

(1990) 04 AP CK 0019

In the Andhra Pradesh High Court

Case No : W. Ps. No's. 3238, 1669, 2013, 2011, 1015, 894, 897, 898, 1460, 1462 and 1687 of 1990

The K.C.P. Ltd.

APPELLANT

Vs

Government of Andhra Pradesh and others

RESPONDENT

Date of Decision : 12-04-1990

Acts Referred:

Andhra Pradesh (Mineral Rights) Tax Act, 1975 — Section 1(4), 10, 11, 12, 13
Andhra Pradesh Revenue Recovery Act, 1864 — Section 8
Constitution of India, 1950 — Article 245, 246
Mines and Minerals (Development and Regulation) Act, 1957 — Section 9, 9(2), 9(3)
Mines and Minerals (Regulation and Development) Act, 1948 — Section 6(2)

Citation : AIR 1990 AP 314 : (1990) 2 APLJ 446

Hon'ble Judges : Yogeshwar Dayal, C.J.; Jagannadha Rao, J

Bench : Division Bench

Advocate : C. Kondandaram, P. Rajagopal Rao, S. Dasaratharama Reddy, K. Ramanujchari, B. Adinarayana Rao, M. Satyanarayana, I. Koti Reddy, for the Appellant;

Judgement

1. The legislative competency of the Andhra Pradesh Legislature in passing the Andhra Pradesh (Mineral Rights) Tax Act, 1975 (hereinafter called the State Act) is in question in this batch of writ petitions. The point was raised earlier unsuccessfully before this Court on two occasions once in Kesoram Cements v. Government of Andhra Pradesh W.P. No. 1451 decided by Madhava Reddy, A.C.J. (as he then was) and T. L. N. Reddy, J. and again in M. K. Rama Murthy v. Government of Andhra Pradesh (1985) 1 APLJ 84 decided by Jeevan Reddy and Sardar Ali Khan, JJ. The controversy has now been raised again before us but this time, the petitioners claim to be amply supported in their contentions by the recent decision of the Supreme Court in India Cement Ltd. v. State of Tamil Nadu wherein "royalty" has been held to be a tax. The question revolves round the interpretation of Entry 54 of List I in the 7th Schedule of the Constitution of India on the one hand and Entries 23, 50 of List II on the other and depends upon the point urged for the petitioners that the entire field of legislation in respect of

regulation and development of mines and minerals including the right to collect royalty and tax on minerals vests in Parliament alone by virtue of the provisions of the Mines and Minerals (Regulation & Development) Act, 1957 and that the State legislatures are denuded of their power to levy tax on all mineral rights held by holders of mining leases.

2. The petitioners are therefore seeking a declaration that the levy and collection of mineral rights tax under the State Act is ultra vires of the powers of the State Legislature and that the State should be restrained in future from levying and collecting the said tax and also that the tax already collected should be directed to be refunded.

3. The preamble to the State Act says that it is an Act passed to provide for the levy and collection of tax on mineral rights of holders of mining leases in respect of certain minerals in the State of Andhra Pradesh. The "Statement of Objects and Reasons" reads as follows :--

"The need to provide and improve infrastructural facilities for rapid exploitation of the vast mineral resources of the State has been engaging the attention of the Government for sometime. The Government consider it necessary to raise monies for the above purpose with a view to achieve this object, the Government have now decided to undertake legislation to levy tax on mineral rights of holders of mining leases subject to any limitations imposed by Parliament by law relating to mineral development and the rules made thereunder at a rate not exceeding one-fourth of the amount of royalty payable by them in respect of the minerals in the State,"

4. We shall briefly refer to the provisions of the State Act. Sec. 1(4) states that the Act shall apply to every mineral specified in the Schedule. Sec. 2(1) defines "mineral" as any mineral specified in the Schedule. Sec. 2(d) defines a "mining lease" as a lease granted for the purpose of mining operations and includes a sub-lease granted for such purpose. S. 3 deals with levy and collection of tax on mineral rights while S. 4 deals with determination. They read as follows :

"S. 3. Levy and collection of tax on mineral rights : (1) With effect on and from the appointed date and subject to any limitations which may be imposed by Parliament by law relating to mineral development and the rules made thereunder, there shall be levied and collected by the Government a tax on the mineral rights of every holder of a mining lease in respect of any mineral specified in the Schedule, "at such rate not exceeding ten times" royalty payable by him u/s 9 of the Mines and Minerals (Regulation and Development) Act, 1957, as the Government may, by notification, fix and different (rates) may be fixed in respect of different minerals.

(2) The tax levied under this section shall be payable by the holder of a mining lease, and shall be in addition to the royalty payable by him.

S. 4. Determination of tax :-- (1) The tax payable under this Act shall be

determined in accordance with the provisions of Section 3 by the prescribed officer.

(2) Before levying the tax, the prescribed officer shall cause a notice of demand to be served upon the holder of a mining lease in such manner as may be prescribed specifying the amount of tax payable by him.

(3) The amount of tax specified in the notice of demand shall be paid within thirty days from the date of service of the said notice."

