

(1972) 03 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No's. 1934 and 2131 of 1967

Laxminarayana, Mining Co. and Another

APPELLANT

Vs

Taluk Development Board and Another

RESPONDENT

Date of Decision : 30-03-1972

Acts Referred:

Madras District Boards Act — Section 78, 79

Mysore Village Panchayats and Local Boards Act, 1959 — Section 143, 144, 6 (1), 6 (2)

Citation : AIR 1972 Kar 299

Hon'ble Judges : E.S. Venkataramiah, J;B. Venkataswami, J

Bench : Division Bench

Advocate : S. Jayathirthachar, for B.G. Sridharan and V. Krishnamurthi, for the Appellant; N. Santhosh Hedge, for the Respondent

Final Decision : Allowed

Judgement

Venkataramiah, J.—The petitioners in these two cases are holders of mineral concessions granted by the State Government authorising them to conduct mining operations within Sandur Taluk, Bellary District. The petitioner in Writ Petition No. 1934 of 1967 is engaged in winning iron ore and the petitioner in Writ Petition No. 2131 of 1967 is winning both iron ore and manganese ore. By a notification issued under Sections 143 and 144 of the Mysore Village Panchayats and Local Boards Act. 1959 (hereinafter referred to as the State Act), the Taluk Development Board of Sandur having jurisdiction over the mining areas in which the petitioners are interested, levied licence fee on the mining of manganese ore, iron ore. red-oxide, barytes etc. Under Entry 62 of Schedule attached to the notification, persons engaged in mining of manganese and iron ore with the help of machinery had to pay Rs. 500/-per area and under Entry 63 persons engaged in mining of manganese and iron ore without the help of machinery had to pay Rs. 200 per area. On the basis of the above notification imposing licence fee, the petitioner in Writ Petition No. 1934 of 1967 was called upon by the Chief Executive Officer of the Taluk Development Board Sandur (respondent 2) by his notice bearing F. No. 30/67 L. I.. dated 18-7-1967 to pay Rs. 3,000/- being the

arrears of licence fee from 1963-64 to 1967-68 in respect of three areas, namely, an area of 640 acres in Karadikolla, another area of 175-63 Hectares in Karadikolla and Bhavihalli area. The petitioner in Writ Petition No. 2131 of 1967 was similarly called upon by the respondents by notice similarly bearing F. No. 13/67 dated 22-7-1967 to pay in all Rs. 10,500/- by way of licence fee in respect of the areas in which the petitioner was engaged in mining within Sandur Taluk. Aggrieved by the notices of demand and the notification issued under Sections 143 and 144 of the State Act referred to above, the petitioners have filed the above petitions for the issue of an appropriate writ, direction or order Quashing the notices of demand and the notification in so far as it levies licence fee under Sections 143 and 144 of the State Act on the petitioners.

2. In the affidavits filed in support of the writ petitions, three main contentions have been urged by the petitioners that-

(i) that the State Legislature could not make a law authorising the imposition of the impugned levy after the Mines and Minerals (Regulations and Development) Act, 1957 (Central Act LXVII of 1957) (hereinafter referred to as the Central Act) came into force;

(ii) that the notification in so far as it levies licence fee on the mining activities carried on by the petitioners is outside the scope of Sections 143 and 144 of the State Act; and

(iii) that the licence fee in question which is in the nature of a tax cannot be levied because Sections 143 and 144 of the State Act do not confer the power on the Taluk Development Board to levy a tax.

3. The respondents have opposed these writ petitions. It is urged on behalf of the respondents that the levy in question was within the scope of Sections 143 and 144 of the State Act and the demands made under the impugned notices have been validly made. It is also stated that the licence fee demanded by the respondents is in the nature of a tax and that the Taluk Development Board had the competence to levy the same.

4. We shall presently take up the first contention urged on behalf of the petitioner. In order to understand the case of the petitioners, it is necessary to briefly refer to the relevant provisions of law.

