
(1980) 10 GUJ CK 0022
In the Gujarat High Court

Smt. Sonbai Pethalji

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 24-10-1980

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g)

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 15

Citation : (1980) 2 GLR 530

Hon'ble Judges : S.H. Sheth, J;G.T. Nanavati, J

Bench : Division Bench

Judgement

S.H. Sheth, J.—This group of 26 cases consists of 25 writ petitions and one Letters Patent Appeal. In all these cases, common questions of law arise. They are, therefore, decided by common judgment. The writ petition out of which Letters Patent Appeal No. 62 of 1978 arise was dismissed by the learned Single Judge. In that petition also, the questions which were raised are the questions raised now before us.

2. The petitioners in all these cases are holders of quarry leases granted to them by the State Government under Gujarat Minor Mineral Rules, 1966. These rules have been made by the State Government in exercise of the power conferred upon it by Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957. Under the leases granted to the petitioners, the petitioners are liable to pay dead rent in respect of the area leased out of them for the purpose of excavation of minor minerals. The rates at which dead rent was prescribed prior to March 26, 1979 were much lower than the rates at which it has been fixed after they were revised under the notification issued on March, 26, 1979. The revised rates came into force with effect from 1st April 1979.

3. The petitioners in all these petitions, therefore, challenge firstly the rule which empowers the State Government to charge dead rent and secondly the notification dated 26th March 1979 under which the rates at which dead rent is payable by the petitioners have been revised.

4. The following three contentions have been raised on behalf of the petitioners:

(1) Rule 21-B of the Gujarat Minor Mineral Rules, 1966 is ultra vires Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957.

(2) The notification issued by the State Government on 26th March 1979 is ultra vires Section 15 of the Act and Article 19(1)(g) of the Constitution.

(3) In any case, Section 15 of the Act does not empower the State Government to charge enhanced dead rent with retrospective effect.

5. In order to appreciate the contentions which have been raised on behalf of the petitioners, it is necessary to examine the scheme of the Act and the rules in so far as it relates to dead rent. Section 14 of the Act provides: "The provisions of Sections 4 to 13 (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals." The expression "minerals" has been defined by Section 3(a) in the following terms: "minerals" includes all minerals except mineral oils." We are not concerned in the instant case with "minerals oils." Section 3(e) defines "minor minerals" in the following terms: "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral." When Section 14 is read in light of Section 3(a) and Section 3(e), it becomes very clear that the Act has distinguished between "minerals" and "minor minerals". By virtue of the provisions of Section 14, Sections 4 to 13 do not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals. The necessary inference which flows from this negative provision in Section 14 is that Sections 4 to 13 apply to minerals other than minor minerals.

6. So far as minor minerals are concerned, the only material power vision is Section 15. Section 15 confers upon the State Government power to make rules in respect of minor minerals. In other words, the entire regulation of grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals has been left to be done by the State Government by making rules in that behalf. There does not appear to be any substantive provision in the Act dealing with particular aspect of minor minerals. Dead rent with which we are concerned in this group of cases is the subject-matter of Rule 21-B.

7. The rules have been made by the State Government u/s 15. Sub-section (1) of Section 15 provides as follows:

The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases mining leases, or other mineral concessions in respect of minor minerals and for purposes connected therewith.

Sub-section (2) is not very material for the purpose of these cases because it provides for transition from the rules earlier governing the field to the rules made by the State Government u/s 15. We, therefore, do not reproduce it here. Sub-

section (3) which empowers the State Government to charge royalty in respect of a mining lease or any other mineral concession granted by it is very important for the present purpose. It is as under:

The holder of a mining lease or any other mineral concession granted under any rule made under Sub-section (1) shall pay royalty in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sublessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals:

Provided that the State Government shall not enhance the rate of royalty in respect of any minor minerals for more than once during any period of four years.