Section 5 deals with appeals, S. 6 with revisions and S. 7 says that the tax will be recovered as an arrears of land revenue under the A. P. Revenue Recovery Act, 1864. S. 8 deals with the power to make rules. S. 9 amends the A.P. (Telangana Area) Mining Settlement Act, 1956. Rules have been made under the State Act in G.O.Ms. No. 534 dated 14-5-1975. The State Act has been amended in 1985 by A.P. Act 7/85 in so far as fixation of rates is concerned.

5. We shall now refer to the relevant provisions of the Constitution. Arts. 245 and 246 deal with the powers of Parliament and State Legislatures to legislate with respect to the matters contained in Lists I, II and III of the 7th Schedule to the Constitution. List I which enumerates the matters upon which Parliament could legislate contains Entry 54 and it reads as follows :

"Entry 54. List I : 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."

So far as the State Legislature is concerned, the following entries in List II are relevant :

"Entry 23 List II : 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 49 List II : Taxes on lands and buildings."

"Entry 50 List II : Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development."

It is to be noted that both Entries 23 and 50 List II are expressly made subject to laws made by Parliament as specified in the respective Entries, The scope and extent of the operation of the law made by Parliament and the scope and extent of the field that is left for the State Legislature or the extent of limitations made by Parliament fall for consideration.

5-A. For appreciating the scope and extent of operation "of the law made by Parliament, it is necessary to refer to the relevant provisions of the Mines and Minerals (Regulation & Development) Act, 1957. (hereinafter called the Central Act), The preamble to the Central Act states that the Act is passed "to provide for the regulation of mines and development of minerals under the control of the

Union." Sec. 2 contains the declaration by Parliament contemplated by Entry 54 of List I. It reads :

"S. 2 : Declaration as to expediency of Union Control : 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."

Having so declared, the Central Act defines various expressions in S. 3 including "minerals" and "mining lease" and then proceeds, in Ss. 4 to 9-A to enact what it calls "General restrictions on undertaking prospecting and mining operations". Ss. 10 to 12 deal with the "Procedure for obtaining prospecting licence or mining leases in respect of land in which the minerals vest in the Government" and Ss. 13 to 16 provide for making rules for "regulating¹ the grant of prospecting licences and mining leases. While Ss. 17, 17-A give special powers to the Central Government in certain respects, Sections 18 & 18A deal with "development of minerals". Sections 19 to 33 deal with various miscellaneous matters. The First schedule deals with "specified minerals", the Second Schedule with "rates of royalty and the Third Schedule with "dead rent.

6. S. 9 of the Central Act provides for levy of royalties in respect of mining leases. It reads as follows :

"S.9 : Royalties in respect of mining leases : (1) The holders of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

(2) The holder of a mining lease granted oh or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.

(2-A) The holder of a mining lease, whether granted before or after commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, (56 of 1972) shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workman does not exceed one-third of a tonne per month.

(3) The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification.

Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years."

S. 9-A deals with levy of dead rent to be paid by the lessee and reads as follows :

"S. 9-A. Dead rent to be paid by the lessee :--The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act. 1972, (56 of 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.

(2) The Central Government may, by notification in the Official Gazette, amend the Third Schedule so as to enhance or reduce the rate at which the dead rent shall be payable in respect of any area covered by a mining lease and such enhancement or reduction shall take effect from such date as may be specified in the notification :

Provided 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 three years."

S. 13 of the Act empowers the Central Government, as a matter of regulation, to make rules in respect of minerals. S. 13(1) is general in nature and S. 13(2) enumerates various specific matters. We shall refer to them a little later. Likewise, S. 18 deals with mineral "development" and for making rules therefor. S. 18(1) confers the general power including power to make rules while S. 18(2) enumerates various specific matters. We shall refer to these items in detail later.

7. In the present case, we are mainly concerned with Entry 54 of List J and Entry 23 and Entry 50 of List II. In fact, the case turns more upon whether the State Act could be passed under Entry 50 of List II in spite of Ss.9, 13, 18 of the Central Act, 1957.

8. In the period between 1957 and 1970, the Supreme Court considered, in three cases, the general effect of the declaration made in S. 2 of the Central Act, upon Entry 23, List II in view of what is stated in Entry 54 of List I. The question arose whether after the declaration in S. 2 of the Central Act, 1957, anything was leftover to the State Legislature with regard to the matter specified in Entry 23 of List I. These three cases decided by the Supreme Court are : Hingir -- The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others, ; State of Orissa Vs. M.A. Tulloch and Co., and Baijnath Kadio Vs. State of Bihar and Others, . They dealt with the scope of Entry 23 of List II in the context of Entry

