

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)

TRANSCRIPT OF HEARING

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3 **ARVIND DATAR:** With Your Lordship's kind request, we discussed among ourselves, it will
4 be difficult for all of us to finish by 2 My Lord. Because the 9 Judge bench, it's not going to....
5 it will have far reaching consequences.
6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We have to conclude the matter by lunch
8 tomorrow, because all of us have regular benches after lunch tomorrow. And we have the call
9 of conscience towards other litigants, who are waiting for years. So, we have to get back to our
10 regular benches tomorrow afternoon. Give an hour to Mr. Rakesh Dwivedi today. So, if he
11 starts at 03:00 today, you will get 1 hour today and he will get two and a half hours tomorrow
12 morning. Between you, you divide it.
13

14 **DR ABHISHEK MANU SINGHVI:** We'll divide ourselves.
15

16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Give us a small note by the morning tomorrow.
17 Just two pages, Mr. Dwivedi, because you've made very detailed notes. But just... what the
18 punch points which you are going to make in response to what they've argued.
19

20 **ARVIND DATAR:** My Lord, we will also give you the punch points.
21

22 **CHIEF JUSTICE D.Y.CHANDRUDH:** I think so, we'll give you until 03:00 and then you
23 can...
24

25 **MANU SINGHVI:** Let's start. I am deeply obliged
26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, these are the matters to be de-tagged. The
28 Nodal Counsel has given us the three... two matters to be de-tagged. The Nodal Counsel had
29 given it. I presume that everybody...
30

31 **RAKESH DWIVEDI:** What I would request is that they may not be de-tagged because some
32 of the issues are common, like Royalty. What is Royalty?
33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We'll not de-tag it right now. At the end, when
35 the judgement comes...
36

37 **RAKESH DWIVEDI:** Then they will go before the appropriate bench for that.

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TUSHAR MEHTA: May I request, My Lord, so far as two matters are concerned, ONGC and OING. If Your Lordships can consider recording in view of the Affidavit of MOPNG. Since they have a separate regime, the matter is needed. Whether now or at the end of the judgement.

CHIEF JUSTICE D. Y. CHANDRACHUD: Fair enough. No difficulty. Who's for the... so long as both the learned Counsel have agreed in this course of action, we can do it.

RAKESH DWIVEDI: I am appearing for the State of Assam.

ARVIND DATAR: I appear for Oil India. I'll agree with the Solicitor. Just one, only one...

CHIEF JUSTICE D. Y. CHANDRACHUD: And Mr. Dwivedi is appeared in that very matter?

RAKESH DWIVEDI: Yes. For State of Assam, what is Royalty will be common there and what is 49 will be common....

ARVIND DATAR: That's common.

CHIEF JUSTICE D. Y. CHANDRACHUD: What you can do is, between two or three seniors, if you could look at all the matters on our board, right? Eventually these matters will be sent to a regular bench. But whatever matters are to be completely de-tagged, if you can just make a little list. If you sit for 15 minutes between all of you over a cup of coffee...

RAKESH DWIVEDI: Yes, we will do that. That will go separately after the judgment.

CHIEF JUSTICE D. Y. CHANDRACHUD: After the judgment.

ARVIND DATAR: No, the Lord's list is right. There are a different regime.

CHIEF JUSTICE D. Y. CHANDRACHUD: Mr. Dwivedi, what is Royalty... whether we de-tag it or not, we are not going to deny permission.

RAKESH DWIVEDI: The State will be there. I will not be adding anything new on that, My Lords. Whatever I'll say will be equally applicable...

1 **TUSHAR MEHTA:** Anyway, My Lord, may I say...

2

3 **ARVIND DATAR:** The only additional point...

4

5 **TUSHAR MEHTA:** Mr. Datar, if you don't mind. Mr. Datar, if you don't mind. Possibly I'll
6 be able to persuade Mr. Dwivedi by tomorrow. I'll mention tomorrow.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All right. All right.

9

10 **TUSHAR MEHTA:** In the State of Assam, maybe agreeable.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All right.

13

14 **RAKESH DWIVEDI:** It will require something...

15

16 **ARVIND DATAR:** It's a very loaded comment. The only interesting point there which
17 Solicitor point out, Assam placed levy Tax on the Entry 49, List II on the oil field.

18

19 **TUSHAR MEHTA:** We are not arguing that Mr. Datar.

20

21 **ARVIND DATAR:** No, I am not arguing. Just...

22

23 **TUSHAR MEHTA:** For a private party there, don't do this.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All right. Let Dr. Singhvi begin then.

26

27 **MANU SINGHVI:** It's 10:45. I am going to save Your Lordship's indulgence to read from the
28 note, the extract. Otherwise, it'll take too much time to go. I am going to race along. Lordship,
29 allow me some speed reading with apologies to Your Lordship.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Fair enough. Where is the note, Dr. Singhvi?

32

33 **MANU SINGHVI:** Yes. 305 it starts. But it is not in the... I will take Your Lordships back and
34 forth. So, Your Lordships follow my para numbers. I'll tell Your Lordships. Volume II(e), 305.
35 There'll be no repetition. Most of the points are new and I'll raise along with Your Lordship's
36 permission. I'm going to keep to the time to the maximum extent possible. Is where it starts.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Dr. Singhvi, just give me one second.

2

3 **MANU SINGHVI:** 305, as I started yesterday, has my six propositions. And My Lord had
4 heard me briefly on each of those six yesterday.

5

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

7

8 **MANU SINGHVI:** There is one point I must point out. The paras I have given against each
9 proposition which are valid. But the pages have been changed by the person who manages it.
10 So, my internal pages have been taken away. Your Lordships should be having the new pages,
11 I think. Now, My Lords, the first point I wish to take Your Lordships to is, Royalty is a Tax and
12 I've broken it up, I'll be reading less than half of these, paras. But Your Lordship will allow me
13 to go in my sequence in that. What are the elements of my first proposition, Royalty is a Tax?
14 The elements are number one, Your Lordships cannot ignore and must not ignore 366 (28).
15 It's a Constitutional Provision. For ease, it is quoted at my B(3) at 325. That's the way I want
16 to proceed, it will be much faster. My B(3) at page 325. The elements are that Your Lordship
17 has an inclusive, which means an expensive definition of Tax, in a sense Tax proper and akin
18 to Taxes or deemed it to be Taxes which are imposed. The characteristics are given in my B(3),
19 page 325 Tax or impost, general, local or special. So, it's an inclusive, expansive approach. Now
20 My Lords, it is so understood, going back, in my para-B (1), in not really general cases, but
21 well, as an extremely important general cases. Para-B (1) is at page 325. I've given a list of Your
22 Lordships, starting from *Shirur Mutt* Seven Judges. All of them reiterate, the famous victim
23 of attacks by Chief Justice Latham, which is my first para. All of them. I ask myself, which is
24 the element of this missing? None. Is it compulsory? Answer yes. Is it public authority? And
25 most important, enforceable by law? I know Your Lordship has two queries. One is Royalty is
26 not a Tax. It's a share or a consideration. Second is, it is charged by private persons. Please
27 leave it for two minutes. I'll deal with both of them.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, what are the ingredients for... compulsory
30 by a public authority?

31

32 **MANU SINGHVI:** B(1). Your Lordship need not note. B (1) has them, underlined,
33 highlighted. 3 to 5. That's why I said it'll be faster this way. This My Lords, [UNCLEAR] is cited
34 by My Lords, in Seven Judges, Five Judges and Nine Judges. I'm sorry. Nine Judges. *Shirur*
35 *Mutt* was Nine Judges. *Jindal* is Nine Judges. *Shirur Mutt* is Seven Judges. Next para cites
36 My Lords. *Shirur Matt* is seven, *Jindal* is nine. So, all the elements are satisfied. Now, the
37 case which alone I want to read, I'm skipping, is *Mc Dowell* in B (5), which is 326 and even

1 in the cases, I'll read only the highlighted portions. B (5), 326. May I read the second half My
2 Lords, para 22, if Your Lordship has got, at page 326, quotation of *Mc Dowell*? All my lords
3 have it.

4

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

6

7 **MANU SINGHVI:** Under 366 (28). My Lords, this is a Constitutional Article. How can it be
8 ignored? 366 (28). 'Taxation has been defined to include the imposition of any Tax or Impost,
9 whether general or local. Impost means compulsory levy, non-volitional, non-optional. The
10 well-known and well settled the characteristics of Tax, in its wider sense includes, all Impost.
11 Impost means, one, incident of sovereignty. Two, law means an act of Legislature.' We know
12 265 very well, My Lords. 'The term 'Tax' under 265 includes impost of every kind, tax, duties,
13 cess or fees, and the idea of 366 (28) is to be expansive and inclusive, not restrictive.'

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Dr. Singhvi, the problem with your argument
16 is very simple. If your argument is right...

17

18 **MANU SINGHVI:** Yes.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That would mean that wherever a contract is,
21 a Statutory Contract, but it is a contract within the fold of a Statute, not just regulated by
22 contract, that you know there are Statutory Contracts, then any payment which is made under
23 the Statutory Contract becomes in the nature of a Tax. That's... We'll have to go as far as that.

24

25 **MANU SINGHVI:** No, Your Lordship will not have to. Give me a... No, it will not have to. I
26 assure you, My Lords. Your Lordship will have two considerations, which fell in the open
27 argument, which I was hearing earlier. One, if it's a Tax, how do private people collect Royalty?
28 That was one argument. Against which I'm answering in a minute. The second is, Royalty is
29 not a Tax, it's a share or a consideration. The judgment from the *Saurashtra*, Gujarat. These
30 two, I'll answer in a minute. Your Lordships will be satisfied. I've dealt with it. But first of all,
31 I am on the elements of a taxation which *Mc Dowell*...

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The license fee which was paid for the State to
34 partake, for the State to part with the privilege of selling alcohol, a liquor, it becomes a Tax.
35 It's not a license fee by this. The State parts with the privilege to deal in liquor, right? You pay
36 a Royalty; you pay a license fee.

37

1 **MANU SINGHVI:** No, I'm not saying it's a Tax.

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It's a Tax.

4

5 **MANU SINGHVI:** I'm not saying it's a Tax. If Your lordship has... see contracts My Lords
6 ultimately, under the law are contracts, whether they are under the fold of a statute or
7 otherwise. So, there will be My Lords, consenting parties with a contract, which I cannot argue
8 then that that's a Tax. I'm going to say it's a contractual fee. There is no contradiction to my
9 argument. It will remain a contractual consensual payment. Somebody will pay 10, somebody
10 will pay 20, longer term, lesser term. It is contractual, it is not Tax. The real only two questions
11 against me on this section are the private person collecting Royalty, which I'll demonstrate in
12 a minute why It's a wrong argument, and one of the Saurashtra High Court Judgment. I'll deal
13 with them in a minute. So, My Lords, first Your Lordships have got B (5) at page 326. Clearly,
14 the characteristics of a Tax are satisfied, absent those two contra points, which I'm coming to.
15 Now on this, my conclusions, if Your Lordship doesn't mind, are at B (13) at 328.

16

17 This conclusion, My Lordship, I'm skipping large portions with Your Lordship's permission.
18 Then I'll deal with those two contras with us in a minute. May I read B (13) at 328? My Lords
19 have got it? 'Royalty and dead rent is a compulsory impost under a statute and not a result of
20 negotiations leading to a contractual agreement. It is unilateral. The mining lessee has no say
21 in its determination. The rate of Royalty is fixed by the Parliament in the Second Schedule.'
22 Now, this is a very important characteristic of a non-contractual impost. Your Lordship, fixes
23 it in the Schedule. No options, no discussions, no consent, no negotiation. 'And can be varied
24 or amended by the Central Government subject to limitations imposed by 9(3) by a mere
25 amendment. The rate of dead rent...', which is actually a more important example, not been
26 given sufficient weight in 9(a), '...is also fixed by the Third Schedule and can be varied or
27 amended. The recovery is capable of being enforced by coercive means.' Your Lordships, in
28 that very relic of the past, that contractual exaction of the Royalty by a private contractor does
29 not have 25 enforceable, enforceability. Then My Lord, 'hence, it is submitted that Royalty
30 meets all the requirements of at least an impost.' Then My Lord, Your Lordship will come to...
31 May I just straight away take Your Lordships to the two contras which I myself formulated
32 against myself. One is My Lord is 328 para 15 onwards, this I have dealt with the Gujarat High
33 Court Judgment. 'Incorrect to characterize Royalty as consideration...', may I read through
34 very quickly? It will be faster and easier, if I read these paras.

35

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

37

1 **MANU SINGHVI:** 'Royalty imposed under 9(1) ought not to be conflated with the concept
2 of Royalty, as consideration, share of income such as intellectual property, music, artworks.
3 Such Royalty would be determined through negotiation between contracting parties. Royalty,
4 in its very essence, is based on removal, consumption...' There's nine Judges, Your Lordships
5 have to lay down the concept one way or the other, very clearly. This will probably endure for
6 a long period of time. And it is very interesting... let me digress for 5 seconds. Three, four
7 months after **India. Cements**, which held it to be a Tax, four months. Learned Judge who
8 was a member of the India... who was heading the bench of **India Cements**. Chief Justice
9 Venkataramiah then was, holds it as four months later, he held so, that it is a Tax. They did
10 not misunderstand their own Judgment. It's only because the interpretation of **Kesoram** that
11 you are misunderstanding your own Judgment. Now kindly see. 'Royalty in its very essence is
12 based on removal or consumption of minerals. Although the terms "removal and
13 consumption" are not defined, they are linked closely to the terms "production and dispatch".'
14 These are directly linked terms. Your Lordship has then defined 3(a), 3 (fa). I'll not read them.
15 Removal, consumption, products, derivative meaning of production or dispatch. I'm not
16 reading it for saving time. Now, let's see customs is a general point. It's not on this. It holds
17 that, it is an akin to excise. It's seven Judges. No, nine Judges. See customs, nine Judges. And
18 just see the bold face on the next page 330. My Lord is saying... I'm jumping. I'm only going to
19 the highlighted portion. Lordship will pardon me. I don't have time to read all. 'Excise duty is
20 primarily a duty on the production.' What is removal? What is dispatch? What is production?
21 What is it? You don't call it excise; it is in the nature of a duty. 'Excise is primarily a duty on
22 the production of manufacturer of goods produced for the manufacture in the country.' Next
23 para. 'Therefore, both excise and sales tax...', of course, different taxable events, 'are levied
24 with reference to goods. The two are very different imposts. In one case, the imposition on
25 manufacture or production. Other is an act of sale.' Now, I'm not saying this is a case on
26 mining. It's a general case. It is. Now come to **Hingir-Rampur** and... the nature of Royalty
27 is more akin to that of an excise duty. **Hingir** and if in **Hingir**, Your Lordship will just come
28 to 331, the page number. Fourth line. 'This raises a question as to what are taxes on mineral
29 rights. Obviously, tax or mineral rights must be different from taxes on goods produced. If
30 taxes on mineral rights also include taxes and minerals produced, there would be no difference
31 between taxes and mineral rights and duties of excise under 84. A comparison of List I and II
32 shows that the same taxes not put in both the lists.' And 50 is a unique entry. It uses the word,
33 tax on mineral rights. They don't use the word, mineral development. They don't pick up the
34 word from anywhere else.

35

36 'Therefore, tax on mineral rights must be different from duties of excise, which are taxes on
37 minerals produced. The difference can be understood.' I'll skip those lines with Your

1 Lordship's permission. Come four lines below. 'There should therefore, be no difficulty in
2 holding that taxes on mineral rights are taxes on the right to extract minerals. And not taxes
3 on the minerals actually extracted.' This is actually my proposition 4. It's coming later, but the
4 judgment is the same. 'Thus, tax on mineral rights will be confined, for example, to taxes on
5 leases of mineral rights and a premium for Royalty. Taxes on such premium and Royalty would
6 be taxes on mineral rights, while taxes on the minerals actually extracted would be duties of
7 excise.' And then the last four lines underlined, not bold face, last four lines, same page.
8 'Therefore, the present cess is not a tax on mineral rights. It is a tax on the minerals actually
9 produced and can be no different in pith and substance of tax produced.' Now, **Saurashtra**
10 I know has been cited against us. B (19). I'll skip that, because it is approved by **Kesoram**.
11 I'm skipping that. That is cited in B (19). Come to B (20). My Lords, what is the reason in
12 **Saurashtra**, with the deepest humility? Reason is if you don't want to have this tax, don't go
13 mining. Is that an excuse...? That's the reason given. Now read my para-B (20). Every Indirect
14 Tax, My Lord, in that sense is optional. If I don't go and buy a good, I won't have to pay the
15 Tax. So that means I should not buy the good. 'However, the underlying logic of this
16 reasoning...' My Lord, this reasoning is the **Saurashtra** reasoning, Gujarat High Court. 'It is
17 respectfully submitted.' And that's adopted by **Kesoram**. That's the problem. Gujarat by itself
18 would not be the problem, it is adopted by **Kesoram**. 'It is respectfully submitted, patently
19 erroneous, in as much as a choice of whether or not to undertake mining operations by
20 obtaining a mining lease, cannot possibly take away the character of Royalty as a Tax, for the
21 reason that this choice is available with respect to all Indirect Taxes. One may or may not buy
22 goods or may or may not avail services, that cannot possibly make the Indirect Tax that would
23 otherwise follow something other than a tax.' Now, My Lords, who are the people operating
24 this system? See the next paragraph. From time immemorial, apart from **India Cements**,
25 apart from nine Judges, this is the Indian Bureau of Mines, which is the My Lords, mother of
26 all organizations for all this. 'Royalty, in the strict sense, in common parlance, may not be a
27 tax, it can be viewed as a kind of Tax...' Which is why 366 is 28. '....linked either directly or
28 indirectly to the intrinsic economic value of a mineral realized through sale by the lessee.
29 Royalty of mines cannot be a fee but a levy in the nature of the Tax.'

30

31 Then next page, My Lords. 333, Royalty on coal is a Tax. Then I move to B (23), International
32 Monetary Fund, My Lords, not that it is at all, in any way binding, it's a working paper. I've
33 quoted that. Don't read it. Saving time, I've quoted it there. Please look at it. Come to B (24),
34 which is on general interpretation. Your Lordships can use an external aid because these are
35 some of these external aids to interpretation. And now just note on the side of B (25), a
36 conceptual point which is not put like that. Your Lordship has taxes which are Royalty under
37 9. This Lordship, I've not put here, Lordships may want to note on the side of B (25). 'Royalty

1 is a Tax under 9, dead rent is a Tax under 9(a), DMF is under 9(b). Only thing which I get a
 2 quid pro quo or a benefit is the fourth one, NMET, the exploration Tax, that is 9(c).' That can
 3 go in the category of fee, but it's an impost covered in 366. It's the fifth one which came in 2015
 4 in my B (25) para, which is a bidding parameter. That is contractual, that is not a Tax. This
 5 what happens, after the auction regime of 2015, I have to bid, so I bid Rs. 10, he bids Rs. 20.
 6 On that bid of mine, depending on the bid, I have to give a share. That's my contractual thing.
 7 That's the fifth one which has come only in 2015, which I have quoted in B (25). All the other
 8 are compulsory exactions. I'm only contrasting it. It's called a premium, but it's actually a
 9 contractual payment and that is the closest to a share or a consideration. I'm contrasting it.
 10 And Your Lordships has got the B (25) and B (26) on that.

11

12 Now, My Lord, I come to the other contra point. If it is a Tax Mr. Singhvi, how do private
 13 persons collect it? Very simple answer. Let me give the answer first, then I will read the rule.
 14 It is true that it is a relic of the constitutional past but because 'the tail should not be allowed
 15 to wag the dog', as was mentioned yesterday. This will be a case of tail wagging the dog. It is a
 16 very, very few numbers of States and my learned friend relies on *Thressiamma*. Mr. Dwivedi
 17 cited it, which was Kerala, which had forgotten, I would use the word, 'forgotten', to pass a law
 18 say that the mineral under the earth is the States'. Incidentally, after *Therissamma*, Kerala
 19 immediately passed that law. Most other states, 99%, have that law. It is true that there may
 20 be one or two examples, which I call a tail My Lords, that will not decide a nine Judges
 21 approach, that Royalty is not a Tax because 0.1% cases may be there in the country, where the
 22 mineral does not vest in the Government and therefore, there can be a Private Lease for which
 23 Royalty is paid. That's answer number one. Answer number two, is very interesting, is that
 24 even in those Private Lease cases, the 2016 rules makes it clear, that it is completely controlled
 25 by the Government. The private man, he is the private lease owner, he can't give me a lease.
 26 He has to go through a gamut of prior authorization by the Government under 2016 rules,
 27 which I'll show in a minute. And the third reason is most important. This private lease holder
 28 cannot enforce through 25. That's the hallmark of a sovereignty of a Tax. So, My Lord...

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the third reason?

31

32 **MANU SINGHVI:** Third is, this private fellow who has a relic, My Lords, a few occasional
 33 leases here and there in the country, which have not been taken over by the Government,
 34 cannot use 25 to enforce Tax. Enforceability is given only to the exaction. Section 25 is clear.
 35 Now, just read the para with that line. Three points have given Your Lordship. All three are
 36 covered here. So, B (27) of my page is 334. 334 is the *Thressiamma Kerala case*.

37

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

2

3 **MANU SINGHVI:** At B (27). At 335-page number of my written submissions, I have said in
4 the first three lines, there was a absence at that time of a provision in the Kerala Land Revenue,
5 declaring the ownership of minerals underneath, to vest with the State. That is My Lords one
6 of those anachronisms. There is hardly a place. 99% would not be that. It's a relic of the pre-
7 constitutional position, which I have said. I don't want to read it My Lords. Second B (28), is
8 the Section 25 point, which I just made. B 28(a), Section 25 and 21 (5), 'the Recovery
9 Provisions, would not be available to Private Lessors, thereby changing the very character of
10 Royalty. The grant of Mining Lease Concessions by private person, is not unqualified.' Now,
11 see this authorization in Rule 27. In the book, Your Lordship will have to take two downs.
12 Actually, although the private man has the lease, he can't sneeze without permission from the
13 Government. All of it is regulated. My Lords, Rule 27 is not given here in this bunch, but Your
14 Lordship has that book. It's got the 2016 of Rules, which says, for a private owner of a lease,
15 to even My Lords, negotiate with him and give it to him, everything is covered by prior
16 permission or authorization. He can't. And this is true of minerals other than Hydrocarbons
17 at Atomic. In Hydrocarbon Atomic, of course, there's no question. It is already gone with the
18 State. But for all other minerals, every other mineral. So, well, it is a relic, it's an argument
19 used to decide the main matter, where 99% leases are not there, and it is true factually, I can't
20 deny it, but it just doesn't make sense to interpret it on that basis, in my humble submission.
21 Now that's the two points. And lastly, My Lords, as I finish my first proposition, just see that
22 four month later judgment by the same learned Judge, who presided over **India Cements**,
23 and how he understood Tax. Kindly see that Honourable Chief Justice... 5 (i) page 67. Starts
24 with 65 at 67. He presided over **India Cements**. Learned Judge who presided over **India**
25 **Cement**, four months later, in a smaller bench... 5 (i) starts at 65, relevant at 67, para 6. And
26 My Lord, I will always harken back to that question. What is so especially wrong about **India**
27 **Cements**? Or what is so especially correct about **Kesoram**?