Sub-section (3) did not find place in the Act when it was originally enacted. It was inserted by Central Act 56 of 1972. Until it was inserted by the Central Act 56 of 1972, the only power which the State Government had was the power to make rules for regulating the grant of quarry leases, mining leases and other mineral concessions. Until then, if the State Government charged royalty or dead rent in respect of a lease granted by it, it was apparently a consequence which flowed from its power to regulate, under Sub-section (1) of Section 15 the grant of quarry leases, mining leases or other mineral concessions. Central Act 56 of 1972 made a number of amendments to the Act. Insertion of Sub-section (3) in Section 15 with proviso was one of the amendments. Section 8 of the Amending Act, inter alia, stated as under: "Alter Sub-section (2), the following sub-section shall be inserted and shall be deemed always to have been inserted." The language used in Section 8 of the Amending Act gave retrospective effect to Sub-section (3). It appears, therefore, that the Parliament instead of depending upon the rule-making power conferred upon the State Government under Sub-section (1) to regulate the grant of quarry leases, mining leases and other mineral concessions thought fit to insert Sub-section (3) in order to provide for charging royalty. It is quite probable that the Parliament might have thought that "regulation" of grant of quarry leases, mining leases or other mineral concessions might not imply the power to make rules charging royalty in respect of a mining lease or quarry lease granted to a lessee.

8. Now, "royalty" is different from dead rent" Rule 21-B has been made by the State Government under Sub-section (1) of Section 15. It reads as follows:

21-B. Rate of dead rent-The holder of a mining lease or any other mineral concession granted under these rules shall pay in advance yearly dead rent in respect of minor minerals specified in column I for the areas mentioned in column 2 at the rates respectively specified against them in column 3 of Schedule II.

The expression "dead rent" has not been defined either in the Act or in the rules. We could not find out its exact connotation even from the dictionary. In our opinion, "dead rent" is the rent which is payable by a lessee in respect of an area leased out to him by the State Government, irrespective of whether he is able to

produce any minerals from his leasehold area or not or whether he is able to produce adequately or not. The liability to pay dead rent is not absolute in the sense that it has to be paid in addition to the royalty which is payable under the [lease by a lessee to the State Government. Rule 22 makes it payable as an alternative to royalty if exceeds the amount of royalty. The relevant part of Rule 22 as amended with effect from 26th March 1979 is as follows:

The lessee shall also pay to Government for every year of the lease the yearly dead rent specified in Schedule 31 and if the lease permits the working of more than one minor mineral in the same area, competent officer may fix separate dead rent in respect of each mineral:

Provided that the lessee shall be liable to pay the dead rent or royalty in respect of each mineral whichever is higher, but not both.

Under the same rule, surface rent is also payable by a lessee to the State Government. Sub-rule (ii) of Rule 22 in that behalf provides as follows:

The lessee shall also pay to Government for the surface area leased to him surface rent at the rate prescribed by Government from time to time.

There are other obligations also which are cast on the lessee under Rule 22. We are not concerned with all those obligations. When we read Rule 21-B with Rule 22, we find that a lessee is liable to pay to the State Government royalty or dead rent whichever is higher and surface rent.

9. The first contention which has been raised before us is whether the State Government has the power to make Rule 21-B and create liability for a lessee to pay dead rent in respect of the area leased out to him. There is no doubt about the fact that the power to make Rule 21-B can be inferred, if it can be inferred, only from the power of regulating the grant of leases (See Sub-section (1) of Section 15). The argument which has been advanced on behalf of the petitioners is that so far as the financial liability of a lessee is concerned, the Parliament has made a specific provision in Sub-section (3) of Section 15 empowering the State Government to make rules in relation to the royalty payable by a lessee in respect of minor minerals removed or consumed by him or on his behalf. The question which arises, there fore is this: Can it be said that when the Parliament has made an express provision empowering the State Government to make rules in respect of a lessee's financial liability in the shape of royalty, the Parliament has left the power of charging dead rent to be inferred from "the regulation of leases?" We are aware of the fact that Sections 4 to 13 do not apply to leases in respect of minor minerals. In order only to find out the legislative intention of Parliament, we refer to Section 9A and Section 15. Section 9A was inserted in the Act by Central Act 56 of 1972. Until then it was not on the statute book. It expressly provides:

The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development)

Amendment Act, 1972, shall, notwithstanding anything contained in the instrument of lease or in any other law for the time being in force, pay to the State Government, every year, dead rent at such rate as may be specified, for the time being, in the Third Schedule, for all the areas included in the instrument of lease:

Provided that where the holder of such mining lease becomes liable, u/s 9, to pay royalty for any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area, he shall be liable to pay either such royalty or the dead rent in respect of that area, whichever is greater.

