

(1961) 04 OHC CK 0011

In the Orissa High Court

Case No : O.J.C. No"s. 142 and 144 of 1960

Misralal Jain and Another

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 18-04-1961

Acts Referred:

Constitution of India, 1950 — Article 251

Mines and Minerals (Development and Regulation) Act, 1957 — Section 18(1), 18(2), 2

Mines and Minerals (Regulation and Development) Act, 1948 — Section 6(1)

Citation : AIR 1962 Ori 24 : (1962) 28 CLT 66

Hon'ble Judges : R.L. Narasimham, C.J;R.K. Das, J

Bench : Division Bench

Advocate : R. Choudhury, for the Appellant; A.G., for the Respondent

Final Decision : Allowed

Judgement

Narasimham, C.J.—These two applications were heard together and are disposed of by one judgment.

2. The two petitioners are holders of leases of manganese ores in the district of Sundargarh in Orissa. The Administrator, Orissa Mining Areas Development Fund by his orders dated 24th and 25th May 1960 respectively levied cess on them under the provisions of the Orissa Mining Areas Development Fund Act, 1952 (Orissa Act 27 of 1952) hereinafter referred to as the impugned State Act) and called upon them to deposit the cess within a certain period. The two petitioners have challenged the constitutional validity of the impugned State Act and the levy of cess under its provision and have prayed for the issue of a appropriate direction under Article 226 of the Constitution cancelling the notice of demand issued to them.

3. It is necessary to briefly narrate the various statutes dealing with the regulation and development of mines and minerals. In 1948 the Dominion Legislature passed an Act entitled the Mines and Minerals (Regulation and Development) Act, 1948 (Act 53 of 1948 hereinafter referred to as the old

Central Act) to provide for the regulation of mines and oil fields and for the development of minerals to the extent specified in that Act. The Act was practically a skeleton Act and left everything to be done by rules framed under it. Section 3 conferred power on the Central Government to make rules for regulating grant of mining leases. Section 6 conferred power on the same Government to make rules for the conservation and development of minerals. In exercise of the powers conferred by Section 5, the Mineral Concession Rules of 1949 were made by the Central Government, but it appears that no rules were made u/s 6. In the meantime, the Orissa Legislature passed the impugned State Act in 1952 and it was brought into force on 23-12-52. The main objection of the impugned Act was to constitute mining areas in various parts of Orissa and to constitute a fund known as the Mining Areas Development Fund for the purpose of providing water supply, public health, educational facilities and other amenities for people residing within those areas, The main source of income for this fund was the cess levied and collected under the provisions of the impugned State Act on all minerals extracted from the mining areas. In 1957 Parliament passed another Act known as the Mines and Minerals (Regulation and Development) Act, 1957 (Act 67 of 1957 hereinafter referred to as the new Central Act) by which the provisions of the old Act were practically repealed except in respect of oil-fields which are not material for our purpose.

The new Act was more elaborately drafted than the old Act but in that Act also the Central Government was given wide powers to make Rules for regulating the grant of prospecting licenses and mining leases (Section 13) and for conservation and development of minerals (Section 18). Section 29 of the new Central Act continued in force the Mineral Concessions Rules 1949 until they were replaced by the Mineral Concession Rules of 1960. It also appears that no Rules have been made u/s 18 of the new Central Act for the conservation and development of minerals.

4. The constitutional provisions dealing with the conferment of legislative powers on the subject may now be noticed. Under the Government of India Act 1935 regulation of Mines and Oil-fields and mineral development was essentially a Provincial subject--see Entry 23 of List II in the Seventh Schedule, to that Act. But the entry expressly stated that this legislative power was "subject to the Provision of List I with respect to regulation and development under Dominion Control". In the Federal List (List I) the corresponding Entry 86 was as follows :

"Regulation of mines, oilfields and mineral development to the extent to which such regulation and development under Dominion control is declared by Dominion Law to be expedient in the public interest."

In Section 2 of the old Central Act such a declaration was given by the Dominion Legislature which thus obtained jurisdiction to legislate on the subject. The Constitution did not make any material change in the distribution of legislative powers in respect of mines and mineral development. Entry 23 of List II of the seventh schedule to the Constitution reads as follows;

"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 54 of List I is as follows:

"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."