54 of List I and S. 2 of the Central Act. The Supreme Court clearly held in all these three cases that the "entire field" relating to "regulation of mines and development of minerals" is occupied by the Central Act, 1957 and thereby there was "no room" for the State Legislature to legislate under Entry 23 of List II. In the first case in *Hingir -- Rampur Coal Co. Ltd. v. State of Orissa* the validity of the cess levied under the Orissa Mining Areas Development Fund Act, 1952 fell for consideration. The majority speaking through Gajendragadkar, J. (as he then was) held that the levy was in the nature of a "fee" and neither a tax nor an excise duty and that the same fell within Entry 54 of List I. But inasmuch as, on facts, the levy related to the period before the commencement of the Central Act, 1957, and therefore not covered by S. 2 of the Central Act, it was held to be within the competence of the State Legislature. A similar declaration made under S. 2 of the Central Act 53 /1948 (the one which preceded the Central Act, 1957) was held to be ineffective as the same was made by the Dominion Parliament and not by Parliament after the Constitution. Wanchoo, J. (as he then was) dissented and held the cess to be an "excise duty" covered by Entry 84 of List I and beyond the competence of the State Legislature. The learned Judge distinguished the levy from a tax on "mineral rights" as contemplated by Entry 50 of List II. In the second case in *State of Orissa v. M. A. Tulloch & Co.* which related to the levy and collection of fees under the Orissa Mining Areas Development Fund Act (1952), Rajagopalan Ayyar, J. while holding the provisions of the State law to be ultra vires of the powers of the State, followed the observations of Gajendragadkar, J. (as he then was) in the earlier case in *Hingir - Rampur Coal Co. Ltd.* Repugnancy between laws made by two legislatures could be tested on the basis of whether the law made by legislature with "superior efficacy" occupied the "whole field" or not. Ayyangar, J. observed that where such is the position, the inconsistency is demonstrated not by a "detailed comparison of provisions" of the two statutes but by the mere existency of the two pieces of legislation, and then declared :

"In the present case, having regard to the terms of S. 18(1), it appears clear to us that the intention of Parliament was to cover the entire field."

In the third case in *Baijnath Kadio Vs. State of Bihar and Others*, which related to levy of dead rent, royalty and surface rent under the Bihar Minor Mineral Concession Rules (1964), Hidayatullah, C.J. considered the validity of the levy of royalty and dead rent under the second proviso to S. 10, Bihar Land Reforms Act (13 1950), as amended by Bihar Act, 4 of 1965 and the amended rules. Though the levies were of royalty and dead rent, the Supreme Court had no occasion to refer to S. 9 of the Central Act, 1957 inasmuch as the levy related to minor minerals and S. 9 stood excluded because of S. 14 of the Central Act, 1957 which said that Ss. 4 to 13 could not apply to "minor minerals". Now the Central Act, 1957, under S. 15 permitted the State Governments to make rules for minor minerals and the impugned levy was therefore a levy made by the State Legislature under Entry 23 of List II but not by the State Government exercising its rule-making power under S. 15. Inasmuch as the "entire field" was covered

by the Central Act, 1957 the State Legislature had no authority to make the levy but the State Government could make rules as per S. 15 of the Central Act, 1957. Though the matter related to royalty on minor minerals, no reference was made to Entry 50 of List II which permits levy, by the State, of taxes on mineral rights. No argument appears to have been advanced that "royalty" is in the nature of a tax on mineral rights falling under Entry 50 of List II or that it was an independent entry unconnected with Entry 23 of List II.

9. It was during this period between 1957 and 1970 that the case in *H.R.S. Murthy Vs. Collector of Chittoor and Another*, since overruled in *India Cement Ltd. v. State of Tamil Nadu*, came up before the Supreme Court. That case had to consider, in some detail, Entry 50, List II. There the demand of the cess was under the Madras District Boards Act (Act 14/1920) as in force in Andhra Pradesh. The appellant was a lessee of a mine to win iron-ore and had to pay dead-rent and royalty on the ore extracted as also surface-rent. Under S. 78 of the Act a further "land-cess" could be imposed on the "annual rental value" of the occupied "lands" and was to consist of a tax of two annas in the rupee of the "annual rent value" of all such lands in the district. Under S. 79, the "annual rent value" was to be calculated in the manner therein mentioned. Sub-sec. (1) of S.79 provided that in cases of land held directly on ryotwari tenure or on lease, or licence, the annual rental value shall be based upon the lease-amount, royalty or other sum payable to Government for the lands, together with any water-rate payable for irrigation and that the levy of the "land cess" is to be made accordingly. As the appellant was a lessee of mines from the Government, the land cess under S. 78 payable on the "annual rental value" which was to be based on lease-amount, royalty, water rate etc., payable to Government. It was held that there was no resemblance between the provisions of the Orissa Act considered in *Hingir -- The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, and in *State of Orissa Vs. M.A. Tulloch and Co.*, and that Ss. 78, 79 of the Madras Act, 1920 were not concerned with "development of mines and minerals or their regulation" but the levy was to be used for the purpose mentioned in S. 112 of the Act. Adverting to the argument for the appellant that the levy came under Entry 50 of List II being a tax on mineral rights and that the field for levy of tax on mineral rights was occupied by the Central Act "under which taxes and fees" might be levied, the Supreme Court observed that the cess was remotely connected with royalty but

"that does not stamp it as a tax on either extraction of the mineral or on the mineral right".

It was also held that it was "unnecessary" for the purpose of the case to examine the question as to what exactly was a "tax on mineral rights" under Entry 50, List II,

"seeing that such a tax is not leviable by Parliament but only by the State and the sole limitation on the State's power to levy the tax is that it must not interfere with a law made by Parliament as regards mineral development,"

and the Supreme Court said that their "attention was not invited to the provisions of any such law enacted by Parliament" and the land cess under Ss. 78, 79 fell squarely within Entry 49 of List II as a "tax on land".