Sub-section (2) which places a limited fetter on the power of the Government to enhance or reduce the rate at which dead rent may be payable is not very material for the purpose of the present case. Proviso to Sub-section (2) of Section 9A, however, lays down that the Central Government shall not enhance the rate of the dead rent in respect of any such area more than once during any period of four years.

10. Two important propositions emerge from Section 9A. The Parliament has made an express statutory provision for charging a lessee dead rent in respect of a lease granted to him for excavating a mineral other than a minor mineral. Secondly, the amount of dead rent which the Government may charge such a lessee cannot be enhanced during a period of four years. In other words, the power to enhance dead rent is limited by the proviso to Sub-section (2) of Section 9A. We do not find any such express provision made by Parliament enabling the State Government to make a rule for charging the lessee of a minor mineral dead rent. Section 13 confers upon the Central Government power to make rules regulating the grant of prospecting leases and mining leases in respect of minerals other than minor minerals and for the purposes connected therewith. That Section 13 applies to minerals other than minor minerals is made clear when we read it with Section 14. Sub-section (1) of Section 13 which confers the general rule making power on the Central Government reads as follows:

The Central Government may, by notification in the Official Gazette, make rules for regulating the grant of prospecting licences and mining leases in respect of minerals and for purposes connected therewith.

Sub-section (2) of Section 13 specifies the subjects on which rules can be made by the Central Government without prejudice to the generality of the power conferred upon it under Sub-section (1). Clause (i) of Sub-section (2) of Section 13 reads as follows:

(i) the fixing and collection of dead rent, fines, fees or other charges and the collections of royalties in respect of:

(i) prospecting licences,

(ii) mining leases,

(iii) minerals mined, quarried, excavated or collected.

We, therefore, find two express provisions in the Act in regard to dead rent which a lessee may be charged in respect of a mineral other than a minor mineral. The substantive provision is contained in Section 9A which indeed came into force in 1972, The rule-making power is contained in Clause (i) of Sub-section (2) of Section 13. It indeed has been on the statute book since the inception of the Act. Therefore, even when Section 9A was not on the statute book, Clause (i) of Sub-section (2) of Section 13 was on the statute book. We find no such express provision in respect of minor minerals in Section 15 or anywhere else in the Act. It has therefore, been argued on behalf of the petitioners that in absence of any provision corresponding to Section 9 A and Section 13(2)(i) in respect of minor minerals, the State Government has no power u/s 15 to make Rule 21-B charging the leases of a minor mineral dead rent in respect of the area leased out to him. There is great force in this submission. If the Parliament thought fit to make a substantive provision in Section 9A (indeed in 1972 in respect of a mineral other than a minor mineral) and also thought fit to make an express provision in that behalf in Clause (i) of Sub-section (2) of Section 13, we cannot infer, in absence of anything else, only from the rule-making power of the State Government to regulate the grant of leases (Sub-section (1) of Section 15) the power to charge a dead rent. To hold that an express provision made by Parliament in respect of one matter is equal to omission to make a legislation in respect of another matter militates against all settled principles of construing statutes. Assuming without holding that power to regulate grant of leases (Sub-section (1) of Section 15) ordinarily implies the power to make a rule charging dead rent, that implication cannot in the case of the present Act be drawn from Sub-section (1) of Section 15 because of the existence of Section 9A and Section 13(2)(i) on the statute book. The view which we are taking is supported by Sub-section (3) of Section 15. It has been reproduced above. It confers upon the State Government express power to make rules in respect of the financial liability in the shape of royalty which a lessee is required to pay. If the Parliament thought fit to make such an express provision in respect of royalty, there is no reason why the Parliament could not have made an express provision in respect of dead rent so far as minor minerals are concerned. It is, therefore, difficult for us to persuade ourselves to hold that though Parliament has made an express provision in respect of royalty in Sub-section (3) of Section 15, it has left another aspect of lessee's financial liability to be inferred from Sub-section (1) of Section 15. When we read Sub-sections (1) and (3) of Section 15 together, no doubt is left in our minds that so far as the conditions of lease relating to financial liability of a lessee are concerned, they derive their authority from Sub-section (3). So far as conditions other than those relating to lessee's financial liability regulating the grant of a lease to a lessee are concerned, they derive their authority from Sub-section (1) of Section 15. We think that it was on account of this reason that the Parliament plugged the loophole and inserted Sub-section (3) in Section 15

with retrospective effect from the date on which the Act came into force.

