IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NO. 4056-4064 OF 1999

IN THE MATTER OF :

Mineral Area Development Authority ….APPELLANT

Versus

M/s Steel Authority of India & Others …RESPONDENTS

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IA NO. 237166 OF 2023
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KARNATAKA IRON & STEEL MANUFACTURERS' ASSOCIATION …APPLICANT

IN THE MATTER OF:

MINERAL AREA DEVELOPMENT AUTHORITY & ORS …APPELLANTS

Versus

STEEL AUTHORITY OF INDIA & ORS …RESPONDENTS

WRITTEN SUBMISSIONS OF MR. DARIUS. J. KHAMBATA, SENIOR ADVOCATE

I. PARLIAMENT'S POWER TO LEVY TAXES AND LIMIT STATES' POWER UNDER ENTRY 50 LIST II

Constitutional scheme gives Parliament the exclusive residuary power to tax

1. The power to legislate is provided for under Articles 245 and 246 of the Constitution [**Volume IV, Pg. 188**]. Article 246 allocates the powers to legislate between the Parliament and the States, thus:
   i. Article 246(1), which is notwithstanding anything contained in Article 246(2) or (3), provides that Parliament *"has the exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule"* i.e. the Union List;

   ii. Article 246(2), which is notwithstanding Article 246(3) and subject to Article 246(1) provides that both Parliament and the State Legislature(s) also have the power to make laws with respect to *"any of the matters enumerated in List III in the Seventh Schedule"* i.e. the Concurrent List; and

   iii. Article 246(3) provides that the State with the exclusive power to make laws for a State or part thereof *"with respect to any of the matters enumerated in List II in the Seventh Schedule* i.e. the State List. Article 246(3) is made subject to Article 246(1) and 246(2).

2. Article 245 of the Constitution corresponds to Section 99 of the GOVERNMENT OF INDIA ACT, 1935 ("**Government of India Act**") and the distribution of legislative powers under Article 246 of the Constitution adopts the distribution of powers between the Federal Legislature and the Provincial Legislature(s) provided under Section 100 of the Government of India Act.

3. However, unlike the Government of India Act, the Constitution expressly provides Parliament with exclusive residuary powers of legislation under Article 248. Article 248 of the Constitution states that[**Volume IV, Pg. 189 and 360]**:

> *"(1) ...Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List"* and Article 248(2) [which corresponds to Entry 97 of List I] further expressly provides that *"(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists."*
>
> [Emphasis added]

4. Article 248 is a significant departure from the position that prevailed under the Government of India Act i.e. in Section 104, which conferred upon the Governor General a power to allocate a topic of legislation, not found to be in any of the three Lists, to the Federal or Provincial Legislatures.

Ambit of Parliament's residuary power to tax

5. The legislative competence of the Parliament to enact legislation, including the levy of taxes, can be traced from Entries 1-96 of List I, Entry 97 of List I and Art 248(2).

6. In ***UOI v Harbhajan Singh Dhillon*** 1971(2) SCC 779 ("**Dhillon**") **[Volume V, Pg. 457-538**] a seven-judge bench of this Hon'ble Court interpreted the scope of two taxing Entries i.e. Entry 86 of List I and Entry 49 of List II, along with Parliament's residuary power to tax (**Para 12**) [**Volume V, Pg. 466**]:

> *"any matter, including tax, which has not been **allotted exclusively** to the State Legislatures under List II or concurrently with Parliament under List III, falls within List I, including Entry 97 of that list read with Art. 248"*
>
> [Emphasis added]

7. Therefore, the Parliament has the legislative competence to impose taxes under all Entries of List I, Entry 97 of List I read with Article 248(2) if it does not encroach on what is of exclusive competence of the states.

8. Reliance is also placed on observations made by ***Dhillon*** (*supra***)** on Parliament's residuary powers under Article 248(2) and Entry 97 of List I :

i. *"... We do not read the words "any other matter" in Entry 97 to mean that it has reference to topics excluded in Entries 1-96, List I. ... the words "any other matter" have reference to matters on which the Parliament **has been** given the power to legislate by the Enumerated Entries 1-96 and not to matters on which it has not been given power to legislate"* [Emphasis added] (**Para 20**) [**Volume V, Pg. 469**]

ii. *"... At any rate, whatever doubt there may be on the interpretation of Entry 97, List I is removed by the wide terms of Article 248. **It is framed in the widest possible terms.** On its terms the only question to be asked is: Is the matter sought to be legislated included in List II or in List III or is the tax sought to be levied mentioned in List II or in List III. **No question has to be asked about List I**. If the answer is in the negative then it follows that Parliament has power to make laws with respect to that matter or tax.*" [Emphasis added] (**Para 21**) [**Volume V, Pg. 469-470**]

Entry 50 of List II

9. Under Article 246(3) read with Entry 50 of List II [**Volume IV, Pg. 364**], provides states with the power to impose *"Taxes on mineral rights."* However, this power is made *"subject to **any limitations** imposed by Parliament by law relating to mineral development."* Two conclusions emerge from a plain reading of Entry 50:

   i. The power to tax conferred on the State Legislature under Article 246(3) read with Entry 50 of List II is not exclusive. In fact, it is subject to an express limitation as contained in the entry itself i.e. being *"subject to any limitations imposed by Parliament by law relating to mineral development.*

   ii. Entry 50 of List II pertains to tax on mineral rights and does not pertain to tax on minerals. As held by Wanchoo J in ***Hingir Rampur Coal Co Ltd v State of Orissa*** AIR 1961 SC 459 (**Para 53**) [**Volume V, Pg. 142 at 172**] [followed in ***India Cement Ltd v State of Tamil Nadu*** (1990) 1 SCC 12 (**Para 30**) [**Volume V, Pg. 1151 at 1168**]] taxes on mineral rights are distinct from taxes on minerals. Since Entry 50 List II is confined to tax on mineral rights (and not tax on minerals), the State has no power to impose taxes on minerals. That right vests with Parliament.

Limitations imposed by Parliament can be implied

10. The legislative scheme essentially permits the Parliament to enter into the legislative field of the States in Entry 50, List II. The constitutional sanction given to the Parliament to interfere with the subject matter under Entry 50, List II is undisputed. Therefore once, Parliament enters into the legislative field under Entry 50 List II, its consequences have to be interpreted with respect to settled theories of constitutional interpretation:

11. The concept of implied limitations is not unknown to our Constitution. It was famously invoked in the landmark case of ***Kesavananda Bharati v State of Kerala*** (1973) 4 SCC 225**,** wherein:

    i. Chief Justice Sikri recognised the concept of implied limitations from the scheme of the Constitution:

       *"210**.** I come to the same conclusion by another line of reasoning. In a written Constitution it is rarely that everything is said expressly**.** Powers and limitations are implied from necessity or the scheme of the Constitution**.** I will mention a few instances approved by the Judicial Committee and this Court and other courts. I may first consider the doctrine that enables Parliament to have power to deal with ancillary and subsidiary matters, which strictly do not fall within the legislative entry with respect to which legislation is being undertaken.* (**Para 210**) [**Volume V(K), Pg. 80 at 81**]

       *211**.** Lefroy in A Short Treatise on Canadian Constitutional Law (p. 94) puts the matter thus:*
       "But when it is (Dominion Parliament) is legislating upon the enumerated Dominion subject matters of Section 91 of the Federation Act, it is held that the imperial Parliament, by necessary implication, intended to confer on it legislative power to interfere with, deal with, and encroach upon, matters otherwise assigned to the Provincial Legislatures under Section 92, so far as a general law relating to those subjects may effect them, as it may also do to the extent of such ancillary provisions as may be required to prevent the scheme of such a law from being defeated. The Privy Council has established and illustrated this in many decisions. (**Para 211**) [**Volume V(K), Pg. 80 at 82**]

       *212**.** This acts as a corresponding limitation on the legislative power of the Provincial or State Legislatures."* (**Para 212**) [**Volume V(K), Pg. 80 at 82**]

    ii. Sikri CJ, also referred to *"instances of implied limitations which have been judicially accepted in the United States"* specifically referring to *Cooley on Constitutional Limitations* on power to tax, quoting (**Para 273**) [**Volume V(K), Pg. 80 at 83**]:

       "273. "... but there are some others which are implied, and which under the complex system of American Government have the effect to exempt some subjects otherwise taxable from scope and reach, according to circumstances, of either the Federal power to tax or the power of the several States. One of the implied limitations is that which precludes the States from taxing the agencies whereby the general government performs its functions. The reason is that, if they possessed this authority, it would be within their power to impose taxation to an extent that might cripple, if not wholly defeat, the operation of the national authority within its proper and constitutional sphere of action." [Emphasis added]

    iii. With reference to the above passage, Sikri CJ observed that "… *what has been implied in the United States is the subject-matter of express provisions under our Constitution [see Arts. 285, 287, 288, 289] (***Para 279***)."* The referenced Articles limit the power of the States

by using language such as *"until Parliament by law otherwise provides."* (**Para 279**) [**Volume V(K), Pg. 80 at 84**]

Implied Limitations under Entry 50

12. Similarly, in Entry 50 List II, Parliament has been given a power to impose limitations on the States' power to impose taxes on mineral rights. Parliament's power to limit is not restricted to only express limitations. They can also be implied.