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Which part is that?

30

31 **MANU SINGHVI:** Para 6 at page 67. That this entire established Law should be changed.
32 I'm sorry. Not four months. Two months after **India Cements**. Two months after **India**
33 **Cements**. Well, the Chief Justices then was says, 'We do not find much substance in this
34 contention.' Does My Lord have para 6? Recently a Constitution Bench of this court has held
35 in **India Cements**, recently is two months earlier, that the 'Royalty levied on the extracted
36 mineral is the nature of Tax and were not in nature of a fee which could be used only for specific
37 purpose. Any Tax realized, *et cetera, et cetera*, Consolidated Fund of India.' I'm not reading to

1 save time. But all this is happening because of five Judge bench. At least judicially My Lord,
2 has set the cat amongst the pigeons. Unless there's some overwhelming reason, why Your
3 Lordship should not follow a five-judge bench for this. Otherwise, the law was very clear,
4 understood as clear. Coming to my second proposition, I must race along with this. Dead rent
5 is the second proposition, at page 335, it starts, is clearly even if for sure I [UNCLEAR], a Tax.
6 As Your Lordship knows the scheme is Central Government occupies in 9 the Royalty. In 9 (a),
7 it starts occupying the dead rent. I would like to call a dead rent an idling charge .

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Which is made to the Government. Will a
10 minimum guarantee payment also partake the character of a Tax? Because in a large number
11 of situations...

12

13 **MANU SINGHVI:** Yes.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** ...a minimum guarantee payment is assured to
16 the Government. Whether it's an electricity company, the principle is you must lift the
17 electricity company.

18

19 **MANU SINGHVI:** No, answer is very simple. I appreciate My Lord, the question. It's very
20 important. Nobody can say a minimum guarantee...

21

22 **CHIEF JUSTICE D.Y.CHANDRUDH:** Suppose there is a public-private partnership.
23 Government has once an assurance of a minimum revenue, it says, you must give me this
24 irrespective of what profits you make.

25

26 **MANU SINGHVI:** Straightaway, straightaway. There's no problem. Every example, which
27 Your Lordship has in mind, will be contractual. Every example. What are these public PPPs?
28 One is a BUT highway. Second is a tender. Third is an auction. Non- contractual. This is an
29 exaction under 9(a) .Your Lordship has a clear dividing line and I'm not going to be
30 inconsistent. I've just yet to show lots of very interesting statement of objects and reasons
31 when 9(a) was brought in. Your Lordship will be shocked. Every case will fall in the contractual
32 versus a non-contractual exaction line. And that's why 366 (28) is perfect. Chief Justice
33 Latham is perfect on *Chicory* followed by My Lord one nine Judge and one seven Judge
34 bench in India, *Shirur Mutt* and *Jindal*. Now in this dead rent, first of all, the points are
35 the same. Three elements; compulsory, non-voluntary, exaction and enforceability. Same
36 ,same. Here the additional point is it is not based on what you extract. As a matter of fact, the
37 better way of looking at dead rent is a charge on you, taxation for squatting or idling. You just

1 idle. My friend Tushar Mehta gave a reverse example. I would think the better example is, that
2 you sit and do nothing. He gave an example that you overexploit early. Suppose you do
3 nothing; you are depriving this man from getting it. You are not contributing to the country
4 and you're sitting idling. So dead rent comes in, irrespective of whether you extract or not.
5 Now in this B (31) straightaway is extremely important. This also was in Form K. It was
6 transposed from Form K in 1972 and put in the section. This is apropos, the Honourable Chief
7 Justice's very important query. Of course, according to me, it was statutory even in Form K.
8 There was no doubt about it. But after 1972, the issue vanishes. It is made a special statutory
9 provision with a capital A. That's by para 31, B (31). Now My Lords, in '72, they brought in two
10 sections together, 4(A) and 9(A). I hope I'm clear on this. And the object, the SOR of 4(A),
11 which I am reading from the note itself rather than taking Your Lordship to save time, it's very,
12 very interesting because it replicates the language of 54. It reads, 'so as to enable mineral
13 development of that area by a Government company or corporation', this Your Lordship will
14 get in Volume IV, 915 and 916. But don't go to it. It'll save time. It's quoted by me here. 4(A)
15 and 9(A) are related. 4(A) is lapsing. If you abandon the mine, lapses, lapsing. And 9(A) is
16 squatting or idling. Similar concepts. This is the object. This is the object.

17

18 So, My Lords, I think I've done my second issue ending on B (32). 'Hence, there can be no
19 manner of doubts that 9(A) was introduced to further mineral development in nature of a tax
20 on mineral rights, thus qualifying for the limitation, etc., etc.' I turn to my third proposition,
21 which I use the very loose and I said for myself, incorrect analogy, look back. There is a phrase
22 in private international law, with that French word [FRENCH]... which is look back. It's like a
23 circle. You come like this, you come here and you reach here and look back. My Lords, 50 is a
24 very interesting way of looking at 50. It's a look back provision. And let me... This was my third
25 proposition is the Entry 97, read with 54 proposition. Let me explain that and then I'll read
26 the paras. Let me explain that first. Let me explain that. Entry 50, a) I'm breaking it up now
27 and Your Lordships have seen the language many times. And the Lordships very important to
28 note the opening three words, taxes on, that has been given less weight. The provision is
29 focused on taxes. Now, when a provision opens with taxes and then follows with the word,
30 limitation, it has to contemplate limitation on taxes or qua taxes, otherwise the provision is
31 meaningless. It will read very distortedly. Taxes on mineral rights, then, of course, subject to
32 limitations, etc., etc. So, the limitations, so point number one, it is on taxes. Point number two,
33 it looks back to limitations of *inter alia qua* taxes by a superior provision. Entry 54 is the only
34 superior provision. There is no other provision. Third, once it looks back to 54, and taxes are
35 a subject matter, then 97 can't be ignored because you have to read 54 synergically. I am not
36 reading 97 as standalone. 97 has no value as standalone. But once 50 looking you back into 54,
37 then 54 and 97 must be read synergically, because the whole of List I specifically put those

1 words in 97, that when you don't find a specific word in my list, in List I, then you must use
2 97. Now to that the Honourable Chief Justice asked many times, what about 248(2)? 248(2)
3 says, provided there nothing in these two. Answer is very simple. I'm now addressing Your
4 Lordships to 248(2.) Answer is simple. If List II was a vanilla provision of taxes on so and so,
5 then 248(2) will bar my argument. But Entry 50 is not a vanilla entry. It's a unique entry which
6 says, I am myself subject to a superior power of 54 and 97. So 248(2) is satisfied fully in my
7 favour. 248(2) protects a vanilla entry of a taxation in List II. But if there is taxes on mineral
8 rights, full stop, then, I could not make this argument.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The only problem, Dr. Singhvi is this. If you
11 look at Entry 97 just as it stands, you see what you are arguing, obviously it's a weighty point
12 but once there's a limitation on...

13

14 **MANU SINGHVI:** Neither does it take advantage of one is making all kinds of.. Your
15 Lordship are going to create... No table on our side, Your Lordships can decide whatever is...

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because you know, Entry 50 speaks of
18 limitations. Now, if you are right, for that purpose, we will proceed on the basis that you are
19 right, to test the hypothesis, that the limitation is provided by the MMDR Act. Once the
20 limitation is provided by the MMDR Act, then the power of the state to impose a tax on mineral
21 rights under Entry 50 is denuded. Right? Is denuded. If that power is denuded, your
22 submission is the power to improve the tax and mineral rights has to be located somewhere
23 and if it is to be located somewhere, it is at Entry 97.

24

25 **MANU SINGHVI:** 54. 54 read with 97.

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 54 read with 97.

28

29 **MANU SINGHVI:** Otherwise, Your Lordship will be right. I mean, I don't want to have a
30 standalone situation. The basic power 97 was meant to go with...

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Entry 54 does not cover the field of a Tax at all,
33 right? The power then to impose a tax... actually, I'm incorrect because the list don't confer a
34 power. 245, 246 to confer a power.

35

36 **MANU SINGHVI:** Correct. Correct.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But the subject of a Tax which does not fall
2 within Entry 50 then, or which is subject to a limitation under 50 by your submission...

3

4 **MANU SINGHVI:** Let me answer that.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:**has to go to Entry 97. The problem with that
7 argument is that Entry 97 says, '...including any other fact not mentioned in either of those
8 lists.' Even if there's a limitation imposed under Entry 54 of List I, that Tax does not cease to
9 be a Tax mentioned in any of the lists. That tax still continues to be mentioned in one of the
10 lists.

11

12 **MANU SINGHVI:** There's a slight thing. My Lord, I appreciate. Allow me. Allow me. I
13 understand My Lords completely.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right. Therefore, the power of the State to
16 impose a Tax is subject to limitations.

17

18 **MANU SINGHVI:** 97 disappplies itself because mention is made in 50 is what Your Lordship
19 is saying.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Otherwise, you look at it slightly differently.

22

23 **MANU SINGHVI:** Yes.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Here according to you, the States cannot
26 impose a Tax on Royalty at all because of the MMDR Act which covers the field. Right? Because
27 that's the limitation. Suppose, for instance, the Parliament has imposed a limitation not of this
28 nature, which, according to you is absolute. The States cannot impose a Tax on Royalty at all
29 according to you. Suppose Parliament imposes a limitation short of an absolute limitation,
30 right. In other words, permits the States to impose a Tax on mineral rights, but hedged in by
31 condition 1, 2, on atomic mineral not exceeding 5%, on Bauxite, not exceeding 7%, on XYZ. In
32 which case it could well be argued that Parliament then retains the power to Tax mineral rights
33 bereft of the limitation which it imposed on the States. That can never be.

34

35 **MANU SINGHVI:** I understand My Lord's query. Allow me to answer. It's very important.
36 The nub of this...

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Entry 97. Entry 97 was introduced because,
2 the framers felt when they framed the Constitution, that in future, there may be new Taxes
3 which we never knew of. They may not have contemplated those Taxes and... exactly... Service
4 Tax was Goods and Services Tax. GST was not mentioned anywhere at all.

5

6 **MANU SINGHVI:** My Lords, I have now applied squarely to this case. First of all, let's just
7 keep MMDR aside for a while. I am at one stage anterior. The simpler argument is 9, 9(a), 9(b)
8 and 9(c) occupy the field completely. That occupation will be... provided Parliament has a
9 power to occupy. So, I am going once stage before, against myself. 9(a), Your Lordship we'll
10 just leave aside. 9, 9(a), 9(b). Now, my... Your Lordship, as the Honourable Chief Justice, the
11 heart of the query is that 97 says not mentioned, clearly 50 mentions. Therefore 97 disapplies
12 itself. I Understand the query completely. Now, what is my answer to this. We have to start
13 the sequence again. And give me just a couple of minutes... It's very important My Lords...
14 conceptually. Entry 50 deals with many elements but two crucial elements for my this
15 argument - Taxes and Limited by Law relating to Mineral Development. Now, I'm only
16 answering My Lord's query. I'm not going to the larger issues. 50 does two ingredients vital
17 for my answer to My Lords. One, Taxes. Two, Limitations imposed by Law relating to Mineral
18 Development. It can't be a limitation related to Non-Mineral Development. Clear, My Lords?
19 Number three, if 50 makes itself a non-vanilla provision... not saying Tax on Mineral Rights.
20 But 50 itself says Taxes subject to a Limitation by Law related to Mineral Development. The
21 third step is, which is the only source of power for Mineral Development, answer has to be 54.
22 That's step three. I'm breaking it up My Lords. Allow me to just develop this. It has to be 54.
23 That's the only single source of that subject. Number four, having reached there... you are in
24 actually only one situation... because it doesn't... 54 doesn't use the word, 'Tax'. So why do
25 you... That's why 97 was created. If Parliament makes a Law Limiting mineral... relating to
26 Mineral Development, which is a limitation, the taxing power goes concomitantly with 97.
27 Now the fifth point is important. The word 'mention', in 97, is not to be led literally to mean if
28 there's any mention. What nature of mention is there? What is the architecture of that
29 'mention'? What is the form of that 'mention'? What is the way you have mentioned it? Your
30 Lordships, word 'mention' would be correct if it said Tax on mineral rights. That's the
31 'mention' which will disable 97.

32

33 **JUSTICE B. V. NAGARATHNA:** So, you're saying 97 has to be read harmoniously with 50.

34

35 **MANU SINGHVI:** Yes, first and foremost 50 has to be read harmoniously with 54. Then
36 through. 54, what My
37 Lords said just now. The 'mention' word, I understand what My Lords is saying.

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CHIEF JUSTICE D.Y.CHANDRUDH: That is the [UNCLEAR]

MANU SINGHVI: That is the crux of the matter. That's why I divided into five points. The answer is divided into five sub-points .

CHIEF JUSTICE D. Y. CHANDRACDHUD: There's something in what you are arguing for this reason, that it can't be in the contemplation of the Constitution that then nobody can impose a Tax.

MANU SINGHVI: Exactly, can't be a vacuum.

CHIEF JUSTICE D. Y. CHANDRACHUD: There can't be a vacuum in taxation, as there can't be a vacuum in Legislation. On the one hand, because of a Central Law, the States can't impose a Tax because it's a limitation. Then does that mean that even Parliament cannot impose a Tax? That is the point which we will hear Mr. Dwivedi on that.

MANU SINGHVI: If Your Lordship holds it to be a different kind of Entry 50 than what we are seeing, that the matter is different. Your Lordship has to be consider this part of the case, which is that 50 is a very unique Entry. It is clearly looking back at 54.

CHIEF JUSTICE D. Y. CHANDRACHUD: It also then leads us to one more question.

MANU SINGHVI: Yes.

CHIEF JUSTICE D. Y. CHANDRACHUD: All those levies which Parliament has now imposed under the MMDR Act.

MANU SINGHVI: Yes.

CHIEF JUSTICE D. Y. CHANDRACHUD: Nobody is challenged those levies of course.

MANU SINGHVI: No, they've been challenged.

CHIEF JUSTICE D.Y.CHANDRACHUD: Somewhere else. But under what power did Parliament impose those levies?

1 **MANU SINGHVI:** No, it is 54, 97. Ultimately no, no. Now judgment is said so. The problem
2 is **Kesoram. Mahalakshmi** said exactly what I'm saying. The problem arose when
3 **Kesoram** came along and ignored number of judgments, including **Mahalakshmi**. I would
4 like to claim My Lords novelty and ingenuity, I can't. **Mahalakshmi** has much of this.
5 **Kesoram**, with respect, could not have set the cat amongst the pigeons on this basis. I have
6 quoted **Mahalakshmi**. Allow me to read that. Honourable Chief Justice will kindly allow me.
7 This is a very important question dealt with by Your Lordships directly. It is only
8 **Mahalakshmi** which is a dissident voice. My Lord has been consistent. Let me give you those
9 four or five cases in a minute. So now, My Lords I'll be reading now from 11 onwards very
10 quickly. This is the whole case. Now on this point, these paras will show Your Lordships that I
11 am not able to claim ingenuity or novelty. This has been....

12

13 **JUSTICE B. V. NAGARATHNA:** You are proceeding on the basis, that Royalty is a Tax.

14

15 **MANU SINGHVI:** Yes, that's a set of arguments.

16

17 **JUSTICE B.V NAGARATHNA:** Yes. Suppose there's another perception, if Royalty is not a
18 Tax, of course, in the subsequent judgment, they said it is akin to a Tax.

19

20 **MANU SINGHVI:** Yes.

21

22 **JUSTICE B. V. NAGARATHNA:** It is a exaction but not a Tax, then what would be your
23 argument?

24

25 **MANU SINGHVI:** First of all, Akin will not make a difference with 366 (28) will make it. But
26 let's forget their argument. Yes.

27

28 **JUSTICE B. V. NAGARATHNA:** It is under the grant of a lease, it is for exercise of a
29 Mineral Right?

30

31 **MANU SINGHVI:** Yes.

32

33 **JUSTICE B. V. NAGARATHNA:** But it is not a Tax, then what would be the argument?
34 The State's power under Entry 50 remains while under the Parliament, Royalty may be
35 imposed.

36

1 **MANU SINGHVI:** That is why I said that would be My Lords, an acceptance of Mr. Dwivedi's
2 argument and a repulsion of Mr. Salve's first part of the argument. But in my case, even then,
3 dead rent is not answered in My Lord's query. What about dead rent My Lords? Remain a Tax?
4

5 **JUSTICE B. V. NAGARATHNA:** But in *India Cements* they included the word 'Royalty'.
6 In *India Cements* a problem arose because they included the word 'Royalty' in the definition
7 of that particular impost or cess.
8

9 **MANU SINGHVI:** My Lords, with respect, I'll read those two paras. Mr. Ganguli will read
10 that also. Straight away, para 34 *India Cements* is not -- My Lords, allow me to answer
11 straight away? Yes, *India Cement* independently on first principle holds Royalty to be Tax,
12 directly and clearly not because it's Included here or there. Then it says cess is another kind of
13 Tax. Therefore, Tax on Tax is bad, but Royalty is a tax is independent on first principles held
14 by *India Cements*.
15

16 **JUSTICE B. V. NAGARATHNA:** It stems from the fact that the word Royalty was included
17 in the definition,
18

19 **MANU SINGHVI:** No, no My Lords, with respect no. I will show that.
20

21 **JUSTICE B. V. NAGARATHNA:** Of the State Act.
22

23 **MANU SINGHVI:** My Lords, it will make no difference. My Lord, obviously a Tax of any
24 kind will have to have some statutory basis. Under Article 265, Your Lordship cannot have.
25 So, it has to have some backing. But the basis is therefore statutory, not the strict sense but let
26 me say sovereign levy, exaction and enforceability. Your Lordships cannot have a Tax.
27 Suppose, I contractually demand something, it won't be a Tax. So that much will be there
28 always. But *India Cements* is directly holding it to be a Tax. It is holding it because it is an
29 exaction... of course, they had a separate question. The first para puts it, that, is this cess on
30 Royalty valid? So, cess and Royalty makes it worse. It's already a Tax. On that, you put another
31 Tax. So that's the issue. But to come back to this, dead rent is a good example because dead
32 rent is a for sure a Tax. Tax, My Lords, dead rent is a for sure a Tax. Because it's an idling
33 charge. You do nothing, you still pay it. It's compulsory, it's exactable, it's enforceable. No
34 option.
35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Dead rent is a Tax. dead rent is actually, dead
37 rent is also very intrinsically related to Royalty. That's why the proviso to Section 9A(1) says

1 that when the holder of a mining lease becomes liable to pay Royalty, he shall pay either
2 Royalty or dead rent, whichever is higher. So, it is really in the nature of... It's for the exercise...

3

4 **MANU SINGHVI:** Let me answer that.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And therefore, non-exercise of a mining
7 right.... It's relatable to the exercise of a mining right... Dead rent in your concept is a Tax may
8 not be correct.

9

10 **MANU SINGHVI:** With respect, it's conceptually the very same point I'm making. It has to
11 be related to Royalty because if you mine and extract, you will pay Royalty. If you don't mine
12 and extract, you are squatting, which is why you pay dead rent. It's an idling charge. I started
13 by saying that.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It's not a Tax. It's a charge which you pay to
16 the State for not having exercised your right to extract and therefore, the State is losing
17 revenue.

18

19 **MANU SINGHVI:** It's not optional.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And therefore, you have to pay.

22

23 **MANU SINGHVI:** So, what is the...? That's why My Lords, C 620 impost, impost. What
24 characteristic of a compulsory does it not have? It's compulsory. It's 9A. It can be enforced by
25 25. The man can't.... And the rate can be changed by amendment to the 3rd Schedule. Your
26 Lordships can't change the rate without amending the 3rd Schedule. It is completely a Tax.
27 And the whole idea of putting 366, 28 was to catch those minor creases which said that, no,
28 it's not a Tax in a full form called so. Your Lordships can't change the rate except the 3rd
29 Schedule Amendment. And 25, same recovery procedure. So...

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 9 B(5) which is a district mineral foundation
32 and 9C(4), which is a national mineral excursion trust. This is all paid as a component of
33 Royalty.

34

35 **MANU SINGHVI:** No, with respect. It is alternative.

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Instead of passing this 9B and 9C, they could
2 have just enhanced the rates of Royalty. They put additional fees on that.

3

4 **MANU SINGHVI:** Let me explain.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It doesn't cease to have that connect with
7 Royalty.

8

9 **MANU SINGHVI:** 9A, 9B are all taxes.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And that should...

12

13 **MANU SINGHVI:** 9C can be a fee.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Assuming royalty is a Tax, where is the bar on
16 the States imposing a Tax on minerals rights, because it is still in the nature...

17

18 **MANU SINGHVI:** That's my my fourth proposition. That's coming. That's my my fourth
19 proposition.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** There is no bar on the...

22

23 **MANU SINGHVI:** Let me shock Your Lordship by saying my fourth proposition says, I
24 concede that. But you're not levying a Tax on mineral rights. For a minute, for the purpose of
25 argument, let me concede that you have a right to, I'm not accepting anything, concede the
26 fact that you have the right to levy Tax on mineral rights. Allow me, that's my fourth
27 proposition coming up. But let me finish my third. My third proposition, therefore, rests with
28 9, 9A and 9B. Kindly read them carefully.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, what is the proposition in Section 9, 9A?

31

32 **MANU SINGHVI:** This is my proposition number 3, my first page.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** How do you formulate it? 9, 9A...

35

36 **MANU SINGHVI:** 9, 9A, 9B are Taxes because they are compulsory imposts by a public
37 authority enforceable by coercive measures, (e.g., land revenue, etc.), and are changeable only

1 by statutory amendment. There is nothing else a Tax has. No Tax will have anything except
2 this, no Tax. Otherwise, the whole concept of Tax will change and if 9 judges have... 7 Judges
3 in **India Cement** have held so, why should Your Lordship depart unless this is something
4 fundamentally wrong?