11. In reply, it has been argued by Mr. Takwani that power to regulate the grant of a lease in respect of a minor mineral necessarily implies the power to make a rule in respect of dead rent. We are unable to subscribe to the view expressed by Mr. Takwani because, as stated hereinabove, it is in direct conflict, so far as parliamentary intention is concerned, with Section 9A and Section 13(2)(i) on one hand and Sub-section (3) of Section 15 on the other hand.

12. Mr. Takwani has invited our attention to the decision of a learned single Judge of the Rajasthan High Court in *Brimco Bricks, Bharatpur Vs. State of Rajasthan and Another*, . It was a case under the Rajasthan Minor Mineral Concession Rules, 1959, made u/s 15 of the Act. It may be noted that Section 15 at that time consisted only of Sub-section (1) and Sub-section (2). There was no Sub-section (3) then. Since Sub-section (3) was not there, the question which arose was whether it was within the statutory authority of the State Government u/s 15 to make a rule under Sub-section (1) of Section 15 in respect of royalty which a lessee may have to pay. The learned Single Judge considered the connotation and amplitude of the expression "regulation" and firstly held that the word "regulate" confers power upon the authority to control and govern by rules or regulations. Secondly in the opinion of the learned Single Judge, Sub-section (1) of Section 15 was couched in a language which conferred a wide power on the State Government to include in the rules framed thereunder all those matters which were necessary for the grant of prospecting licences and mining leases in respect of the minor minerals. The learned Judge emphasized the expression "purposes connected therewith" used in Sub-section (1) of Section 15. Expounding that connotation, the learned Judge has observed that the fixation of royalty for extracting minor minerals undoubtedly fell within the expression "purposes connected therewith". Under Sub-section (1) of Section 15, the State Government, in his opinion, could lawfully prescribe the rate of royalty for the grant of prospecting licences or leases in respect of minor minerals. He, therefore, rejected the argument which was advanced to the contrary. In the first instance, this decision does not deal with the width and amplitude of Sub-section (1) of Section 15 in light of the parliamentary intention evidenced by Section 9A and Section 13(2)(i) as well as Sub-section (3) of Section 15. Secondly, when the learned Judge interpreted the word "regulating" used in Sub-section (I) of Section 15 Sub-section (3) was not on the statute book. In this group of cases, we are concerned with delineating the correct frontiers of Sub-section (1) of Section 15 in light of the parliamentary intention expressed in Section 9A. 13(2) (i) and Sub-section (3) of Section 15. We are, therefore, unable to accept that decision as an authority for the proposition that power to regulate grant of leases conferred upon the State Government under Sub-section (1) of Section 15 necessarily includes the power to make rule charging dead rent in respect of the area leased out by the State Government to a lessee.

13. Mr. Takwani has further argued that we must bear in mind the objects with

which a lessee is charged dead rent. According to him, they are three-fold. The liability to pay dead rent forces a lessee to have maximum production with the result that he may significantly add to the production of mineral wealth of the nation. The second object which has been described by him is "decentralization and discouragement of monopolistic lease-holds". What Mr. Takwani means is that liability to pay dead rent irrespective of mineral wealth excavated from a leasehold area will act as a deterrent to take on lease big areas for mining purposes. If a few persons do not, under the aforesaid circumstances, take on lease bigger areas, the mining areas remaining the same, they would come to be distributed amongst a large number of applicants or lessees. The third object which Mr. Takwani has pressed into service is that payment of dead rent safeguards revenue of the State for the simple reason that even if a lessee is not able to excavate a minor mineral, he shall pay a certain amount to the State Government. According to him, if there is no provision to pay a dead rent, a lessee may take on lease a particular area for mining purposes, may sit idle or become negligent and may not excavate any minor mineral from his leasehold. In such a case, no royalty will be payable to the State Government and the State will lose the revenue. The objects which Mr. Takwani has pressed into service are indeed very laudable objects. No exception can be taken to them. But, we cannot take into account the objects underlying Rule 21-B and hold that, irrespective of whether the State Government has the power to make a rule in respect of dead rent, the rule is within the statutory power of the State Government u/s 15 of the Act. In that behalf, he has invited our attention to the decision of the Supreme Court in *Pathumma and Others Vs. State of Kerala and Others*, . Therein the Supreme Court has adverted to certain philosophical aspects of social legislation. It does not help Mr. Takwani in establishing the proposition that Sub-section (1) of Section 15 necessarily confers upon the State Government power to make Rule 21-B.