On the construction of these two entries I can do no better than quote the following observations of the Supreme Court in the case of *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, . In that case the constitutional validity of the impugned State Act was challenged.

"The effect of reading these two entries together is clear. 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 the public interest, be under the control of the Union, to the extent of such declaration the jurisdiction of 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 of the legislative competence of the State Legislature itself. This position is not in dispute".

5. The judgment of the Supreme Court in the aforesaid case was delivered on 21st November, 1960 and though the new Central Act had come into force as early as 1957 their Lordships were concerned with the validity of the impugned State Act with special reference to the old Central Act inasmuch as the levy of the cess under challenge in the case related to a period prior to the commencement of the new Central Act, They were not therefore called upon to decide whether the impugned State Act ceased to be operative by the passing of the new Central Act by Parliament in 1957. Their Lordships, however held that the impugned State Act was valid and that it was not affected in any way by the existence of the old Central Act. The essential provisions of the impugned State Act were discussed in detail in that judgment and hence it is unnecessary to refer to them here. As counsel for both sides have relied on some of the observations in the judgment in support of their respective contentions, it is necessary to examine what were the questions actually decided in that case and the reasons for the decisions.

6. Their Lordships overruled (by majority) the contention that the cess levied under the impugned State Act was in the nature of an "excise duty" on minerals. They held that it was essentially a "fee" and not a "tax". I may quote the following observations (at page 225):

"Thus the scheme of the Act shows that the cess is levied against the class of persons owning mines in the notified area and it is levied to enable the State Government to render specific services to the said class by developing the notified mineral area. There is an element of quid pro quo in the scheme, the cess collected is constituted into a specific fund, and it has not become a part of the consolidated fund, its application is regulated by statute and is confined to its purposes and there is a definite correlation between the impost and the purposes of the Act, which is to render service to the notified area. These features of the Act impress upon the levy the character of "fee" as distinct from a "tax".

Then their Lordships considered whether the impugned Act dealt with the same subject as was provided in Section 6 of the Old Act. After comparing the relevant provisions they held:

"Judged by this test there can be no doubt that the field covered by the impugned Act is covered by Central Act LIII of 1948".

Having thus come to the conclusion that the old (Central) Act and the impugned (State) Act covered by the same field, they nevertheless held that the State Legislature was competent to pass the impugned Act inasmuch as the declaration made by the dominion legislature under entry 36 of List I of the Government of India Act could not be deemed to be a declaration by "Parliament" under Entry No. 54 of List I of the Constitution.

7. Mr. Chowdhury for the petitioner properly conceded that in view of the aforesaid decision of the Supreme Court he could not challenge the validity of the impugned State Act and its continuing in force till the commencement of the new Central Act in 1957. But he urged that after the commencement of the new Central Act the impugned State Act ceased to be operative because the parliament by making the appropriate declaration required by Entry No. 54 of the List I took upon itself the power to legislate and actually legislated in respect of all matters connected with the regulation and development of mines and minerals.

8-9. As stated already the Supreme Court held that the old Central Act and the impugned State Act covered the same field. It now remains to consider whether the new Central Act and the impugned State Act also covers the same field. If such a conclusion is reached it would necessarily follow that the impugned State Act ceased to be operative and must be deemed to have been impliedly repealed from the commencement of the new Central Act.

10. I have already indicated that though the old Central Act was in the nature of a skeleton Act whereas the new Act dealt with the subject in a more elaborate manner nevertheless there is no essential distinction between the two. Both were made for the purpose of regulation and development of mines and minerals. Section 2 of the new Act contains a declaration to the following effect:

"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".

The language of this declaration is identical with that of the declaration contained in Section 2 of the old Central Act. So far as regulation of grant of mining leases is concerned Section 6 of the old Central Act is very similar to Section 13 of the new Central Act though the latter contains more detailed provisions while describing the rule making power. So far as conservation and development of minerals is concerned, Section 18 of the new Act is more elaborate than Section 6 of the old Act. Section 5(1) of the old Central Act reads as follows:

"5(1) The Central Government may, by notification in the official Gazette make rules for the conservation and development of minerals".