5. The State Legislature is authorised by Entry 23 in List II of the Seventh Schedule of the Constitution to make law with respect to 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 in the same list authorises the State Legislature to levy tax on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development. Entry 54 in List I of the Seventh Schedule of the Constitution confers Legislative power on the Parliament to make law with respect to the regulation of mines and mineral development to the extent to which such regulation and development

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

6. It is necessary at this stage to refer to the provisions of the Central Act. The preamble of the Central Act shows that it was enacted with a view to provide for the regulation of mines and development of minerals under the control of the Union. Section 2 of that Act reads, "it is hereby declared 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". Sections 4 to 8 of the Central Act deal with the need for and the issue of prospecting licence and mining leases authorising the winning of the minerals specified in the First Schedule, and the maximum area and the period in respect of which such licence and lease can be issued. Section 9 of the Central Act requires the holder of a mining lease to pay royalties in accordance with the rates specified in Section Schedule in respect of the minerals won by the lessee pursuant to the lease, and the Central Government has been conferred by Section 9 (3) the power to amend the Section Schedule so as to modify the rates of royalties specified in the Second Schedule. Sections 10 to 12 deal with the procedure for obtaining the prospecting licence or mining lease in respect of land in which the minerals vest in the Government. Section 13 confers on the Central Government power to make rules regulating the grant of prospecting licences and mining leases in respect of minerals and purposes connected therewith. In particular. Section 13 (2) (i) authorizes the Central Government to make rules regarding the fixing and collection of dead rent, fines, fees or other charges and the collection of royalties in respect of prospecting licence, mining lease and minerals mined, quarried, excavated or collected. Sections 14 and 15 exclude the application of Sections 4 to 13 and confer power on the State Governments to make rules for regulating the grant of prospecting licences and mining leases in respect of minor minerals. Section 18 lays down that it shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and development of minerals in India, and for that purpose the Central Government may by notification in the Official Gazette, make rules as it thinks fit. Sub-section (2) of Section 18 in particular refers to the power of the Central Government to make rules regarding the regulation of the excavation or collection of minerals from any mine, the development of mineral resources in any area and the regulation of the arrangements for the storage of minerals and the stocks thereof that may be kept by any person, among others. Section 25

prescribes that any rent, royalty, tax, fee and other sum due to the Government under the Central Act or the rules made thereunder or under the terms and conditions of any prospecting licence or mining lease, may be recovered in the same manner as an arrear of land revenue. It is unnecessary to refer to other provisions of the Act for the purpose of this case. In exercise of the power conferred by Section 13 of the Central Act, the Central Government has framed Rules known as "The Mineral Concession Rules, 1960" which deal with the procedure for the grant of a prospecting licence or the mining lease and conditions subject to which it can be issued. It is manifest from the provisions of the Central Act extracted above that the Parliament has made the necessary declaration as provided in Entry 54 of List I of the Seventh Schedule to the Constitution and has assumed Legislative control over matters dealt with in the Central Act. It is, therefore, clear that to the extent the Central Act makes provision regarding the regulation and development of minerals, the powers of the State Legislatures under Entry 23 of List II stand curtailed.

7. The State Act was passed in the year 1959. Its object was to consolidate and amend the laws relating to Panchayats and to provide for the constitution of Taluk Development Boards and District Development Councils in the State of Mysore. Section 143 of the State Act on which reliance is placed by the respondents reads as follows:--

"Regulation of certain trades. Subject to the provisions of Sections 56, 57 and 58, it shall be lawful for a Taluk Board to notify that no place within the area under its authority, be used for any one or more of the purposes specified in Schedule II without a license from the Chief Executive Officer and except in accordance with the conditions specified therein".

Schedule II to the State Act specifically refers to certain trades and at the end of it we find the following:--

"In general, any purpose or the doing in the course of any industrial process anything which, in the opinion of the Taluk Board, is likely to be dangerous to human life, or health or property or is likely to create or cause a nuisance". Mining of manganese ore or iron ore or any other ore is not one of the specifically enumerated trades in Schedule II. Relying upon the last Part of Schedule II extracted above, respondent 1 passed a resolution to levy the tax in question and issued the impugned notification. The relevant part of the impugned notification reads as follows:--

"OFFICE OF THE PRESIDENT TALUK DEVELOPMENT BOARD, SANDUR.