13. The Constitution must be interpreted in a manner which considers implicit meanings or 'constitutional silences' which are discoverable. In ***Kalpana Mehta v UOI*** (2018) 7 SCC 1 a Constitution Bench of this Hon'ble court, referred to the decision of a nine-judge bench in ***Supreme Court Advocates-on-Record Assn v Union of India*** (1993) 4 SCC 441and observed (**Para 54**) [**Volume V(K), Pg. 488 at 538**]:

    "54… It has to be remembered that while interpreting a constitutional provision, one has to be guided by the letter, spirit and purpose of the language employed therein and also the constitutional silences or abeyances that are discoverable. The scope and discovery has a connection with the theory of constitutional implication. Additionally, the interpretative process of a provision of a Constitution is also required to accentuate the purpose and convey the message of the Constitution which is intrinsic to the Constitution."

    [Emphasis added]

14. It is therefore submitted that an implied limitation or prohibition is contemplated by Entry 50 List II, meaning that once law relating to mineral development is enacted by Parliament, even under Entry 54 List I, it is akin to occupying the field of Entry 50 List II, denuding the state of its powers to impose taxes on mineral rights.

15. This Hon'ble Court has recognised that once Parliament had made a law, *"that area is abstracted from the State List"* i.e. an implied limitation of the power of the States under Entry 50. In ***Fatehchand Himmatlal & Ors v State of Maharashtra*** (1977) 2 SCC 670, a five-judge bench of this Hon'ble Court applied the doctrine of occupied field to Entries within List I, II and III of Schedule 7, demonstrating that the underlying principle of such a doctrine is not limited to concurrent powers only, but to maintain demarcation of legislative powers as envisioned by the Constitution. This Hon'ble court observed *"…but the core of the matter is that where under its power Parliament has made a law which over-rides an entry in the State List, that area is abstracted from the State List. Nothing more."* **(Para 57) [Volume V(K), Pg. 85 at 109]**

16. Therefore, once Parliament makes a law relating to mineral development, and that law includes taxing provisions, it occupies the subject matter of Entry 50 List II, abstracting the States' power to impose taxes on mineral rights.

Parliament's power to impose tax in a "law relating to mineral development" under Entry 54 of List I and Entry 97 of List I read with Art. 248(2)

17. It is submitted that the express power to limit the States power to impose taxes on mineral rights coupled with Parliament's competence under Entry 54 of List I to regulate mineral development is understood as empowering the Parliament to levy taxes on mineral rights or exactions akin to it, which prevent states from imposing any further taxes on mineral rights.

18. Reliance is placed on Para 22.258 of H.M. Seervai, Constitutional Law of India (4th Edn) ("**Seervai**") stating [**Volume IV(N), Pg. 2 at 6**]:

    "A tax on mineral rights is made expressly subject to any limitation by Parliament by law relating to mineral development, consequently, Parliament would have the power to regulate or prohibit the levy of a tax on mineral rights if such a levy obstructed or hampered mineral development." [Emphasis added]

19. It is settled that a general Entry cannot include a power to tax, however, Entry 50 List II is *sui generis* as it permits any limitations on the States' power to tax mineral rights by a law relating to mineral development. The Parliament is empowered under Entry 54 List I to take up the entire field of mineral development, including curtailing the States' powers under Entry 50 List II.

20. In ***Synthetics and Chemicals Ltd & Ors v State of UP & Ors*** (1990) 1 SCC 109, Para 40 ("**Synthetics and Chemicals Ltd**") where a seven-judge bench of this Hon'ble Court, which referring to the sui generis nature of Entry 50 List II observed that Entry 54 List I read with Entry 50 List II, is the exception to the general rule on power to tax **(Para 40) [Volume V, Pg. 1175 at 1202-1203]**:

    "40… The power to levy taxes is to be read from the entry relating to taxes and not from the general entry. Exception in Entry 50 List II where tax on mineral rights is subject to any limitation imposed by Parliament relating to mineral development, and this power of Parliament is in the general entry that is Entry 54 of List I. …"

    [Emphasis added]

21. This judgment in ***Synthetics and Chemicals Ltd*** (*supra*) has been followed and applied by the 9-judge bench of this Hon'ble Court in ***Jindal Stainless Limited v State of Haryana & Ors***, (2017) 12 SCC 1, Para 24 [**Volume V, Pg. 2937 at 3070-3071**]. While the majority judgment in ***State of WB v Kesoram Industries Ltd*** (2004) 10 SCC 201, (**Para 111**) [**Volume V, Pg. 2020 at 2133**] cites ***Synthetics and Chemicals Ltd*** (*supra*) it does not notice Para 40 thereof.

22. The expression "*law relating to mineral development"* in Entry 50 of List II will hence include a law enacted by Parliament under Entry 54 of List I. Moreover, the power to include a taxing provision in a *"law relating to mineral development"* vests with Parliament under Article 248 read with Entries 54 and 97 of List I.

MMDR Act a complete code relating to mineral development including taxation

23. In any event, in view of Section 2 of the MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT, 1957 ("**MMDR Act**") [**Volume IV, Pg. 823**] contains a declaration to the effect that *"it is expedient in the public interest that the union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided"*, therefore the MMDR Act falls under Entry 54 of List I, which provides Parliament with the exclusive power to pass legislation on *"Regulation of mines and mineral development to the extent to which such regulation and development under the control of Union is declared by Parliament by law to be expedient in the public interest"*.

24. However, as referred to above, Parliament is competent to impose taxes on subjects independent of Entries 1-96 of List I. The MMDR Act which also imposes taxes (i.e. royalty and dead rent as explained below) is referrable to Parliament's powers under Article 248(2) read with Entry 97 of List I. It is well-settled that:
    i. Parliament may legislate an enactment under several Entries, one of them being a tax entry ***Southern Petrochemical Industries Co Ltd v Electricity Inspector & Etio & Ors*** (2007) 5 SCC 447 **(Para 55)** [**Volume V(K), Pg. 425 at 454**]; and
    ii. A regulatory statute may also contain taxing provisions ***Commissioner of Central Excise, Lucknow v Chhata Sugar Co Ltd*** (2004) 3 SCC 466, **(Para 26)** [**Volume V(K), Pg. 402 at 422**]

25. The MMDR Act is a complete code on regulation of mineral development, including the field of taxing or exactions on minerals and mineral rights.

26. The scheme of the MMDR Act is as such that the Parliament both imposes tax on the subject area of Entry 50 of List II and curtails the states powers from imposing tax under Entry 50 of List II.

27. Parliament in exercise of its express powers conferred Article 248(2) and Entry 97 of List I of the Constitution, has under the MMDR Act provided for imposition of tax (by way of royalty, dead rent) on mineral rights as well as minerals:
    i. Section 4 of the MMDR Act provides that *"No person shall undertake any reconnaissance, prospective or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting license or of an exploration license or, as the case may be, of a mining lease, granted under this Act and rules made thereunder"*. [**Volume IV, Pg. 813 at 827 and 887**]

ii. The term "mining operations" is defined under Section 3(d) to mean *"any operations undertaken for the purpose of winning any mineral"* and the term "mining lease" is defined under Section 3(c) to mean *"a lease granted for the purpose of undertaking mining operations, and. Includes a sub-lease granted for such purpose"*. [**Volume IV, Pg. 813 at 825**]

iii. The MMDR Act therefore bars any right to conduct ant mining activities unless it is in accordance with the provisions of the Act and Rules.

iv. Section 9(2) of the MMDR Act mandates that a holder of a mining lease *"shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the lease area at the rate for the time being specified in the Second Schedule in respect of that mineral"*. [**Volume IV, Pg. 813 at 845**] Thus, royalty is a statutory exaction of a sum imposed on lessees of mining leases, under the MMDR Act.

v. Section 9-A of the MMDR Act [**Volume IV, Pg. 813 at 847**] imposes upon a mining lessee a statutory obligation to pay to the State Government, annual "dead-rent" (computed under the Third Schedule) for all the areas includes in the instrument of lease. As provided under the proviso to Section 9-A, in the event the lessee of a mining lease becomes liable to pay royalty under Section 9, *"he shall be liable to pay either such royalty, or the dead rent in respect of that area, whichever is greater"*.

vi. The imposition of royalty and / or dead rent under the MMDR, being a statutory impost constitutes a tax (as explained below).