5
6 This was accepted by **India Cement** in so many cases. It's just that **Kesoram** has created
7 this new thing. 9C, is however a fee, because there is a *quid pro quo* of exploration. I myself
8 said so on my note. 9C has an element of *quid pro quo* and is a fee. It's an exploration issue.
9 Third point My Lords, apropos the Honourable Chief Justices' query. Two more sentences on
10 this. 9A, which is dead rent, has to be alternative, because when you don't bind the land and
11 extract minerals and squat or waste time or sit there idling, then dead rent comes in. So, the
12 very concept is in the alternative. That's the concept of it. The whole idea is that you must bind.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright. That's the third point now.

15

16 **MANU SINGHVI:** And the last, is My Lords, that some of these calculations, in one or two
17 of these cases, is done on by a percentage of the Royalty. That's a calculation. That has nothing
18 to do with changing the character. It says that you will pay, at X percent of the Royalty. This
19 My Lords, completes my third point. The most important part of the third point is a look-back
20 nature. Non-vanilla nature of My Lords of Entry 50. I've done proposition three, My Lords.
21 Proposition four, is what my Lord, the Chief Justice just have asked me. No, I'm sorry, I have
22 not finished. I have to read very quickly this previous point. Please turn to A-11 My Lords, page
23 310. I, My Lords, is conceptualizing it. This will be very quick. I'll just read it very quickly... on
24 the previous point, that is, on this 50 look back and 97. Come to para A-11 at page 310. This I
25 had to read My Lord. Extremely important. Such important judgments are completely My
26 Lords, put to the side by **Kesoram**. That's the only reason where Your Lordships have to
27 exert... please turn to page 310. Does My Lord have it? All My Lords have got it? Now just I
28 will read the bold face only, I'm skipping. This is **Mahalakshmi**. 'Once the Parliament is
29 occupied the field in connection with regulation of mines and Minerals development, and
30 when the Parliament declares there is experience in the public interest to do so, Entry 23 of
31 the State list, regarding regulation of Mines and Minerals, would be of no avail to the State
32 Legislature, as Entry 23, is subject to List I, nor will Entry 50 be of any assistance in this case.'
33 Kindly go further, the bold portion. 'Once these entries are out of the picture, it is Entry 54 in
34 the Union list, which will operate, and the imposition of Tax and Minerals extracted, would be
35 squarely covered by 54.' Now, come to the next page. 'Section 9, being part and parcel thereof,
36 cannot be out of the sweep of 54. However, even assuming that there should be a specific
37 Taxing entry regarding Taxing of Royalty on Mineral Rights, which can sustain such legislation

1 under the said entry being a topic of Legislative Power, we find that there is no such specific
 2 entry in Union List, nor in State List or Concurrent List, which can be of any assist in this
 3 connection. Entry 50 in the State List is out of the picture, that's non-vanilla entry.' Then My
 4 Lords, 'in the alternative, imposition of such Hybrid Tax on Mines, on Capital, on Labour,
 5 would be covered by the residuary Entry 97 of the Union List, which empowers the Parliament
 6 to enact laws on topics not covered.' Now go furthermore. It is not a flash in the pan, it is not
 7 one solo, which I want to make a summer out of. Come to My Lords the next judgment,
 8 **Saurashtra**. Now My Lords, the next para is **Saurashtra**. This is not that **Saurashtra**.
 9 This is The Supreme Court's **Saurashtra**. The other one was Gujarat High Court. The bold
 10 face. 'Section 9 and 9(3) thereof, by holding that by Entry 54 of List I was within the list of
 11 competence, to make the law in question. Neither 23 of List II nor 50 of List II would be
 12 attracted. It is no doubt true that in the aforesaid case,' that is **Mahalakshmi** aforesaid case,
 13 'the Court also held that 97 will confer Legislative competence, but not because Parliament has
 14 no competence under Entry 54.' They went further. 54 is enough. But it was used as an
 15 additional prop, I hope I'm clear My Lords. They say 54 is enough. 97 is an additional prop.
 16 Now My Lords, come to A-15.

17

18 **Kannadasan**, I'm not citing. Mr. Salve was dismissive of it. I'm not citing for that purpose
 19 at all. I am citing that when Your Lordships had so much collection and you had to help the
 20 states to not get refund, you passed **Kannadasan**. I mean, you passed the Validation Act,
 21 and it came for **Kannadasan**. Look at these highlighted paragraphs. Shri Sanghvi argued
 22 that the denudation is not absolute, but only to the extent provided in the MMDR Section 9,
 23 learned Counsel submitted one of the facets of the extent of denudation. This partly will deal
 24 with the extent argument also. This contention assumes that, notwithstanding the declaration
 25 in 2, the State still retained the power to levy taxes upon minerals over and above those
 26 prescribed by the MMDR and that a fresh declaration is called for whenever such subsisting
 27 power is sought to be further enforced upon. That was the original argument. Each time you
 28 must have a fresh declaration. Then, 313. Page 313. 'The denudation is not partial, it is total.
 29 They cannot levy any tax or cess on minerals so long as the declaration in Section,' this is a
 30 misprint there My Lords, 2 stands, 2 is missing. 'Once the denudation is total, there is no
 31 occasion or necessity for any further declaration offer that matter for repeated declarations or
 32 denudations.' Now, My Lords, let me make the submission, after I finish. Come to para 17.
 33 'Even assuming, without conceding that the declaration in 2 does not *ipso facto* oust the State
 34 Legislative competence'. I'm arguing the alternative. 'Expressly contemplates a levy of Taxes
 35 thereunder as evidence from Section 25 and the fact that it levies a Royalty, which is a special
 36 kind of Tax under 9 and a Dead Rent under 9(A) denotes the States.' Conclusion in 18 is very
 37 important, conclusion. 'Thus, even assuming Entry 50 is to be read restrictively so as to require

1 an inquiry as to whether any specific provision imposes a Tax. 9(1) imposes Tax, directly covers
 2 the field. 9(A) imposes dead rent, directly covers. 9(B) imposes a cess to be employed for
 3 upliftment of the district affected'. I am on the next page and well as Your Lordship will just
 4 allow me this, *Pradhan Mantri Khanij Shaitra Kalyan Yogana*, which is at page 47, is very
 5 useful. May please study. I don't have the time to show it. Please make a note and please see
 6 it, My Lord, at Your Lordships. The Centre covers the entire gamut and tells you how to use
 7 the money to the last user, this *Pradhan Mantri Yogana* is Page 57 is very comprehensive and
 8 it is issued under Section 20(A) of the Act. So, the My Lord, here one sentence. This extent will
 9 not have any problem here because coverage is complete. The coverage cannot mean multiple
 10 piecemeal legislations. I gave the example of the court and the gown and the band yesterday.
 11 You cannot have multiple legislations that because I covered the court and the gown, tomorrow
 12 My Lord somebody can do on shoes. That was My Lord, intention is to leave that to the Centre
 13 and not Tax it. There is an implied prohibition there clearly . My Lord Para 19. Now let's just
 14 see. ***Odissa Cements*** says, all these are ignored My Lord. I mean, not ignored. They're just
 15 brush aside, cited and brushed aside. The object of 9 cannot be ignored. 25 implicitly
 16 authorizes the levy of rent, Royalty, Tax, and fees directly the issue. There's a total of judges
 17 who are spread over ***India Cement, Orissa Synthetic*** is coming, all judges have the same
 18 view. I mean, Your Lordship is of course clearly, but why should Your Lordship give so much
 19 weight to ***Kesoram?*** This is the only dissonant judgment. Now see the next one. Synthetics
 20 is very interesting. My Lord is hearing Synthetics from the other point of Entry 33, List 3. This
 21 is a different point. Very interesting. Seven judges have held so. Now see Mahanadi. So, Orissa
 22 have done in 19. Now see 20. 20 is Mahanadi. A perusal of the MMDR, all the sections are
 23 given, will clearly point out that taxation on mineral and mineral rights, any Tax, Royalty fee
 24 or rent are provided in the said Act. The State Legislature is denuded or deprived of the power
 25 to an Act. Then 21. My Lord, these are calculations I've given. Your Lordships may just keep it
 26 in mind. I will save time by not reading it. I am only adding to Mr. Tushar Mehta's impassioned
 27 plea about various monies where they go. The last part of para 21 is very interesting. He's given
 28 you the details. I don't have to go. That's a government's job. But just see, all these totals to
 29 about 16% to 21% of the average sale price. Last line is above paragraph C, above para-C. All
 30 My Lords have got line above C? Total of all these levies, which is 9, 9(A), 9(B), 9(C).

31
 32 Of this, 21 or 16%, 0.3% is retained by the Centre. Previous line above that. That is 2% of
 33 Royalty NMET. That is 0.3%, all the rest goes back. Now see, next para-C at page 315. 'Most
 34 significantly, all these levies except NMET, that is, 0.3, admittedly go to the State Government
 35 coffers'. Then, My Lords, State wise breakup is given. Mr. Mehta has dealt with it, I'm not
 36 going to deal with it. Two more paras, I'm done with this part. 23 at page 316. It is true that
 37 the general standard ***Sundaramier*** concept of grouping is there. Before I read it, my

1 answer is simple. That is not a mechanical sorting machine, where this Article leads you
2 Lordships to think differently. That is 50 special unique architecture. Then that grouping is
3 not casting stone. That's by submission in two paras. **Sundaramier** is valid, but it says
4 itself, is not exhaustive. **Sundaramier**, that judgment which says grouping, says itself that
5 you don't treat it exhaustive. There may be entries like 50, which don't allow grouping because
6 they're uniquely worded. My Lord, if I may say, called it eight *mantras*, Honourable Chief
7 Justice, two days ago. I've dealt with that. Kindly come to 823. You have to therefore not be a
8 slotting machine. You have to go entry wise, mostly **Sundaramier** apply. Sometimes it
9 will not apply, Your Lordship's analysis or interpretation can't be straight jacketed by a
10 **Sundaramier** focus that, no, I have to group. This is a unique architecture. This one is not
11 a grouping architecture. It is 54, 97, 50. It's a totally different triangle.

12

13 Now come to 23. 'For these reasons, 50 and 54, read with 97 imply its *suis generis* and
14 complete code on regulation of mines and mineral development and taxation of minerals and
15 mineral rights as the state's power of taxation in Entry 50 as well as general powers are *both*
16 subject.' Then come to 24. I'll skip 24 to save time. Come to 26 straight away. This is, the word
17 *mantra* is replaced by word *sutra* here. '**Roy's Case** from Assam acknowledged that the
18 scheme of the 7th Schedule cannot be governed by a straitjacket. Our endeavour...', he goes
19 against the Gwyer principle. The Gwyer principle is grouping. So, he says, no, it can't be a
20 straitjacket every time. 'Our endeavour is only to demonstrate a great deal of examination, etc.
21 No rule which has a universal application with regard to the interpretation of all entries can
22 be postulated,' that's my point. That's my respectful submission. The statement of Justice
23 Gwyer, Chief Justice Gwyer that a broad and liberal spirit should inspire, and the legislative
24 entry should not be read in narrow, cannot be understood as a *sutra* valid for all time and in
25 all circumstance. That's the only point I want to say.

26

27 And My Lords, Para 26, next page 318. I have mentioned the 8 *mantras*, 8 formulations which
28 the Honourable Chief Justice had done. I am now coming to 27, which is a little noticed, but
29 an extremely important paragraph, 827. 7 judges in *velo Synthetics*, not on the point Your
30 Lordship is considering next week, say the power to levy taxes is to be read from the entry
31 relating to taxes and not from the general entry. Exception and Entry 50 of List II, where tax
32 on mineral rights is subject to any limitation imposed by Parliament relating to mineral
33 development, and this power of Parliament is in General entry... There can be no direct, more
34 direct than this, My Lords. Now, you may say 9 Judges is wrong or right, but certainly My
35 Lords, **Kesoram** with greatest respect had no business to brush it aside. Then...

36

1 **JUSTICE B. V. NAGARATHNA:** See, the power to impose a limitation has to be read under
2 Entry 54. That doesn't mean the power to impose a Tax is to be read under 54, read with Entry
3 97.

4
5 **MANU SINGHVI:** Two answers, My Lords. It means tax because of the language of 50, that's
6 the opening word of 50. 50 cannot contemplate a limitation which cannot be a Tax limitation,
7 answer number one. Answer number two, 7 Judges have said exactly what I said just now.

8
9 **JUSTICE B. V. NAGARATHNA:** It's a limitation on the power to impose Tax.

10

11 **MANU SINGHVI:** No, Tax it says. Synthetic says Tax.

12

13 **JUSTICE B. V. NAGARATHNA:** Yes, a limitation on the power to impose Tax means the
14 power resides with the State. The limitation emanates from Entry 54.

15

16 **MANU SINGHVI:** Yes.

17

18 **JUSTICE B. V. NAGARATHNA:** Correct.

19

20 **MANU SINGHVI:** Therefore, the power resides in the Centre also. The Centre cannot
21 impose without power. The power has to be with the Centre and a superior power is the Centre.

22

23 **JUSTICE B. V. NAGARATHNA:** What I'm trying to say is the power to impose a limitation
24 doesn't take within itself the power to impose a Tax.

25

26 **MANU SINGHVI:** My Lords, with respect. Let me examine. That's a new nuance My Lord,
27 if you will give me two minutes. Well, My Lords, how do you limit a Tax, without reducing or
28 imposing? Suppose the State imposes 1%, I want to limit it. I say abolish it. Your Lordship has
29 to assume that I have a power. If the Centre has no power, the matter ends. Your Lordships
30 will not be able to control it. Limitation has to include from 0 to 100.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We can say we are abolishing the power of the
33 States to levy the Tax, but we are going to levy the Tax. That's not the scheme of the
34 Constitution.

35

1 **MANU SINGHVI:** By 97, they will have the power. If Your Lordship resides the power, it has
2 to have the power. With respect My Lords, that will be an artificial limitation. My Lord, let me
3 just explain.

4

5 **JUSTICE HRISHIKESH ROY:** It is very clearly divided, Dr. Singhvi, the State is given the
6 power to levy the Tax.

7

8 **MANU SINGHVI:** Subject to limitation.

9

10 **JUSTICE HRISHIKESH ROY:** Yes, subject to limitation. We understand that, and we go
11 into the limitation of 54. But you are trying to bring in 97 as also a power to levy Tax. How can
12 the residual entry be utilized for this problem?

13

14 **MANU SINGHVI:** Can I answer that? First question to be decided is does the Centre have
15 the power or not? Matter ends if Your Lordship finds they have no power on taxation. That's
16 the primary question. All this debate is if they have some power of taxation. My answer is they
17 have to have a power of taxation because the limitation envisaged and recognized by 50 itself
18 is a limitation on taxation. 50 itself recognizes that you, my superior, has the power. We stop
19 here, My Lords. Unless we accept the fact that 50, dealing with taxes, using the word
20 'limitation', recognizes a superior person, then we can't go further. Now we come to a different
21 nuance, which, My Lord Justice Nagarathna has asked. Yes, taxation is also within 54 because
22 of the look back by 50.

23

24 **JUSTICE B. V. NAGARATHNA:** It is in Entry 50, List II, the power to impose a limitation
25 on 54.

26

27 **MANU SINGHVI:** *Qua* taxation Right. Let's accept that. The power to impose a limitation
28 *qua* Taxes. We are only concerned with that. Right My Lords. Now, my two submissions there
29 are, if Your Lordships concede, this is only a debate, Your Lordship doesn't have to concede or
30 accept... but if Your Lordship accepts a power that taxes can be limited by the Central
31 Government under 54, then two facets. One, the word 'limited' by Central Government has to
32 include the Plenary Power, from 0 to 100, is the first submission. It's not that Your Lordship
33 gives them some power and not gives them some power. He either has the power or doesn't
34 have the power on taxes. And I say he has to have a power on Taxes because 50 looks back.
35 Now the second facet. Once he has the power, I am...

36

37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Look back to limitation...

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MANU SINGHVI: But limitations *qua* Taxes because the entry is on Taxes.

CHIEF JUSTICE D. Y. CHANDRACHUD: And does not transfer... the limitations do not transfer the entire field of Taxes on mineral rights to Parliament on the entry under List I.

MANU SINGHVI: No. If Parliament chooses not to do so, yes. Kindly go to 50...

CHIEF JUSTICE D. Y. CHANDRACHUD: You know the danger... look at the great danger to the Indian Federal structure by accepting your argument.

MANU SINGHVI: Parliament can decide...

CHIEF JUSTICE D. Y. CHANDRACHUD: The Parliament prevents... Suppose the limitation assumes the character of a prohibition, because there are Judgements that say a limitation can amount to a prohibition, then on the one hand, Parliament can prohibit the States, that it can say, 'I have prohibited the State, so now the entire field is left to me', under List I. Point number two, Parliament imposes limitations. It can say, 'I have limited the States, but I am unlimited.' I can impose the Tax minus those limitations That was never the intent.

MANU SINGHVI: Can I answer? Can I answer?

JUSTICE HRISHIKESH ROY: Apropos to what the Chief Justice was saying... you see, merely because bulk of the revenue collected goes back to the State, would not meet the argument that the Chief Justice...

MANU SINGHVI: That is a constitutional argument. This is a factual argument. These are two different things. Your Lordship first has to locate the power. This is not a question of fact, whether I give you back or not I'm not arguing that at all.

JUSTICE HRISHIKESH ROY: The limitation in on mineral development.

MANU SINGHVI: No, therefore. Now let's just look at 50 for a bit. Just look at 50. I know this is too late. I need to look at 50, but let me give you... one minute... 'Taxes...only one sentence, I'm done. I've made my submissions here. Lordships may or may not... I'll go to the next point. I only want to say one thing.

1 **JUSTICE HRISHIKESH ROY:** Remember looking back, Doctor Singhvi, it might be seen
2 by the States as looking back with anger.

3

4 **MANU SINGHVI:** Super hit it was My Lords. One sentence, then I'm done. I'll then go to the
5 next point. I'm coming to my next proposition, with one sentence in the last one. There are,
6 therefore, in summary, five judgments which we note on the side is not in my note. Three of
7 them, locate this point in 54 read with 97. I'm summarizing now. Those three are
8 ***Mahalakshmi, Saurashtra*** and Justice Sinha's dissent in ***Kesoram***.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just one minute. There are five judgements.
11 We locate the power of Parliament to levy a Tax...

12

13 **MANU SINGHVI:** Yes. Under 54 read with 97.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And you have given those as ***Mahalakshmi***?

16

17 **MANU SINGHVI:** First is ***Mahalakshmi***, then is ***Saurashtra*** .

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Sinhaji's dissent in...

20

21 **MANU SINGHVI:** And the fourth is important, ***Orissa***, which is quoted in my page 311. I'm
22 saving time. It's a very useful quotation. 4 judgments. I'm sorry. The fourth one is. I'm sorry.
23 That's an error. Justice Oza in ***India Cements***. I meant, not ***Orissa***, Justice Oza in ***India***
24 ***Cements***.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Not ***Kesoram***?

27

28 **MANU SINGHVI:** No, no. ***Kesoram***. Justice Oza because he was a concurrence in ***India***
29 ***Cements***.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, we saw that.

32

33 **MANU SINGHVI:** And there is one more judgment which does not reach us the same
34 conclusion without 97, without 97, which is ***Mahanadi*** plus ***Synthetics***. Two judgments.
35 I'm sorry. Two judgments.

36

37 **CHIEF JUSTICE D.Y.CHANDRACHUD:** ***Mahanadi***?

1
2 **MANU SINGHVI**; And *Synthetics*. They're all quoted. So, My Lords has 6 judgments in
3 all, 4 which do conjointly 54 and 97. And 2 which rely on 54 but the same conclusion, taxation.
4 My question remains the same to myself. Why should *Kesoram* be preferred? This is an
5 important proposition for Your Lordship's to lay down guidelines. It is dealt with, it is dealt
6 with from 319 to 322, 3 pages only. Let me make the point. Then The Lordship doesn't have to
7 spend time. On it. I only want to ask Your Lordships, this is again without prejudice. Three
8 pages, 319 to 322. That Your lordship should make it clear what is a Tax on minerals versus
9 what is a Tax on mineral rights. My first principal points are twofold. Then I'll just read one or
10 two paras. 50 is advisedly using unique words. I always call it a non-vanilla entry because no
11 other article in minerals as well as entries has used Tax on mineral rights. 53 and 54 use
12 mineral development. 23 uses regulation of mines and minerals development. 54 uses
13 identical language. Now my point is, that Your Lordship should give some weight to that
14 different language used and one more sentence, factually and contextually. My Lord, as there's
15 a fundamental difference. One is you Tax my extraction from the bowels of the earth. So, 10
16 tons, add fee, 5%. What are the value? Sale value to Tax. 100, more Taxes. It's a fixed.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD**: So, Tax on minerals?

19

20 **MANU SINGHVI**: Yes. It's very easily understood. And in contrast I give him a lease for 20
21 years. I give him a lease for 50 years and I give him a 100-year lease, or I give different forms
22 of licenses. I don't know all forms Your Lordship has, along with size. You can Tax that, but
23 that's a different taxable event, the nature of the Tax is different. I'm not saying you can't Tax
24 this, in my, this argument, I'm conceding without prejudice argument naturally, without
25 prejudice argument, I am assuming that you can Tax. But you please Tax mineral right. That
26 is the duration and the size which you have to extract minerals, not the actual mineral
27 extraction. The grant can be taxed. This has been held, My Lords. Incidentally again, these are
28 all upset because of *Kesoram*. This has been directly held by three persons at least. The same
29 Justice Oza concurring in *India Cement*. It's all quoted in my notes, in these pages. Justice
30 Sinha in *Kesoram* and Justice Wanchoo in great detail in *Hingis*, if that's the most detailed.
31 I'm going to save time by not reading it. I would request, My Lord, those paras repay study.
32 My respectful submission is what is so conceptually wrong that Your Lordship is inclined to
33 the *Kesoram* view. *Kesoram* has cited them all and said because *India Cement* had a typo
34 and an error, therefore, all these judgments are wrong.

35

36 **JUSTICE B. V. NAGARATHNA**: But Royalty is not on, is on the mineral removed or
37 consumed.

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MANU SINGHVI: Exactly.

JUSTICE B. V. NAGARATHNA: It is on the product.

MANU SINGHVI: Exactly. That's my point.

JUSTICE B. V. NAGARATHNA: But a Tax on mineral right is under Entry 50.

MANU SINGHVI: Correct. So, Your Lordship, please less down...

JUSTICE B. V. NAGARATHNA: It says that Royalty is not a Tax on mineral right but a Tax on the mineral removed or consumed.

MANU SINGHVI: Agreed.

JUSTICE B. V. NAGARATHNA: Then there is no dichotomy at all.

MANU SINGHVI: That's all I'm asking for. With the deepest respect, that's my formulation. But I can't say it, Your Lordship has to say it.

CHIEF JUSTICE D. Y. CHANDRACHUD: So, you are saying if States impose a Tax under Entry 50, you can Tax the grant, but not the extraction of the material. That's your content.