Notification,

Notification under Sections 143 and 144 of the Mysore Village Panchayats and Local Boards Act 1959 and the rule framed thereunder by the Taluk Development Board, Sandur. It is hereby notified for the information of the inhabitants of Sandur Taluk in Bellary District that the levy of licence fees under Sections 143

and 144 of the Mysore Village Panchayats and Local Boards Act 1951 as Per the conditions and the rates specified in the annexed schedule and that levy will come into force after 60 days of the publication of this notification.

Conditions.

1 . No place within the limits of Sandur Taluk Board shall be used for any one or more of the purposes specified in the annexed Sch. I without a licence from the Sandur Taluk Board.

2. The owner or occupier of such place (other than a person to whom a licence may be granted by a Panchayat u/s 56 or 57) shall within 30 days of the publication of this notification apply to the Chief Executive Officer of the Taluk Board. Sandur for a licence for the use of such place for such purpose.

3 to 16. x x x x

Schedule I.

SI. No.

Purpose for which places may not under S. 143 of the Mysore Village Panchayats and Local Boards Act. 1959. be used without licence.

Rate of licence fees fixed.

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62.

Mining in manganese, iron ore, red-oxide, barytes, asbestos, steatite, mica, etc.. with the help of machinery per area.

500-00

63.

Mining in manganese, iron ore, red-oxide, barytes, asbestos steatite, mica, etc., without the help of machinery per area.

200-00

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8. The respondents claim in the counter-affidavit filed by them that the fee that is sought to be levied under the above notification although is termed as licence fee is in truth and substance a tax. It may be mentioned here that the State Act does not specifically authorise the levy of any such licence fee or tax on a person carrying on mining operation in manganese ore or iron ore. The question for consideration is whether the notification authorising the levy of licence fee or tax on mining of manganese ore or iron ore is valid.

9. It was argued by Sri V. Krishna Murthy, the learned Counsel for the petitioners, that in view of the declaration contained in Section 2 and the other provisions of the Central Act. it should be assumed that the State Legislature while passing the State Act did not intend to trench upon the Legislative field in respect of which the Parliament had assumed control under the Central Act, and, therefore, by issuing a notification under the provisions of Section 143 of the State Act, respondent 1 could not do something which the State Legislature itself was prohibited from doing. In support of the argument that the power to levy a fee or tax as it has been done in this case, was not available to the State Legislature and to the Taluk Board (respondent 1), our attention was drawn to the several provisions of the Central Act and Entry 50 in List II of the Seventh Schedule to the Constitution. Sri V. Krishna Murthy in particular relied upon the provisions of Section 9 of the Central Act requiring the holder of a mining lease to pay royalty in respect of any mineral removed from him from the leased area at the rates specified in the Section Schedule; Section 13 (2) (i) of the Central Act which provides for the promulgation of rules by the Central Government in respect of fixing and collection of dead rent, fines, fees or other charges and the collection of royalties in respect of prospecting licence, mining lease and minerals mined, quarried excavated or collected; Section 18 (2) (b). (d) and (f) which provides for rules being framed by the Central Government in regard "to the regulation of the excavation or collection of minerals from a mine, the development of mineral resources in any area and the regulation of the arrangements for the storage of minerals and the stocks thereof that may be kept by any person, and Section 25 of the Central Act which lays down the procedure for the recovery of any rent, royalty, tax, fee or other sum due to the Government under the Central Act or the rules made thereunder. It was urged that the provisions of the Central Act referred to above made it very clear that the Parliament had assumed Legislative control with regard to the levy of fee or any other tax in respect of mining operations carried out under the lease and licence issued under the Central Act.

10. The effect of the passing of the Central Act has been explained by the Supreme Court in more than one case. The first case in which the above question came up for consideration was *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, . In that case the validity of the Orissa Mining Areas Development Fund Act (27 of 1952) was Questioned on the ground that the Orissa State Legislature had no power to pass the said Act in view of the provisions of the Mines and Minerals (Regulation and Development) Act. 1948 (53 of 1948) passed by the Central Legislature. By the time the above case came up for decision before the Supreme Court, the Central Act which was passed in 1957 had come into force. While dealing with the contentions urged before it, the Supreme Court observed as follows:--

".....The jurisdiction of the State Legislature under Entry 23 is subject to the limitation imposed by the latter part of the said Entry. If Parliament by its law has declared that regulation and development of mines should in public interest be under the control of the Union, to the extent of such declaration the jurisdiction of the State Legislature is excluded, in other words, if a Central Act has been passed which contains a declaration by Parliament as required by Entry 54, and if the said declaration covers the field occupied by the impugned Act the impugned Act would be ultra vires, not because of any repugnance between the two statutes but because the State Legislature had no jurisdiction to pass the law. The limitation imposed by the latter part of Entry 23 is a limitation on the legislative competence of the State legislature itself. This position is not in dispute.