28. As held by a Constitution Bench of this Hon'ble Court in ***State of Orissa v M/s M.A. Tulloch and Co*** AIR 1964 SC 1284 ("**Tulloch**") (**Para 12**) **[Volume V, Pg. 278 at 286-288]** *"the entire range of the law relating to mines and mineral development was taken over and covered by Central Act 67 of 1957."*

29. ***Tulloch*** (*supra*) pertained to the validity of levy of fees on mine owners by the State of Orissa under the ORISSA MINING AREAS DEVELOPMENT FUND ACT, 1952 in view of the enactment of the MMDR Act. (notwithstanding the absence of a specific levy of fee thereunder) Referring to the powers vested in the Central Government under Sections 13 and 25 of the MMDR Act, this Hon'ble Court dismissed the State of Orissa's appeal and held the State Act to be *ultra vires* observing thus (**Para 14**) **[Volume V, Pg. 278 at 289-290]**:

> *"…if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation."*

[Emphasis added]

The MMDR Act expressly denudes the States of taxing power under Entry 50

30. The MMDR expressly limits the States' power to tax mineral rights under Entry 50 of List II by providing thus:

i. The Second Schedule of the MMDR Act, passed by the Parliament provides for the rates of royalty [i.e. rates of tax] payable by mining lessees. Further, Section 9(3) of the MMDR Act [**Volume IV, Pg. 813 at 845**] provides that the Central Government [and not the State Government], may, by notification in the Official Gazette, amend the rate at which royalty is payable in respect of any mineral. Thus, the entire machinery of taxation is within the competence of the Parliament and not the State Government.

ii. This is further borne out by Section 13 of the MMDR Act [**Volume IV, Pg. 813 at 861-862**], which provides the Central Government with the power to make rules in respect of minerals inter-alia includes providing *"i. the fixing and collection of fees for mineral concession, surface rent, security deposit, fines, other fees or charges and the time within which and the manner in which the dead rent or royalty shall be payable"*.

iii. In contrast, Section 15 of the MMDR Act [**Volume IV, Pg. 813 at 866-867**] delineates the rule making power of the State Governments in respect of minor minerals and no others [since the provisions of Sections 5 to 13 of the MMDR Act do not apply to minor minerals – Section 14]. In the context of minor minerals, Section 15(1-A)(g) states that the State Government may provide rules providing for the *"fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable"*.

iv. Thus, the rule making power (including the power to fix and collect royalty and dead-rent (which constitute taxes) is expressly divided between Parliament and the State Government(s), respectively under the MMDR Act. Apart from what is permitted under Section 15 of the MMDR Act, the State Government has no power to fix or collect royalty under the Act.

v. Section 18 imposes upon the Central Government, the duty to *"take all such steps as may be necessary for the conservation and systematic development of minerals in India"* and provides that *"for such purposes the Central Government may, by notification in the Official Gazette, make such rules as it thinks fit"*. [**Volume IV, Pg. 813 at 873**]

vi. Further, Section 19 of the MMDR Act renders void *"Any mineral concession granted, renewed or acquired in contravention of the provisions of this Act or any rules or orders made thereunder"*. [**Volume IV, Pg. 813 at 876**]

vii. Section 25 of the MMDR Act expressly contemplates the power of the Parliament to impose "*any rent, royalty, tax fee or other sum*" under the MMDR Act and rules thereunder, and provides that such rent, royalty, tax, fee or other sum due to the Government may be recovered in the same manner as an arrear of land revenue, on a certificate of such officer as may be specified by the State Government in this behalf. [**Volume IV, Pg. 813 at 881-882**]

31. Seervai, in the Chapter titled "Legislative Power of the Union and States" has dealt with the field of mines and minerals and noted the judgment in ***Laxminarayana Mining Co v Taluk Development Board*** AIR 1972 Kant 299 [**Volume V, Pg. 538-549**] In that context, ***Seervai*** states that *"22.256…In the first of these cases it was also held that the state legislatures lost their power to legislate under entry 50 List II and the provisions of the Central Act of 1957, and particularly s.25 of that Act, supported this conclusion"*. (**Para 22.56**) [**Volume IV(N), Pg. 2 at 3**]

As a complete code the MMDR Act also excludes States' taxing power under Entry 50

32. This Hon'ble Court ***In re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1889*** 2023 SCC Online SC 1666, **(Paras 91-93)** [**Volume V(K), Pg. 679 at 703 -704**] has (in the context of the Arbitration Act being a complete code), held that a self-contained code contains the entire machinery sought to be achieved by that law (para 91). This Hon'ble Court relied on the judgment in ***Fuerst Day Lawson Ltd v Jindal Exports Ltd*** wherein it was held that:

> *"92…Once it is held that the Arbitration Act is a self-contained code and exhaustive, then it must also be held, using the lucid expression of Tulzapurkar, J., that it carries with it a 'negative import that only such acts as are mentioned in the Act as permissible to be done and acts or things not mentioned therein are not permissible to be done.' In other words, a letters patent appeal would be excluded by the application of one of the general principles that where the special Act sets out a self-contained code the applicability of the general law procedure would be impliedly excluded."*
>
> [Emphasis added]

33. From the above provision of the MMDR Act, it is clear that the Parliament expressly intended for the Union to cover the whole field of legislation pertaining to mines, minerals and mineral development.

34. The law laid down in ***Tulloch*** (*supra*) is also the position that obtains in Australia, which also divides fields of legislation between the Centre and State (akin to the Constitution of India):

i. In ***Clyde Engineering Company Ltd v John William Cowburn*** [1926] ALR 214**,** Isaacs, J. held that (**Para 3**) [**Volume V(K), Pg. 2 at 9 -10**]

"If, however, a competent legislature expressly or impliedly evinces its intention to cover the whole field, that is a conclusive test of inconsistency where another legislature assumes to enter to any extent upon the same field…It stands on the basis of natural common sense, and does not depend necessarily on express words…"

[Emphasis added]

ii. Likewise, in ***Victoria v Commonwealth*** [1938] ALR 97, Dixon, J. held that [**Volume V(K), Pg. 31 at 34**]:

"When a State law, if valid, would alter, impair or detract from the operation of a law of the Commonwealth Parliament, then to that extend it is invalid. Moreover, if it appears from the terms, the nature or the subject matter of a Federal enactment that it was intended as a complete statement of the law governing a particular matter or set of rights and duties, then for a State law to regulate or apply to the same matter or relation is regarded as a detraction from the full operation of the Commonwealth law and so as inconsistent." [Emphasis added]

[NOTE: The judgment in ***Clyde Engineering Company Ltd (supra)*** has been cited with approval by this Hon'ble Court in ***Ch Tika Ramji & Ors v State of Uttar Pradesh & Ors*** AIR 1956 SC 676, **(Paras 27-28)** [**Volume V(K), Pg. 40 at 60**]

35. Thus, without prejudice to the fact that the provisions MMDR Act not only expressly limit the States' power to impose taxes on mineral rights (as explained above), it is evident that by the MMDR Act, Parliament has evinced its intention of ensuring complete control and dominion over the legislative field covered in the Act, which also includes the imposition of taxes on mineral rights by Parliament, thereby limiting the States' power to tax mineral rights.

Pre-constitution reports and Constitutional Assembly debates on demarcation of legislative power

36. Reliance is placed on the Constituent Assembly Debate on 30 August 1949, in response to a motion to transfer geological surveys from the Union List to the Provincial List, on basis that the Provinces were more interested and better suited in exploiting the rich minerals in their area, Dr. B.R. Ambedkar, rejecting this motion, stated that [**Volume IV(N), Pg. 7 at 45**]:

"The second difficulty I find in accepting his amendment is that we have in the Union List an entry stating that the mineral resources of India may be developed by the Centre. If Parliament were to make a law that the mineral development of the country shall be a central subject obviously there would be very great difficulty created in the way of Parliament executing that law or developing the mineral resources, if the provinces

retained with themselves concurrent power of legislation. *Therefore, my request to Mr. Sidhva is to allow the entry to remain as it is."*

[Emphasis added]

37. In view of the above passage, it is submitted that once a law covering the subject area of Entry 50 List II is enacted, the state power is denuded. A continuance of State power to tax mineral rights despite the express limitation and levy by the Centre, would create an absurdity.