MANU SINGHVI: My Lord, this is a more pithy formulation. Tax on minerals extracted, dispatched or removed are not part of 53. Sorry, not part of 50. And 50 is, My Lord puts in a different form...

CHIEF JUSTICE D. Y. CHANDRACHUD: It can be used as a measure?

MANU SINGHVI: Can't, you can't. Measure can't change the taxable event. A measure can't change the taxable event.

CHIEF JUSTICE D. Y. CHANDRACHUD: Taxable event is your right to extract.

MANU SINGHVI: Extract, which is not the mineral extraction.

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But the State legislature may say, okay, I will
2 impose a Tax which will be a certain component of Royalty.

3

4 **MANU SINGHVI:** Once Your Lordships...

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Your right to extract is not really something in
7 the abstract. Your right to extract has meaning because of the commercial exploitation of the
8 right. So, the legislature may choose a number of formulations because a number of
9 formulations are open to the legislature. It may say, all right, we will Tax at the rate depending
10 on the number of years of the lease, or the quantum of the area, or the size of the grant. Or we
11 can also Tax on the basis of the actual extraction as a measure of the Tax.

12

13 **MANU SINGHVI:** Can I, My Lord, just say...?

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because that's the commercial use to which
16 you are putting the grant.

17

18 **MANU SINGHVI:** Now, My Lord is simply putting that the measure....

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Tax on mineral rights should have no
21 connection at all.

22

23 **MANU SINGHVI:** No, no.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** To do exploitation of the mineral right. Maybe
26 I am little too far-fetched.

27

28 **MANU SINGHVI:** My Lords....

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It's a legislative entry with respect to....
31 [UNCLEAR] the broadest possible terms.

32

33 **MANU SINGHVI:** Then Your Lordship should be allowing a camouflage.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It's a field.

36

37 **MANU SINGHVI:** May I answer that? Your Lordship would then be allowing...

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CHIEF JUSTICE D. Y. CHANDRACHUD: And you know, it's not this that, a Tax on minerals is given to Parliament and the Tax on mineral rights is given to the State Legislatures, in which case you would have had to have, you would have clearly have to restrict taxes on mineral rights by excluding that which is given to Parliament as a Tax on minerals.

MANU SINGHVI: May I answer?

CHIEF JUSTICE D. Y. CHANDRACHUD: Here, the entire field of mineral rights is gain to the States and it is subject to limitations which Parliament made.

MANU SINGHVI: May I answer both the points? Point number one, point number one. Your Lordship will not allow a legislative subterfuge. Its most established principal maxim of tax law, that by camouflaging you cannot use the measure.

CHIEF JUSTICE D. Y. CHANDRACHUD: Therefore, Dr. Singhvi, is that, look, you can only Tax the right to extract minerals.

MANU SINGHVI: Your Lordship put it differently, it was grant, grant.

CHIEF JUSTICE D. Y. CHANDRACHUD: It must have no nexus at all with the actual expense.

MANU SINGHVI: That second point, you are right. I'm saying something else. Your Lordships can let division benches decide the individual case. But Your Lordships as 9 Judges must lay down, that what you have given on entry is only mineral rights. Mineral rights can't be equated with minerals. My Lord, that will be a subterfuge. A taxable event can be changed by a measure completely. Now, just see My Lords. A grant is well understood. Taxes, in the very minor sense...

CHIEF JUSTICE D. Y. CHANDRACHUD: Forget this area for a moment. State can levy Stamp Duties. Well settled principle of law that the Stamp Duty is never Tax on the transaction, but on the Instrument. That's very well settled, since Independence. Now all States, including Maharashtra, from where, you know both Burjor and I come from, while levying a Stamp Duty on an agreement to sale... agreement to sale... you use the measure. What is the measure which is used? The market value of the property.

1 **MANU SINGHVI:** I appreciate, but does Your Lordship know clearly the difference... but
2 Your Lordship clearly knows, at that point, the clear difference in Stamp Duty and any other
3 duty.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You'll have to tell the States, that look, you can
6 levy a duty only on the Instrument and not the transaction. So, the underlying market value of
7 the asset which is transferred, you can't use at all as a... this can never be... Once a field is given
8 to the States, out of the Centre, you can choose any numerous formulations the legislature can
9 say.

10

11 **MANU SINGHVI:** The field given is by unique language limited to Tax on mineral rights.
12 The field given is not a Tax on minerals. Your Lordship will not give them a field wider than
13 that is given and My Lords, today...

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The measures may always be suitably...

16

17 **MANU SINGHVI:** Measure cannot change the...

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** A little caveat is what *RR Engineering* said
20 that your measure should not assume the character of the Tax.

21

22 **MANU SINGHVI:** I am saying, well if Your Lordships will lay down the guidelines, then the
23 division bench will decide in a particular case. But the guideline cannot be that My Lords today
24 you can camouflage a Mineral Tax, a Tax on mineral rights by levying it on the entire extraction
25 of minerals. That will change the character of the Tax. Your Lordship has to only lay down a
26 guideline, as My Lords... two of My Lords have formulated. The actual thing will have to be
27 seen act by act. But what is given... this is on the assumption that the States are given
28 something. The States are given a taxing right on mineral rights. They are not given a taxing
29 right on extraction of minerals. Why has Entry 50 not used the words of 52, 53, 54 or 23, is my
30 question to myself? Why has Entry 50 used unique words not in 52, 53, 54 and 23? It's as
31 simple as that. And My Lords the nine Judges should, refer or not refer is not the point, today
32 My Lordships should lead on this guideline.

33

34 **JUSTICE ABHAY S. OKA:** Mr. Singhvi, now your argument comes to this.

35

36 **MANU SINGHVI:** Yes.

37

1 **JUSTICE ABHAY S. OKA:** 57 Act does not take away power of the State Legislation under
2 50.

3
4 **MANU SINGHVI:** Without prejudice. Correct. No, no, no. On taxing on mineral rights.

5
6 **JUSTICE ABHAY S. OKA:** 50 is mineral rights. Tax on mineral rights.

7
8 **MANU SINGHVI:** But the whole question is what is mineral rights?

9
10 **JUSTICE ABHAY S. OKA:** Therefore, your argument is, 57 Act does not take away the
11 power of the State Legislature to levy Taxes on mineral rights.

12
13 **MANU SINGHVI:** This is an alternative argument, assuming that we are wrong on the
14 earlier argument, that you must limit this to mineral rights only. That's obviously a without
15 prejudice alternative argument. If I'm right on the first argument, they have no rights at all.

16
17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And therefore, your contention is that it should
18 be only be a Tax on a right to extract and not be agnostic to the actual extract.

19
20 **MANU SINGHVI:** That's right. That's all. Whichever way Your Lordship frames it, grant or
21 whatever. The next...

22
23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We can't do it to Parliament, likewise, we
24 cannot do it to the State Legislatures also.

25
26 **MANU SINGHVI:** My Lords, Your Lordships in interpreting 50, can interpret the language
27 of 50, and say so. Clearly. Your Lordship would be allowing the grant to be governed by
28 something which happens post extraction. The language of 50, which we are interpreting, is
29 very clear. Please don't allow it to be expanded, without prejudice. The fifth and the two last
30 points. The fifth point is at pages 322 to 324. Two pages. This is settled by two constitution
31 benches *Hingir* and *Tulloch*. They are quoted in A-47 and A-48. It's a very short two-minute
32 point. Once 23 is denuded, then 66 cannot lie, because 66 is a piggyback provision, which lies
33 with 23.

34
35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's Entry 23 of List II, is denuded then...?

36
37 **MANU SINGHVI:** Then Entry 66, *qua fees*.

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CHIEF JUSTICE D. Y. CHANDRACHUD: Entry 66?

MANU SINGHVI: Entry 66 is the entry for fees, List II. Yes. *Pro Tanto* gets eclipsed or inoperable or inapplicable. The judgments are clear. My Lord. My para My Lordship will note are 47, 48, and 49 at 322 to 325. They are ***Hingir Constitution Bench, Tulloch*** and My Lord, Mr. Seervai has clearly very unequivocal in his usual style in A-49 of my para. I've quoted that, said so. Not that My Lord any one person is dispositive, but this is My Lord as in the same trend. Now, the last point.

CHIEF JUSTICE D.Y. CHANDRACHUD: Reason for the clarification?

MANU SINGHVI: Yes. I'm sorry. This should be said. The reason for this fifth point of 66 is para 110 of ***Kesoram***. That will be My Lord, with great respect ridiculously brought, it says all fiscal levies. Then Your Lordship, will have validation of all fiscal levies by whatever name called, including 66, is a fiscal levy. Para 110 of ***Kesoram*** says all fiscal levies is clearly over broad. And Your Lordship now laying down the law for. Now, lastly, My Lord just turned to page 338. It takes exactly five minutes. It's a very interesting ten-page analysis of ***Kesoram***. I'll read less than a page and a half. 338. My Lord, ***Kesoram*** with deepest humility and is grievously wrong. It's not wrong. It's grievously wrong. And why is it so? Again, it doesn't matter. Your Lordship it's nine judges. But Your Lordship should know this because it is really... So, first Para C 1.1 at page 338. A point obvious five Judges cannot effectively overrule or sideline seven Judges. That's an obvious point. I've cited the case law not required. That's my Para 1.1. They had to refer it. With this kind of surgery, they could not have one of said five judges, we are interpreting, we are distinguishing, completely changing. Second error at page 339 of my note. The typo point is answered by C.2.2 and 2.3 at 339. My lords, I can understand Your Lordship saying something with a para quoted by me in C 2.3, how can you say that ***India Cement*** held that Royalty is not a Tax? And by typo, it became a Tax. You can say that conceptually, I don't agree. I refer to. This full, My Lord, redefine the word typo. That is C 2.2 and 2.3. ***India Cement*** is saying with guns blazing categorically and I've just read a two month later judgment by the same person who presided over ***India Cement*** saying that we held that Royalty is a Tax. Third error is C 3.3 at 340. The errors I explained in much more detail. I'm only pinpointing one or two paras each. It says, this is where something is grievously wrong. It says that ***India Cements*** looked at two High Court judgments ***Mysore*** and ***Patna*** and then it also looked at four other judgments and ***India Cements*** is wrong because it really intended to follow four judgments. This is answered very clearly in C 3.3. Those two judgments are given 3.3 at page 340. Don't read it. Go to the real relevant paras. 4.3. ***India Cement***

1 noted four lines of cases and two lines and said, we prefer two lines. I hope I'm clear. That's
2 4.3. What Your Lordship refers is not the point. But **Kesoram** can't say in five Judges that
3 **India Cement** overlooked four. And why did we choose two? It cited all the six. It cited two
4 left and four right and said we should prefer the left. Why can't it say so? And who is **Kesoram**
5 to say so? Then My Lord, the fifth error is at 5.2. This, they say, they brush aside **India**
6 **Cement** in **Kesoram**. I'll give you the **Kesoram** paras also. That was **India Cement** was
7 case of cess on Royalty.

8

9 And therefore, there's no occasion only to decide Royalty is a Tax or not. But My Lords, that
10 forgets... In this Your Lordship will only tick 5.2 and 5.5, only two paras. 5.5 is the 343. They
11 were no doubt dealing with the cess. But the para says cess is a Tax, Royalty is a Tax. Therefore,
12 Tax on Tax, we don't accept. It says clearly, the paras are quoted by me.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now we've seen the matter as a matter of first
15 impression.

16

17 **MANU SINGHVI:** I'm done, My Lords.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you, Dr. Singhvi.

20

21 **MANU SINGHVI:** And lastly, I'm deeply obliged. Your Lordship will see the written
22 submission for the few things that I have talked. I'm very deeply obliged.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you, Dr. Singhvi. Mr. Ganguli.

25

26 **MANU SINGHVI:** I am very deeply obliged for the accommodation of time also.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, Mr. Ganguli.

29

30 **MANU SINGHVI:** The parties I've appeared for, I've given here in the note also.

31

32 **AMAL KUMAR GANGULI:** May I please rush this? I beg to appear primarily for one of the
33 PSUs for the coal producers, NCL. I have given the Respondent Number 8 and all the numbers
34 are given. I have given my written submissions, the very first tranche of our submissions. I
35 don't want to...

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37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Can you just give us a reference?

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AMAL KUMAR GANGULI: Volume II.

CHIEF JUSTICE D. Y. CHANDRACHUD: Volume II.

AMAL KUMAR GANGULI: Volume II, pages 4 to 44. I beseech Your Lordships to kindly allow me not to read them, but I treat them as read, so that Your Lordships will have it, the text before you and you know what I'm doing. In view of the paucity of time as Your Lordships have rationed the time, so in view of the paucity, I would try to be as brief as possible, making only the essential points. So very briefly, without going into my submissions right now, My Lord, detail. First and foremost, Your Lordships have had enough of argument on both sides as to what is the scope of interpretation of the relevant entries. I would not go deep into it except, I have to say at the beginning with others, I'll not be in a position to develop my argument. 50, Your Lordships have seen. We are only on 50 now.

JUSTICE HRISHIKESH ROY: First give us the Volume, so that we just have a look at... which one?

AMAL KUMAR GANGULI: Volume II. My submissions are in Volume II, page 4 to 44.

CHIEF JUSTICE D. Y. CHANDRACHUD: Seven of....

AMAL KUMAR GANGULI: That came in my earliest Volume.

JUSTICE HRISHIKESH ROY: It's actually PDF page 7, I think. Yes.

AMAL KUMAR GANGULI: Oh, I'm sorry My Lord.

JUSTICE HRISHIKESH ROY: No, we have got it now.

AMAL KUMAR GANGULI: And here second set of submissions with reference to the particular coal mines, that Your Lordship will get in Volume II(G), page 21. These are the two sets of submissions. Volume II is the first one. And II(G) is the second, which is with reference to the Coal Bearing Areas Act.

CHIEF JUSTICE D. Y. CHANDRACHUD: Read?

1 **AMAL KUMAR GANGULI:** No, I'm not reading.

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You can just formulate it.

4

5 **AMAL KUMAR GANGULI:** I just gave a reference My Lord, so that Your Lordships can
6 read at your convenient time. But briefly, I'll just give you My Lords, my summary of my
7 submissions. Your Lordships have heard for so many days the scope of the various entries.
8 First proposition, that a law made by Parliament under Entry 54, subsumes the entire subject
9 matter, under Entry 23 of List II, there is no doubt. On that, there is no caveat. It is accepted.
10 You were there. The same subject matter dealing with the law and 54 ultimately covers the
11 entirety of Entry 23. The question before Your Lordships My Lords for your kind consideration
12 is, what is the scope of 50? Because 50 also has a reference to law made by Parliament with
13 reference... with regards to a subject matter that is Mineral Development.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But even your first proposition may not be --
16 maybe a little over broad. That a law made by Parliament under Entry 54 of List I, subsumes
17 the entire content of Entry 23, that may not be correct. That would be glossing over the words
18 to the extent to which.

19

20 **AMAL KUMAR GANGULI:** Quite right.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Parliament is covered a field under Entry 54,
23 that field is taken out of Entry 20.

24

25 **AMAL KUMAR GANGULI:** I agree with Your Lordship's observation, but only one thing I
26 was wanting to say. No one has suggested to you that something else is left out in the 23, which
27 is not covered. But this is a broad proposition.

28

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

30

31 **AMAL KUMAR GANGULI:** Which is an accepted proposition. If there is some issue,
32 somebody can say no, still something is left in 23. It's all right. But no one has claimed, that
33 they are [UNCLEAR]. And My Lords, the decisions of this court, starting from *Hingir-*
34 *Rampur* till *India Cement*. All of them say so... that... in that, Entry 54 really subsumes,
35 covers the entirety of the subject matter of Entry 23. There is no caveat on that at all. Now the
36 question is, 50 is a tax entry, no doubt. And that is how the arguments were advanced from
37 the state that look, you go by what the Supreme Court has said, will not since

1 **Sundararamier** that tax entries are independent, all other entries are general entries, tax
2 cities are not governed or controlled by -- this is true My Lord. That's the arrangement of the
3 broader element of the Constitution and various items in the Seventh Schedule of the
4 Constitution. It's a broad classification, so they are not considering, are there any exceptions
5 at all? First, they weren't considering that. Broadly you see that tax entities are separate; the
6 general legislative entries are different. Generally, they don't overlap. But 50 everyone has
7 accepted, 50 is a *sui generis* provision. It is a tax provision, no doubt, but it allows a law made
8 by Parliament which is not, with reference to a tax entry, to control. Control it by giving...
9 laying down limitations. Limitations having the word used of wider import. Limitations will
10 not have no limitations. Also, limitation would mean any kind of limitation, any kind. How the
11 parliament would have visualized from time to time. It can only test the Parliament's power,
12 when it has exercised that power of limiting the scope of Entry 54, whenever the matter comes
13 up before Your Lordships My Lord, you will test it, whether it is limiting or not limiting. But
14 there cannot be a broad theory that limitation means only a, b, c, d and not d, e, f.

15

16 **JUSTICE HRISHIKESH ROY:** Limitation of the type that we look into from 54 itself, that
17 has to pertain to regulation and development.

18

19 **AMAL KUMAR GANGULI:** Of course. No doubt. Those are the most important words My
20 Lord, qualify. So those words bring us back to Entry 54 because Entry 54 is a Legislative entry
21 which authorises Parliament to make law on that subject, regulation and development of
22 minerals.

23

24 **JUSTICE HRISHIKESH ROY:** To that extent, it is not absolute?

25

26 **AMAL KUMAR GANGULI:** No, it is not. I'm not saying....

27

28 **JUSTICE HRISHIKESH ROY:** No. I mean, I am just....

29

30 **AMAL KUMAR GANGULI:** It's a law made by the Parliament to exercise powers. Power is
31 of course 246, but it's subject, which is a general subject. Parliament has been given the power
32 to regulate this by limiting the taxing power of the State. That's the significance of this Entry,
33 My Lord. Now, having said that's the scope. First step in the interpretation of Entry 50. Now
34 next, what my friend learned Mr. Singhvi was trying to argue, if you look at the Entry, My Lord,
35 it is not a tax on minerals. That could have been so, very simple thing would have been My
36 Lord Constitution to say taxes on minerals. And then you say, what is subject to, et cetera. But
37 that Constitution makers have not said so. They've used the chosen a different expression. Not

1 minerals. Taxes on mineral rights. Obviously, they were aware that there is a clear distinction
2 between mineral and mineral rights. They're not one and the same. My friend has already
3 given you that exposition. Therefore, while Your Lordships are interpreting Entry 50 kindly
4 bear this in mind, this is my humble request, that the Entry would have to be..... that's it for
5 Volume 4(h).

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Ganguli, what is the, what is the core of your
8 submission?

9

10 **AMAL KUMAR GANGULI:** Core of submission is this My Lord, the scope of Entry 54 is
11 not an entry with reference to levy of taxes on minerals.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Entry 54?

14

15 **AMAL KUMAR GANGULI:** 50.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Entry 50. That we got. I made a note to that.

18

19 **AMAL KUMAR GANGULI:** It's not an entry for taxing minerals...

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But mineral rights. That is..... Dr. Singhvi
22 argued.

23

24 **AMAL KUMAR GANGULI:** He has chosen to use a different expression, obviously it has
25 some meaning. And I have cited some of the literature on the subject. *Corpus juris* etc. I will
26 give Your Lordships.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Fair enough. What is the next point?

29

30 **AMAL KUMAR GANGULI:** Therefore, this power has to be only with reference to mineral
31 right and nothing else.

32

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

34

35 **AMAL KUMAR GANGULI:** The question is, has Parliament made a law with reference to
36 Entry 54 restricting that right, which is also right. Not mineral, but mineral right. Has
37 Parliament enacted the law with reference to development of mines and minerals, restricting

1 or limiting the power of the State to tax mineral rights. So, if the first concept of mineral right
2 being only a right to extract minerals and not a right in the minerals themselves. There's a
3 world of difference between the two.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** On your fourth point, 'has Parliament enacted
6 a law limiting the power of the States to tax mineral rights.'

7

8 **AMAL KUMAR GANGULI:** Is the question, My Lord. Then...

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The answer is yes. MMDR Act is that sort of a
11 law.

12

13 **AMAL KUMAR GANGULI:** Quite right. And to understand that, what would have to be
14 investigated or looked at is...

15

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

17

18 **AMAL KUMAR GANGULI:** Whether the parliamentary law really restricts the rights of the
19 State to levy a... of that kind of tax.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So how do you... which are the... what is it?
22 Without reading the Act, how according to you do you say that, well, that is a law which
23 restricts a limitation under Entry 50?

24

25 **AMAL KUMAR GANGULI:** Now, My Lord, if the right is to only the mineral right... If the
26 tax is to the mineral rights, then that would only mean that someone who holds the right to
27 extract the mineral, which will be by a grant of a lease or some other authority.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then are you conceding the fact, that there is
30 no limitation imposed by parliament on the right of the States to tax mineral rights?

31

32 **AMAL KUMAR GANGULI:** No, I'm not... it is.... they have it tapped under the Entry yes.
33 But now the next question is, has the parliament put any limitation on that or not?

34

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

36

37 **AMAL KUMAR GANGULI:** I'm on that.

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CHIEF JUSTICE D. Y. CHANDRACHUD: Has parliament... One aspect is that you say it's not a tax on mineral, but a tax on mineral right.

AMAL KUMAR GANGULI: Exactly.

CHIEF JUSTICE D. Y. CHANDRACHUD: But according to you, has Parliament left the area of a taxation of mineral rights open to this State?

AMAL KUMAR GANGULI: No, it was not. That's where I was coming to you. Therefore, the law of the Parliament would have to be tested from that angle, has its depth open or has it decided?

CHIEF JUSTICE D. Y. CHANDRACHUD: Doesn't MMDR has not...

AMAL KUMAR GANGULI: Covers that. It covers that, My Lord. It provides for levy of, for example the Dead Rent. Dead Rent is nothing but a tax on a right to extract mineral in future time, as and when you think convenient for you. And another important thing, Your Lordship will notice, in the Schedule, do they... the Dead Rent, the measure of Dead Rent is not per ton etc. as you find for Royalty. Dead rent measure is the extent of land, acreage, that's important, if Your Lordship may have a look at it. Dead rent is provided under Section 9(a) corresponding schedule is My Lord the Third Schedule and I would invite Your Lordship's attention to that Schedule because you have not been shown so far, that provision.

JUSTICE ABHAY S. OKA: For not exercising right in respect of minerals.

AMAL KUMAR GANGULI: You have the right. No, to return in delay, not exercise.

JUSTICE ABHAY S. OKA: Is it mineral... exercise of mineral rights as such because you are not utilizing the right conferred on you, and therefore you are....