It is urged by Mr. Amin that the field covered by the impugned Act has already been covered by the Mines and Minerals (Regulation and Development) Act. 1948 (LIII of 1948) and he contends that in view of the declaration made by Section 2 of this Act. the impugned Act is ultra vires. This Central Act was passed to provide for the regulation of mines and oil fields and for the development of minerals.

It may be stated at this stage that by Act LXVII of 1957 which has been "subsequently passed by Parliament, Act LIII of 1948 has now been limited only to oil fields. Section 2 of the Act contains a declaration as to the expediency and control by the Central Government. It reads thus: "It is hereby declared that it is expedient in the public interest that the Central Government should take under its control the regulation of mines and oil fields and the development of minerals to the extent hereinafter provided". It is common ground that at the relevant time this Act applied to coal mines. Section 4 of the Act provides that no mining lease shall be granted after the commencement of this Act otherwise than in accordance with the rules made under this Act. Section 5 empowers the Central Government to make rules by notification for regulating the grant of mining leases or for prohibiting the grant of such leases in respect of any mineral in any area.

Sections 4 and 5 thus purport to prescribe necessary conditions in accordance

with which mining leases have to be executed. This part of [he Act has no relevance to our present purpose. Section 6 of the Act, however, empowers, the Central Government to make rules by notification in the official gazette for the conservation and development of minerals. Section 6 (2) lays down several matters in respect of powers conferred on the Central Government by Section 6 (1). Amongst the matters covered by Section 6 (2) is the levy and collection of royalties, fees or taxes in respect of minerals mined, quarried, excavated or collected. It is true that no rules have in fact been framed by the Central Government in regard to the levy and collection of any fees; but, in our opinion, that would not make any difference. If it is held that this Act contains the declaration referred to in Entry 23 there would be no difficulty in holding that the declaration covers the field of conservation and development of minerals, and the said field is indistinguishable from the field covered by the impugned Act. What Entry 23 provides is that the legislative competence of the State Legislature is subject to the provisions of List I with respect to regulation and development under the control of the Union, and Entry 54 in List I requires a declaration by Parliament by law that regulation and development of mines should be under the control of the Union in public interest. Therefore, if a Central Act has been passed for the purpose of providing for the conservation and development of minerals, and if it contains the requisite declaration, then it would not be competent to the State Legislature to pass an Act in respect of the subject-matter covered by the said declaration. In order that the declaration should be effective it is not necessary that rules should be made or enforced; all that is required is a declaration by Parliament that the regulation and development of mines are under the control of the Union. In such a case the test must be whether the legislative declaration covers the field or not. Judged by this test there can be no doubt that the field covered by the impugned Act is covered by the Central Act LIII of 1948".

11. After stating the law as extracted above, the Supreme Court disposed of the above case on the ground that the declaration contained in the 1948 Act with which they were concerned and which had been made by the Dominion Legislature before the Constitution came into force, was not sufficient to take away the jurisdiction of the State Legislature under Entry 23 of List II of the Seventh Schedule of the Constitution, since the declaration was not one made by the Parliament after the Constitution came into force. In that view of the matter the Supreme Court, considered that it was unnecessary to decide whether the impugned Act could be justified under Entry 50 of List II or it was relatable to Entry 25 of the List III, and as such suffered from the vice of repugnancy with the Central Act XXXII of 1947 (vide paragraph 36 of the decision). The enunciation made by the Supreme Court in the above case was followed by it in *State of Orissa Vs. M.A. Tulloch and Co.,* . In that case again the provisions of Orissa Mining Areas Development Fund Act were Questioned on the ground that the said Act could not be in force after the coming into force of the Central Act with which we are concerned in this case. In paragraph 15 of the said decision,

the Supreme Court held,

"In the present case, having regard" to the terms of Section 18 (1) it appears clear to us that the intention of Parliament was to cover the entire field and thus to leave no scope for the argument that until rules were framed, there was no inconsistency and no supersession, of the State Act".