The corresponding Section 18(1) of the new Central Act says:

"18(1) 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 such rules as it thinks fit".

Thus Section 18(1) of the new Central Act casts a statutory duty on the Central Government to take All such steps as may be necessary for the conservation and development of minerals. Such duty was not expressly cast on the Central Government by the old Central Act. Section 6(2) of the old Central Act and Section 18(2) of the new Central Act contain detailed provisions regarding the rule-making power, but these provisions are expressly stated to be "without prejudice to the generality of the foregoing power". There is however one significant omission in Sub-section (2) of Section 18 of the new Central Act on which considerable emphasis was laid by the Advocate General. In Clause (i) of Sub-section (2) of Section 6 of the old Central Act, express power was conferred to make rules regarding "the levy and collection of royalties, fees on taxes in respect of mineral quarries, excavated or collected," but no such express power was conferred by Sub-section (2) of Section 18 of the new Act. On the other hand, in Clause (i) of Sub-section (2) of Section 13 of the new Act express power was conferred to make rules relating to collection of dead rent, fines, fees and other charges and collection of royalties in respect of prospecting licenses, mining leases, etc.

The learned Advocate General contended therefore that when in 1957 Parliament, being fully aware of the provisions of the impugned State Act passed by the Orissa Legislature which was in force from 1952 and also being fully aware that under the old Central Act express power to make rules in respect of royalties, fees and taxes was conferred on the Central Government deliberately omitted to confer such express power in Sub-section (2) of Section 18 of the new Central Act, so far as conservation and development of minerals was concerned, the reasonable conclusion would be that the Central Government deliberately refrained from taking power in that behalf, and consequently it must be held that

the new Central Act and the impugned State Act do not cover the same field. The Parliament refused to enter on this field and left it free to the State Legislature, by the impugned State Act to deal with the subject. Hence according to him the impugned State Act cannot be said to have been "impliedly repealed" by the new Central Act.

11. Mr, Chowdhury for the petitioners met this argument by saying that though the power to make rules relating to levy of royalties, fees or taxes was not expressly conferred by Section 18(2) of the new Central Act, nevertheless, such a power is impliedly granted by the wide language used in Section 18(1) and that the matters specified in Sub-section (2) of Section 18 were intended to be only illustrative and not restrictive, having regard to the opening words of that sub-section. "Without prejudice" to the generality of the foregoing power. According to Mr. Chowdhury the power to levy fees for the conservation and development of minerals is ancillary to the general and wide power conferred on the Central Government by Sub-section (1) of Section 18 which authorises them "to take all such steps as may be necessary for the conservation and development of minerals etc. "Hence, according to him, Section 18 of the new Central Act and Section 6 of the old Central Act both cover the same field and the impugned State Act also deals with the same subject.

12. I am inclined to accept the contention of Mr. Chowdhury. It is well known that the established Indian practice of the statutory drafting in rule making clauses is to follow the statement of the general power in the first sub-clause, with setting out in detail the various purposes to be served by the rules in the second sub-clause with particular reference to every matter on which, the rules may be made or which has to be or may be prescribed. With a view to make it absolutely clear that the reference to the particulars in the second sub-clause is meant to be illustrative and not restrictive, that sub-clause contains the significant words "without prejudice to the generality of the foregoing powers". This question came up directly for decision before the Privy Council in the well-known *Shibnath Banerjee's case* AIR 1945 156 (Privy Council) . Section 2(1) of the Defence of India Act conferred on the Central Government the general power to make rules and Sub-section (2) contained various clauses dealing with matters regarding which rules may be made, but that subsection contained the opening words, "without prejudice to the generality of the powers conferred by Sub-section (1)."