AMAL KUMAR GANGULI: I would beseech Your Lordships, what I am saying is, you are holding on to the right, therefore you have to pay this Tax, not that you are not exercising. You are exercising the right by holding on to that.

CHIEF JUSTICE D. Y. CHANDRACHUD: No, but you pay either Royalty or Dead rent. If you are....

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AMAL KUMAR GANGULI: If you are working then of course.

CHIEF JUSTICE D. Y. CHANDRACHUD: Whichever is higher.

AMAL KUMAR GANGULI: That is because that's a mechanism to get more money. That's a different matter. Because it's an option for a Lessee either to work it or hold on to the right. But I'm only on the point. Kindly see My Lords, Schedule 3, that gives Your Lordships an idea as to what is the.....

CHIEF JUSTICE D. Y. CHANDRACHUD: Therefore, the lease of Mineral Bearing Lands is not like a lease of any land. Suppose the government grants a lease in respect of some land, Government still, we know that they provide for forfeiture, if you have not constructed within a particular period. The idea there is that, well, you have taken a lease for a purpose. You must utilize it for that purpose. Now, similarly, the same concept in regards to Dead Rent that you are bound to fully exploit the mineral potential of the land which has been leased to you. If you don't...

AMAL KUMAR GANGULI: Then you have to pay this. Now, there was a situation which I'll bring to Your Lordships. That's another point. There had been umpteen number of cases My Lords, where, I'm sorry... So, My Lord has seen this third schedule, it says....

CHIEF JUSTICE D. Y. CHANDRACHUD: It is on acreage.

AMAL KUMAR GANGULI: It's on acreage, per hectare, per annum. So, that is what is My Lord contemplated, to be the right of the state to Tax under Entry 50. But that is now being regulated as... put it in the language of 54... 'limitations'.

JUSTICE B. V. NAGARATHNA: The reason why it is on acreage, it is because no mineral is extracted.

AMAL KUMAR GANGULI: Exactly.

JUSTICE B. V. NAGARATHNA: Therefore, a dead rent... If mineral is [UNCLEAR], then it is a royalty on the Mineral.

1 **AMAL KUMAR GANGULI:** Quite right. Absolutely right. I bow down to that. But when
2 you're Taxing, the right to extract, that is, the Dead Rent, Dead Rent is in the nature of your
3 right to extract Mineral, which comes squarely under.....

4

5 **JUSTICE B. V. NAGARATHNA:** That is the question, whether payment of Royalty or Dead
6 Rent, whether it is an exercise of Mineral Rights, is the question. Or it is something else?

7

8 **AMAL KUMAR GANGULI:** The exercise of Mineral Right is holding on to the Right. When
9 you exercise that Right and you produce pursuant to that right, you are in a different scenario
10 altogether... because now you have extracted the Minerals. They're out.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Fair enough. Now, what is the next point Mr.
13 Ganguli?

14

15 **AMAL KUMAR GANGULI:** Just to give Your Lordships an example, because My Lord the
16 Chief Justice was pleased to observe, that yes it is a kind of a deterrent, that, so that people
17 don't sit on their property. And you don't allow the development of the mineral. though
18 Parliament is desired to do so, by enacting this law. So, My Lord, what happened was there's
19 a concrete scenario. Large number of private leaseholders had acquired leasehold rights, but
20 never used those rights. Large number of leaseholders. So, what Parliament then had to
21 intervene in, to enact a law for your Coal Bearing Areas - Acquisition Act. Acquisition and
22 development. Though My Lord that law will be referable to some other Entry under List III if
23 acquisition is only there. But this law was enacted for the purpose of giving effect again to the
24 mandate of Entry 54, for development and regulation of Minerals. And that act, was challenged
25 by... actually, the suit file was basically by **State of West Bengal**, in this court, challenging
26 the Parliament's power to enact such a law because their contention was, this is our property.
27 How can you acquire our property? We are sovereign. Our sovereign rights can't be acquired
28 by Parliament, [UNCLEAR]. Your Lordships negated that argument that upheld the validity
29 of the act. There's a Constitution Bench judgement.

30

31 I'll give Your Lordships that judgment. And then what happened interestingly, as a result of
32 that Act all rights of the existing leasehold right, whosoever had it, right to extract minerals
33 those vested in the Centre under the Act. But that Act, Parliament authorized the Central
34 Government to get the mine's work through Government companies on such terms etc. as they
35 [UNCLEAR]. So that Act was given effect to in that matter where the Government companies
36 came in and they. States questioned further to the Government, to the Central Government,
37 saying that we don't get any Royalty from these because you have acquired our property and

1 it's a huge loss of revenue. The Central Government will not accept this and eventually
2 Parliament amended the law in 1971 and made a provision under that Act introduced new
3 provision Section 18(A) enabling payment of Royalty, even in respect of these lands which are
4 vested in the Central Government. That Act I have to place before you, that directly relates to...
5 that Act Your Lordships will find is at Volume IV(L) page 2. Volume IV(L) page 2 of...that
6 volume Your Lordship will get that Act. I have to place that and come to it.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the next point now?

9

10 **AMAL KUMAR GANGULI:** Yes. The other point, which has been already argued. I owe a
11 duty to the court to explain to Your Lordships, what happened exactly in *Kesoram*? How did
12 *Kesoram* come to be referred to a bench of five judges. That *Kesoram* itself extracts. I have
13 to show you that. What is the controversy that *Kesoram* was asked to decide? It was not
14 whether My Lord the tax on Royalty is a tax on mineral rights or on minerals, and whether
15 royalties, a tax. None of these issues were convened at all there. I'll immediately show you that
16 judgment. I will show you according to paragraphs. So, the scope in *Kesoram* was completely
17 different. This was not an issue at all. And much less reconsideration of what happened in the
18 *India Cement*. But I have to give it to the ingenuity of my friend Mr. Dwivedi. After the
19 hearing was concluded by the Constitution Bench, My Lord he came out with-- hearing is
20 closed. He stood up to say there is a point. There is some kind of an error in the judgment. This
21 was attempted in an earlier case, in the *Odissa Cement* case, but given up. This was raised,
22 so we asked the court, are you going to take up this issue now? Now that the hearing is
23 concluded? So, the Chief Justice Khare who was presiding the bench, said certainly not. It was
24 a closed chapter. So, nobody addressed any argument to that bench at all on these questions.
25 Whether there was any issue or not. Let's not go into that. That's a factual thing.

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Why to go into all that? We will really go into
28 an unnecessary quagmire if we muddle, if we start now.

29

30 **AMAL KUMAR GANGULI:** This is an historic fact, unfortunately we don't have the
31 transcript facility in those days.

32

33 **RAKESH DWIVEDI:** [INAUDIBLE]

34

35 **AMAL KUMAR GANGULI:** Yeah, that's why Your Lordships find My Lord....Your Lordship
36 don't find any mention at all in the dissenting judgment....

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just that limited significant because that is one
2 of the reasons why the reference was made to us. From now once the reference is made to nine.

3

4 **AMAL KUMAR GANGULI:** I will limit it to that. I only just want to point out to how it will
5 happen. But this is important to know that in *Kesoram* this was not an issue.....

6

7 **CHIEF JUSTICE D.Y. CHANDRACHUD:** If we were a bench of seven, then certainly
8 whether *Kesoram* could have done this, whether there was an error in *India Cements*.
9 Because we would have been bound by *India Cements* if we were a bench of seven.

10

11 **AMAL KUMAR GANGULI:** May I just take Your Lordships through the *Kesoram*
12 decision only.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No, not necessary, Mr. Ganguli. Not necessary.

15

16 **AMAL KUMAR GANGULI:** No, I'm not going through that. I'm only showing you what is
17 the scope there and how it has been dealt with...

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's okay. We'll look at your notes.
20 Something on the core now, if there is anything. Otherwise, we'll conclude.

21

22 **AMAL KUMAR GANGULI:** Just one paragraph My Lord. [UNCLEAR].

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Not necessary to read *Kesoram*.

25

26 **AMAL KUMAR GANGULI:** No, I will not read. I will only give Your Lordships the
27 paragraph.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** After Mr. Ganguli, Mr. Bagaria will be arguing
30 next?

31

32 **ARVIND DATAR:** Sequence to Bagaria, Mr. Khambata, myself and Mr. Dwivedi... complete
33 by 3:00.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Bagaria, Mr. Datar, Mr. Khambata. And
36 then...

37

1 **JUSTICE HRISHIKESH ROY:** Is somebody raising both the palms? Because we found
2 many....

3

4 **AMAL KUMAR GANGULI:** Only one. Then let me take Your Lordships through the Coal
5 Bearing Areas Act. That's an additional point. May I beseech Your Lordships kindly see My
6 Lord, Volume IV(L).

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What do you want to refer to for Mr...?

9

10 **AMAL KUMAR GANGULI:** For the Coal Bearing Areas Act. Your Lordships have not seen
11 that and there is directly an argument that once the mines come within the purview of that
12 Act, the tax under Entry 50, in any case, is not leviable. So, I want to show Your Lordships that
13 Act.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Do we have to deal with that? That... let a
16 smaller bench deal with these issues, particularly, I think.

17

18 **JUSTICE ABHAY S. OKA:** What is the effect of the Act?

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the effect of the Act? We shouldn't
21 really.... Mr. Dwivedi, I think that's a better course of action, isn't it?

22

23 **AMAL KUMAR GANGULI:** This also, My Lord...

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Otherwise, we'll also start interpreting
26 individual legislations and there'll be a... miss some legislation, that's not the scope of this.

27

28 **AMAL KUMAR GANGULI:** My Lord, we are not questioning the validity...

29

30 **RAKESH DWIVEDI:** Broad aspects of the legislation can be kept in view.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Anything else, Mr. Ganguli or ?

33

34 **AMAL KUMAR GANGULI:** So, if Your Lordships will just permit me, this is an act which
35 is important for the reason that it will throw light as to the scope of Entry 50. That's why I just
36 want to tell Your Lordships what it is all about. We are not asking Your Lordships to adjudicate

1 on the nitty gritty of that provision, no. So, Volume IV (L), if Your Lordship will kindly permit
2 me, page 2, if Your Lordships will see the objects and reasons at page 2.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Show us the relevant provisions Mr. Ganguli.

5

6 **AMAL KUMAR GANGULI:** My Lords, the provisions are -- first My Lordships may kindly
7 permit me to -- first see My Lords the preamble. Preamble My Lord at page 5.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then we can maybe look at everything again.

10

11 **AMAL KUMAR GANGULI:** Section 4 is the preliminary notification which is issued by the
12 Central Government once the Central Government has come to the conclusion that coal is
13 likely to be obtained in an area. So, Section 4. Then My Lord, a notification under Section 5. It
14 is similar to the Land Acquisition Provisions. Effect of notification what happens My Lord, all
15 prospective license mining leases, they all cease to have any effect at all. The whole purpose
16 was to acquire the mining rights of those who are holding on to the leases and not operating
17 the mines at all. Then Section 6 is a compensation to them My Lord. It's not very relevant.
18 Section 7...

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because I don't think that's been the scope of
21 the reference. It's not argued this side. We leave for interpretation of the act, the impact of the
22 act on the appeal or whatever there is for the regular bench. Let's not go into the....

23

24 **AMAL KUMAR GANGULI:** I understand that. Your Lordships, kindly leave it to the regular
25 bench to go into the question of interpretation if there be any. I was only giving Your Lordships
26 the scheme of it. Just see My Lords, Section 10. What happens?

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Let's leave it. Mr. Ganguli. I don't think we
29 need to go into the act unless there's a formulation, which you have, and then want to just sort
30 of illustrate that formulation with reference to a particular....

31

32 **AMAL KUMAR GANGULI:** I'm referring to this act for the formulation My Lord, that this
33 is clearly an example of how the Central Government can control in exercise of its powers
34 under Entry 54 and some other powers, Entry 42 of List III. Acquisition is specifically dealt
35 with under 43. The power of acquisition was exercised My Lord, in furtherance of its obligation
36 under Entry 54. That's how I was reading to Your Lordships My Lord, the Preamble. Preamble
37 says, you know, this, that we have large deposit of minerals. They remain unexploited. They

1 are required for the betterment of the country and in the larger interest of industrial
2 development in the country. Therefore, they cannot be left to be unworked for all these years.
3 So, we should acquire. That was the whole argument. So, this is nothing but augmentation of
4 law in terms of...

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright. Anything else Mr. Ganguli? Anything
7 else now?

8

9 **AMAL KUMAR GANGULI:** Entry 54. A few portions I have to show to Your Lordships from
10 the *India Cements* judgment. Just one or two paragraphs, to indicate how *India Cements*
11 dealt with the issue. So, if Your Lordships kindly permit me, My Lord. It is Volume V(H), page
12 1151. Page 1200. Now, first, Your Lordship, just once again, My Lord, see the question that was
13 formulated by the court at page 1155, foot of that page. The question involved in the writ
14 petition and the writ petition is whether levy of cess or royalty is within the competence of
15 State Legislature, and the board will discuss this My Lord. Then, first paragraph 24 at page
16 1166 where Your Lordships are discussing the scope of Entry 50 of List II. And then referring
17 to *Anant Mills* case My Lords, Your Lordships said, all minerals which are under the earth
18 can contain, under certain circumstances, fall under the expression 'land', but a Tax on
19 Mineral Rights, is expressly covered in Entry 50 List II. If it is not under the head 'taxes' under
20 Entry 49 of List II, they will render 50 as redundant. So that was the argument with regards
21 to Entry 49. Then kindly turn to paragraph 29 at page 1168, where Your Lordships are now
22 discussing the case on *HSM Murthy's* case. *Murthy's* case was the issue whether *Murthy*
23 has correctly laid down the law or not

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What are you driving at actually? What are you
26 driving at?

27

28 **AMAL KUMAR GANGULI:** What I am driving at is My Lord is *India Cement* was directly
29 concerned with the question as to whether Royalty is a tax or not. Why? Because Your Lordship
30 is considering the validity of the earlier judgment in *Murthy's* case. *Murthy* said My Lord, a
31 Tax on Royalty so that is what was cess on Royalty was a valid Tax. So that was the issue, which
32 was before the court. So, the court was examining whether that is correct Law or not? It is in
33 that context Your Lordships observe at paragraph 29, page 1168, the passages quoted below
34 from *Murthy's* case last four lines of the passage after having said My Lord, that cess is valid
35 on Royalty. The Lordship says, our attention was not invited to the provision of any law created
36 by Parliament. In the context of Section 78 and 79 of the schemes of those provisions, it is clear
37 that the land says in the [UNCLEAR] a Tax on land under Entry 49 of the state case. This is

1 what *Murthy* has held. Now they are considering correctness of that problem. Next
2 paragraph. Paragraph 30. It seems therefore ...

3

4 **JUSTICE HRISHIKESH ROY:** 33 could be what you are driving at. I think 33 paragraph
5 33.

6

7 **AMAL KUMAR GANGULI:** Yes. I was going to 33, but I want to show you first also this My
8 Lord, that Your Lordships found that Section 9 is a provisional MMDR Act, which covers that.
9 That is stated in paragraph 30. And all Your Lordships have said is, last sentence, all that
10 means tax on Royalty is not a tax on mineral right. It would therefore be in any event outside
11 the [UNCLEAR]. So, they made again a distinction between tax on minerals and mineral
12 rights. I will read 32 first My Lord and then 33. 32 first, it is contained by Mr. Krishna Murthy
13 Iyer that the state has the right to tax minerals which is completely different from what is the
14 scope of Entry 50. Now My Lord, that has been dealt with, paragraph 33. In any event, royalties
15 directly relatable only to minerals extracted and on the principles that the general provision is
16 excluded by the special [UNCLEAR]. Royalty would be relatable to Entry 23 and 50 of List II
17 and not under Entry 49 of List II, where the fee is covered by the Central power under Entry
18 23 or Entry 52. [UNCLEAR] registration cannot be upheld. And then paragraph 34. Having
19 said this, it clearly said that royalty is a tax, as a cess on royalty is beyond the permissible limits
20 of the power of the state. Then Your Lordships go on to discuss paragraph 34. Since the
21 beginning. in the aforesaid view of the matter -- in the aforesaid view of the matter, we are of
22 the opinion that the royalties are a tax and assets based on royalty being a tax on royalty is
23 beyond the [UNCLEAR] of the state legislature. Because Section 9 of the Central Act are
24 [UNCLEAR] and the state legislature is denuded of its competence under Entry 23 of these
25 two. Then My Lord, the last sentence. In any event, we are of the opinion that the cess on
26 royalty cannot be sustained under Entry 49. That is another argument. And then My Lord, a
27 royalty on a mineral right, is not a tax on land, but on payment of the user of land. Now, this
28 is being picked up the last sentence to suggest that *India Cement* did not have the occasion
29 to decide whether royalty is a tax or not tax. That My Lord with great respect, that is the genesis
30 of *Kesoram's* beginning. That's how the *Kesoram* begins, let's say to distinguish this
31 judgment of seven judges. And that is how Your Lordships have found some possible error, et
32 cetera, et cetera. Whatever is that? That part, I don't go over it. But this is because of incorrect
33 reading of this paragraph 54, which flows from what has been held in the earlier two
34 paragraphs. And it is very clear from the earlier two paragraphs that cess on royalty is a tax.
35 Royalty is a tax and cess on royalty, therefore, is forbidden. Very clearly, says says so and My
36 Lord, there's also a reference to a judgment by Justice JS Verma as His Lordship then was

1 acting Chief Justice. He has also held that the development phase under Section 9 of the
2 Madhya Pradesh [UNCLEAR].

3

4 But Your Lordships did not go further into it because appeal was pending before this
5 Honourable Court. My Lord, I was referring to that Coal Bearing Area Act for the limited
6 purpose that how does that Act also reflect all the interpretation that Your Lordships are going
7 to place on Entry 50. That's a law which has acquired all the rights of the existing leaseholder.
8 And then the Government in furtherance of its objective, My Lord, under Entry 54, for further
9 development of mineral development, has compulsorily directed, that those lines would have
10 to be developed for the purpose of mineral development. And that's how they have appointed
11 the Government companies. That Act now provides, by an amendment, to Section 18(a),
12 payment of Royalty. So, these government companies are paying Royalty to the State because
13 of that new introduction under Section 18(a) from 1971. At the same time, there is a further
14 demand under the Orissa Act, from the same companies by saying you now have to pay a cess,
15 which is now calculated again at the rate of Royalty.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright. Thank you, Mr. Ganguli. Now, after
18 lunch, Mr. Bagaria, we'll hear you after lunch. For 15 minutes, we'll give Mr. Bagaria and then
19 Mr. Datar.

20

21 **DARIUS KHAMBATA:** May I address after Mr. Bagaria?

22

23 **RESPONDENT'S COUNSEL:** Give me 15 minutes.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We are going to conclude all arguments on this
26 side at sharp 3:00.

27

28 **RESPONDENT'S COUNSEL:** My Lord. My Lord....

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** One second. All of you sit down together.
31 Whoever...

32

33 **RESPONDENT'S COUNSEL:** Your Lordship. Your Lord, my...

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** One second, we are not going to do this. We
36 are not going to haggle and ration time between Counsel. That's for you all. Between all of you,
37 you decide, you've got 1 hour, who will take what. If one person takes the entire hour, I'm sorry.

1 We'll have to conclude at 03:00. So, we leave it entirely to your good allocation on who will
2 allocate, how you will allocate time the last 1 hour before you have.

3

4 **RESPONDENT'S COUNSEL:** My Lord, I have...just I'll take five minutes because my case
5 is completely different.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Seems to be, my English seems to be
8 improperly understood. You may take 5 minutes, you may take 15 minutes, you may take 59.59
9 minutes, 59 seconds. But that eats into somebody else's time.

10

11 **RESPONDENT'S COUNSEL:** Just 5 minutes.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Why don't you understand what I'm trying to
14 say? Why don't you understand what I'm trying to say? It's a 20 Counsel, if you take 5 minutes
15 for all of them, it goes to 100 minutes. Between all of you, at lunch as you leave the Court,
16 please ration out the time inter se. We are giving now 1 hour. We made it... Yesterday, we said
17 till 02:00, we have extended it by 01:00... by one more hour, 03:00 Mr. Dwivedi will start
18 arguing. Between all of you, decide how you will divide that 1 hour between yourselves. We
19 have no difficulty here. We will hear everybody within that 1 hour.

20

21 **RESPONDENT'S COUNSEL:** May I just say, then that will Your Lordship segregate that
22 Mahanadi Coal Fields and refer it to a regular bench?

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That segregation we will do tomorrow.

25

26 **RESPONDENT'S COUNSEL:** Respondent number 87. Because...

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We can't do it like this. Because you know,
29 there'll be a mess if you start throwing things like that.

30

31 **RESPONDENT'S COUNSEL:** Very well.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We are looking at this Tomorrow all of you
34 give us that, these are the matters which have to be de-tagged. That's why we said.

35

36 **KAILASH VASDEV:** My Lords, on behalf of the NTPC, we go by what the Learned Solicitor
37 has said.

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CHIEF JUSTICE D. Y. CHANDRACHUD: All right. Mr. Bagaria, then after that, followed by Mr. Khambata, Mr. Bagaria, Mr. Datar, Mr. Khambata.

ARVIND DATAR: No, Your Lordships may put Mr. Khambata. He has got some difficulty after 2:00.

CHIEF JUSTICE D. Y. CHANDRACHUD: All right.

ARVIND DATAR: Let Khambata go first. I'll follow him.

CHIEF JUSTICE D. Y. CHANDRACHUD: All right. So, Mr. Bagaria, Mr. Khambata and then Mr. Datar. All within 1 hour.

RESPONDENT'S COUNSEL: Five minutes.

DARIUS KHAMBATA: We will try. We will do it if Your Lordship says so.

CHIEF JUSTICE D. Y. CHANDRACHUD: It will be entirely right, to just appeal to the seniors who are preceding you. That's all.

CHIEF JUSTICE D. Y. CHANDRACHUD: I'm so sorry. I'm responsible for the delay. I had a meeting which spilt over, that's all.

S. K. BAGARIA: Now, we have divided that 60 minutes between ourselves.

ARVIND DATAR: It's coming to 62 minutes, My Lord.

CHIEF JUSTICE D. Y. CHANDRACHUD: So, Mr. Bagaria how much of the allocated time do you get?

S. K. BAGARIA: 20 minutes.

CHIEF JUSTICE D. Y. CHANDRACHUD: 20. All right, let's get started.

S. K. BAGARIA: I'll try to finish it in that.

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

2

3 **S. K. BAGARIA:** I'm appearing in two of these matters. **Civil Appeal 1883 of 2006**, that
4 is of Steel Authority of India and a brief synopsis is filed that is at page 43 of Volume II(a).
5 Your Lordship need not open it. I will not go into that. **Civil Appeal 1883 of 2006**. And the
6 second one is **Civil Appeal 6135 of 2013**, that is in the case of Birla Cement Works.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the submission, Mr. Bagaria?