14. One more argument which he has advanced is as follows. Clause (1) of Sub-section (2) of Section 13 expressly provides in respect of a mineral other than a minor mineral for making a rule in respect of dead rent. Necessarily, therefore, Sub-section (1) which confers upon the Central Government the general rule-making power implies it. It is a well settled proposition of law that subjects which are mentioned in Sub-section (2) of the section which confers upon the Government rule-making power do not cut down the amplitude of general power conferred upon the Government under Sub-section (1) of such a Section (See AIR 1945 156 (Privy Council) and *Santosh Kumar Jain Vs. The State Union Of India (Intervener)*, . Now, if the power conferred by Clause (i) of Sub-section (2) is implicit in Sub-section (1) of Section 15, can it not be said that such a power is also implicit in Sub-section (1) of Section 15? Would the construction of Sub-section (1) of Section 15 make any difference because that section does not have a provision similar to Sub-section (2) of Section 13. This argument indeed is ex facie attractive. Sub-section (1) of Section 13 and Sub-section (1) of Section 15 are in *pari materia* with each other. If Sub-section (1) of Section 13 implies the

power to make a rule in respect of dead rent, why can't it be said that Sub-section (1) of Section 15 also implies such a power in respect of a minor mineral?

15. It has been argued on behalf of the petitioners that whether to charge dead rent or not is a matter of legislative policy and that it cannot by implication be delegated to the State Government. It has also been argued that if we take the view that Sub-section (1) of Section 15 necessarily implies the power of making a rule in respect of dead rent so far as minor minerals are concerned, it would suffer from excessive delegation. It is not necessary to enter into the niceties and sophistication of the vice of excessive delegation. It is sufficient for the purpose of the present case if we say that omission on the part of the Parliament to make any express provision touching dead rent in respect of minor minerals does not warrant the conclusion that though Parliament has made such an express provision in respect of minerals other than minor minerals, we should infer it, so far as minor minerals are concerned, from the State Government's power to make rules regulating the grant of leases. Next, we do not, in this view of the matter, propose to answer whether power to regulate grant of leases, if it carries with it the power to make a rule for charging dead rent, will suffer from excessive delegation.

16. We have examined the relevant provisions of the Act and the Rules. In our opinion, in the context of the scheme which the Act discloses, Section 15 does not confer on the State Government power to make Rule 21-B in order to enable it to charge a lessee dead rent. Therefore, Rule 21-B is ultra vires the power of the State Government u/s 15 of the Act and we declare it accordingly.

17. In view of the conclusion which we have recorded on the first contention, it is strictly not necessary for us to answer the other contentions which have been raised on behalf of the petitioners. However, we briefly express our opinion on them. Notification dated 26th March 1979 by which amendment has been made to the Gujarat Minor Mineral Rules, 1966, must necessarily be held to be ultra vires Section 15 in view of the conclusion which we have recorded on the first contention, this is the only answer which we can give to the second contention which has been raised on behalf of the petitioners. It has also been argued that it is ultra vires Article 19(1)(g) inasmuch as it enables the State Government to unilaterally enhance the rates at which dead rent can be charged even during the currency or the subsistence of a lease. In all these cases, the leases granted to the petitioners have not yet expired. During the currency of those leases, the rates at which dead rent is payable by them has been enhanced. It is necessary to find out what the State Government has done in that behalf. Prior to 1st April 1979 when the impugned amendment came into force, dead rent was payable at the following rates. It was payable under Rule 22 and not under Rule 21-B. Prior to 6th April 1976, for the purposes of dead rent, minor minerals were classified into two categories under Rule 22 (i) specified minor minerals (ii) and other minor minerals. In respect of specified minor minerals, dead rent was payable at the rate of 00.25 P. for every 100 square metres or part thereof upto the total