38. Reliance is also placed on the Constituent Assembly Debate on 31 August 1949, which discussed Entry 63 of List I in the Draft Constitution, 1948 (corresponding to Entry 52 of List I). Mr. HV Kamath, moved an amendment proposing the inclusion of the words "development" in addition to "control" of Industries in the said Entry. To this amendment, Dr. BR Ambedkar's response was [**Volume IV(N), Pg. 58 at 87**]:

    "Sir, the. entry as it stands is perfectly all right and carries out the intention that the Drafting Committee has in mind. My submission is that once the Centre obtained jurisdiction, over any particular industry as provided for in this entry, that industry becomes subject to the jurisdiction of Parliament in all its aspects, not merely development but it may be in other aspects. Consequently, we have thought that the best thing is to put the industries first so as to give undoubted jurisdiction to Parliament to deal with it in any manner it likes, not necessarily development. Therefore, the entry is far wider than Mr. Kamath intends it to be."

    [Emphasis added]

Scheme of the MMDR Act, 1948 included taxation.

39. The MMDR Act, 1948 was enacted by the Dominion Legislature which had the same composition as the Constituent Assembly.

40. Therefore, the scheme enacted by the MMDR Act, 1948 was enacted by the very body that was also the Constituent Assembly.

41. Under S. 6 of the MMDR Act, 1948 [**Volume IV, Pg. 794 at 796-797**] i.e. *"Power to make rules as respects mineral development:" empowered* the *"(I) the Central Government may, by notification in the official Gazette, make rules for the conservation and development of minerals. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:"* S.6(i) *"the levy and collection of royalties, fees or taxes in respect of minerals mined, quarried, excavated or collected;"*

42. Thus, there is strong evidence to show that the Central power to regulate mineral development covers the power to levy taxes on minerals and mineral rights. The framers invoking Entry 54 of List I i.e. *"expedient in the public interest to provide for regulation of mines and oilfields and*

for the development of minerals to the extent hereinafter specified;" understood the legislative competence of the Centre under Entry 54 of List I to include levy of taxes on minerals.

43. Additionally, this provision under Section 6(i) of the MMDR Act, 1948 indicates that the framers did not envision categories on exactions levied on minerals/rights, when classifying all royalties, fees or taxes under the dominion of the central government.

House of Commons debate on Government of India Act

44. The Lists in Seventh Schedule of the Constitution adopted the demarcation of legislative powers qua mines, mineral development and taxation of mineral rights in almost identical from the Government of India Act:

	Government of India Act	**Constitution of India**
Union / Federal List Entry – List I	Entry 36 - "*Regulation of mines and oilfields and mineral development to which such regulation and development under Dominion control is declared by Federal law to be expedient in the public interest."* [**Volume IV, Pg. 640**]	Entry 54 - "*Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.*" [**Volume IV, Pg. 357**]
State / Provincial List Entry – List II	Entry 23 – *"Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under 635 [Dominion] control"* Entry 44 – *"Taxes on mineral rights, subject to any limitations by an Act of the Federal Legislature relating to mineral development"* [**Volume IV, Pg. 642-643**]	Entry 23 – "*Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union."* Entry 50 – "*Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development."* [**Volume IV, Pg. 362 and 364**]

45. Entry 36 of List I was specifically deliberated upon by the framers of the Government of India Act i.e. the House of Commons on May 13, 1935 [**Pg. 54, Volume IV(M)**]. The intent of Entry 36 in List I in the Seventh Schedule of the Government of India Act (which it is submitted would squarely apply to Entry 54 in List I in the Seventh Schedule of the Constitution of India) as borne out from the debates (the relevant extracts of which are attached as an **Annexure)**, was to:

i. provide the Dominion Government the power to frame a complete code of laws (including the imposition of taxes on mineral rights) relating to as many minerals as possible throughout India;
ii. so as to ensure uniformity in the development of minerals and to obviate distortion of mineral development by the possible discriminatory tax regimes that respective Provinces may adopt;
iii. under a mechanism where the revenue earned from taxes, royalties and charges levied under the law passed by the Dominion under Entry 36 of List I would ultimately be accounted to the Provinces.

46. Thus, under Article 248 of the Constitution of India, where the power to impose a tax does not vest with the State Government in a field enlisted either under List II or List III of the Constitution, Parliament has the exclusive right to impose tax. Pertinently, no such residuary power of taxation vests in the State Government(s).

State has no power to tax minerals and / or mineral rights under Entry 49 of List II

47. Article 246(3) read with Entry 49 in List II of the Seventh Schedule provides the State with the power to impose "*taxes on land and buildings*." [**Volume IV, Pg. 364**]

48. Entry 49 of List II has been subject matter of interpretation by a number of Constitution Benches of this Hon'ble Court. This Hon'ble Court has held that:
    i. The requisites of a tax under Entry 49, List II, include the following: (a) It must be a tax on units, i.e. lands and buildings separately as units; (b) the tax cannot be a tax on totality, i.e., it is not a composite tax on the value of all lands and buildings; and (c) tax under Entry 49, List II, is not a personal tax but a tax on property. ***Union of India v. H.S. Dhillon*** (1971) 2 SCC 779 (**Paras 74, 75**) **[Volume V, pg. 457 at 483**]

    ii. Entry 49 of List II contemplates the levy of tax on lands and buildings or both as units. Tax on lands and buildings is directly imposed on the land / buildings and *"bears a definite relation to it"* ***Sudhir Chandra Nawn v. Wealth-Tax Officer, Calcutta & Ors.****, AIR 1969 SC 59* (**Paras 3, 5**) **[Volume V, Pg. 384 at 385-386]**

    iii. In ***The Second Gift Tax Officer, Mangalore Etc. v. D. H. Nazareth Etc.*** 1970(1) SCC 749 (**Para 10**) [**Volume V, Pg. 446 at 450**], this Hon'ble Court has distinguished between gift tax, which is a levy on the particular use of land from taxes directly levied on land and buildings as a result of ownership thereof.

49. While the judgment of this Hon'ble Court in ***Goodricke Group Ltd. & Ors. v. State of W.B. & Ors.*** 1995 Supp (1) SCC 707 [**Volume V, Pg. 1512**] came subsequent to the above Constitution

bench decisions, *Goodricke* took the view that merely because the levy on land is quantified on the basis of its yield, it does not follow that the levy is not a direct levy on the land itself. **(Paras 29 and 30) [Volume V, Pg. 1533]**

50. It is submitted that the decision of this Hon'ble Court in ***Goodricke*** (*supra*) is erroneous and does not follow the decisions of the Constitution bench cited above. The rationale for this has been well-explained by Sinha, J. in his dissent in ***Kesoram*** (*supra*) (**Para. 546**) [**Volume V, pg. 2020 at 2242**] as follows:

> *"546. A distinction must be borne in mind as regards the approved method of valuation for the purpose of imposition of tax on land and building. We should not be under any illusion or suffer any confusion in this behalf. Methods of determining annual value of a land or building are distinct from the value of the mineral-bearing land. Annual value of a land or building is determined by applying one or the other approved or known methods of valuation, but the same cannot have any application for determination of the total value of the mineral-bearing land. The valuation of mineral-bearing land would be dependent upon so many factors which would include the geographical condition, quality and quantity of the mineral which can be removed, the capital required to be invested and various other factors. Once the mineral is removed from the mineral-bearing land, the surface may not either remain in existence and, thus, the value of the land would gradually come down. The value of a land with minerals and without minerals would be different. As and when mineral is taken out of the land, the value is diminished. The method of imposing tax with reference to the minerals produced from the land, thus, cannot be a criterion for determining the value of the land and, thus, the said method of valuation should not be made to apply which is applicable for the purpose of determining the annual value of land or building. This aspect of the matter has again not been considered in Goodricke Group."*
>
> [Emphasis added]

51. An important decision which was rendered in the context of mining, is that of ***State of Bihar v. Indian Aluminium Co.***, (1997) 8 SCC 360 (**Paras 15, 17**) [**Volume V, Pg.1644 at 1654**] While interpreting the provisions of the BIHAR FOREST RESTORATION AND IMPROVEMENT OF DEGRADED FOREST LAND TAXATION ACT, 1992, which imposed a tax on certain excavation activities, this Hon'ble Court held that Entry 49, List II envisages a levy of tax directly on land as a unit, which includes land on the surface and even below the surface. However, under the Act being considered, tax was being levied on the void which had been created and was effectively on the removal or excavation of land. In other words, tax was squarely imposed on the activity of mining, i.e., on the activity of removal of the earth and not on the land itself. Hence, it was outside the ambit of List II, Entry 49.