10. During the period when the decision of H.R.S. Murthy Vs. Collector of Chittoor and Another, was in force, the two Division Benches of this Court referred to earlier i.e., Kesoram Cements v. Government of A.P., W.T. No. 1451 of 1976, D/-21-9-1982 (Andh Pra) and M. K. Rama Murthy v. Government of A.P., (1985) 1 APLJ 84 held that the "mineral rights tax" levied under the State Act, 1973 was a levy within the competence of the State legislature and covered by Entry 50 of List II. It was further held in these two cases that the field covered by the entry was not occupied by any law made by Parliament nor was the State Legislature subject to any limitation made by law made by Parliament in relation to "mineral development" as stated in Entry 50 of List II. We shall come back to these cases a little later. We shall now refer to the recent case in India Cements v. State of Tamil Nadu, which has overruled H.R.S. Murthy Vs. Collector of Chittoor and Another, .

11. The Tamil Nadu legislature had passed the T.N. Panchayats Act (35 of 1958) and S. 115 thereof provided for levy of a "local cess" at 45 ps. on every rupee of "land revenue, in every panchayat development-block. The Explanation to S. 115 defined "land-revenue". In 1964, the Explanation was amended by T.N. Act 18 of 1964 by enlarging the meaning of "land revenue" to include "royalty" apart from the lease amount, water cess etc., S. 116 provided for a further surcharge on the said "local cess", subject to a maximum. The maximum of the local cess surcharge was increased to Rs. 2.50 on every rupee of "land revenue", by the Amending Act of 1972. A learned single Judge of the Madras High Court by judgment dated 23-2-1967 dismissed the writ petition filed by the appellant holding that the levy fell within Entry 49 of List II, being a tax on land, though fixed with reference to land revenue. On appeal, the Division Bench held that the cess was a tax levied on the basis of lease amount, land revenue, royalty etc. and was a tax on land, falling under Entry 49 of List II and applied H.R.S. Murthy Vs. Collector of Chittoor and Another, . On further appeal to the Supreme Court, the matter was considered by a Bench of seven learned Judges and the case abovementioned decided in 1965 was over-ruled.

12. It will first be necessary to examine the above said judgment in India Cements Ltd. v. State of Tamil Nadu closely to find out what the Supreme Court has now authoritatively decided on the various aspects covering Entry 54 of List I and Entries 49 and 50 of List II.

13. The State of Tamil Nadu first contended that royalty as stated in Ss. 115 and 116 of the Tamil Nadu Act was "land revenue" and cannot be treated as "royalty" as understood in common parlance. This contention was rejected (see para 21 of AIR) and it was held that the cess could not mean "land revenue" properly called but was a levy on royalty. The question then arose whether royalty was in itself a tax. The Supreme Court referred to the conflicting views of various High Courts

in this behalf, Mysore and Patna taking the view that royalty is a tax while the Rajasthan, Punjab, Gujrat and Orissa High Courts taking the view that royalty was an impost different from a tax. The Supreme Court approved the Mysore and Patna views in *M/s. Laxminarayana Mining Co., Bangalore v. Taluk Dev Board*, AIR 1972 Mys 299 and *L.Mal. v. State of Bihar*, AIR 1963 Pat 491 that royalty was a tax. (see AIR paras 27, 28 and 31). While dealing with the question whether the royalty was a tax or not, the Supreme Court referred (see paras 28, 29 of AIR) to *H.R.S. Murthy Vs. Collector of Chittoor and Another*, and held that that case in so far as it held that the cess on royalty had only a remote relation with mining but a direct relation to land, thereby falling under Entry 49 of List II, was not correct. Coming to the nature of the cess which was the subject matter of levy, the Supreme Court held that the word "cess" is used in India generally to mean a "tax" (see para 19 of AIR) and therefore the cess on land revenue as contemplated by Ss. 115 and 116 of the Tamil Nadu Act amounted to a tax on royalty, royalty being itself a tax. Once it was held that the cess was a tax on royalty, the counsel for the State of Tamil Nadu thought it fit to bring the case within Entry 50 of List II for that entry permitted the State of Tamil Nadu to levy a tax of mineral rights. That is how the Supreme Court came to consider the applicability of Entry 50 of List II.

14. It will be noticed that Entry 50 of List II permits the State legislature to levy a tax on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development. It was not in dispute that the Mines and Minerals (Regulation and Development) Act, 1957 was a law made by Parliament relating to mineral development. The question was whether there was any "limitation" imposed by the said law in relation to tax on mineral rights. S. 9(3) of the said Act permitted the Central Government, by notification in the Gazette, to amend the Second Schedule so as to enhance or reduce the right at which royalty shall be payable in respect of any mineral with effect from such date as may be specified, provided that the Central Government shall not enhance the rate of royalty in respect of any minerals more than once during any period of three years. The Supreme Court accepted the view that so far as royalty was concerned, there was a limitation made by S. 9(3) of the Central Act. In the earlier judgment in *H.R.S. Murthy Vs. Collector of Chittoor and Another*, , the Supreme Court while dealing with a cess on minerals extracted, had observed that the attention of the Supreme Court was not invited to any provision of the Central Act 1957 see para 10 of *H.R.S. Murthy Vs. Collector of Chittoor and Another*, wherein any limitation was placed on the power of the State legislature to levy a tax on the mineral extracted. Obviously, the provisions of Sec. 9(3) of the Central Act were not brought to the notice of the Supreme Court in *H. R. S. Murthy's* case but in *India Cement's* case the Supreme Court expressly referred to Sec. 9(3) of the Act as being a limitation on the legislative power of the State to levy a tax on royalty. In fact, they pointed out that in *H. R. S. Murthy's* case Section 9(3) was overlooked. This is clear from the following passage (para 30 of AIR) :