area of five hectares. Where the total area exceeded five hectares, Rs. 40/-were payable for each additional hectare or part thereof. In respect of other minor minerals, 00.10 p. were payable for every 100 square metres or a part thereof upto a total area of five hectares. Where the total area exceeded five hectares, Rs. 25/-was payable in respect of each additional hectare or part thereof. Dead rent payable prior to 6th April 1976 was, therefore, quite nominal. On 6th April 1976, the State Government issued a notification by which it amended the rates and provided that for quarry leases for any minor mineral Rs. 500/-shall be payable as and by way of dead rent for every hectare or part thereof and that for every quarry "Parwana" for any minor mineral Rs. 100/-shall be payable per "Parwana". With effect from 1st April 1979, these rates have been raised sky-high. Minor minerals, with effect from that date, have been classified under 12 heads for the purposes of dead rent. In respect of lime stone including lime Kankar and lime shells, Rs. 1.5CC/-are payable per hectare or part thereof. For marble and sand stone, Rs. 1,200/-are payable per hectare or part thereof. For black trap, chelsedony pebbles, flint pebbles, quartzite pebbles and coloured stones used for decoration, Rs. 3,000/-are payable per hectare or part thereof. For other building stones not mentioned in the notification dated 26th March 1979, road metal, murrum and gravel Kankar, Rs. 1,200/-are payable per hectare or any part thereof. For brick earth (provided that no dead rent should be charged from the village potter, if the production is less than 50,000 bricks per year) Rs. 3,000/-are payable per hectare or part thereof For ordinary clay, Rs. 1,200/-are payable per hectare or part thereof. For ordinary sand, Rs. 2,000/-are payable per hectare or part thereof. For bentonite and fullers earth and all other minor minerals not therein specified, Rs. 1,200/-are payable per hectare or part thereof. These figures leave no doubt in our minds that the financial liability of a leases has been increased manifold by the impugned amendment.

18. The question which arises is whether during the subsistence of a lease its terms can be so modified by the State Government unilaterally as to increase manifold the financial liability of the lessee.

19. It has been argued on behalf of the petitioners that the grant of a lease creates a vested right in favour of the lessee and that that right cannot be unilaterally affected by the State Government by enhancing the dead rent payable by him. In reply, our attention has been invited by Mr. Takwani to Clause 12 of the lease. It reads as follows: "The quarry lease shall be subject to the Gujarat Minor Mineral Rules, 1966, as amended from time to time." It has been argued by Mr. Takwani that the lessees have agreed in advance to abide by the amendments or modifications which the State Government may make in the Gujarat Minor Mineral Rules, 1966 in other words, according to Mr. Takwani, the lessee has given prior consent to the unilateral increase in the dead rent which the State Government may make. We are not impressed by this argument at all because Clause 12 can be enforced only if there is a valid power to charge dead rent. We find none in case of minor minerals.

20. So far as Article 19(1)(g) is concerned, it guarantees to every citizen a fundamental right to carry on his business. When a lessee of a minor mineral takes on lease certain area, he invests capital therein, employs labour and hires the machinery. He also makes arrangements for marketing the mineral which he may win from his leasehold area. All these factors involve capital outlay. He takes into account how such capital will be required to be invested in the venture and, after paying all outgoings, what he will earn or what net income he will make. It cannot be gainsaid that to take a mining lease is to carry on business for the purpose of earning a living. Unilateral increase by the State Government in the amount of dead rent will certainly upset the financial calculations of the lessee. Inasmuch as his venture would be loaded with much greater financial liability than what he thought he would be loaded with when he took the lease, his right to carry on business would be adversely affected. In our opinion, therefore, during the subsistence of a lease, the State Government cannot unilaterally increase the amount of dead rent and cause financial or economic distress to the lessee placing in his way of carrying on business unforeseen difficulties which may prove damaging or ruinous to him. It has been argued by Mr. Takwani in this behalf that the lessee in such a case has a right to surrender the lease. It is not easy for a person who takes on lease a mining area to surrender the lease prematurely and to get out of it because such a surrender may not mean full recovery of the capital invested by him and may saddle him with pre-mature financial liability in the shape of retrenchment compensation to his workmen and the hire charges for machinery and such other charges which he may have to pay. Therefore, though it appears simple to say that one who does not agree to unilateral enhancement of dead rent may surrender the lease, in fact, it appears to be a booby trap which would bring financial ruin to an entrepreneur. Therefore, what is termed as a surrender is not a surrender of lease. It may as well turn out to be a surrender of the financial soundness of a lessee. On account of this reason, we are of the opinion that unilateral enhancement of rates at which dead rent is payable during the subsistence of a lease violates the lessee's fundamental right to carry on business under Article 19(1)(g).