52. The fact that 'land' and 'mineral rights' are distinct subjects or fields is evident from their treatment as such by the Parliament in the MMDR Act, 1957. While Section 9 imposes royalty on the extraction of minerals lying beneath the surface and Section 9A imposes dead-rent for holding on to a mining land, i.e., a mineral-bearing land, without undertaking mining operations, Section 24(2) contemplates compensation for surface rights to be paid by a lessee to the owner

of the land, i.e., which is above ground. Thus, there is no doubt that ‘land’ and ‘mineral rights’ cannot be treated synonymously. This, more so in view of the fact that ownership of minerals vests in the State Government, notwithstanding that the land may be owned by private individuals.

53. For the reasons set out above, it is submitted that mineral rights are taxable only under Entry 50 of List II. To conflate ‘mineral rights’ with ‘land’, would be to obliterate the distinct Entries 49 and 50 in List II, and so also the distinct treatment given to the two terms under the MMDR Act, 1957, in the context of mining.

ANNEXURE

Relevant extracts of the House of Commons deliberations on Entry 36 in List I of the Government of India Act - May 13, 1935

1. The then Solicitor General sought to insert *"Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest"* as an Entry in List I. This Entry was referred to in the discussions as proposed Entry 37.

2. The intent for insertion of the Entry was explained thus:
   "...If there is inaction at the Centre the Provinces can go ahead with their own regulations and developments, but to the extent to which the Centre desires and declares by law that there shall be central regulations and control, then the subject comes out of the purely restricted Provincial field and becomes a subject of control at the Centre".

3. What came to be finalised as Entry 23 of List II to the Seventh Schedule of the Government of India Act was stated to be a *"consequential amendment".*

4. He further clarified that under the proposed Entry 37 only operated *"if there is an* ***express law*** *passed relating to that development by the Centre".*

5. At these deliberations, Mr. Spens and Lord Percy raised the question as to the impact of proposed Entry 37 on the power to tax mineral rights (which was provided to the Provinces under Entry 50):

   a. Mr. Spens: *"...Lastly, there is the question which legislature is to have the power to tax mineral rights..."*
   b. Lord Percy: *"I notice that the Government are not proposing to remove taxation is mineral rights from the Provincial list, where it now is. How can the Federal Government have power to regulate the development of mines if an unlimited power to tax rights is still felt in the Provincial Legislature?"*

6. Mr. Spens also expressed the desirability of formulating one code of laws (including taxation on mineral rights) relating to minerals throughout India:

   "I have on a former occasion referred to unfortunate results which have occurred in the United States and elsewhere where a variety of States have been allowed to deal with proprietary rights and regulations affecting the minerals in their own district. The same thing will happen in India if we have 11 States making their own laws with regard to the

rights of owners in minerals, whether they are vested in the Crown or in private persons. It is exactly the same thing with the important question of the taxation of minerals, one State imposing high taxes on mineral rights and another State imposing a different scale of taxation. This only leads to confusion and to a very uneconomic and non-commercial development of the mineral resources of a country. Therefore, I urge that as far as possible we should take this opportunity to try bring about one code of laws relating to as many minerals as possible throughout India."

Mr. Spens therefore suggested the following system: *"...that regulations are made from the Centre but that taxes and revenues derived from them are accounted to the Provinces, is, I would suggest, a method which might be further considered as applicable to minerals generally in India..."*

7. The desirability for one code of laws pertaining to minerals (including that of taxation) was also voiced by Sir Reginald Craddock who supported the amendment proposed. He cited the dangers of discriminatory taxes that might be imposed by different provinces and therefore expressed that *"There is great necessity therefore for maintaining the control of the Central Government over the rates of taxes and so forth merely with a view to securing uniformity*.". He too suggested that the taxes and revenues derived from the regulations framed by the Dominion / Centre *"would go to the Province and the Provinces would go on in the ordinary way as they are doing now administering those matters which they administer at present under the mining rules and the royalty rules. If they wanted to alter these rules they would require the sanction of the Central Government*."

Sir Reginald Craddock summarized his support to the proposed amendment as being one that secured uniformity without depleting the Provinces of their source of income:

"*It is that way that uniformity can best be secured while allowing the Provinces to have the legitimate income from their mining concessions, and at the same time avoiding all risk of discrimination between concession holders of different races. I thought that those facts, derived from my personal experience, might usefully be placed before the Committee in connection with the consideration of this matter. I support the Amendment*."

8. The intent of proposed Entry 37 (which was finally introduced as Entry 36 of List I) was expressly clarified by the Solicitor General, addressing the issue as to what obtains of the Provinces' power to tax mineral rights:

"My Noble Friend the Member for Hastings (Lord E Percy) raised an obviously important point, into which we shall certainly look. I can quite imagine a form of taxation which would conflict with regulation and development. In that case I think I am right in saying that under the scheme

I have in mind at the moment, List 1 wins; if there is overlapping between List 1 and List 2, List 1 wins…"

While the Solicitor General did state that he would look into the point raised by Lord Percy further, he concluded stating that the amendment proposed *"made plain our intention"* i.e. that List I would prevail in such a situation.

9. The Solicitor General's closing remarks are instructive:
"*Federal control means a writ running in all Provinces, and therefore if the Federal Legislature had gone through the two stages and had said it was in the public interest that the matter should be publicly controlled, any provision of the Provincial law which was repugnant to the Federal law would be to that extent inoperative.*"

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1883 OF 2006

IN THE MATTER OF:

State of Orissa	**Appellant**
Versus	
National Aluminium Co. Ltd & Ors.	**Respondents**

WRITTEN SUBMISSION ON BEHALF OF SENIOR ADVOCATE, MR. A.K. GANGULI

PARTY :

M/S. MAHANADI COAL FIELDS LTD (RESPONDENT NO. 87)

[WRIT PETITIONER BEFORE THE HON'BLE HIGH COURT IN W.P. (C) NO. 9454 OF 2005]

ADVOCATE ON RECORD: SHIBASHISH MISRA

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1883 OF 2006

IN THE MATTER OF:

State of Orissa ... Appellant

Versus

National Aluminium Co. Ltd & Ors. ... Respondents

WRITTEN NOTE OF SUBMISSIONS ON BEHALF OF RESPONDENT (MAHANADI COAL FIELDS LTD)

1. The Appellant in the present Civil Appeal have challenged the order dated 05.12.2005 passed by the Hon'ble High Court of Orissa at Cuttack in a batch of Writ Petitions. Mahanadi Coal Fields Ltd was the Writ Petitioner in W.P. (C) No. 9454 of 2005.
2. Mahanadi Coal Fields Limited is engaged in coal mining having collieries in the District of Angul, Jharsuguda and Sundargarh in the State of Odisha. The entire mining areas of Mahanadi Coal Fields Limited are divided into different areas such as IB Valley Area, Orient Area, Lakhanpur Area in the District of Jharsuguda, Bharatpur Area, Jagannath Area, Kaniha Area, Talcher Area, Hingula Area and Lingaraj Area in the District of Angul and Basundhara & Garajanbahal Area in the District of Sundargarh. Under each area, there are a number of mines/collieries. Mahanadi Coal Fields Limited is a subsidiary of Coal India Limited, a Government Company incorporated under the provisions of Section 617 of the Companies Act, 1956, which is engaged in coal mining and sale of coal to various Government Organization and State Governments, amongst others.
3. At the outset, the Respondent humbly submits that it relies upon the general principles of arguments rendered on behalf of the other Respondents and also relies upon the judgment of this Hon'ble Court in the case of India Cements Ltd Vs. State of Tamil Nadu reported in (1990) 1 SCC 12. However, the Respondent submits before this Hon'ble Court certain additional grounds, relating to coal mining by the Respondent.