9

10 **S. K. BAGARIA:** My Lord?

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is your submission?

13

14 **S. K. BAGARIA:** This first submission, I'll straight away come to Entry 50.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Sorry?

17

18 **S. K. BAGARIA:** I'll straight away come to Entry 50.

19

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

21

22 **S. K. BAGARIA:** Because much is revolved around Entry 50. I need not read that. Your
23 Lordships have gone there a number of times. It is into three parts or, if I may say, three
24 attributes. Taxes on mineral rights is the first attribute. Subject to any limitations imposed by
25 the Parliament. That is the second attribute. Third attribute is by law relating to mineral
26 development. Each of these three attributes are very, very carefully worded and very carefully
27 put into the Entry. What is the uniqueness of this Entry, it must have been submitted. I adopt
28 all the submissions of the learned Solicitor and all the Counsels made. If I may summarize in
29 all the testing Entries in List I and List II, this is the only Entry providing for subject to
30 limitations, any subject to any limitations by Parliament. So that sort of restricted coverage is
31 not in any other Entry. Kindly mark the expression 'subject to any limitations'. So, My Lord,
32 the Entry itself is not unrestricted. The Entry itself is giving the field. As Your Lordships are
33 aware these are the Entries for the Legislative fields. So, field relating to taxes on mineral
34 rights.

35

36 That field is allocated to the State Legislatures. But that allocation itself is conditioned,
37 restricted and subject to. My Lord, that conditioning can only be by a law, imposed by law

1 made by the Parliament. And that law, must relate to mineral development. Parliament may
2 make any sort of laws, it may make hundreds of laws. But no, for imposing the restrictions
3 under the Entry it must necessarily be a law relating to mineral development. My Lord, these
4 are the three attributes, very carefully chosen words. Any limitations imposed by Parliament
5 by law relating to mineral development. Now My Lord, if you look into the Lists the only Entry
6 providing for a law made by the Parliament relating to mineral development is 54. Because
7 law made by the Parliament is only in List I, leaving aside List III, for the time being. And in
8 List I, 54 is the only Entry. Kindly, also mark at this stage one important fact. I checked up all
9 the three lists, this expression 'mineral development', that appears only in the three entries
10 today, what is being considered by My Lords, 23 of second List, 50 of second List, 54 of first
11 List. All the three lists, they use the expression 'mineral development'. This expression is not
12 appearing in any other list. So, what is the significance? Immediate question Your Lordships
13 raised earlier also, all right. If that be so, how do you denude the State Legislature of the power
14 to levy taxes on mineral rights? My utmost respectful submission is, that denudation
15 automatically comes in by reason of the Entry's own limitations and restrictions. That is a
16 Constitutional limitation inbuilt in the Entry.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Comes in?

19

20 **S. K. BAGARIA:** By reason of the Entry itself. My Lord, how that comes in? The moment
21 there is a law made by the Parliament under 54 List I, and that touches on the mineral
22 development, then to that extent the denudation occurs and Entry's power gets eclipsed to that
23 extent. Immediate next question would be - All right, what is that law?

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the extent?

26

27 **S. K. BAGARIA:** Yes.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the extent?

30

31 **S. K. BAGARIA:** Absolutely. My Lord, Honourable Chief Justice on that day was putting the
32 question - 'By whom, how and what?' By whom, the Parliament, the Entry itself is, how the
33 Entry says by law relating to mineral development and what, for that, we need to go to MMDR.
34 Now My Lord, MMDR was placed before My Lords in extenso by the learned Solicitor. I won't
35 take Your Lordships into all the sections again, only I may give a reference to some of the
36 sections My Lords, can make a note of that. What MMDR does? Every possible considerable
37 concept relating to mines and mineral development gets occupied and gets occupied along

1 with the financial obligations, along with the finances, along with the limitations. And if that
2 be so, if that is the correct reading of MMDR what necessarily follows subject to any
3 limitations imposed by Parliament that comes in. So that limitation on the State's powers...

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But assuming that the MMDR occupies every
6 possible field of mines and mineral development does that impose a limitation on the taxation
7 of mineral rights? That's the question you have to answer.

8

9 **S. K. BAGARIA:** Does that impose a limitation on the taxing power? Taxing power. That is
10 the question.

11

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

13

14 **S. K. BAGARIA:** That is the question.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Which are those provisions? Just tell us.

17

18 **S. K. BAGARIA:** I'll tell Your Lordships. What MMDR does? Your Lordships have seen the
19 Preamble and other things, statement of objects, et cetera, et cetera. There are two or three
20 very important features of MMDR. All possible, considerable rights, reconnaissance, mining
21 and other connected obligations and rights. They're all taken care of in MMDR. Connected to
22 that as an intrinsic measure to the development and regulation, MMDR provides for various
23 financial obligations which are in the nature of imposts. I will not use the expression tax for
24 the time being, but they are imposts. Whatever meaning we may give to impost that is defined
25 in 366. Let us confine to that meaning. So different types of financial obligations are being
26 created by MMDR. Not only created, created My Lord along with the limitations in built into
27 each one of them. So, the moment that limitation on the financial obligations gets created by
28 MMDR specifically then those limitations cannot be breached. Then that is what is the
29 occupying of the entire field. That entire field is getting occupied by reason of making the
30 provisions for mines and minerals in all their aspects along with what are the financial outgoes
31 which are...

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** There is a fallacy. The field of taxes on mineral
34 development that cannot be occupied because it's a field exclusively assigned to the State.

35

36 **S. K. BAGARIA:** That is why.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Occupied field can arise where an entry NIL.
2 State List is subject to an entry in the Union List. Union occupies the entire situation.
3 Alternately it can occur within the Concurrent List. Now, in this case, the entire field of
4 taxation of mineral rights is assigned to the States. Therefore, it can be only by virtue of
5 limitation under the Central Act. But the States are precluded from exercising the right to tax
6 the mineral development. Now, where is that limitation?

7

8 **S. K. BAGARIA:** My Lord, that is what I'm coming to.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** How do you trace it? Occupied field will not
11 help you.

12

13 **S. K. BAGARIA:** That is what I was coming to.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because the field is exclusively assigned to the
16 State subject to limitations.

17

18 **S. K. BAGARIA:** That subject to we cannot bifurcate. That subject to is a part of the entry.
19 That subject to is inbuilt as a limitation.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now you show us which are the limitations
22 which have been imposed under the MMDR Act, which affects the taxing power of a State.

23

24 **S. K. BAGARIA:** Kindly allow me to place only the relevant sections.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just tell us, you can enumerate and tell us what
27 those sections.

28

29 **S. K. BAGARIA:** I'll enumerate in this way. Let us start with Royalty. Going to other sections
30 also. I'll just give the section numbers. Royalty, the rates are fixed here on all India basis to
31 maintain the uniformity by reason of the national importance of minerals. Not only the
32 fixation of the rates, they are coupled with the right given to the Parliament under Sub-Section
33 3 of 9 to amend or enhance once in 3 years. So, even if the Parliament itself desires, that
34 revisional process or exercise cannot be done in violation of Sub-Section (3).

35

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

37

1 **S. K. BAGARIA:** So, the totality of the rights, totality of the outgoes, totality of the imposts
2 that can be levied in respect of that particular exercise, that is inbuilt in the Section. Now if on
3 that, what is Royalty? My Lords have been discussing it for last few weeks. One thing cannot
4 be denied. Whether we call it a tax, whether ultimately what Your Lordships hold. Definitely
5 the right in that mineral, which is taken away after extraction, that is parted with, that mineral
6 is gone, and that is why it is on per metric ton basis, or [UNCLEAR] basis, depending upon,
7 how much do you take and extract and dispatch or consume. Now kindly note one important
8 aspect. In any of the three lists, the State has not been given or let's say, there is no Entry
9 providing for taxes on minerals. List I, List II, List III, there is no Entry called taxes on
10 minerals. That has been gone into *India Cements* also. It has been specifically noted. So,
11 the only Entry on which State can fall is 50. Taxes on mineral rights. Now is that right gets
12 eclipsed by reason of the limitations imposed by Parliament by the law relating to mineral
13 development, and that is MMDR then so long as that limitation continues that eclipse
14 continues.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Bagaria, you have five minutes to go for your
17 20 minutes to end. Please tell us, which are those restrictions? Which are those limitations?

18

19 **S. K. BAGARIA:** Can you just make note of the sections?

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Is It a tax on minerals under the MMDR Act?

22

23 **S. K. BAGARIA:** Royalty is a tax or not a tax that is a separate issue. Now Royalty is definitely
24 calculated, if Your Lordships see the section.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is your submission on Royalty?

27

28 **S. K. BAGARIA:** If Your Lordships see Section 9, on what basis it is being payable. Just
29 around place. Section 9 only.....

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just formulate it. Formulate it. We have seen
32 it now many, many times. Just formulate it.

33

34 **S. K. BAGARIA:** The holder of a mining lease.....

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is your submission? Don't read it. Just
37 formulate it.

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S. K. BAGARIA: My Lord, these two lines reading is important. I will not read anything further. 'The holder of a mining lease granted before the commencement of the tax shall, not to withstanding anything contained in the instrument of lease, or any law enforcement, commencement, et cetera, et cetera, pay Royalty in respect of any mineral removed or consumed by him.' So, the conditions precedent are, you must be a holder of the lease. Now, by reason of holding of the lease, you acquired the mining right or the mineral right, and then the calculation that is getting quantified based on how much is extracted and dispatched. So whatever way, ultimately Your Lordships may decide, whether it is a tax or mineral, right, or a tax on mineral, State cannot get the tax.

CHIEF JUSTICE D. Y. CHANDRACHUD: Is there a tax at all ?

S. K. BAGARIA: Doesn't matter. Let us call it impost. Let us call it a levy. That field by reason of this levy, that is getting occupied irrespective of it's being called a tax on mineral or not, because even if it is a tax on mineral...

CHIEF JUSTICE D. Y. CHANDRACHUD: Field of Royalty is occupied. You are right.

S. K. BAGARIA: My Lord, tax filled of that financial imposition, that financial impost on exercise of that right, that is getting occupied. And My Lord, if you see the entirety of the Act, as the learned Solicitor was pleased to place before My Lord, every aspect, Prospecting, reconnaissance, mining...

CHIEF JUSTICE D. Y. CHANDRACHUD: Alright. Anything else, Mr. Bagaria?

S. K. BAGARIA: Just give me 5 minutes, I'll complete.

CHIEF JUSTICE D. Y. CHANDRACHUD: 3 minutes left, [UNCLEAR] finish it now.

S. K. BAGARIA: Very well, very well. Kindly take the sections. Sections are My Lord, 8, 8(a).

CHIEF JUSTICE D. Y. CHANDRACHUD: Section 8?

S. K. BAGARIA: 8, then 8(a).

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

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S. K. BAGARIA: 9.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

S. K. BAGARIA: 9, 9(a), 9(b),9(c), 11(d), 13, 18, 25. These all relate to different types of financial obligations and financial matters, financial outgoes.

CHIEF JUSTICE D. Y. CHANDRACHUD: So, according to the field of Royalty is occupied, including all financial impost on the exercise of these rights.

S. K. BAGARIA: My Lord, not only Royalty.

CHIEF JUSTICE D. Y. CHANDRACHUD: That's what I said, including.

S. K. BAGARIA: Everything connected to mines and mineral obligations.

CHIEF JUSTICE D. Y. CHANDRACHUD: All financial impost.

S. K. BAGARIA: All financial impost. And they are getting occupied as an intrinsic part of development and regulation.

CHIEF JUSTICE D. Y. CHANDRACHUD: Thank you, thank you.

S. K. BAGARIA: My Lord, only one section Your Lordship will note, Section 28.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

S. K. BAGARIA: Even the notification by which the rates are changed the three yearly, that is required to be placed before the Parliament, with approval depending upon et cetera et cetera.

CHIEF JUSTICE D. Y. CHANDRACHUD: Thank you. Yes Mr Datar, thank you.

S. K. BAGARIA: My Lord, can we make a note of... The other day, Your Lordship asked, how can a form that is Form k, in which the lease deed is given that are[UNCLEAR]. My Lord, this Form K is a statutory form under the section. Kindly can you only make a note of sections?

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CHIEF JUSTICE D. Y. CHANDRACHUD: That's it. It's a statutory form. No [UNCLEAR]

S. K. BAGARIA: Statutory forms.

CHIEF JUSTICE D. Y. CHANDRACHUD: Ok, ok. We got the point. Yes, Mr. Datar. Thank you, Mr. Bagaria. Yes, Mr. Datar.

ARVIND DATAR: Mr. Khambata will take 10 minutes. He wanted to finish first.

CHIEF JUSTICE D. Y. CHANDRACHUD: Who?

ARVIND DATAR: Mr. Khambata.

CHIEF JUSTICE D. Y. CHANDRACHUD: Mr. Khambata.

S. K. BAGARIA: Could Your Lordship give me one more minute only?

CHIEF JUSTICE D. Y. CHANDRACHUD: No. Thank you.

S. K. BAGARIA: My Lord, one more minute only for mentioning the name of the act. only for mentioning the name of the act.

CHIEF JUSTICE D. Y. CHANDRACHUD: What is the act?

S. K. BAGARIA: Other day Your Lordship asked the question, is there any other law under 54 relating to mineral development? There are two other laws relating to coal. One is Coal Mines Conservation and Development Act 1974. That is at page 1873 of Volume IV.

CHIEF JUSTICE D. Y. CHANDRACHUD: We will look at it. Yes, Mr. Khambata.

DARIUS KHAMBATA: I'm grateful to Your Lordship, that I am getting the opportunity of addressing virtually. I'm sorry. My Lord of personal reasons, I couldn't be here physically before Your Lordships. I'll restrict myself. I have ten minutes and I've heard the argument. I know what apprehensions are troubling My Lords, and I seek to address those. My Lord, I want to make five points on Entry 50. As we have seen, Entry 50 permits the States to tax mineral rights, but it is subject to any limitations imposed by Parliament by law. The first

1 submission, therefore is, that the States do not have exclusive competence to tax driven
2 mineral rights. I'm not getting into the issue of whether mineral right is narrower than
3 minerals, because that has been dealt with. But whatever the subject matter is the states do
4 not have exclusive competence. It's always subject to Parliament. I say this because if My Lord,
5 see my written submissions in Volume II(g), pages 2 to 17, I have extracted a portion from the
6 case in *HS Dhillon* which enunciated the test thus. It said -'Any matter, including tax, which
7 has not been allotted exclusively to the State Legislatures, will fall into the province of
8 Parliament.' Because, as we know, Parliament has the residuary power to tax under Article
9 248, and read with Entry 97. So, unless, it is allotted exclusively to the State it would always
10 fall within Parliament's power. Point number one, my submission is...

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12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Khambata...

13

14 **DARIUS KHAMBATA:** Yes, My Lord.

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16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Allotted exclusively to the State Legislatures is
17 not inconsistent with limitations on the exercise of the power.

18

19 **DARIUS KHAMBATA:** That is right, i accept that, I accept that.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Therefore, the field is not given to Parliament.
22 The field is exclusively assigned to the States, but it is limited by law which is passed by
23 Parliament in the interest of mineral development.

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25 **DARIUS KHAMBATA:** May we take that My Lord as the... I accept that. I'm not saying that
26 Parliament can step in without imposing those limitations by a law relating to mineral
27 development. The second point, therefore, is linked exactly to that, that law pertaining to
28 Mineral Development is empowered by Entry 54. And as the paragraph in *Synthetics and*
29 *Chemicals* that Dr. Singhvi referred to, paragraph 40, I won't read it again. It says, Entry 50
30 is the one exception to the rule, that the power to tax cannot come from a general entry. It says,
31 the power can come from Entry 54. That's what Seven judges were Your Lordships, held in
32 *Synthetics and Chemicals*. More importantly and I rely on *Servai*, a passage from
33 *Servai* as well as in *Hind Stone*, Your Lordship's the judgment, the power to regulate will
34 include the power to prohibit absolutely. And if My Lords, would kindly see my written
35 submissions for one moment at page 7 of those, para 18, I have set out the passage from
36 *Servai*, which might be some assistance. Page 7 of the written submissions, para 18.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just 1 second.

2

3 **JUSTICE J.B. PARDIWALA:** It's Volume II(g)?

4

5 **DARIUS KHAMBATA:** II(g), Volume II(g). Page 2 it starts and at Page 7. My Lords have
6 that?

7

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

9

10 **DARIUS KHAMBATA:** I may just read that 'Tax on mineral rights is made expressly subject
11 to any limitation by Parliament by law, relating to mineral development. Consequently,
12 Parliament would have the power to regulate or prohibit the levy of a tax on mineral rights, if
13 such levy obstructed or hampered mineral development.' And even generally, as I said, in the
14 judgment of *Hind Stone (1981) 2 SCC 205* Your Lordships have taken the view 'power to
15 regulate includes power to prohibit'. Now if the limitation imposed in Entry 50 prohibits and
16 as felt from the Honourable Chief Justice this morning, there would be a vacuum, because
17 then nobody would be able to tax mineral rights which can never be because the residuary
18 power to tax is always with Parliament and therefore, if the limitation effectively prohibits.
19 Then in my respectful submission, Parliament would have competence not only under Entry
20 54 but also read with its residuary powers under 97 and 248. And the third point is, of course,
21 the very language of Entry 50, by law relating to mineral development imports the fact that in
22 this law limitations at least can be put on the taxing power. Therefore, they can be related to
23 the field of taxation. Your Lordships have held in State of Karnataka and Meghalaya also that
24 the word 'subject to' takes the entry completely out of the scope of powers of the States. The
25 word subject to in Entry 50. I'll show that data, if I have the time. The fourth point, and this
26 is, I think, my main point, and others have made it, but I just want to substantiate. Entry 54
27 envisaged a complete code on the law relating to mines and mineral developments. And this
28 would include taxation because of the language we find in Entry 50. We've seen the sections.
29 They have been shown to My Lords by the Learned Solicitor. They are extensive. They purport
30 to cover the entire, the full range of matters, as was held in *Tulloch's* case at para 12 and 14.
31 But specifically, there is a Section 25 which we saw this morning, which permits the
32 Government to recover any arrears of rent and Royalty, tax fee or otherwise, expressly uses the
33 word 'tax', which means the scheme and scope of the Act is expressly, it covers tax as well and
34 a recovery of tax and Dr. Singhvi has already pointed out why Royalty is at a statutory impost,
35 Dead rent under 9(a) would be clearly a tax, and even 9 (b) and (c) are cesses, computed on
36 the basis of Royalty, which are in the nature of taxation on impost. Now the legal consequence
37 of a complete code, as Your Lordships are familiar with, I have set out, at paras 30 to 35 of my

1 note. My Lord would kindly quickly go, to page 11. Your Lordship's judgment in the
2 **Arbitration and Stamp Act** matter, I've set out the passage at page 11, relying on the
3 genesis of an idea from Justice Tulzapurkar, sitting in the Bombay High Court, that if an act is
4 intended to be an exhaustive or complete code, it implied [NO AUDIO] excludes all other laws.
5 So, a complete code on mines and minerals will, which includes the power of taxation, will
6 exclude the State's power and I have set out a passage from **Servai**. My Lord, just see that at
7 page 11, paragraph 31 of my note. He actually refers to what the consequence of the MMDR
8 Act is, was Entry 50. He says, and I quote, in paragraph 31, 'In the first of these cases, relying
9 on a judgment of the [UNCLEAR] it was also held, that the State Legislatures lost their power
10 to legislate under Entry 50 List II, and the provisions of the Central Act of 1957, and
11 particularly Section 25 of that Act supported this conclusion.' That's the fourth point. The fifth
12 point is that under our Constitutional scheme, limitations include implied limitations. We are
13 not limited to expressed limitations. And if My Lords would just kindly see para 11 of my note,
14 page 5, I have extracted some portions from **Kesavananda**, which explains, that everything
15 is not said expressly in our Constitution. Limitations can be implied and must be implied, and
16 they can be implied either by necessity or from the scheme of the Constitution. If My Lord
17 would just see para 11, page 5. Just the first two extracts, I'll just read, from Justice Sikri's
18 judgment, para 210 - 'I have come to the same conclusion by another line of reasoning, in a
19 written constitution, it is rarely that everything is said expressly. Powers and limitations are
20 implied from necessity or the scheme of the Constitution.' And the next two extracts also speak
21 of, if you imply that, then it acts as a corresponding limitation on these State... the power of
22 the States of Provincial Legislature. So, for the very structure and constructive Entry 50, read
23 with 54 shows that the intention was to place this entire scheme, including taxation. Because
24 one can't deal in taxation from mineral development. If a State heavily taxes mineral rights, it
25 might [UNCLEAR] or retire mineral development in that State. The whole idea was to unify.
26 There are three points on unification. The first is, and I've set this out... since my time is
27 limited, I want to just point out at page 13 of my submissions, I've referred to the 1948 MMDR
28 Act. Because there was an Act before this one in 1948, which expressly contemplated taxation.
29 And one must remember this was made by the Dominion Legislature, which was effectively
30 the same as the Constituent Assembly at that stage in 1948, so they expressly permitted
31 taxation as part of the MMDR Act, 1948. That's point number one. Point number two, is let's
32 go back to the Government of India Act, because... My I request My Lords to see para 44 of my
33 note. Because for convenience, I've set out the respective Entries. This is very illuminating. the
34 Entries are almost identical. And if My Lords see para 44, page 14, Entry 36 is the equivalent
35 of Entry 54. Entry 23 is, 23 and 44 is the current Entry 50. Now, there are debates of the House
36 of Commons. I agree that they're not authorities to be cited but it's illuminating to see those
37 debates. And if My Lords would just see I've extracted them for convenience in the annexure

1 to my submissions at page 18. I would have shown them at length, but there's no time. So,
2 Volumes IV... they are contend in Volume IV(m) from pages 54 to 58 and the anxiety of
3 members there was to put to the then Solicited General in England that should not there be a
4 complete code and should not all powers, including power to tax mineral rights be vested in
5 the Federal Legislature. And on provisions near identical to ours...

6

7 **JUSTICE HRISHIKESH ROY:** Khambata, you had mentioned the 1948 Act?

8

9 **DARIUS KHAMBATA:** Yes, My Lord.

10

11 **JUSTICE HRISHIKESH ROY:** And you said that the expression 'taxation' was specifically
12 used therein?

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14 **DARIUS KHAMBATA:** Yes, My Lord.

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16 **JUSTICE HRISHIKESH ROY:** Now, we haven't gone so much into detail, but you see, in
17 the 1957 Act...