Their Lordships of the Privy Council overruled the decision of the Federal Court and held that Sub-section (2) was merely illustrative and that the rule making power was really conferred by Sub-section (1) of Section 2 and that the words "Without prejudice to the generality of the foregoing power" showed that the provisions of Sub-section (2) were not restrictive of the power conferred by Sub-section (1). It must therefore be held that Sub-section (2) of Section 18 of the new Central Act is not restrictive of the powers conferred by Subsection (1) and consequently the mere omission of any reference to "fees, royalties and taxes" in Subsection (2) would not lead to the inference that the rule making power of the

Central Government in respect of those matter is excluded from the scope of Sub-section (1) of Section 18.

On the other hand the difference in language between Sub-section (1) of Section 18 of the new Central Act and Sub-section (1) of Section 6 of the old Central Act is significant. By the former the Parliament cast on the Central Government the imperative duty of taking all such steps as may be necessary for the conservation and development of minerals. The word "all" must mean the power conferred was very wide and was intended to include even ancillary power such as the levy of fees and taxes for the purpose of conservation and development of minerals. It is also clear that the Parliament intended that the Central Government alone should have that power and nobody else subject, of course, to its right to delegate, as provided in Section 26. It must necessarily follow from this that Section 18 of the new Central Act covered the same field as was covered by Section 6(1) of the old Central Act, and bearing in mind the observation of the Supreme Court referred to above, it must be further held that the impugned State Act also covers the same field.

13. Thus we reach a peculiar position not expressly provided for in the Constitution. When the impugned State Act was passed by the Orissa State Legislature in 1952 it had undoubted competence to legislate on the subject in view of the express power conferred by Entry 23 read with Entry 66 of list II of Seventh Schedule to the Constitution and that Act remained in force validly until 1957, when Parliament after making a declaration under Entry 54 of list 1 legislated in respect of the same subject matter by passing the new Central Act. From that day the State Legislature lost its competence to legislate on the subject because as pointed out by the Supreme Court in the aforesaid case : "the limitation imposed by the latter, part of Entry 23 is a limitation imposed on the competency of the State legislature itself".

14. The question which naturally poses itself is: What will be the effect of the new law on the old law? The very duty cast by the old law on the State Government, to take necessary steps for regulation and development of mining areas and to provide amenities for the people residing therein, by levying cess etc. has been cast on the Central Government by the new law in the wide language used in Sub-section (1) of Section 18. Article 284 of the Constitution cannot be taken in aid to reconcile these two laws because that article deals with the power to legislate with respect to matters in the concurrent List. Mr. Chowdhury urged that guidance may be taken from Article 251 to resolve this difficulty. He also urged that the Parliament's power to legislate under Clause (1) of Article 246 being paramount and the power of the State Legislature under Clause (2) of that Article being subject to Clause (1) of that Article it must be held that the State Law ceased to be operative when the Parliament made the law in respect of matters covered by the impugned State Act. Article 251 may not apply strictly to this case because that provision deals with "inconsistency" between the law made by Parliament under Article 249 and Article 250 and a Law

made by the Legislature of a State.

Under these two Articles though the parliament may by appropriate resolution or proclamation have power to legislate in respect of matters enumerated in the State List, nevertheless the "Competence" of the State Legislature in respect of these matters is not taken away. Article 251 merely says that so long as Parliament's law prevails the law made by the State Legislature shall be inoperative. Here however as soon as the declaration was made under Entry 54 of List I the competence of the State Legislature to legislate on the subject were automatically extinguished. Notwithstanding this difference, Article 251 may be taken in aid along with the general principle of "implied repeal" of an earlier Act by a later Act dealing with the same subject

15. It is true that the principle of "implied repeal" must be applied cautiously and the Courts generally do not lean in favour of such repeal. But where there seems clear repugnancy between a later Union Law and an earlier State Law, there seems no other alternative except to hold the State Law to be inoperative as having been impliedly re-pealed by the later law. There are various tests to decide the existence of repugnancy between two laws but it is well settled that one of the important tests is whether the Union Law is intended to be a complete code on the subject even though there may not be actual conflict between its provisions and the provisions of the earlier State Law. In this connection I may quote the following observations of Dr. Lushington in (1865) 12 LT 316, (The India) :

"A prior statute would, I conceive be repealed by implication if its provisions were wholly incompatible with a subsequent one; or if the two statutes together would lead to wholly absurd consequences if the entire subject matter has been so dealt with in the subsequent statute that according to all ordinary reasoning the particular provisions in the prior statute could not have been intended to subsist".