"It seems therefore, that attention of the Court was not invited to the provisions of Mines and Minerals (Regulation & Development) Act, 1957 and Section 9 thereof Section 9(3) of the Act in terms states that royalties payable under the Second Schedule of the Act shall not be enhanced more than once during a period of four years. It is, therefore, a clear bar on the State legislature taxing royalty so as to, in effect, amend Second Schedule of the Central Act."

The Supreme Court therefore held in India Cement's case that so far as royalty was concerned there was a limitation in Sec. 9(3) of the Central Act 1957 and the cess levied by the Tamil Nadu Government on the royalty by expanding the definition of "land revenue, would result in exceeding the limitation prescribed by law made by Parliament and that therefore the levy was ultra vires of the powers of the Tamil Nadu legislature.

15. Having thus dealt with Sec. 9(3) of the Central Act and the limitations imposed by the law made by Parliament in the context of Entry 50 of List II, the Supreme Court then proceeded to deal with a larger ground viz., the "field" occupied by the law made by Parliament. It is in this context that they referred to another sub-clause of Sec. 9 viz., Section 9(2) (see para 32 of AIR). The Supreme Court observed that Section 9(2) "fully covered" the field covered by Entry 50 of List II. Here the Supreme Court was obviously having in mind the various principles of "occupied field" in the context of Entry 54 of List I which the Supreme Court had laid down in the earlier cases right from 1961.

16. After thus referring to Sec. 9(3) and Sec. 9(2) of the Central Act, the Supreme Court made a general reference to both Entries 23 and 50 of List II in para 33 of the judgment in India Cement's case (see AIR). The Court held that royalty was directly relatable only to the minerals extracted and on the principle that the general provision was excluded by the special one, royalty would be relatable to Entries 23 and 50 of List II and not Entries 49 of List II. However, as the field is covered by the Central power, the impugned legislation would not be upheld under Entry 23 or Entry 50 of List II. Finally the Supreme Court summarised as follows (para 34 of AIR) :

"In the aforesaid view of the matter we are of the opinion that royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State legislature because Sec. 9 of the Central Act covers the field and the State legislature is denuded of its competence under Entry 23 of List II. In any event we are of the opinion that cess on royalty may not be sustained under Entry 49 of List II as being a tax on land. Royalty on mineral rights is not a tax on land but a payment for the user of the land."

17. We have summarised the various points decided in India Cement's case with a view to consider the various, contentions raised by the counsel before us. We shall now refer to these contentions.

18. It is contended for the petitioners that the levy under Sec. 3(2) of the State Act, 1975 is a levy which will be in addition to the royalty payable by the lease

holder and such an addition is hit by Sec. 9(3) of the Central Act which states that royalty cannot be increased more than once in every three years and even if so increased it should be by a notification issued by the Central Government. It is pointed out that the State legislature has, by enacting Sec. 3(2) to the State Act, 1975, exceeded the limitations imposed by Sec. 9(3) of the Central Act and this is not permissible in view of the language of Entry 50 of List II. It is further contended for the petitioners that in any event the entire "field" of levy of tax of mineral rights is covered by Sec. 9(2) of the Central Act and in view of Entry 54 of List I the State legislature is denuded of its power whether under Entry 23 or Entry 50 of List II.

19. On the other hand, it is contended by the learned Advocate General that Sec. 9(3) of the Central Act imposes limitation only in respect of royalty and not in respect of tax on mineral rights and therefore the State legislature is competent to enact a law such as the one covered by Sec. 3(2) of the State Act, 1975 for imposing a tax on mineral rights in addition to the royalty payable by the leaseholder. It was also argued that the field covered by Sec. 9(2) of the Central Act is restricted to royalty and even on the basis of the "occupied field" theory enunciated by the Supreme Court since 1961, the State legislature is not denuded of its power to levy a tax on mineral rights. Reference in this context is made to Sec. 6(2) of the Mineral Development and Regulation Act, 1948 to show that the said sub-section permitted rules to be made both in respect of royalty as well as mineral rights whereas Section 13(2) of the Central Act 1957 permitted rules to be made by the Central Government only in respect of royalty but not mineral rights. This, according to the learned Advocate General, is a clear indication that while under the 1948 Act the Central Legislature evinced an intention to occupy the field not only of royalty but of mineral rights, there was no such intention when Central Act 1957 was passed. Under the latter Act the intention was to occupy the field relating only to royalty. It is also argued by the learned Advocate General, relying upon *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, that entries relating to taxation such as entries 82 to 92 in List 1 and entries 45 to 63 in List II relate to taxes and merely because a law is made by Parliament under Central Act of 1957 in relation to regulation of development of mines and minerals, that law cannot be said to occupy the field relating to levy of taxes on minerals or minerals rights.