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19 **DARIUS KHAMBATA:** Yes, My Lord.

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21 **JUSTICE HRISHIKESH ROY:** The taxation thing has come only in the recovery section.
22 What was the difficulty for the 1957 Act to also specifically say, taxation, and that would make
23 our task a little simpler. You know, instead of trying to say that Royalty is an exaction and go
24 back to the definition of taxation...

25

26 **DARIUS KHAMBATA:** My Lord, even in the 1948 Act...

27

28 **JUSTICE HRISHIKESH ROY:** Unanswered in the 1957 Act. Although, you may be right
29 there, you know, that the Indian Government has the power to exclusively sort of pass laws on
30 the subject, but has it denuded to the extent of taking away the right of the State to also impose
31 taxation under...

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33 **DARIUS KHAMBATA:** My Lord is right. Before Your Lordships, because there's not such
34 an express reference. But reading the scheme of the Act, for example, in the 1948 the reference
35 is in the rulemaking power, the power to make rules for levy and collection of Royalties, fees
36 or taxes. I've said that out in my para 41. All this is internal evidence to show that the range of
37 the Act intended and it cover taxation as well, in whatever name call. Because if you pluck out

1 taxation, and give it to different states, there will be a regime which will be inconsistent all
2 over the country. That was not the Parliamentary intent and the debates which I have set out
3 in Annexure A, I have extracted some of the questions...

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We'll have a look at it. Thank you. Thank you,
6 Mr. Khambata.

7

8 **DARIUS KHAMBATA:** My Lord, I'll leave that thought with Your Lordships, as the whole
9 intent will be subverted, if implied limitations are not read into the power under Entry 50.
10 That's the crux of it.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you. Yes, Mr. Datar.

13

14 **ARVIND DATAR:** I made a PowerPoint presentation. But before Mr. Darius Khambata
15 concluded, there is a very important passage in the Joint Committee in 1933-34 which
16 prepared the Government of India Act. And I just flagged that. The original entry, Entry 23 of
17 List II, said that tax on mineral rights, they were no subject to limitation. And there was a
18 general power given to the Federal Government. A member of a committee called Lord Percy,
19 he flags the issue and says, if you give 'Complete General Power' to the Federal Government,
20 an unlimited taxing power to the provinces, then the very regulatory part of the Federal
21 Government will be in jeopardy. That is why then they put subject to mineral rights. I'll give
22 that passage from Lord Percy and the Solicitor General agrees - Yes, this is a very valid point,
23 because unlimited taxing power can completely jeopardize the regulatory power of the Federal
24 Government. Now My Lord, I'll come to my submission straight away. My Lord, first of all, the
25 taxing powers of the state there are no allocation of taxing powers. There are 12 taxing powers
26 given to the Union. Entry 82 to 96, 92 (b). And 16 subject matters given to the State
27 Government, that is 46 to 62. It's now one less because Entry tax is gone, Octroi is gone.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And to the Union, which one is gone?

30

31 **ARVIND DATAR:** Union 12 subject matters. And to the State 16, now 15.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 82 to?

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35 **ARVIND DATAR:** 82 to 92(b).

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

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ARVIND DATAR: And for the State Governments' Entry, 46 to 62, of course, now 55 is deleted after GST. But out of these 15 taxing powers...

CHIEF JUSTICE D. Y. CHANDRACHUD: 54 is deleted?

ARVIND DATAR: Sorry, My Lord?

CHIEF JUSTICE D. Y. CHANDRACHUD: 54 is deleted?

ARVIND DATAR: 55 is deleted. Entry tax.

CHIEF JUSTICE D. Y. CHANDRACHUD: 55... 55? Yes, yes, 55.

ARVIND DATAR: Because now it's one nation, one tax, so there's no check post and all that.

CHIEF JUSTICE D. Y. CHANDRACHUD: Right.

ARVIND DATAR: Now, My Lord, out of these entries in the State List. Three entries use the word 'subject to'. Entry 54, the power to levy sales tax is subject to 92(a) of List I. My Lord, I'll give you a complete note to save time. Entry 54 is subject to Entry 92 of List I, Interstate Sales. Entry 50 is subject to a law made by Parliament and Entry 57 Motor Vehicles is subject to principles in Entry 55 of List III. So, three taxing entries are subject to something. Now the word subject to has been subject to a lot of interpretation and a recent judgment by My Lord, Justice Gavai and Justice Nagarathna in the case of case of *Baharul Islam*. Your Lordships may just make a note, **2023 SCC Online**, page 79. **2023 SCC Online** page 79, para number 85 is the most important, 'subject to means yields to'. So, a taxing power which uses subject to X must yield to X. Now take 50, My Lord. I'll not get into Entry 54. If I have time, I'll mention that. So, 50 says, subject to a law made by Parliament. So, my submission is, this taxing power is still a State power, there's no question about it because all the money goes to the State, all the money goes to the State, but it is subject to a law made by Parliament, meaning the taxing power of the State must yield to Parliamentary Legislation and what has Parliament Legislation has done? My Lord, I am taking the plea in my slide number 2. I took the liberty making a PowerPoint, so it'll save time. Lordships just sees slide number 2. I'm just going to refer to slide 2.

JUSTICE HRISHIKESH ROY: Page number?

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ARVIND DATAR: Slide number 2.

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

ARVIND DATAR: I've made a PowerPoint presentation. I am giving. I got hard copies if Your Lordship wants to save time. Lordships may just take the hard copy. I just got 10 minutes.

CHIEF JUSTICE D. Y. CHANDRACHUD: I know it. Just one second, but written submissions volume?

ARVIND DATAR: My Lord, what happened I gave written submissions earlier...

[UNCLEAR]

CHIEF JUSTICE D. Y. CHANDRACHUD: Then to what page?

ARVIND DATAR: PowerPoint is there? [UNCLEAR] Can you just take a hard copy I hardly got 10 minutes. What page number My Lord? Your Lordships have slide 2. I'll just give a hard copy in case Your Lordships... Now please come to slide 2. Now I am submitting what Parliament has done. Slide 2, Your Lordship comes to, 'Limitations on taxing power.' My submission is. All Your Lordships have got it? All My Lords have got it? List. Can I pass on a hard copy in case... Now My Lord I am submitting that when you say taxing taxes on mineral rights, when a Legislature has the competence to break a law relating to tax. It basically can decide on three components, the levy of tax, the assessment of tax and the collection of tax. My humble submission is what Parliament has done is it has divided minerals into two parts, major minerals and minor minerals. On minor minerals under 15 State can levy tax. In Tamil Nadu they call Royalty on major minerals. They call it seigniorage on minor minerals, but both are basically taxes are imposed. Now my submission is. Why did Parliament do this? Parliament did it, in my humble submission, to impose financial guardrails or financial limitations in national interest. And I'll draw a parallel to Sales Tax. So, the first submission is, Parliament has imposed limitations on major minerals. They have set out in 2nd Schedule. What are the major minerals. They have specified how much you can tax, either so many rupees per ton or 5%. *ad valorem*, 20% *ad valorem* and then allocation of taxing power, taxing revenues. Insofar as 9 is concerned, Parliament says entire thing goes to consolidate fund of State. Come to 9(b). 9(b) District Mineral Board. It says, it will go to the district. Doesn't go to the State. It goes to a trust to be used for the purpose of the district. So, what Parliament has

1 done is this is how the taxing powers has been regulated by Parliament. So, they made a law
 2 which imposes the levy, but the entire funds go to the State. And this is what I've said. Now
 3 kindly come to slide 4. I have drawn a map of Tamil Nadu. Your Lordship has got the map of
 4 Tamil Nadu?

5

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

7

8 **ARVIND DATAR:** What I've done is. What is the, Your Lordship kept asking the question.
 9 What is interplay of 49(2) with Entry 52? Now I'm just making a suggestion for Your Lordships
 10 kind consideration. Now, tax on land and buildings. Land will be a genus and mineral land will
 11 be a species, because not the entire state may not be a mineral. So, what I'm submitting is
 12 under the Mining Mineral Development Regulation Act. You have reconnaissance permit. You
 13 have this permit and ultimately a mining lease is given for a period area not exceeding 10
 14 sq.km. It can be extended, depending. So, some mines can be 30 kms, 40 kms et cetera. I'm
 15 just suggesting to Your Lordship that whatever is the black dot represents the area for which
 16 a mining lease has been allotted. And who gives the mining lease? The State Government with
 17 the approval of Central Government. You make an application to the State. So, my humble
 18 submission for Lordships consideration is, the black dot area is Entry 50 tax, rest of the state
 19 is a 49 tax and on the black dot area there cannot be both a 49 tax and a 50 tax. That's the
 20 submission. Now, My Lord, third point on why Royalty is a tax. I am very clear. Royalty is a
 21 tax. You can call it impost. Let's not foible on words. It is a tax, it's an impost. And why do I
 22 say it's a tax. On **India Cements** where Lordship sees the opening page of **India Cements**
 23 is page 1155 and at 1156 Justice Nagarathna asked the question. What is this, Royalty? The
 24 opening paragraph of Justice Mukherji's Judgment says, India Cements is paying royalty... at
 25 page 1156...under the mineral concession rules 1960, which is under the 57 Act. And please
 26 see. What do they say? Royalty, Limestone. Government land 75 per ton subject to rebate, the
 27 schedule. Now my submission is what are the indicia for a tax? Typically speaking, because if
 28 you apply the [UNCLEAR] test, Royalty is not a tax. then, what is it? Is it consideration? Is it
 29 rent? It fails because the indicia for a tax is, it is normally given at a particular rate. The word
 30 rebate *ad valorem*, schedule, alteration, all these are factors which are very, very unique to a
 31 tax. Consideration under 2d contract is *nomen Juris*. It leads to contractual relationship. In
 32 **DK Trivedi** Justice Madan said - The mining lease is not an orderly contract. So, my humble
 33 submission is Royalty is a tax. That's the first submission. Secondly the District Mineral Board
 34 is a percentage of the Royalty that is also a tax. And finally, I'll say why **India Cements** was
 35 wrong. Oh sorry. Why **Kesoram** was wrong? **India Cements**, what happened was, the
 36 Royalty was under these mineral concession rules, parliamentary levy, Parliament rules. The
 37 Tamil Nadu Government under Section 115 and 116 of the Panchayat's Act said the cess will be

1 at 45% of the Royalty. They said - 45% of public revenue. And then they amended the
2 explanation and said land revenue in public revenue includes Royalty. Now **Kesoram** says
3 cess on Royalty is a tax but Royalty is not a tax. In my humble submission, it's a logical fallacy
4 because 99.99% of the cases in tax law. Everybody who practices tax knows cess and
5 surcharges are piggyback levies. They're always related to a mother levy. Education Cess
6 12.32% of the Service Tax, Higher Education Cess 0.6% of Income Tax. So, if the cess on
7 Service Tax is a tax, then it's paradoxical to say that the mother levy is not a tax and that's
8 exactly what **Kesoram** does. They say - no, no, Royalty is a tax is a the typo. But cess on
9 Royalty is a tax. Now, if cess on Royalty is tax by logic the Royalty has to be a tax. I'm putting
10 the inverted paradox. And finally, my submission is, Royalty is also a tax because it satisfies
11 all the four tests of Govindram Ganga Saran. Your Lordship sees. I've given in the last slide.
12 What are the four attributes of tax. I've given in Slide number 8. Taxable event, person liable,
13 rate of tax, value of measure. All these things are satisfied. And finally, just 1 minute to say
14 how Parliament subjects it to levy. Take sales tax. Just one and I'll conclude. Entry 54, till this
15 Bengal... Your Lordship knows that full confusion in **Bengal Immunity**. Which state can
16 levy tax? **United Motors** and then **Bengal Immunity**. Ultimately the validation was
17 upheld in **M.P.V. Sundararamier**. After the 6th Amendment they introduced 92(A) and
18 said, what was as absolute power of the State taken away and made subject to 92(A). So,
19 happens in 92 (A), Central Sales Tax. Central Sales Tax puts two limitations. It under Section
20 14 makes declared goods which includes many of the minerals also. [NO AUDIO] otherwise
21 each state can levy whatever it wants.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank You, Mr Datar.

24

25 **JUSTICE HRISHIKESH ROY:** See, not only you, others have also argued this. Money
26 going back or the entire money is reserved by the State, could that be the logic for....

27

28 **DARIUS KHAMBATA:** I'm very grateful. My Lord, Chief Justice also raised the point, you
29 keep saying it is a tax on, it is a State Tax. Just think for a moment. Suppose Parliament
30 tomorrow says, I will make the law, and I will keep the entire money with me. That could be a
31 serious challenge because you can't make it a state levy and entire funds goes to the
32 consolidated fund of India. Because the point is, why I'm saying...

33

34 **JUSTICE HRISHIKESH ROY:** That is simple enough. But if we understand the State has
35 a power to tax.

36

37 **ARVIND DATAR:** Yes.

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JUSTICE HRISHIKESH ROY: And if Centre says that - No, I will impose the tax, but I am giving you [UNCLEAR] but I am giving you the entire. Does that satisfy what is given to the State under this too?

ARVIND DATAR: Your Lordship may not just take giving. Lordship may not just take giving. Entire assessment is by the State, collection is by the State. Special courts are set up by the States. All the parliament is doing is don't go haywire in a levy. Suppose they levy to the State Government, then any State Government can levy any tax. So, what I'm submitting is, the very fact that the entire money goes to the State itself shows that the State is not denuded of their taxing rights. Taxing money. All happens, ceiling limit is imposed, like in Sales Tax, once you're a declared goods, you can't put more than 5%.

JUSTICE B. V. NAGARATHNA: [UNCLEAR] Interstate Trade is [UNCLEAR] by the Central Government

ARVIND DATAR: Pardon me.

JUSTICE B. V. NAGARATHNA: It's only by the Parliament.

ARVIND DATAR: Yes, again. What happens is...

JUSTICE B. V. NAGARATHNA: The power under Article 286 with regard to Interstate Sales, only the parliament.

ARVIND DATAR: Only parliament can levy.

JUSTICE B. V. NAGARATHNA: Only the machinery is by the State.

ARVIND DATAR: Yes, why, I gave the analogy...

JUSTICE B. V. NAGARATHNA: The power to impose a tax.

ARVIND DATAR: No. Why I gave the analogy is, after 6 years of independence the State's absolute power became subject to limitations. Now, limitations can be in any way Parliament wants. In Sales tax what did they did? They said - not more than 5%. Only single point levy. For minerals they said - major minerals you can tax in the second schedule at these rates. So

1 now suppose it is 8% *ad valorem*. It's an all-India tax. Whether you find the coal in Bihar or
2 you find the coal in Karnataka, it's an 8% tax.

3

4 **JUSTICE HRISHIKESH ROY:** Are you feeling the heat from behind?

5

6 **ARVIND DATAR:** Very much. Unfortunately, I can't be pushed in front

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you Mr. Datar. Now Mr. Datar you have
9 to tell us who's following now next.

10

11 **ARVIND DATAR:** Mr. Ghosh is following. He wants to take 1 minute. I'll give the note
12 tomorrow.

13

14 **SUJIT GHOSH:** 901(10). I have only three points to make, and I will not take more than 10
15 minutes. Three issues have been troubling this Honourable Court. First, is there a possibility
16 of a sovereign right of taxation to be ever denuded. Here's the first thing. Whether the
17 sovereign right of tax of a State can ever be denuded. That's first question. That has been
18 troubling My Lords. The second, as such a denudation ever happened under the current
19 context and third, whether the Parliament can arrogate that right of taxation under Entry 97.
20 These are the three very particular things. Whomsoever, the first issue is concerned. I'd like to
21 place a judgment of the US Supreme Court where the issue was of mineral right taxation
22 exercised by the Tribes, the Apache Tribes. The Apache Tribes under their formulation... My
23 Lord, this judgment I had given it to the Court Master. This particular point is not there. This
24 judgment, because I also fine tune my judgment based on the... **455 US 130. Merrion** The
25 opinion of the Court was rendered by....

26

27 **JUSTICE ABHAY S. OKA:** Part of the compilation?

28

29 **SUJIT GHOSH:** It's not there, My Lord. I've just... It has been given it to the Court Master.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** *Merrion*. Yes. We got it.

32

33 **SUJIT GHOSH:** This was a case where.... and I'll just briefly explain what had happened.
34 That Tribes, the Apache Tribes, were sovereign. They had the power to legislate and also
35 impose tax. On minerals, they imposed a tax called 'Severance Tax' on non-tribe, non-Indians,
36 so to say, and non-Indians challenged it. Issue that came before the US Supreme Court and
37 the opinion of the court was by Justice Thurgood Marshall was - 'Sovereign's right of taxation

1 cannot be denuded.' However, the very wordings of the Constitution of the Tribes said, and I'll
 2 read that particular thing, My Lord, please take internal page 134, at the bottom. I'll just read
 3 the charter. Yes, [UNCLEAR] please. Yes. The bottom paragraph. This was the charter of the
 4 Constitution. 'Inherent powers of the so and so Tribe, including those conferred under Section
 5 16 of the Act of June, as amended, shall vest with the Tribal Council and shall be exercised
 6 thereby, subject only to limitations imposed by the Constitution of the US, applicable Federal
 7 Statutes and regulation of the Department of Interior, and restrictions are established by this
 8 revised Constitution.' Very similar in construct that your power of taxation can be limited by
 9 the US Constitution or the Federal Government. In this case, the same thing is happening as
 10 well. In that context, three things, the majority opinion said - 'This power can be used to
 11 restrain the tribes.' And I'll take, My Lord, where it is. 'To abridge that right and also to take
 12 away their right.' All the things are possible. I'll take My Lord, kindly have page 141. Internal
 13 page 141. 'Of course.....' Second paragraph. 'Of course, the Tribe's authority to tax non-
 14 members is subject to constraints, not imposed on other Government entities. The Federal
 15 Government can take away this power, and the Tribe must obtain the approval of the
 16 Secretary, before any tax on non-members can take effect. These additional constraints
 17 minimize potential concerns that Indian Tribes will exercise the power to tax in an unfair or
 18 unprincipled manner and to ensure that any exercise of Tribal power of tax will be incurred.'

19
 20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is... what is the next point?

21
 22 **SUJIT GHOSH:** Yes, My Lord. That is what. So, therefore, that is possible. Now, the second
 23 point is, if it is possible, then has it happened? Because the words used in Entry 50 is that 'any
 24 limitation' and My Lords have read the word 'any' in the 'Bearer Bond'.... in the ***Electoral***
 25 ***Bonds*** case to means some, one or all limitations. And therefore, it could go to anything. And
 26 reasonable restriction also has been meant to be complete prohibition. It is our submission,
 27 My Lord, that if Section 9 of the MMRD, and the architecture of MMRD has actually imposed.
 28 And entire restriction on the taxing power of the State *qua* mineral rights, we apply the 'Aspect
 29 theory'. There is one aspect that has been written there, which is the taxes on mineral rights.
 30 There could be other aspects. We don't know. Subject to the States having their power on that
 31 aspects, State can levy tax. But the aspect of tax on mineral rights has been taken over by the
 32 Parliament by virtue of Section 9. Because Section 9 has all the ingredients of a levy, of a valid
 33 levy, as per ***Ganga Saran Govind Saran***. The taxable person is there, Mineral holder.
 34 Taxable event is there, the conformant of the right and extraction of the mineral. The measure
 35 and value of taxes, the rate of tax is there in as much as there is a rate, specific rate that is
 36 provided. So, Section 9 is the only sphere, *qua* mineral rights. Because there's nothing left
 37 there thereafter. Maybe there is other aspect of mineral right. That may be there. But that the

1 state will have fine power, unlike the Parliament, which has a residual power. And the third is,
2 whether the Parliament can allocate itself to the power to taxation. The submission is as
3 follows. We apply the principle that is applicable in Doctrine of Eclipse. My Lord knows. If a
4 pre-constitutional law was *ultra vires* the fundamental right, it is not dead and gone. It is in
5 a moribund state. Which means, it is inoperative. Applying the same principle, as soon as the
6 Parliament exercises the power under Entry 50, that whole taxing power is in a moribund
7 state. It is inoperative. The purpose of 248 is to deal with such subjects and such enumerations,
8 which is active. Because conferment of power is meant... means that you must use that power.
9 If you cannot use the power, it is in a moribund state. It has, to that extent, become dormant
10 and ineffective. Therefore, that cannot be there.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you, Mr. Ghosh. Thank you. Who is
13 next?

14

15 **NAVEEN KUMAR:** Yes, My Lord, as per... Ghosh....

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Anything over and above what has been
18 argued? Otherwise, we will note your appearance.

19

20 **DR. VIVEK SHARMA:** By consensus sir.

21

22 **NAVEEN KUMAR:** As per sequence I am supposed to do. My Lord...

23

24 **DR. VIVEK SHARMA:** You can.

25

26 **NAVEEN KUMAR:** I'm sorry. Mr. Datar...

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It is like an SLP there. Monday, Friday.

29

30 **NAVEEN KUMAR:** I'm so sorry. I'm so sorry, but as per sequence, I was supposed to come,
31 My Lord. As per sequence, I'm so sorry, My Lord. I am only answering few questions which
32 have been raised and as per my submission, few new answers can be given to that. One
33 question which has been repeatedly asked by particularly Justice Nagarathna and Justice Oka
34 that to what extent Parliament has taken over. And to that My Lord, Mr. Salve has referred
35 that trilogy and my submission is the consistency in all Constitutional Benches except
36 **Kesoram** is that total inundation in respect of both, regulation as well as extraction.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Not total inundation, total denudation.

2

3 **NAVEEN KUMAR:** Denudation, extraction all. Denudation a word has also been used in
4 *Sandur*. And *Sandur* and *Bharat Coking Coal* has gone. *Bharat Coking Coal* and
5 *Sandur* has gone to the extent of saying that even executive power....

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright... Let's start the other side at 3:30. We
8 gave one hour.

9

10 **NAVEEN KUMAR:** When Mr. SG was citing that law, My Lord was looking for substantive
11 limitation.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you Mr. Naveen Kumar. Just tell us,
14 who are the others who please give us your appearances. Mr. Dwivedi, please start. Yes, Mr.
15 Vasudev.

16

17 **DR. VIVEK SHARMA:** New point, new point, new point.