To a similar effect as the following observation of Issac, J. in (1926) 37 CLR 466 (489), *Clyde Engineering Co. v. Cowburn*.

"But surely the vital question would be; was the second Act, on its true construction, intended to cover the whole ground and therefore to supersede the first. If it was so intended, then the inconsistency would consist in giving any operative effect at all to the first Act because the second was intended entirely to exclude itIf however a competent legislature expressly or impliedly evidences 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".

Again in (1937) 58 CLR 618 at p. 630 *Victoria v. Commonwealth* it was pointed out:

"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".

Judged by these principles there can be no doubt that when the new Central Act was passed by Parliament it was intended to be a complete code on the subject of conservation and development of minerals. The wide powers conferred by Sub-section (1) of Section 18 of that Act must include the development of mining areas with a view to provide better amenities for the residents of the areas including the mine owners, their labourers and other persons residing there, specially when Parliament cast this imperative duty on the Central Government, knowing fully well that the State Legislature had already passed a law for the same purpose in 1932.

The State law must therefore be held to have been impliedly repealed by the Central Law (except in respect of past and closed transactions as held by Fazl Ali J. in *Keshavan Madhava Menon Vs. The State of Bombay*, . If the Parliament's intention was to keep alive the impugned State Law also, there was nothing to prevent them from inserting a special clause in the new Central Act continuing in force (the impugned State Act until the Dominion Government choose to make rules under the new Central Act for the purpose. On the other hand by Section 29 of the new Central Act nothing was kept alive except the Mining Concession Rules, 1949.

16. The fact that the Central Government have not made any rules u/s 18 of the new Central Act does not materially affect the constitutional position. In the aforesaid Supreme Court decision also their Lordships noticed the fact that u/s 6 of the old Central Act no rules had been made. Nevertheless they held that that Section covered the same field as was covered by the impugned State Act.

17. I may now notice an argument raised by the Advocate General based on the observations of the Calcutta High Court reported in *Aluminium Corporation of India Ltd. Vs. Coal Board*, . There one of the important questions for decision was whether Sub-section (1) of Section 8 of the Coal-mines (Conservation and Safety) Act 1952 in so far as it purported to impose a duty on all coal raised and despatched to collieries was a valid piece of legislation. An attempt was made to uphold the validity of that Act by contending that under entry 54 of List 1 the power conferred on the legislature in respect of mineral development (after making the necessary declaration) impliedly included the power to levy taxes on minerals for that purpose. The learned Judges of the Calcutta High Court did not accept this argument but pointed out that taxes may be of two kinds; those imposed purely in aid of revenue and those imposed for the purpose of controlling the thing taxed. They further held that the tax imposed under the impugned provision was a tax in aid of the public revenue and that the power to levy such a kind of tax could not be inferred impliedly from Entry 54 alone, in view of the express mention in the Constitution of other Entries dealing with the power of taxation.

The Advocate General relied On this observation and urged that though ordinarily, the wide power conferred by Sub-section (1) of Section 18 of the new Central Act to make rules for the conservation and development of minerals would include the power to levy fees for that purpose, nevertheless as the power to legislate in respect of "fees" was expressly conferred by a separate entries in the list, namely Entry 96 of List I and Entry 66 of List II. No implied power to levy fee for any purpose can be inferred from any statutory provision and that the Legislature must itself confer such power expressly. In my opinion the aforesaid Calcutta decision does not go so far as that. While making a distinction between the two types of taxes, the learned Judges seemed to be of the view that a tax imposed for the purpose of controlling the thing taxed might possibly come within the scope of Entry 54. They were mainly concerned with the question as to whether the power to levy tax in aid of public revenues could be impliedly inferred from Entry 54 of List I and they answered that question in the negative because the power to tax was conferred by independent Entries in the various lists. But the power to levy fees conferred by the List is not an "independent power inasmuch as it is limited by the Entries themselves to only those matters specified in the Lists.