20. It is true that in *India Cement's* case the Supreme Court was concerned with levy of cess on royalty but not with a cess or tax on mineral rights in general. But there are clear passages in the said judgment which show that the Supreme Court interpreted Entry 50 of List II and came to the conclusion that Section 9(3) of the Central Act 1957 was a limitation on the power of the State legislature to pass a law relating to tax on "mineral rights". It has to be borne in mind that entry 50 does not use the word "royalty" but using the words "mineral rights". If there are limitations contained in a law made by Parliament in regard to levy of tax on mineral rights the said limitation would control the power of the State legislature to that extent. The Tamil Nadu Act when it imposed a cess on land

revenue, the definition of "land revenue" having been expanded to include royalty, the levy was a tax on royalty as held by the Supreme Court but even so, for purposes of entry 50 of List II, Section 9(3) of the Central Act 1975 which dealt only with the royalty was treated as a tax on mineral rights so as to control the power of the State Legislature to make legislation. The position under S. 9(2) is that royalty is levied on the minerals extracted or consumed. In the bundle of rights which a lease-holder of mines possesses, one of the rights is the right to extract the mineral as well as consume the same. The tax relatable thereto would be a tax on royalty according to India Cement case. Thus the right to extract and consume the mineral extracted is only a part of the totality of the rights arising out of the lease of the mines. It is with regard to the totality of the rights and the tax thereon that Entry 50 of List II is concerned. Therefore, in our opinion, the limitation prescribed by Sec. 9(3) of the Central Act 1957 must be treated as a limitation imposed not merely with respect to levy of royalty but with respect to any tax on "mineral rights", properly so-called. We are supported in our view by the observations of the Supreme Court in India Cement's case (see para 28 of AIR) to the following effect :

"It was held in H.R.S. Murthy Vs. Collector of Chittoor and Another, that land cess paid on royalty has a direct relation to the land and only a remote relation with mining. This, with respect, seems to be not a correct approach. It was further observed that it was not necessary to consider the meaning of the expression "tax on mineral right" following under Entry 50 of List II inasmuch as according to this Court, Parliament has not made a tax on mineral rights. This is not a correct basis."

Referring generally to the limitation upon tax on mineral rights for purposes of Entry 50 of List II the Supreme Court observed in India Cement's case (see para 30 of AIR) that the attention of the Court in H. R. S. Murthy's case was not invited to S. 9 of the Central Act, 1957. We have already extracted the relevant passage in our discussion of the matter earlier.

21. It is therefore clear that Sec. 9 of the Central Act was viewed by the Supreme Court as a general limitation on the levy of tax on mineral rights and not merely as a limitation on the levy of royalty. We, therefore, reject the contention of the learned Advocate General that India Cement case was merely concerned with the levy of royalty or cess on royalty by the State legislature and not with regard to the levy, generally, of tax on mineral rights. In our view a tax on mineral rights which includes within the compass a tax on the mineral extracted or consumed, to be levied by a State legislature is limited by the provisions of Sec. 9 of the Central Act and nothing more than what is mentioned in Sec. 9 can be levied by the State legislature under the head of "tax on mineral rights" by merely stating that it will be other than royalty.

22. Coming to the general principle of occupied field, in relation to regulation and development of mines and minerals, the earlier cases decided by the Supreme Court since 1961 show that the entire field of regulation and development is

occupied by the Central Act 1957, leaving "no room" for the State legislature to make a law under Entry 23 of List II in relation to regulation and development of mines and minerals. A question has arisen whether a right to levy a tax on minerals extracted (i.e., royalty) by a right to levy tax generally on mineral rights can be said to form part of the field relating to "regulation and development" of mines and minerals within Entry 54 of List I. In our view, a clue to this question can be gathered from the language of Entry 50 of List II itself. The entry itself says that the power to levy tax on mineral rights is subject to any limitations imposed by a law made by Parliament relating to "mineral development". It is therefore clear that even the Constitution proceeds on the basis that a law made by Parliament in relation to mineral development could limit the levy of tax on mineral rights. Apart from that the decision of the Supreme Court in *Bajnath Kadio Vs. State of Bihar and Others*, already referred to also bears a close analogy. There the Bihar Land Reforms Act and Rules as amended in 1965 enabled the State to levy royalty and seigniorage fee by the State Government but the Supreme Court pointed out that such a levy could be made only by rules made in regard to minor minerals as provided in Sec. 15 of the Central Act 1957 and not by a law made by the State legislature. It was clearly held that the power of levying royalty, after the declaration made in Sec. 2 of the Central Act 1957, was occupied by the Central Act and the levy could only be made as provided in the Central Act viz., by rules made by the State Government, so far as minor minerals are concerned and not by the legislation made by the State legislature. This decision, in our opinion, shows that the power of levying royalty which, in the absence of a Central law, would fall under Entry 50 of List II if royalty is to be treated as a tax, could no longer be available to the State legislature inasmuch as the entire field of legislation relating to "regulation and development" of mines and minerals is contained in the Central Act. The decision impliedly shows that the power of levying royalty, treating the same as a tax, is also within the field of "regulation of development" of mines and minerals as contained in the Central Act. Of course in *Bajnath Kadio Vs. State of Bihar and Others*, the Supreme Court did not make any reference to Entry 50 of List II obviously because if the State legislation fell under Entry 23 of List II then it would be covered by Entry 54 of List I. If the field viz., regulation and development of mines and minerals was not available, the power to levy tax on minerals or mineral rights which, as above stated, is part of the said power, cannot be imposed by the State legislature. This view of ours is amply supported by the decision of the Supreme Court in *India Cement's case* wherein it is clearly held (see para 32 of AIR) that the field upon which entry 50 of List II could operate, viz., the power of levying taxes on mineral rights was "fully covered by the Central legislation".