Having observed so, the Supreme Court came to the conclusion that the levy of the cess under the Orissa Act in respect of the period prior to June 1. 1958 on which date the Central Act came into force, alone was protected. But with regard to any fee or cess subsequent to June 1. 1958, the Supreme Court observed that it was impermissible. After referring in great detail to the observation of Gajendragadkar, J.. (as he then was) in *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, , the Supreme Court observed as follows:--

"It is only necessary to add that the validity of this impost was affirmed, however, for the reason that whereas the Orissa Act, the Central Act of 1948 was a Pre-Constitution law and as in terms of Entry 54 "Parliament" had not made the requisite declaration, but only the previously existing Central Legislature it was held not to be within the terms of Entry 54 and the State enactment was held to continue to be operative. Since the Central Act 67 of 1957 contains the requisite declaration by the Union Parliament under Entry 54 and that Act covers the same field as the Act of 1948 in regard to mines and mineral development, we consider that the decision of this Court concludes this matter unless there were any material differences between the scope and ambit of Central Act 54 of 1948 and that of the Act of 1957. Learned counsel for the appellant was not able to point to any matter of substance in which there is any difference between the two enactments. It was suggested that whereas Section 6 of the Act of 1948 empowered rules to be made for taxes being levied, there was no specifically power to impose taxes under that of 1957. It is not necessary to discuss the materiality of this point because what we are concerned with is the power to levy a fee and there is express provision therefore in Section 13 of the Central Act of 1957 apart from the implication arising from Section 25 thereof, which runs:

"25. Any rent, royalty, tax. fee or other sum due to the Government under this Act or the rules made thereunder or under the terms and conditions of any prospecting licence or mining lease may, on a certificate of such officer as may be specified by the State Government, be recovered in the same manner as an arrear of land revenue.

We ought to add that besides we see considerable force in Mr. Setalvad's submission that sub-sections (1) and (2) of Section 18 of the Central Act of 1957 are wider in scope and amplitude and confer larger powers on the Central Government than the corresponding provisions of the Act of 1948".

12. It is, therefore, clear that the Supreme Court has in unequivocal terms said that in respect of matters dealt with by the Central Act. the State Legislature has

no authority to make any law. It was however argued on behalf of the respondents on the basis of the decision of the Supreme Court in *H.R.S. Murthy Vs. Collector of Chittoor and Another*, that it was permissible for the State Legislature to make law providing for levy of a tax on the mining areas since the subject-matter of such a law would be one falling under Entry 49 of the State List, which authorises the levy of tax on lands. We find it difficult to accept the above argument for two reasons, (i) that there is no provision in the State Act similar to the provisions of Sub-section 78 and 79 of the Madras District Boards Act with which the Supreme Court was concerned in that case, and (ii) that Sub-section 143 and 144 of the State Act read with the schedule do not authorise the levy of any tax on land. Section 143 provides for regulation of certain trades and the relevant part of Schedule II of the State Act on the basis of which the impugned notification is issued provides for the levy of a licence fee on any purpose or the doing in the course of any industrial process anything which, in the opinion of the Taluk Board, is likely to be dangerous to human life, or health or property or is likely to create or cause a nuisance. These provisions do not amount to a delegation of the power to the Taluk Board to levy tax on land. It is no doubt true that in paragraph 10 of its decision, in *H. R. S. Murthy's* case the Supreme Court has observed that it was unnecessary for the purpose of that case to examine the question as to what is meant by "tax on mineral rights" falling Within Entry 50 of the State List.