21. We now refer to two decisions which have a bearing on the subject. One is in *Baijnath Kadio Vs. State of Bihar and Others*, . It was a case under Bihar Minor Mineral Concession Rules, 1964. One Jyoti Prakash Pandey had obtained a quarry lease in respect of a minor mineral from Bijan Kumar Pandey and Anila Devi on March 23, 1955. The leases were to commence from November 1, 1954 and to end on October 31, 1984. Jyoti Prakash sold his right, title and interest in the lease to appellant Baijnath on September 9, 1963. With the coming into force of Bihar Land Reforms Act, 1950, the lessors ceased to have any interest in the minor minerals as soon as they vested in the State of Bihar which became the lessor u/s 10(1) of that Act. u/s 10(2), the State Government was empowered to determine the lease by giving three months' notice in writing if the lessee had not commenced any prospecting or development work before the commencement of that Act. Indeed the lease could be thus determined before

the expiry of one year from the date of the commencement of that Act. Section 10(2) had a proviso which laid down as follows:

nothing in this sub-section shall be deemed to prevent any modifications being made in the terms and conditions of the said lease in accordance with the provisions of any Central Act for the time being in force regulating the modification of existing mining leases.

Rule 20 of Bihar Mineral Concession Rules, 1964 provided for charging a lessee dead rent, royalty and surface rent. It was applicable to leases granted after it came into force. Thereafter Rule 20 was amended and Sub-rule (2) was added to it. It provided as follows:

On and from the commencement of these rules, the provisions of Sub-rule (1) shall also apply to leases granted or renewed prior to the date of such commencement and subsisting on such date.

Sub-rule (2) unquestionably affected the terms of the already existing leases and was, therefore, retrospective in character. Two questions arose before the Supreme Court:

(1) Whether proviso to Sub-section (2) of Section 10 of Bihar Land Reforms Act, 1950 was ultra vires the legislative competence of Bihar State Legislature.

(2) Whether Sub-rule (2) of Rule 20, in so far as it affected the terms and conditions of the already existing leases, was ultra virus the power of the Government of Bihar.

Supreme Court answered both the questions in the affirmative. We are really not concerned in these cases with the reasons which led to the affirmative answer to the first question. Suffice it to say for the purpose of these cases that by Section 2 of the Mines and Minerals (Regulation and Development) Act, 1957 the Parliament had made a declaration that it was in public interest that the Union should take under its control the regulation of mines and the development of minerals and that, therefore, the subject-matter of proviso to Section 10(2) of Bihar Land Reforms Act, 1950 fell within the exclusive jurisdiction of Parliament under Entry 54 in Union List and to that extent Entry 23 in State List stood down.

22. Reasons given in support of affirmative answer to the second question are very material. Sub-rule (2) of Rule 20 could not be justified under proviso to Sub-section (2) of Section 10 of Bihar Land Reforms Act, 1950, because it was held to be ultra vires the legislative competence of Bihar State Legislature. It could not be justified under the Mines and Minerals (Regulation and Development Act, 1957. This Act did not confer any power upon the State Government to alter the terms and conditions of the existing leases so as to affect the vested rights adversely. By a mere rule, vested rights cannot be adversely affected. This is what the Supreme Court has observed in this behalf.

Vested rights cannot be taken away except under authority of law and mere rule

making power without the support of a legislative enactment is not capable of achieving such an end" (Paragraph 21 of the report).

23. Proceeding further the Supreme Court has said:

.... Vested rights could only be taken away by law made by a competent legislature. More rule-making power of the State Government was not able to reach them. The authority to do so must, therefore, have emanated from Parliament.... As no such parliamentary law had been passed, the second sub-rule to Rule 20 was ineffective" (paragraph 24 of the report.

24. The view which have expressed on the second and third contentions in this group of cases received its primary sustenance from this decision of the Supreme Court.