23. It is thus clear that whether we approach the question from the point of view of a limitation on the power of the State legislature under Entry 50 of List II or whether we approach the question from the theory of occupied field viz., the field of "regulation and development" of mines and minerals, in the context of Entry

23 of List II read with Entry 50 of List II, it cannot be said that the State legislature has any residue of power to levy a tax on mineral rights.

24. It was, however, contended by the learned Advocate General that the Supreme Court in *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, made a distinction between general entries in Lists I and II and specific or independent entries relating to power of taxation. It was argued that Entry 50 of List II is an independent entry relating to levy of taxes on mineral rights and cannot be said to be controlled in any manner by any law made by Parliament under Entry 54 of List I.

25. It is true that in *Sundararamier's* case the Supreme Court made such a distinction between general entries and specific entries relating to taxation. There, Venkatarama Aiyar, J. speaking for the Court stated that in List I, entries 1 to 81 mention the several matters over which Parliament has authority to legislate and Entries 82 to 92 enumerate the taxes which could be imposed by Parliament. It was observed that an examination of these two groups of entries showed that while the main subject of legislation figured in the first group, a tax in relation thereto was separately mentioned in the second group. After referring to certain examples, the learned Judge also referred to the separation of these two groups of entries in List II also. It was pointed out that Entries I to 44 in List II form one group mentioning the subjects on which the States could legislate. Entries 45 to 63 in that list form another group and dealt with taxes. After saying so Aiyar, J. observed :

"Entry 23 (List II) is regulation of mines and Entry 50 is "taxes on mineral rights". The above analysis -- and it is not exhaustive of the entries in the list -- leads to the inference that taxation is not intended to be comprised in the main subject in which it might, on an extended construction, be regarded as included -- but is treated as a distinct matter for purposes of legislative competence."

No doubt, the above analysis of the Lists I and II brings out the distinction between certain general entries and certain specific entries dealing with taxation but, in our view, it cannot be disputed that in respect of certain entries such as Entry 54 of List I and Entry 23 of List II on the one hand and Entry 50 of List II on the other, there is a dependence created by the very terms of the entries, the latter being subject to Entry 54 of List I to the extent of limitation prescribed by law made by Parliament. Inasmuch as the specific entry dealing with taxation of mineral rights in Entry 50 of List II is made subject to the general entry in Entry 54 of List I which has the effect of occupying the field covered by Entry 23 of List II whenever a declaration as provided in Entry 54 of List I is made, we are of the view that if the field is occupied by the Central Act 1957 there will be no matter upon which Entry 50 of List II could operate. In fact such a reasoning was adopted by Ayyangar, J. in *State of Orissa Vs. M.A. Tulloch and Co.*, . In that case it was contended that Entry 66 of List II which permitted the State legislature to levy a fee, was an independent entry and that even if the Central Act 1957 referable to Entry 54 of List I covered the entire field, covered by Entry 23 of List

II, still there could be no objection for a State law levying fee under Entry 66 of List II to operate. Ayyangar, J. rejected the said contention stating as follows (para 16, at page 1292 of AIR 1964 SC) :

"It is no doubt true that technically speaking the power to levy a fee is under the entries in the three lists treated as a subject matter of an independent grant of legislative power, but whether it is an incidental power related to a legislative head or an independent legislative power it is beyond dispute that, in order that a fee may validly be imposed, the subject matter or the main head of legislation in connection with which the fee is imposed, is within legislative power. The material words of the entries are : "fees in respect of any of the matters in this list". It is, therefore a prerequisite for the valid imposition of a fee that it is in respect of "a matter in the list" if by reason of the declaration by Parliament the entire subject matter of "conservation and development of minerals" has been taken over, for being dealt with by Parliament, that depriving the State of the power which it therefore possessed, it would follow that the "matter" in the State list is, to the extent of the declaration subtracted from the scope and ambit of Entry 23 of the State list. There would, therefore, after the Central Act of 1957, be no matter in the list to which the fee could be related in order to render it valid."

26. In fact in M. K. Rama Murthy's case (1985) 1 APLJ 84, the Division Bench of this Court accepted (at page 88 of column II of APLJ) that there is a dependence between Entry 50 of List II and Entry 54 of List I.

27. In view of the above said reasoning and also in view of the decision of the Supreme Court in India Cement's case holding that the entire field is fully covered by the Central legislation viz., Central Act 1957, the argument that Entry 50 of List II is an independent entry under which tax on mineral rights could be levied cannot be accepted.