13. One view that may be taken about the meaning to be attached to the expression "tax on mineral rights" appearing in Entry 50 is the one appearing in paragraph 53 of the minority judgment of Wanchoo. J., (as he then was) in *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, . which reads as follows:--

"The next contention on behalf of the State of Orissa is that if the case is not justified as a fee, it is a tax under Item 50 of List II of the Seventh Schedule. Item 50 provides for taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development. This raises a question as to what are taxes on mineral rights. Obviously, taxes on mineral rights must be different from taxes on goods produced in the nature of duties of excise. If taxes on mineral rights also include taxes on minerals produced there would be no difference between taxes on mineral rights and duties of excise under Item 84 of the List I. A comparison of Lists I and II of the Seventh Schedule shows that the same tax is not put in both the Lists. Therefore, taxes on mineral rights must be different from duties of excise which are taxes on minerals produced. The difference can be understood if one sees that before minerals are extracted and become liable to duties of excise somebody has got to work the mines. The usual method of working them is for the owner of the mine to grant mining leases to those who have got the capital to work the mines. There should therefore be no difficulty in holding that taxes on mineral rights are taxes on the right to extract minerals and not taxes on the minerals actually extracted. Thus, tax on mineral rights would be confined, for example, to taxes on leases of mineral rights and

on premium or royalty for that. Taxes on such premium and royalty would be taxes on mineral rights while taxes on the minerals actually extracted would be duties of excise. It is said that there may be cases where the owner himself extracts minerals and does not give any right of extraction to somebody else and that in such cases in the absence of mining leases or sub-leases there would be no way of levying tax on mineral rights. It is enough to say that these cases also, rare though they are, present no difficulty. Take the case of taxes on annual value of buildings. Where there is a lease of the building, the annual value is determined by the lease money; but there are many cases where owners themselves live in buildings. In such cases also taxes on building are levied on the annual value worked out according to certain rules. There would be no difficulty where an owner himself works the mine to value the mineral rights on the same principles on which leases of mineral rights are made and then to tax the royalty which for example, the owner might have got it instead of working the mine himself he had leased it out to somebody else. There can be no doubt "therefore that taxes on mineral rights are taxes of this nature and not taxes on minerals actually produced. Therefore, the present cess is not a tax on mineral rights; it is a tax on the minerals actually produced and can be no different in pith and substance from a tax on goods produced which comes under Item 84 of List I. as duty of excise.

The present levy therefore u/s 4 of the Act cannot be justified as a tax on mineral rights".

14. The views expressed by the learned Judge of the Supreme Court in minority judgment are entitled to great respect and have very high persuasive value. The Supreme Court however in the majority judgment in the above case, did not decide the question as to what meaning should be given to the expression "tax on mineral rights" appearing in Entry 50 and again in H. R. S. Murthy's case, the said question was not decided.

15. Entry 50 in List II which authorises the levy of tax on mineral rights is subject to limitations imposed by Parliament by law relating to mineral Development made in exercise of its power under Entry 54 of List I. It was contended on behalf of the respondents that in the instant case the tax was not on mineral rights, but on the activity of mining carried on in certain areas. We find it difficult to accept the said contention. As observed by the Supreme Court in State of Orissa Vs. M.A. Tulloch and Co., by making a declaration u/s 2 and enacting Section 18 of the Central Act, the intention of the Parliament to cover the entire field of mineral development including tax on mineral rights is made clear. The levy of royalty u/s 9 of the Central Act and the provision for making rules with regard to the fixation and collection of dead rent, fines and fees or other charges and the collection of royalties on prospecting licence and mining lease and the provisions of Section 25 of the Central Act authorising the recovery of any tax payable under the Central Act as arrear of land revenue, clearly shows that the Parliament intended that the power to legislate with regard to taxation

on mineral rights also should be assumed by it to the exclusion of the State Legislatures. The expression "royalty" is used differently in different contexts. Sometimes it is used as equivalent to a tax also and in some other cases it is used as representing the amount payable by a lessee in respect of minerals removed by the lessee even though the lessor is not the sovereign Government. We are of the opinion that the expression "royalty" in Section 9 which requires payment of royalty to the State Government as prescribed in the II Schedule connotes the levy of a tax. Vide *Laddu Mal and Others Vs. The State of Bihar and Others*, . It is a levy falling outside the scope of Entry 84 in List I which provides for levy of excise duty by Parliament, but within the scope of the expression "tax on mineral rights" within the meaning of that expression in Entry, 50 of List II. To us it appears the expression "tax on mineral rights" includes within its scope the royalty payable on minerals extracted. Mineral rights and mining activity carried on in exercise of those mineral rights appear to us to be indistinguishable in the above context. That appears to be the true intendment of the declaration contained in Section 2 of the Central Act and that it is so enacted in order to see that throughout the Indian Union, the rents, royalties and other taxes payable in respect of mining and minerals are uniform. It may be recalled here that in *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, the Supreme Court has stated that the scope of the Central Act is wider than the scope of the Central Act LIII of 1948 which by Section 6 (2) provided for making rules regarding levy and collection of royalties, fees or taxes on minerals mined, quarried or excavated (vide paragraph 24 of the judgment).