25. The next decision is in Indian Aluminium Company Vs. Kerala State Electricity Board, . It was a case under the Electricity (Supply) Act, 1948. The question which arose in that case was whether a State Electricity Board has power to enhance the rates for supply of electricity notwithstanding an agreement binding it to supply electricity at certain rates where it finds that the contractual rates are less than the cost of generation, distribution and supply of Electricity and in the result there is loss to the State Electricity Board in its operations. In that case, on July 30, 1941, an agreement had been entered into between the Indian Aluminium company and the then Government of Travancore under which the Government offered to supply electric power to the Company at certain rates for a period of 34 years with an option to the company to renew it for 20 years. Later on, two more agreements were entered into. During the subsistence of these agreements, Kerala State Electricity Board, in exercise of power conferred upon it u/s 79(j) read with Sections 49 and 59 of that Act framed General Tariffs Regulations Under them, the Electricity Board could prescribe different tariffs for different classes of services under various heads and could also fix special terms and conditions for supply for special purposes. The Board could also amend the Regulations. They were amended in 1969. Section 59 of that Act enjoins the Board that "it shall not as far as possible carry on its operations under this Act at a loss and shall adjust its rates accordingly from time to time." u/s 49 and the Regulations and "other enabling provisions in the statute", the Board issued on 28th November 1969 Kerala State Electricity Board Extra High Tension Tariff Order, 1969 under which it fixed rates or tariffs for the supply of electric power which adversely affected the Company. They were made applicable notwithstanding anything to the contrary contained in any agreement already entered into. Kerala State Electricity Board had been suffering in that case loss because the cost of generation, distribution and supply of electric power had gone up considerably.

26. This is what the Supreme Court has said while answering the question in the context of Section 49.

Once the agreements were made containing these stipulations, it was not

competent to the Board to override these stipulations which were binding as having been val-idly made in exercise of statutory power. The Board could not enhance the charges in breach of these stipulations. To hold that the Board unilaterally revise the charges notwithstanding these stipulations would mean that the stipulations had no binding effect, or, in other words, the Board had no power to enter into such stipulations. That would negate the existence of statutory power in the Board under Sub-section (3) of Section 4) to fit the charges for a fixed period of time which would be contrary to the plain meaning and intendment of the section. Moreover, if the stipulation as to charges were not binding and the Board could enhance the charges unilaterally in disregard of them, it is difficult to see how the agreements of which the stipulations formed a term as well as consideration could be sustained The stipulations as to charges are inseverable from the rest of the agreements and if these stipulations are disturbed and the charges are revised unilaterally by the Board, how could the agreements continue to bind the appellants? On the view contended by the Board, it would be impossible for a consumer to enter into an agreement with the Board for supply of electricity at a certain specified tariff (paragraph 17 of the report).

27. In the context of Section 59 which enjoins the Board as far as practicable, not to carry on its operations under that Act at a loss and "to adjust its charges accordingly from time to time", this is what the Supreme Court has observed.

We do not therefore think that Section 59 confers any power on the Board to enhance the charges for supply of electricity in disregard of a contractual stipulation entered into by it under Sub-section (3) of Section 49.

28. In the instant cases, the position is much worse because no question of making up any actual or anticipated loss arises. Rates of dead rent have been enhanced principally for augmenting the revenue. In our opinion, therefore, the enhanced rates of dead rent which the State Government has prescribed with effect from 1st April 1979 were ultra vires their power under the Act and were also ultra vires Article 19(1)(g) of the Constitution. They were, therefore, void and we declare accordingly.

29. In the result, all petitions are allowed. It is declared that Rule 21-B of the Gujarat Minor Mineral Rules, 1966 and the notification issued by the State Government on 26th March, 1979 are ultra vires Section 15. The notification is also ultra vires Article 19(1)(g).

30. They are therefore, declared void. The demands made by the State Government upon the petitioners in pursuance of the impugned amendments are, therefore, quashed. A writ of mandamus shall issue directing the State Government to desist and refrain from enforcing Rule 21-B and the notification dated 26th March, 1979. So far as Letters Patent Appeal No. 62 of 1978 is concerned, we set aside the order made by the learned Single Judge, allow the writ petition and make the aforesaid declarations in favour of the petitioner

therein. Rule is made absolute in each of the cases with no order as to costs in the circumstances of the case.