Hence when the Parliament by making the necessary declaration purported to legislate, in respect of Entry 54, it necessarily follows, as a matter of construction, that the declaration was intended to include within its scope, the power to legislate in respect of "fees" also, as in Entries 54 and 96 of List I, thereby taking away the power of the State Legislature under entry 23 read with Entry 66 of List II. If it was merely a question of construction of Entry 54 of List I there might be some force in the contention of the Advocate General that the power to levy a fee could not be implied from that Entry, in view of the express power to levy such fee conferred by Entry 96. But here we are primarily concerned with the true meaning of the declaration made by Parliament in Section 2 of the new Central Act. The true scope and, content of that declaration is to be found in the subsequent provisions of that Act. Once it is held that Sub-section (1) of Section 18 of the Central Act is very wide and admits of no restriction whatsoever, it follows as a necessary inference that the declaration u/s 2 of that Act included within its wide sweep the power to levy fees for the purpose of conservation and development of minerals.

18. In this connection some of the observations of the Supreme Court in *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, are relevant. It is true that their Lordships were dealing with the old Central Act which, as already pointed out, expressly deals in Clause (i) of Sub-section (2) of Section 6 with the power to levy fees but the following passage in the judgment (at pp. 229-30 (of SCA): (at p. 470 of AIR) would seem to indicate the provision in Clause (i) of Sub-section (2) of Section 6 did not influence their Lordships in coming to the conclusion that the old Act and the impugned Act deal with the same matter:

"Section 6 of the Act however empowers the Central Government to make rules by notifications in the Official gazette for the conservation and development of minerals. Section 6(2) lays down several matters in respect of which rules can be framed by the Central Government. This power is however without prejudice to the generality of the power conferred on the Central Government by Section 6(1). Amongst 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 the 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 decision." 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 it is expedient in the public interest to take the regulation and development of mines 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 Central Act 53 of 1948."

The words underlined (here into " ") are very significant. Their Lordships have made it absolutely clear that the main test is whether the Legislature's declaration covers the field or not and not what is the scope of the Entry 54 of List 1.

19. This is sufficient for the disposal of these applications. I should, however, notice another argument of Mr. Chowdhury. He contended that the view taken by their Lordships of the Supreme-Court in the aforesaid case to the effect that the levy contemplated by the Impugned State Act is a fee and not a tax is not correct and that the cess is in reality a tax and not a fee. In support of this contention he urged that the persons who benefit from the cess are not necessarily the owners of the mines or minerals, or the labourers working in the mines, in which case an element quid pro quo may reasonably be said to be present, but that all persons residing in the mining area irrespective of their occupations, such as cultivators shop-keepers, other professional men and other residents who have nothing to do directly or even indirectly with the extraction of the minerals will also equally benefit from the amenities provided under the

impugned State Act and consequently the element of quid pro quo was wanting. He relied on an Allahabad decision reported in AIR 1942 All 156, *Emperor v. Munnalal* in support of his contention that local cess is distinguishable from a fee.

Developing this argument he further urged that the cess imposed by the impugned State Act, being of the nature of a tax, imposed restrictions on inter-State trade and that it would not be saved by Article 304 of the Constitution inasmuch as the President's sanction was not obtained prior to the introduction of the Bill, and moreover the restrictions imposed by the impugned State Act were unreasonable. We are however bound by the decision of the Supreme Court that the levy imposed by the impugned Act is a fee and not a Tax, and hence it is unnecessary to discuss this question beyond merely referring to the argument of Mr. Chowdhury as desired by him.

20. The applications are therefore allowed with costs and it is declared that the impugned Orissa Act viz. Mining Areas Development Fund 1952, (Orissa Act 27 of 1952) ceased to be operative from the commencement of the new Central Act, viz., the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act 67 of 1957). A direction shall issue to the Administrator, Orissa Mining Areas Development Fund prohibiting him from taking steps to levy cess under the impugned Act, on the petitioners. The demand notices already issued on them shall stand cancelled. There will be one set of bearing fee, which we assess at Rs. 200/- in both these applications.

R.K. Das, J.

21. I agree.