We are, therefore, of the opinion that by the enactment of the Central Act, the State Legislature lost its legislative power Under Entries 23 and 50 of List II to the extent indicated in the Central Act. Hence, we cannot accept the contentions of the respondents that even after the passing of the Central Act, the State Legislature by enacting Section 143 of the State Act intended to confer power on the respondents to levy tax on the mining activities carried on by persons holding mineral concessions. It follows that levy of tax on mining by respondents as per the impugned notification is unauthorised and is liable to be set aside. It was however argued that such a declaration cannot be made without pronouncing upon the validity of Section 143 of the State Act we do not agree. Section 143 of the State Act is not inconsistent with the Central Act, It does not in express terms authorise a levy of fee or tax on mining of manganese or iron ore. It cannot also be construed as conferring such a power on the respondents to levy a tax or fee on mining, in view of the well settled rule of statutory construction that a court construing a provision of law must presume that the intention of the authority in making it was not to exceed its power but to enact it validly. Where therefore two constructions are possible, the one which sustains the constitutional validity must be preferred. Section 143 so construed cannot be held to be unconstitutional. What is however liable to be set aside is the notification issued by respondent 1 in exercise of its power u/s 143 of the State Act to the extent it levies a tax on mining of manganese or iron ore.

16. It was next contended by Sri V. Krishna Murthy that Section 143 of the State Act authorised the regulation of only certain trades specifically mentioned in Schedule II of that Act and any industrial process or activity carried on within the jurisdiction of the Taluk Board, and, therefore, the mining operation carried on by the petitioners could not come within the scope of Section 143 of Schedule II. There appears to be some force in the above contention, in view of the fact that in the Constitution two separate entries one excluding the other, are to be found in List II regarding regulation of mines and mineral development and industry (vide Entries 23 and 24 of List II). But we do not propose to express any opinion on the above question in this case in view of the opinion we have already expressed on the first point raised by the petitioners.

17. The next contention urged on behalf of the petitioners was that Section 143 of the State Act did not empower the Taluk Board to levy any tax. Our attention was drawn to the provisions of Chapter IX of the State Act dealing with property and finance of the Taluk Board and in particular to Section 164 which exclusively provided for the levy of tax. It was argued that u/s 143 it was open to the Taluk Board to levy only a fee in connection with the regulation of trades falling under Schedule II of that Act and that in the absence of any service being rendered to the petitioners, the licence fee was not leviable. It may be mentioned here that the specifically case of the respondents in this case is that the impugned levy is in the nature of a tax and not a licence fee and that it was sought to be sustained on the basis of a decision of this Court in *Salar Jung Sugar Mills Ltd v. Taluk Development Board-Koppal* (1968) 1 Mys LJ 100. Sri V. Krishna Murthy contended that this Court while deciding the above case had not taken into account the provisions of Chapter IX of the State Act, and, therefore, the matter should be referred to a Full Bench, if necessary, for reconsidering the opinion expressed therein. We find it unnecessary to do so in this case as the petitioners are to succeed on the basis of our decision on the first point raised by them.

18. In the result, these two writ petitions succeed and the impugned notification issued by respondent 1 to the extent it levies tax on mining of manganese and iron ore carried on by the petitioners is quashed. The respondents are directed not to enforce the said levy appearing at S. L. Nos. 62 and 63 in the impugned notification against the petitioners. Any amount already paid by the petitioners, within three years upto the date of these writ petitions, pursuant to the said levy is directed to be refunded to them.

19. Petitions are accordingly allowed with costs. Advocate's fee Rs. 250/- one set.