THE COAL BEARING AREAS (ACQUISITION AND DEVELOPMENT) ACT, 1957

4. The mining areas of the Respondent have been acquired under the provisions of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (an Act of Parliament) (herein after called the Act of 1957). The relevant provisions of the Act of 1957 are quoted herein below:

> "*4 (1) Wherever it appears to the Central Government that coal is likely to be obtained from land in any locality, it may, by notification in the Official Gazette given notice of its intention to prospect for coal therein.*
>
> *(2) Every notification under sub-section (1) shall give a brief description of the land and state its approximate area.*
>
> *(3) On the issue of a notification under sub-section (1), it shall be lawful for the competent authority and for his servants and workmen-*
>
> > *(a) to enter upon and survey any land in such locality;*
> >
> > *(b) to dig or bore into the sub-soil;*
> >
> > *(c) to do all other acts necessary to prospect for coal in the land;*
> >
> > *(d) to set out the boundaries of the land in which prospecting is proposed to be done and the intended line of the work, if any, proposed to be made thereon;*
> >
> > *(e) to mark such boundaries and line by placing marks; and*
> >
> > *(f) where otherwise the survey cannot be completed and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle;*
>
> *Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.*
>
> *(4) In issuing a notification under this section the Central Government shall exclude therefrom that portion of nay land in which coal mining operations are actually being carried on in conformity with the provisions of any enactment, rule or order for the time being in force or any premises on which any process ancillary to the getting, dressing or preparation for sale of coal obtained as a result of such operations is being carried on are situate.*
>
> *5. Effect of notification on prospecting licenses and mining leases:- notification under sub-section (1) of section 4 in respect of any land-*
>
> *(a) any prospecting license [which authorizes any person] to prospect for coal or any other mineral in the land shall cease to have effect; and*

(b) any mining lease shall, in so far as it authorizes the lessee claiming through him to undertake any operation in the land, cease to have effect for long as the notification under that sub-section is in force.

[a] Substituted for the words "granted to any person under the Mineral Concession Rules which authorizes him" by the Coal Bearing Areas (Acquisition and Development) Amendment Act, 1957 (51 of 1957), S. 3 (w.r.e.f 12.6.1957)

(b) Words "granted to any person under he Mineral Concession Rules" omitted, Ibid

6. Compensation for any necessary damage done under section 4 – (1) whenever any action of the nature described in sub-section (3) of Section 4 is to be taken, the competent authority shall before or at the time such action is taken, pay or tender payment for all necessary damage which is likely to be caused, and in cae of dispute as to the sufficiency of the amount so paid or tendered or as to the person to whom it should be paid or tendered, be shall at once refer the dispute to the decision of the Central Government, and the decision of the Central Government shall be final

(2) the fact that there exists any such dispute as is referred to in this section shall not be a bar to action under sub-section (3) of section 4.

7. Power to acquire land or rights in or over land notified under section 4- (1) If the Central Government is satisfied that coal is obtainable in the whole or any part of the land notified under sub-section (1) of section 4, it may, within a period of two years from the date of the said notification or within such further period not exceeding one year in the aggregate as the Central Government ma specify in this behalf, by notification in the Official Gazette, give notice of its intention to acquire the whole or any part of the land or of any rights in or over such land, as the case may be.

(2)If no notice to acquire the land or any rights in or over such land is given under sub-section (1) within the period allowed thereunder, the notification issued under sub-section (1) of section 4 shall cease to have effect on the expiration of three years from the date thereof.

7. (1) If the Central Government is satisfied that coal is obtainable to the whole or any part of the land notified under sub-section (1) of section 4, it may, within a period of two years from the date of the said notification or within such further period not exceeding one year in the aggregate as the Central Government may specify in this behalf, by notification in the Official Gazette , give notice of its intention to acquire the whole or any part of the land or of any rights in or over such land, as the case may be.

(2) If no notice to acquire the land or any rights in or over such land is given under sub-section (1) within the period allowed thereunder, the notification issued under sub-section (1) of section 4 shall cease to have effect on the expiration of three years from the date thereof.

8. Objections to acquisition – (1) any person interested in any land in respect of which a notification under section 7 has been issued may, within thirty days of the issue of the notification, object to the acquisition of the whole or any part of the land or of any rights in or over such land.

Explanation- It shall not be an objection within the meaning of this section for any person to say that he himself desires to undertake mining operation in the land for the production of coal and that such operations should not be undertaken by the Central Government or by any other person.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing, and the competent authority shall given the objector an opportunity of being heard either in person or by a legal practitioner and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, (either make a report in respect of the land which has been notified under sub section (2) of section 7 or of rights in or over such land, or make different reports in respect of different parcels of such land or of rights or over such land, to the Central Government containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government.]

(3) For the purposes of this section a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land or any rights in or over such land were acquired under this Act.

[a] Substituted for the words "submit the case for the decision of the Central Government together with the record of the proceedings held by him and a report containing his recommendations on the objections" by the Coal Bearing Areas (Acquisition and Development) Amendment and Validation Act 54 of 1971.S.2(11-12-1971)

9. (1) When the Central Government is satisfied, after considering the report, if any, made under section 8 that any land or any rights in or over such land should be acquired, a declaration shall be made by it to that effect, [and different declarations may be made from time to time in respect of different parcels of any land, or of rights in or over such land, covered by the same notification under sub-section (1) of section 7, irrespective of whether one report or different reports has or have been made (whenever required) under sub-section (2) of section 8]:

[Provided that no declaration in respect of any particular land, or rights in or over such land, covered by a notification under sub-section (1) of section 7, issued after commencement of the Coal Bering Areas (Acquisition and Development) Amendment and Validation Act, 1971, shall be made after the expiry of three years from the date of the said notification.
Provided further that, where a declaration] relates to any land or to any rights in or over land belonging to a State Government which has or have not been leased out, no such declaration shall be made except after previous consultation with the State Government.
(2) [Every declaration] shall be published in the Official Gazette, and-
(a) in any case where land is to be acquired shall state the district or other territorial division in which the land is situate and its approximate area; and, where a plan shall have been made of the land, the place where such plan may be inspected;
(b) in any case where rights in or over such land are to be acquired, shall state the nature and extent of the rights in addition to the matters relating to the land specified in clause (a); and a copy of every such declaration shall be sent to the State Government concerned.
[9A. If the Central Government is satisfied that it is necessary to acquire immediately the whole or any part of the land notified under sub-section (1) of section 4 or any rights in or over such land, the Central Government may direct that the provisions of section 8 shall not apply, and if it does not direct, a declaration may be made under section 9 in respect thereof at any time after the issue of the notification under section7.]
10. (1) On the publication in the Official Gazette of the declaration under section 9, the land or the rights in or over the land, as the case may be, shall vest absolutely in the Central Government [free from all encumbrances].
(2) Where the rights under any mining lease [granted or deemed to have been granted by a State Government] to any person are acquired under this Act, the Central Government shall, on and from the date of such vesting, be deemed to have become the lease of the State Government as if a misusing lease under the Mineral Concession Rules had been granted by the State Government to the Central Government, the period thereof being the entire period for which such a lease could have been granted by the State Government under those rules.
11.(1) Notwithstanding anything contained in section 10, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as the Central Government may think fit

to impose, direct, by order in writing, that the land or the rights in or over the land, as the case may be, shall, instead of vesting in the Central Government under section 10 or continuing to so vest, vest in the Government company either on the date of publication of the declaration or on such other date as may be specified in the direction.

(2) Where the rights under any mining lease acquired under this Act vest in a Government company under sub-section (1), the Government company shall, on an from the date of such vesting be deemed to have become the lessee of the State Government as if a mining lease under the Mineral Concession Rules had been granted by the State Government to the Government company, the period thereof being the entire period for which such a lease could have been granted by the State Government under those rules, and all the rights and liabilities of the Central Government in relation to the lease or the land covered by it shall, on and from the date of such vesting be deemed to have become the rights and liabilities of the Government company."

Section 13 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 deals with compensation for prospecting licenses ceasing to have effect, rights and the mining leases being acquired, etc. The aforesaid Section relates to payment of compensation to the person interested, wherein the rights under the mining lease are acquired under this Act. However, the aforesaid Section, contemplates that the value of any minerals lying in the land shall not be taken into consideration in determining the market value of any land.

Section 14 of the Act of 1957 relates to the method of determining compensation. The aforesaid Section contemplates that in case of non-agreement with regard to amount of compensation, the Central Government shall constitute a Tribunal for purpose of determining the amount by way of an award, having the powers of a Civil Court trying a suit under the Code of Civil Procedure Code, 1908.