18

19 **SYED RIZVI:** One line... He has raised the point, only pith and substance.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** *Sun toh lo zara. Sun toh lo. Itni bhi kya jaldi*
22 *hai. Aadha ghanta hai hum logon ko. Aapke pehley senior counsel hain. Unko 2 minute de*
23 *dijiye.*

24

25 **KAILASH VASUDEV:** Just want to point out. [UNCLEAR] civil appeal **9458 of 2013**. I
26 appeared for the NTPC. We have given our submission which are on record. Was supporting
27 what everybody else. I just wanted to point out the notification of the 1st August 2077 issued
28 under... 2007, issued by the Government of India, which deals with the question of Royalty in
29 the [UNCLEAR] and in para 4, it says -'For States other than West Bengal levy cess or other
30 taxes specified to coal bearing lands. The Royalty allowed shall be adjusted for the local cesses.'
31 Because we have a situation where the local cess comes in. So, you have a question of a Royalty.
32 If the local cess is to be there, then in keeping with the Constitutional scheme of having the
33 standard tax or a standard Royalty all over the country, the local cess should be...

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you we got the point. Yes, Ms. Bhati.

36

1 **KAILASH VASUDEV:** Just one more second. In that context, I must say that in our cases
2 we are operating in Madhya Pradesh amongst other states as the NTPC acting in the national
3 interest. We are now being levied with a cess, which is very high, making it difficult to balance
4 the finances with regard to the other states. So, my respectful submission is this notification
5 cess should be a part of Royalty, not excluding that. Of course, we will argue this before the
6 other benches when it comes up, that is the submission to Your Lords.

7
8 **AISHWARYA BHATI:** To appear for two of the coal companies. My written submissions
9 are already on record. The only additional point that I've made. My Lords, which some of the
10 seniors have touched upon. Is the Coal Mining Area Acquisition and Development Act, which
11 is the regime under which we operate. And there the levy is that is by way of an amendment.
12 The Act is of 1957, the amendment comes in 1971, by virtue of which we are paying something
13 akin to Royalty on the same rates to the State Governments. So, we have an alternate
14 submission. But I wanted to bring that because as nationalized coal companies we are paying
15 back to the State Governments under that regime. Just two lines. I want to add. Firstly, Your
16 Lordships are looking at the interpretation of Entry 50, which is a taxing right. Taxing power,
17 but it is not eclipsed by a taxing power. It is eclipsed by a regulatory power. So, My Lords will
18 consider that aspect. The second thing, taxing power is limited, but the limitation itself is of
19 very wide amplitude because the Entry reads, any limitation subject to it being for mineral
20 development. So, the entry is smaller and the limitation is wider is my respectful submission
21 and though the Entry is taxed but Your Lordships will not find a limitation which is of tax,
22 because the Entry does not contemplate a limitation of tax alone. One more submission. Just
23 additional that fell from Your Lordships during the hearing with regard to intergenerational
24 equity. I also wanted to place, My Lords, aspect of intergenerational equity in harnessing and
25 development of the minerals and their usage in national interest for national infrastructure is
26 an equally important component of intergenerational equity that this generation has to bear
27 in mind. I'm very grateful.

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

30
31 **DR. VIVEK SHARMA:** Volume II. Page number 64. What is tax is nowhere defined in the
32 Indian Constitution. There are three essential features of the tax in India. First is it can be
33 imposed by the public authority or you can say that is the Government. Second, it is the
34 compulsory contribution to the Government.

35
36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Who are you appearing for?

37

1 **DR. VIVEK SHARMA:** Appearing for IA number 237364.

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Who are you intervening for?

4

5 **DR. VIVEK SHARMA:** Private party.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Which private party?

8

9 **DR. VIVEK SHARMA:** Not getting sir, in *MADA v SAIL*. IA number 2373642...

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What does the private party have to do with
12 this litigation?

13

14 **DR. VIVEK SHARMA:** Yeah sir. These minerals are for the ultimate use and the benefit of
15 the....

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You can't continue *ad nauseum* like this. All
18 kinds of private parties can't come here. It's a dispute between the....

19

20 **DR. VIVEK SHARMA:** Let me say. I have the. I have the locus and I can say before you.
21 These minerals are for the ultimate use for every citizen of the India. We in watches, in
22 medicines, in everything of daily life we use these minerals. So, then the tax rates or the
23 disputes of the Centre or the State are deciding that issue, then if the cost is higher than the
24 every citizen will be impacted by this sir. It is directly connected to every citizen of India.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright. Who...

27

28 **SHIV SINGH YADAV:** We are discussing and highlighting upon the interpretation of three
29 entries. Entry 23...

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We heard that for the last three weeks.

32

33 **SHIV SINGH YADAV:** The point is that the expression common in all the entries is, mineral
34 development. Entry 50, as my learned friend has just said that, is controlled by a general
35 provision. Entry 50 is controlled by...

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then why are you repeating what Ms Bhati
2 said. She made a very valid point. Don't dilute the point which Ms Bhati made. Thank you.

3

4 **SHIV SINGH YADAV:** In *Tulloch* Your Lordship has held that the Entry 23 has been
5 carved out in view of Entry 54 of List I. So therefore, the entirety of... as if it does not exist.
6 That is why...

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It is not carved out. it's subject to.

9

10 **SHIV SINGH YADAV:** It says subject to means that the area of Entry 23 has been carved
11 out from Entry 54.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No, please. Don't say that.

14

15 **SHIV SINGH YADAV:** Therefore, My Lord Entry..... There is no. There is no Entry 23
16 existing. That is why the fees, whether it comes under Entry 66 was denied. Second is...The
17 second point. I have given submission My Lord, in which I have pointed out 10 flaws on
18 [UNCLEAR] which are committed in *Kesoram*. That has to be seen. I've given my
19 submissions.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you. Yes, what do you have to say?

22

23 **RAJAT MITTAL:** I have an intervention on behalf of ESL Steel for Vedanta group. Lot of
24 submissions have been made on nature of Royalty, whether Royalty is akin to tax or Royalty
25 is a tax. My submission is converse. I am saying that Royalty may or may not be taxed, but it
26 is definitely not a consideration. And the proposition of law that I'm advocating is, that any
27 amount that a State or an instrumentality of the State which collect collects in order to perform
28 a sovereign function or constitution function or a statutory function My Lords, cannot be
29 towards a consideration, because what the State is doing is not a service. The consideration
30 pre-supposes whether it is understood under the contract....

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Therefore, are you postulating that Vedanta
33 can excavate as many minerals as it wants and they are not bound to pay anything?

34

35 **RAJAT MITTAL:** What they bound to pay, maybe in the nature of tax, but that's not
36 consideration. That's....

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You can excavate from the bowel of the Earth
2 without having to pay anybody. That's your submission.

3

4 **RAJAT MITTAL:** Not.... My Lords, the nature of that particular payment may not be treated
5 as consideration. Because....

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That means you don't pay any consideration
8 at all. Alright, thank you. Who else?

9

10 **SYED RIZVI:** May I permitted? Lordships, here I am discussing about the pith and
11 substance. Doctrine whether law is valid by examining its dominant.... *Yeh Chemical*
12 *Engineer versus.... 9.901.7.* Only 2 things here. One thing is, Lordships, already
13 pronounced meant by the Apex Court, later on *jo hai...* later on Legislation....

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Datar, I think we rushed you a bit. Mr.
16 Rakesh Dwivedi can start in the morning tomorrow, fresh. Is that okay? We have less than 20
17 minutes.

18

19 **RAKESH DWIVWDI:** Yes. As Your Lordships please.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I think that's better. Mr. Datar, we rushed you
22 a little bit. We'll give you the last word, you can wrap it up for us. Please. Let's not go from the
23 sublime to the ridiculous now, please.

24

25 **ARVIND DATAR:** Mr. Menon wants to have just two minutes.

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, certainly.

28

29 **MKS MENON:** My Lord, I had occasion to assist his Honourable Court, in the larger bench
30 in the *Thressiamma Jacob*, which everyone was referring to. That is where in Kerala the
31 minerals are vested in the private persons. Now, in that one issue was left open was....

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Menon, why don't you do this? Just close
34 everything.

35

36 **MKS MENON:** Yes.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And give us your core conscious.... tell us, what
2 you would like us to....

3

4 **MKS MENON:** My point for that....

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just leave aside everything and just tell us what
7 you...

8

9 **MKS MENON:** My point is that...

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** [UNCLEAR] in your mind.

12

13 **MKS MENON:** Yes, Royalty and Tax are mutually exclusive and the Royalty is a proprietary
14 right, whereas tax is a sovereign right. Prerogative right.

15

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

17

18 **MKS MENON:** Now, when the States vest mineral and as per... what all principle has prised
19 under.... all these principles followed by this honourable.... arrogation. Et cetera, et cetera. It
20 can be processed separately. Minerals can be processed separately. Because it's a sub-soil
21 right. Now, when you vest the mineral in the Government, then Government become the
22 proprietor. Now, when you are saying taxation, it's a prerogative right. Can the State impose
23 tax when you, yourself is the owner? Suppose.... the timing probably.... It appears in fact, my
24 duty to assist the Honourable Court. Now, when they are collecting Royalty, they are the
25 owners. How can they impose a tax? Now, so far as the taxing power is concerned, Entry 49
26 and 50. Yes.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Make the conceptual difference, that, 'Royalty
29 is something which you charge and exercise is your proprietary right. Tax is something which
30 you levy in pursuance of your sovereign power.'

31

32 **MKS MENON:** Correct.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** When the same entity wheels two heads. You
35 are both a proprietor of the mineral, and yet you are also sovereign, so, imposing both, is not
36 inconsistent. Because you are exercising a right as a proprietary in one instance and as a
37 sovereign in the other.

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MKS MENON: In fact, one position, I agree. Entry 49 and 50. These are to be read together. The entire power is vested with the State. I have no quarrel on that. Because Entry 50 is carved out. Otherwise, the entire taxation power is there in Entry 49. This is carved out for a limited purpose of bringing in a limitation by the Law, being passed by the Parliament. So that aspect problem, My Lord, I don't think I have anything. But when you are the owner. For example, let us assume that My Lord, in the case of a land revenue... And you are making an assessment. And you are selling your own property? No. You are the owner. At the same time, you are exercising a prerogative right. Both these things cannot go together. The moment you become the proprietor, then you are not a sovereign and vice versa. When you become the proprietor, you cease to be the sovereign. So, when you are imposing a tax on your own property.

CHIEF JUSTICE D. Y. CHANDRACHUD: No, but it's not really, because what the State is doing is this. A private party, the lease owner, or the leaseholder has been given the right to extract, that private party extracts the material and removes the, extracts the mineral and removes the mineral. For that, that person has to pay Royalty to the State.

MKS MENON: Activity is being charged.

CHIEF JUSTICE D. Y. CHANDRACHUD: Right. And therefore, when the State now imposes tax, it's not imposing a tax on itself. It's imposing a tax in a private party on the Royalty which was paid by him for the extraction or removal of the material of the mineral.

MKS MENON: Yes. I got it. I got what's flowing from Your Lordship. So that's why let's just have a look at Entry 49 and 50. I'm not going to read out or anything. Entry 49, Entry 45 and Entry 50. Entry 45 is land revenue. Entry 49 is land and building and land is a bundle of right, as per *Halsbury*, followed in *Tarakeshwar* or *D K Trivedi* or whatever. Now out of that you are separating this. As I already pointed out. Now, for that purpose, that power is always there with them, but in this case, why this? Probably. I'm arguing against this thing about the thing, I mean, a tax is being imposed. When the restrictions are being brought in to the MMRD Act, Section 9... more stress was given. According to me, it cannot be. Because Section 9 is only a regulation and Section 9(3), read with Schedule 2. What they wanted to rely upon is it is rather a tax that's imposed falling under 366(28). It can never be that's my argument.

CHIEF JUSTICE D. Y. CHANDRACHUD: Thank you. Yes, Mr Datar.

1 **MKS MENON:** My only proposition was an owner. If they become the owner and if you are
2 what is mineral right. That is something embedded in the land. It is embedded in the land, you
3 are imposing a tax on that. Only to that extent you should be governed by that particular
4 limitation.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you, Mr. Menon. Yes, Mr. Datar will
7 give you the last word. You can take us through to the end of the day today.

8

9 **ARVIND DATAR:** Two points I wanted to highlight. One was that Mr. Khambata made a
10 very important point and because of time constraints, he could not do it. And it's the context
11 of what My Lord Justice Roy asked the question that in the Constituent Assembly debates,
12 there was a move to shift it back to Parliament, and Dr. Ambedkar simply says - No, there is
13 no logical reasoning. One answer could be in the debates which came before the Joint
14 Committee and my friend... Your Lordship will just see the debates. IV(m), M for Mother at
15 54 and Lordship will just come to 56. I'm going to deal with that and also Lordship asked the
16 question, tax on minerals versus mineral rights. That also I'll clarify. IV(m), M for mother.
17 Page 56. About the third, Mr. Spence, I think must be Sir Patrick Spence and Your Lordships
18 will just come to just above the first paragraph. Last line. Page 56. If Your Lordship come 5-6
19 lines down that. The first.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What are we reading, Mr. Datar?

22

23 **ARVIND DATAR:** No, we are reading a question where the matter was concerned by the
24 House of Commons and earlier by a Joint Committee, whether the State should get an
25 unlimited power of taxation or not. That was a short one. And there's a discussion. The other
26 discussion is who owns the mineral rights and so on. That's not the subject matter for this
27 Bench. But what the Bench. I'll just summarize because time is short. The initial proposal in
28 the draft was Entry 54 was like the same thing in that at that time included oil also, but it was
29 Entry 54 and the tax on mineral rights was not subject to any limitations. It was like tax on
30 land and buildings simply tax on mineral rights. Taxes on mineral rights. That's all. When the
31 matter came for discussion Sir Craddock and Lord Percy. They said that... Please see page 60.
32 That sentence is...

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Page 60?

35

36 **ARVIND DATAR:** Yes. Please come to page 56. Second, the penultimate paragraph.

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1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I have on a former occasion.

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3 **ARVIND DATAR:** 'I have on a former occasion.' All Your Lordships have got? 'I have on a
4 former occasion referred to unfortunate results which have occurred in the United States and
5 elsewhere, where a variety of states have been allowed to deal with proprietary rights and
6 regulations affecting the minerals of their own district. The same thing will happen in India, if
7 you have eleven states making their own laws, with regard to Rights of owners of minerals,
8 whether they are vested in the Crown or in private person. It is exactly the same thing with the
9 important question of taxation of minerals, one state imposing high taxes on mineral rights
10 and other state imposing a different scale of taxation. This only leads to confusion and to a
11 very uneconomic and non-commercial development of the mineral resources of a country.
12 Therefore, I urge that as far as possible, we should take this opportunity to bring about one
13 code of laws relating to as many minerals as possible throughout India.' Now, please come to
14 page 60. Yes, at page 59 and this... Your Lordships at 07:19 p.m. Lordship has got that? Lord
15 E. Percy at page 59.

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17 **TUSHAR MEHTA:** It is there in my written submissions.

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19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We are following.

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21 **TUSHAR MEHTA:** This is... I have quoted.

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23 **ARVIND DATAR:** Yes, 'I noticed.' Your Lordships have got 07:19 p.m.?

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

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27 **ARVIND DATAR:** My Lords have got 07:19 p.m.? 'I noticed that the Government are not
28 proposing to remove taxation on mineral rights from the Provincial List where it is now. How
29 can the Federal Government have power to regulate the development of mines if an unlimited
30 power to tax rights is still left in the Provincial Legislature?' Then the Solicitor General
31 answers, and kindly come to the second paragraph. 'I now come to the questions put by my
32 honourable and learned friend, Member for Ashford and [UNCLEAR] and the subsequent
33 speakers. My view certainly is that these words clearly cover the power of vesting minerals in
34 the Crown. The word would clearly entitle the Federal Assembly to make provisions as to
35 concessions and the word minerals are wide enough to empower the Federal Legislature to
36 cover all matters in development of mines coordination and so forth.' Now My Lords, and
37 please come to find page 62. Yes, please come to page 60 and please come to page below the

1 Solicitor General. Below, Mr. Malson. Yes, please, Mr. Malson. I'll read. Mr. Malson. 'The
2 Learned Solicitor General keeps on referring of leaving it to the provinces. The responsibility
3 for developing oil and coal is at present with the Government of India. What is being done
4 under this is to transfer the primary responsibility from the Centre to the Province, and at the
5 same time, provided subsequently it may be re-transferred from the Province to the Centre.
6 The Solicitor General, I was speaking of the bill as originally drafted and comparing it with the
7 result which will flow from this amendment. In the original bill, mines and minerals were
8 exclusively provincial. Many matters which are now Central are being transferred to the
9 provinces, but would be out of order to go into a larger issue raised by my learned friend,
10 member of Hastings. Lord Percy lays an obviously important point into which we shall
11 certainly look. I can quite imagine a form of taxation which would conflict with regulation and
12 development. In that case, I think I'm right in saying that under this scheme I have been
13 minded present List I wins. If there is an overlapping between list I and list II. List I wins.'
14 And this amendment was accepted and we come to page 62. Page 61 is a speech by Sir Reginald
15 Craddock and just the last two portions. Page 62, My Lords. Second paragraph. 'There is a
16 further point that great discrimination might be caused by heavier taxation being imposed in
17 one province than in another. If mines are being worked in one province, say by a European
18 or a Parsi, and mines were being worked in another province by persons of some other race
19 and status. It would be possible for a province to bring about discrimination. One province
20 might put a heavy tax on a European mining concern, while other province might put a low
21 tax on Indian mining concern. There is a great necessity for maintaining control of Central
22 Government over the rates of taxes and so forth, merely with the view to securing uniformity.
23 The other Royalties and the income would go to the province, and the provinces in the order,
24 go in the ordinary way, as they are doing now. Administering those matters, which they
25 administer at present under Mining Rules and Royalty Rules, et cetera.' Yes. 'If they want to
26 alter these rules, they would require the sanction of Central Government. It is that way, that
27 uniformity can best be secured while allowing the provinces to have legitimate income from
28 their mining concessions. And the same time, avoiding all risk of discrimination between
29 concession holders of different races.' Lordship can say now, different states. 'I thought that
30 these facts derived from personal experience. But usually placed before the committee in
31 consideration of so and so...' My learned Solicitor says on page 37 to....

32

33 **TUSHAR MEHTA:** 250 of my submissions. Something more. On this era, joint [UNCLEAR]

34

35 **ARVIND DATAR:** So, this debate shows, why tax on mineral rights was subject to a law
36 made by Parliament? To maintain uniformity, as I said, to impose financial guardrails,
37 financial limitation. That was the proposal. My Lord, question came from the bench... Yeah,

1 my friend points out that, this was the confusion which was sorted out eventually by the 1948
2 Act, saying that - 'Look, there'll be a Mines and Mineral Act.' Yes, and perhaps, that could be
3 an answer, why Dr. Ambedkar felt that - 'Look, there's no need to interfere with what was the
4 earlier position.' So, you have Entry 54, Entry 23 and 50. Now, the last point Lordship asked
5 on taxes on minerals and minerals rights. I just put forth what I think, My Lord. In para 400
6 of Justice Sinha's descent in **Kesoram**. His Lordship rightly points out, that mineral rights
7 are embedded in the earth. Only when the minerals are won, do they become minerals. Only
8 after the mining is done, excavation is done, they become minerals. Now, on the taxing of
9 minerals, I would just submit My Lord... because, Entry 84 of List I, I'm talking of the pre-GST
10 era. Refers to 'Goods manufactured or produced in India.' Entry 84. There are judgments
11 which say that coal is produced. Nobody can say - Coal is manufactured. Because it is in the
12 earth, it is won. And once it is won, coal becomes produce. Then it is.... beneficiation takes
13 place, purification.... So, coal is produced. Coal is Entry 2701 of the Central Excise Tariffs.
14 Lignite is an entry, Coking coal is an entry. Petroleum is an crude oil. So maybe, once the goods
15 are produced, the taxable event is the production of the particular mineral that could be
16 subject to Central Excise Duty. Suppose the mineral is sold. Sale of mineral be subject to Sales
17 Tax. So, maybe in the context of minerals, at the mineral right stage, the taxation is on the
18 activity of excavation, mining, whatever it is, because once a mining lease is given, the
19 definition of mining lease, is the activity of trying to win the mine from the mine you're going
20 to lease. So, mining rights is 50. Once the coal is produced or minerals are produced, and if
21 they are mentioned in the tariff, it'll be Entry 84 List I. If the minerals are sold, it'll be Entry
22 54 List II. This could be the architecture of the taxation powers, is my humble submission.
23 And again, Parliament has been very careful. Under Section 14 of the CST Act, coal, iron ore,
24 many minerals are declared goods. So, you can't tax more than 4%. Earlier it was 3%. It became
25 5%. And you can't tax at more than single point. So, if it is taxed by coal, say, Neyveli Lignite
26 Corporation taxes at the point of pithead, subsequent dealers, when they sell, it can't be taxed
27 again. So, this is my submission on tax on minerals and mineral rights. That's my submission.
28 And My Lord, the only issue of subsoil et cetera. We leave it later. Because....

29

30 **MR. SETH:** Can I get 30 seconds? I'm appearing for one of the interveners. Can I just get 1
31 minute, Your Lordship? That's all I'm praying for.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Who is the intervener you are appearing for?

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35 **MR. SETH:** Your Lordship, it is IA number 55372. It's one Ganapati Eant Udyog and there
36 are other 800 petitioners for which separate SLPs have been filed. We have provided to list as
37 well. Your Lordship, this is concerning the....

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CHIEF JUSTICE D. Y. CHANDRACHUD: Mr. Seth, which corporate group have you been sponsored by?

MR. SETH: Not at all Your Lordship. All these...

CHIEF JUSTICE D. Y. CHANDRACHUD: All right. Thank you, Mr. Seth. We'll conclude here.

JUSTICE HRISHIKESH ROY: I do not know whether the present audience can answer the question that I have...

ARVIND DATAR: Yes, we'll try, My Lord.

JUSTICE HRISHIKESH ROY: Because Mr. Salve should be the right person. Because this house of commerce debate that you are this thing.... They are giving the timing also. Timing, does it relate to happy hour or something?

ARVIND DATAR: Honestly, My Lords, we have been seeing, none of us thought about it.

TUSHAR MEHTA: Because we are not concerned.

ARVIND DATAR: Your Lordships reads the biography of Rufus Isaacs, Lord Reading. He used to be in Court till 5 and then go to the House of Commons, which be KCMP in those days, and then the Parliament would go on in the evenings. So, after Court hours Parliament go late into...

JUSTICE HRISHIKESH ROY: And in the anteroom of the Parliament, they used to serve...

TUSHAR MEHTA: If it would not have been there Winston Churchill would definitely have introduced.

CHIEF JUSTICE D. Y. CHANDRACHUD: Mr. Dwivedi, so we will start tomorrow morning.

ARVIND DATAR: Extremely grateful to Your Lordship for the hearing.

1 **RESPONDENT'S COUNSEL:** I need ... to circulate one for development and its effect on
2 taxation My Lord.

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END OF DAY'S PROCEEDINGS