28. It is then argued by the learned Advocate General that the Madhya Pradesh High Court struck down a cess on mineral rights under S. 9 of the M. P. Karadhan Adhinyam, 1982 in M/s. Hiralal Rameshwar Prasad v. State of M. P. 1986 MPLJ 514 and the Supreme Court, in India Cement's case expressly refrained (see para 33 at p. 96 of AIR) from saying anything as to its correctness. It is true that the Supreme Court observed so as an appeal is pending before it against the said judgment of the M. P. High Court. We have been taken through the said judgment of the M. P. High Court and with great respect, we are in agreement with the reasoning in the said judgment. In fact, in India Cement's case ; it was merely observed (see para 33, page 96 of AIR):

"It is not necessary in the view taken by us, and further in view that the said decision is under appeal in this Court, to examine in detail."

29. Reliance is then placed on the judgment of the Division Bench of this Court in M. K. Ramamurthy's case (1985) 1 APLJ 84. We may point out that in that case the Court followed the decision of the Supreme Court in H.R.S. Murthy Vs.

Collector of Chittoor and Another, which has since been overruled in India Cement's case . Further the Court observed that no law made by Parliament dealing with tax on mineral rights was referred to before them. In fact the judgment does not contain any reference to Sec. 9 of the Central Act 1957 or to its sub-sections 9(2) and 9(3). The Supreme Court in India Cement's case pointed out that the provisions in Sec. 9 of the Central Act 1957 are provisions relating to taxes on mineral rights once royalty is held to be a tax. Therefore the observations of the Division Bench of our Court can no longer be accepted. We may, in fact, point out that in H. R. S. Murthy's case Ayyangar, J. had also observed (at p. 182 of AIR 1965 SC para 10) that the attention of the Supreme Court was not invited to the provisions of any such law enacted by Parliament. This observation was as already stated, commented upon by the Supreme Court in India Cement's case (see page 95 Col. II para 30 of AIR) stating that Sec. 9 of the Central Act was an effective answer to the problem.

30. Strong reliance is also placed by the Division Bench in M. K. Ramamurthy's case (1985) 1 APLJ 84 on the dissenting view of Wanchoo, J. (as he then was) in The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others, where the learned Judge drew the distinction between a tax "on mineral" produced and a tax "on the right to extract-mineral." The learned Judge treated the former as a "customs duty" falling under Entry 84 of List I. In fact, the learned Judge had differed from the majority view that the cess was a fee. The view of Wanchoo, J. (as he then was) that the levy of tax on "mineral produced" is a duty of excise falling under Entry 84 of List I, in our view, runs counter to the view of the Supreme Court in India Cement's case where it is held clearly that levy of tax on mineral produced or extracted is "royalty" falling under S. 9 of the Central Act, 1957 and is also a tax on mineral rights falling under Entry 50 of List II. As the same is limited by S. 9(3) of the Central Act or occupied by Entry 54 of List I in view of S. 9(2) of the Act; royalty cannot therefore be treated as excise duty in view of India Cement's case.

31. Reliance is then placed by the Advocate General on the earlier unreported Division Bench judgment of this Court in Kesoram Cement's case (W. P. No. 1451 of 1976, D/-21-9-1982). That case was, as earlier stated, decided long before India Cement's case and even before the Division Bench case in M. K. Rama Murthy's case(1985) 1 AP LJ 84. Madhava Reddy, A. C. J. (as he then was) after referring to S. 9 of the Central Act, 1957 permitting levy of "royalty" observed that

"It is now well-settled that royalty is not a tax as such."

This runs counter to the view of the Supreme Court in India Cement's case and, as already stated, makes all the difference. The learned Judges in that case placed reliance upon Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others, which dealt with the Entry 52 of List I as opposed to Entry 24 of List II and the extent to which the Industries (Development and Regulation) Act, 1961 covered the field and the validity of the I). P. Sugar

Undertakings (Acquisition) Act, 1971. It is true that in Iswari Khetan Sugar Mill's case the Supreme Court held that, in spite of the declaration under S. 2 of the said Central Act, 1961 the State legislation for acquisition of the sugar undertakings was not ultra vires. In view of the direct cases of the Supreme Court under Entry 54 of List I, and Entries 23 and 50 of List II, and particularly India Cement's case, we are of the view that the above decision rendered in connection with Entry 52 of List I cannot now avail. Further, as far as acquisition is concerned, even with regard to mines and minerals, the Supreme Court held in State of Haryana and Another Vs. Chanan Mal and Others, that the Haryana Mineral (Vesting of Rights) Act, 1973 was not covered by the field covered by Central Act, 1957. Regulation and Development is different from acquisition. For the aforesaid reasons we are not able to follow the decision in the unreported judgment of the Division Bench in Kesoram Cement's case (WP No. 1451 of 1976, D/-21-9-1982 (Andh Pra)).

32. For all the reasons stated above we declare that S. 3 of the State Act, 1975 is ultra vires of the powers of the State legislature and as all the other provisions are dependent on S. 3, the whole State Act, 1975 is declared ultra vires. We, however, hold that, as in India Cement's case there being justification for the levy and collection in view of H.R.S. Murthy Vs. Collector of Chittoor and Another, the amounts already collected need not be refunded by the State. However, the State shall not levy and collect any mineral rights tax in future under the provisions of the State Act, 1975. The interim orders passed in this batch are also made absolute and the writ petitions allowed as stated above. No costs. Advocates fee Rs. 250 in cash.

33. Order accordingly.