5. The Legislative intention behind bringing the Coal Bearing Areas (Acquisition and Development) Act, 1957 is "*to establish in the Economic interest of India, greater public control over the coal mining industry and its development by providing for the acquisition by the State of unworked land containing on likely to contain coal deposits or of rights in or over such land, for the extinguishment or modification of such rights accruing by virtue of any agreement, lease,*

license or otherwise and for matters connected therewith". (Preamble to the Coal Bearing Areas (Acquisition and Development) Act, 1957) The coal bearing lands acquired by the Central Government have been vested with the Respondent as per the mandate of Section 11 of the Act of 1957. There is no mining lease / prospecting license-cum-mining lease executed by the State Government with the Respondent in respect of the acquired lands. By virtue of Section 10(1) of the Act of 1957 (Coal Bearing Areas Acquisition Act), the lands vest absolutely in the Central Government on the date on which the declaration under Section 9 was published in the Official Gazette. There was absolute vesting of the lands in the Central Government and this absolute vesting was made in favour of the Respondent Company under Section 11(1). The lands now absolutely vest in the Respondent Company instead of the Central Government by virtue of the interaction of Sections 10 and 11 of the Coal Bearing Areas (Acquisition and Development) Act, 1957. The Coal Bearing Areas (Acquisition and Development) Act, 1957 is a special Act and has to prevail over the Mines and Minerals (Development and Regulation) Act, 1957.

STATE OF WEST BENGAL VS. UNION OF INDIA REPORTED IN (1962) 1 SCR 371:

6. A suit was filed by the State of West Bengal against the Union of India before this Hon'ble Court for a declaration that the Parliament is not competent to make a law authorizing the Union Government to acquire land and rights in or over land, which are vested in the State and that the Coal Bearing Areas (Acquisition and Development) Act, 1957 enacted by the Parliament and particularly Sections 4 and 7 thereof are ultra vires, the Legislative competence of Parliament. A prayer for injunction restraining the Union of India from proceeding under the provisions of the Act of 1957 in respect of the coal bearing lands vested in the State of West Bengal was made in the suit. The basic challenge to the Coal Bearing Areas (Acquisition and Development) Act, 1957 was that the rights of the State over the land cannot be diluted and the Act of 1957 will have no application to the lands vested with the State Government.

This Hon'ble Court while dismissing the suit filed by the State of West Bengal upheld the provisions of the Coal Bearing Areas (Acquisition and Development) Act, 1957. This Hon'ble Court in the aforesaid judgment has framed the issues based on the written statement of the Union of India, which reads as follows:

> *"The defendant states that it is in the public interest that there should be a planned and rapid industrialization of the country. For such rapid and planned industrialization, it is essential that the production of coal should be greatly increased as coal is the basic essential for industries. Regulation of mines and mineral development under the control of the Union has been declared by Parliament by law to be expedient in the public interest. It is submitted that in the circumstances, the acquisition of coal bearing areas by the Union is necessary for the regulation of mines and mineral development and for increased production of coal in the public interest. The defendant will rely on documents a list whereof is hereto annexed."* (Page 378 of the judgment)

The aforesaid statement of the Union of India formed the basis of the five issues framed by this Hon'ble Court and thereafter another issue was raised i.e. "*Whether Act XX of 1957 on its true construction applies to lands vested in or owned by the Plaintiff State?"*

7. That the Act of 1957 lays down the statements of Objects and Reasons, which reads as under:

> *"According to the Industrial Policy Resolution of 1956 the future development of coal is the responsibility of the State. All new units in the coal industry will be set up only by the State save in exceptional circumstances as laid down in the Resolution."*

The entire Statements of Objects and Reasons as mentioned in the Act of 1957 has been reflected in the judgment of this Hon'ble Court in the case of State of West Bengal Vs. Union of India reported in (1962) 1 SCR 371 (Pages 380 to 382). The entire scheme of the Act of 1957 has been discussed by this Hon'ble Court in the aforesaid judgment (Pages 386 to 389) i.e.;

(i) While dealing with the term "any person" used in Section 8, this Hon'ble Court held that the word "person" has been used in the generic sense of including both a natural person and a juristic person. (Page 387)

(ii) The reference to the "State" in the words "acquisition by the State" occurring in the Preamble was a reference to the Union

Government, as the entire object and purpose of the Act of 1957 was to vest powers in the Union Government to work coal mines and in that context the word “State” could obviously refer only to the Union Government. (Page 383)

(iii) Section 9 provides that after the Central Government has investigated the prospect of obtaining coal, after the issue of a notification under Section 4, and after notifying its intention to acquire the land covered by the notification under Section 7 and after disposing of objections, if any, under Section 8, the Central Government has to make the necessary declaration that the land should be acquired. The proviso to Section 9(1) only requires consultation with the concerned State Government where it is the owner of the land or has any interest in or over such land. The right or interest of a State Government are not involved in the acquisition.

(iv) The consultation with the State Government under Section 9(1) is made a condition precedent to the declaration to be made by the Central Government in respect of the proposed acquisition. But consultation does not necessarily mean consent, though ordinarily consultation between two Governments or two public authorities would signify the cooperation and willingness to accede to the proposal- a situation which is not contemplated with reference to the interests of private persons. (pages 387-388)

(v) The Act of 1957 is intended to cover land or rights in or over land belonging either to an individual or to a juristic person. **Such land may comprise not only surface rights but also mineral rights**. (Page 389)

The Act uses the compendious language “land or any interest in or over land” to cover all those diverse rights and interests which the Central Government would be interested to acquire in order to have a free hand **in developing the land for coal mining in the public sector**. (Page 389)

(vi) The Parliament intended to acquire all rights and interests in coal bearing land with a view to prospecting for coal and for exploiting coal bearing mines. (page 390).

8. The Coal Bearing Areas (Acquisition and Development) Act, 1957 is an Act for development of coal, which is a mineral and the concept of development is inbuilt in the Preamble to the Act. Therefore, coal as a mineral is subject to the limitation imposed by the Parliament, which has enacted the Act of 1957, clearly with an intention for mineral development. (Entry 54 of List I and Entry 50 of List II of the Constitution of India)

ACT 54 OF 1971 [AMENDMENT TO THE COAL BEARING AREAS (ACQUISITION AND DEVELOPMENT) ACT, 1957]

9. Section 18A of the Act of 1957 was brought in by way of an amendment (Act 54 of 1971). Section 18A of the Act of 1957 reads as under:

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

The statements of Objects and Reasons for bringing in Section 18A under the Amendment Act of 1971 reads as under:

> *"Act 54 of 1971.- The Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the Coal Bearing Areas Act) provides inter alia for the acquisition by the Central Government of virgin lands, including underground minerals, or rights in or over such lands. Under the Explanation to clause (a) of sub-section (5) of section 13, which provides that the value of any minerals lying in the land will not be taken into consideration in determining the market value of any land no compensation is payable to the State Governments in respect of the underground minerals which also vest in the Central Government when the land is acquired by the Central Government. The State Governments have been representing from time to time that this results in their being deprived of large sums by way of revenue. The Central Government has considered the representations of the State Government and*

> *has decided that the State Governments should be paid purely on an ex gratia basis such sums as they would have been entitled to receive by way of royalty, had mining leases been granted in respect of the areas acquired. It is now proposed to amend the Coal Bearing Areas Act to make such payments obligatory."*

In terms of Section 18A of the Act of 1957, the Respondent pays to the State Government such sum of money as would have been payable as royalty by a Lessee had such land or rights been under a mining lease granted by the State Government. The payment of royalty is in terms of the notification of Coal India Limited i.e., 14% ad valorem on the price of coal. Apart from royalty, the Respondent pays to the State Government National Mineral Exploration Trust (NMET) in terms of sub-section 4 of Section 9C of the Mines and Minerals (Development and Regulation) Act, 1957. The Respondent also pays District Mineral Foundation (DMF) in terms of sub-sections 5 and 6 of Section 9B of the Mines and Minerals (Development and Regulation) Act, 1957.

Therefore, the acquisition of the land having taken place with the consent of the State Government under Section 9 of the Act of 1957, the premium having been paid to the State Government at market price (being the "person interested"), the money as would have been paid by a Lessee as royalty is being paid to the State Government, NMET and DMF are also being paid, there is no scope for the State Government to enact the impugned Act i.e. the Orissa Rural Infrastructure and Socio-Economic Development Act, 2004. The scheme of the Act of 1957 relates to development of coal and is a comprehensive Act by itself, occupying the field of coal in respect of acquired lands by the Government of India, wherein the mining is to be done by the Central Government or by the Government Company like that of the Respondent for development of coal. A levy equivalent to royalty, as determined by Coal India Ltd., is paid by the Respondent to the State Government on all dispatches / removal of coal as per Section 18A of the Act of 1957.

10. Section 18A of the Act of 1957 was introduced in 1971 to compensate the State Government, notwithstanding the fact that the compensation amount arising out of the acquisition had been paid to the State

Government. Therefore, there can be no further tax/ compensation that can be levied by the State Government through a Legislation, which has been already occupied by a Legislation of the Parliament (the Act of 1957). The royalty paid by the Respondent to the State Government is not under the Mines and Minerals (Development and Regulation) Act, 1957, but under Section 18A of the Act of 1957. A conjoint reading of Sections 9 and 18A of the Act of 1957 would make it clear that the power of the State Government to legislate on the acquired coal bearing areas is denuded and is hit by Entry 50 of List II and Entry 54 of List I of the Constitution of India.

ORISSA RURAL INFRASTRUCTURE & SOCIO-ECONOMIC DEVELOPMENT ACT, 2004

11. In the Orissa Rural Infrastructure & Socio-Economic Development Act, 2004 "coal bearing land" has been defined under Section 2(c) to mean *any land acquired or declared from time to time under any law for the purpose of obtaining coal.* Vide notification dated 25.05.2005 of the Government of Odisha in Department of Steel and Mines, the State Government in exercise of the powers conferred by sub-section 2 of Section 3 of the Orissa Rural Infrastructure & Socio-Economic Development Act, 2004, fixed the rate of rural infrastructure and economic development tax in respect of coal at the rate of 15% of the annual value of the coal bearing land.

12. The Respondent is operating the coal bearing areas as per the mandate of the Act of 1957 and no tax on mineral rights can be sought to be imposed by the State Government, through a legislation especially when the field is occupied by a legislation of the Parliament i.e., the Act of 1957. Entry 50 of List II and Entry 54 of List I, lays down the constitutional scheme relating to levy of taxes on mineral rights. The power of the State Legislature to levy tax on mineral rights is clearly denuded by the limitation created by Parliament through enactment of the Act of 1957, which relates to development of coal.

13. The provisions of the Mines and Minerals (Development and Regulation) Act, 1957 is not applicable to the coal bearing areas of the Respondent, which are being operated through acquisition under the provisions of the Act of 1957. The Act of 1957 lays down an elaborate

method of compensation to the State Government under Sections 9 and 18A. In order to further compensate the State Government, the amendment to the Act of 1957 was brought in the year 1971, with the introduction of Section 18A. A reading of the aims and objectives of Section 18A would indicate that the Section was brought in with the sole purpose of compensating the State Government. Therefore, no rights has been created in favour of the State Government to tax on the mining rights of the Respondent and such action of the State Government has disturbed the entire federal equilibrium. The limitation created by the Act of 1957, which itself is an Act for development, so far as the State is concerned cannot be reopened in view of the judgment of this Hon'ble Court in the case of State of West Bengal Vs. Union of India reported in (1962) 1 SCR 371.

14. Entry 50 of List II states that taxes on mining rights should be subject to any limitations imposed by Parliament by law relating to mineral development. The Act of 1957 is an Act for mineral development as would be evident from the Statements of Objects and Reasons as well as the Preamble to the Act. The nomenclature to the Act of 1957 is clear that the said Act is intended for the development of coal. The Act of 1957 fulfils the conditions laid down in Entry 50 of List II of the Constitution. By this Act of Parliament, the power of the State Government to enact/ legislate laws in respect of the mining areas of the Respondent is denuded as per the mandate of Entry 50 of List II. Such power of legislation by the State Government is taken away as far as the mineral-coal is concerned.

15. Once the acquisition takes place by the Central Government and the areas are handed over to the Government Company like that of the present Respondent, in terms of the scheme of the Act of 1957, the mineral rights along with the land vests with the Government Company and not with the State Government. The mineral rights (coal), in other words is taken away from the State Government (reference to Sections 8, 9 and 13 of the Act of 1957).

16. In respect of the land acquired under the Act of 1957, the ownership vests in the Central Government and the State has no jurisdiction to grant mining lease. The aforesaid proposition has been held by this

Hon'ble Court in the case of Bharat Coking Coal Ltd. Vs. State of Bihar reported in (1987) Supp. SCC 394. This Hon'ble Court, in the aforesaid case held that "o*nce the acquisition is made under the Coal Bearing Areas (Acquisition and Development) Act, 1957, requisite declaration was issued by the Central Government, it was not opened to the State Government to grant lease as the land vests in the Central Government"*.

Through notifications issued under Section 11(1) of the Act of 1957, absolute ownership of the lands and all rights in or over such lands, including right over underlying coal have been vested in the Respondent Company.

THE COAL BEARING AREAS WHEREIN THE RESPONDENT COMPANY IS THE HOLDER OF A MINING LEASE

A. Chhendipada Open Cast Mine in the District of Angul, which has been discontinued since 2014.

B. Talcher Colliery in the District of Angul- an underground mine which has been discontinued since 2018.

C. Handidhuan Colliery in the District of Angul- an underground mine which has been discontinued since 1998.

D. Deulbara Colliery in the District of Angul- an underground mine which has been discontinued since 2006.

E. Hingir Rampur Colliery in the District of Jharsuguda- an underground mine which has been discontinued since 2013.

F. Orient Mine No. 3 in the District of Jharsuguda- an underground mine which has been discontinued since 2021.

G. Orient Mine No. 4 in the District of Jharsuguda- an underground mine which has been discontinued since 2017.

The total lease area in respect of all these mines is 4573.06 Hectors.

JUDGMENT OF THIS HON'BLE COURT IN THE CASE OF MAHANADI COALFIELDS LTD. VS. STATE OF ODISHA & ORS. REPORTED IN (2023) 4 SCC 343.

17. This Hon'ble Court in the case of Mahanadi Coalfields Ltd. Vs. State of Odisha & Ors. reported in (2023) 4 SCC 343 while relying upon Sections 9, 10, 11, 18A of the Act of 1957 held that the State Government being the 'person interested', the Government Company in whose favour the order has been issued by the Central Government shall be deemed to be the Lessee and shall be liable to pay the compensation and surface land rent etc. to the State Government towards premium of Government land. This Hon'ble Court has also noticed the Statements of Objects and Reasons of the Act 54 of 1971 by which Section 18A of the Act of 1957 was introduced.

This Hon'ble Court in its order dated 18.08.2023 has further clarified that the quantification/ calculation is to be made in accordance with the provisions of the Act of 1957 wherein the adjudication process has been specifically prescribed.

DETAILS OF PAYMENTS MADE BY THE RESPONDENT COMPANY TO THE STATE GOVERNMENT

A. In lieu of royalty, as per the mandate of Section 18A of the Act of 1957, the Respondent Company has been paying the amount to the State Government as fixed by Coal India Ltd. The amount of royalty paid by the Respondent Company to the State of Odisha for the period from 2005-06 to 2022-23 is Rs. 26141.63 crores.

B. The Respondent Company for the period from 2015-16 to 2022-23 has paid Rs. 5132.21 crores towards the District Mineral Fund as per the direction of the Ministry of Coal, Government of India. Further, the Respondent Company has paid Rs. 324.42 crores for the period 2015-16 to 2022-23 towards the National Mineral Exploration Trust in accordance with the directions of the Ministry of Coal, Government of India.

   It is pertinent to mention here that on acquisition of the coal bearing areas, by the Government of India in respect of those areas on which the title vests with the State Government, appropriate compensation/ premium has been paid to the State Government.

   The liability under the impugned Act of 2004 as far as the Respondent Company is concerned is Rs. 30343.40 crores (from 2005-06 to 2022-23). The aforesaid amount is without interest and

along with 9% simple interest (the interest component for the aforesaid period is Rs. 18939.32 crores), the total liability is Rs. 49282.71 crores.

CONCLUSION

18. Therefore, the impugned levy, which purports to impose a tax on the annual value of mineral bearing land cannot be sustained as the field of legislation, so far as the Respondent Company is concerned, is already occupied by the Act of 1957 i.e. an Act of the Parliament. The development and regulation of coal is a part of the Act of 1957 and the impugned Act is a parallelly enacted Act of the State Legislature, which seeks to demolish the federal equilibrium and introduces an Act, which is otherwise an occupied field.