MINERAL AREA DEVELOPMENT AUTHORITY V. SAIL

Citation: Civil Appeal Nos. 4056-4064 of 1999; 2024 INSC 554

Date of Order: 25th July 2024

Nine-Judge Bench: CJI DY Chandrachud, Justice Hrishikesh Roy, Justice Abhay S Oka, Justice J B Pardiwala, Justice Manoj Misra, Justice Ujjal Bhuyan, Justice Satish Chandra Sharma, Justice Augustine George Masih, Justice B.V. Nagarathna (Dissenting opinion)

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FACTS

Entry 50 of List II of the Seventh Schedule of the Constitution deals with taxes on mineral rights, whereas Regulation of mines and mineral development is mentioned in both the Union List (Entry 54 of list I) and the State List (Entry 23 of list II).

Based on Entry 54 of list I, Parliament enacted the Mines and Minerals (Development and Regulation) Act, 1957. Section 9 of the Act mentions that the holder of a mining lease shall pay royalty for the minerals removed or consumed. In the case of ***India Cement Ltd. v. State of Tamil Nadu,*** the Hon'ble Court held that royalty is a tax, and the state legislature cannot levy taxes on minerals under Entry 49 of list II. But later, in the case of ***State of West Bengal v. Kesoram Industries Ltd.***, it was held that the case of *India cement* had typographic error and royalty is **not** a tax. State legislatures then started to impose taxes through mineral value, royalty, environmental and health cess, and fees for transportation of coal and coal dust collected from mines.

The tax was challenged before the Patna High Court, where the petition was allowed by relying on the case of *India cement*. The said order was challenged before the three-judge bench, who referred it to the nine-judge bench.

ISSUE

1. Whether royalty is in the nature of tax under section 9 read with section 15(1) of the MMDR Act?
2. What is the scope of Entry 50 of List II and the limitations of Entry 54 of List I, specifically regarding the MMDR Act?
3. Whether Entry 50 of List II, subject to limitations imposed by Parliament, impacts on the distribution of legislative powers as per ***M.P.V. Sundararamier & Co. v. State of Andhra Pradesh***?
4. Can the State Legislature levy tax based on the value of the produce of land?
5. Is Entry 50 of List II a specific entry related to Entry 49 of List II? If so, would it subtract mining land from the scope of Entry 49 of List II?

RULE

Statute:

List I – Union List

54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

List II – State List

23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

50. Taxes on mineral rights subject to any limitation imposed by Parliament by law relating to mineral development.

Cases:

Cases	**Principle**
India Cement Ltd v. State of Tamil Nadu[1]	Seven-judge Bench held royalty under the MMDR Act is a tax; once Parliament occupies the field via Entry 54 List I, State legislatures lose competence to tax mineral rights, and royalty cannot be used to measure tax on mineral-bearing land under Entry 49.
Orissa Cement Ltd. V. State of Orissa[2]	Three-judge Bench, applying *India Cement*, struck down a cess under the Orissa Cess Act 1962 where "annual value" of mineral land was defined by reference to royalty, held to be, in substance, a tax on royalty (Entry 50), not on land (Entry 49).
Federation of Mining Associations of Rajasthan v. State of Rajasthan[3]	Relying on *India Cement* and *Orissa Cement*, held the State legislature lacked competence to tax mineral-bearing land measured by reference to royalty.
Saurashtra Cement & Chemical Industries Ltd v. Union of India[4]	Following Mahalaxmi Fabric Mills, held Parliament lacked competence under Entry 54 List I to enact S.9(3) MMDR Act so as to denude the States' Entry 50 taxing power.

[1] (1990) 1 SCC 12
[2] (1991) Supp 1 SCC 430
[3] 1992 Supp (2) SCC 239
[4] (2001) 1 SCC 91

State of Orissa v. Mahanadi Coalfields Ltd.[5]	Held the MMDR Act exhaustively covers “all kinds of taxation on minerals and mineral rights,” and struck down a cess on “all lands” (including mineral land) as an impermissible tax on minerals under Entry 50.
P Kannadasan v. State of Tamil Nadu[6]	Held Parliament's declaration under S.2 MMDR Act denudes the States of power to levy any tax or cess on minerals so long as that declaration stands.

SUBMISSIONS

Petitioners

Section 9 of the MMDR Act, which determines the price compulsorily paid as royalty, does not meet the criteria of a tax or impost on minerals or its right under Article 366(28) of the Constitution. It limits contractual royalty collection but does not limit state taxing power under Entry 50 of List II.

In Entry 49 of list II “land” includes land containing minerals until they are extracted, so to tax the land, the value of the mineral can be used. Source of imposing tax is not provided in general entries like Entry 54 of List I and 23 of List II. Entry 50 of List II gives power to Parliament to impose limitations “by law” on the state on the imposition of tax, but Parliament cannot itself tax mineral rights. Since royalty is not a tax, the limitation imposed by Entry 50 of List II is not applicable.

Respondents

Any levy in relation to minerals will be included in the limitation mentioned in Entry 50 of List II. Entry 50 of List II cannot be used to impose levies unrelated to mineral development or for other purposes like education cess. It can only impose tax in case the mineral rights vest in a private person, but in India all minerals vest with the state; therefore, tax on mineral-bearing land cannot be imposed based on the value of subsoil minerals. Entry 49 of List II cannot be included in matter related to mineral rights, as the word “land” only means “surface of land” and does not include minerals, as they are covered in Entry 54 of List I and Entries 23 and 50 of List II.

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[5] 1995 Supp (2) SCC 686

[6] (1996) 5 SCC 670

Royalty meets the criteria of tax under Article 366(28) of the Constitution as it is imposed compulsorily by the MMDR act.

ANALYSIS

Whether royalty is tax

A thorough analysis of loyalty was done where it was traced how the concept evolved from originally being payment made to crown (landowners) for the privilege of extracting minerals from land to modern contractual and statutory arrangements.

Section 9 of MMDR act framework determines royalty as being payable at removal or consumption of minerals and it paid along with dead rent. Central government fixes rates for major minerals while states prescribe rates for minor minerals.

Essential characteristics of tax were analysed as compulsory exaction by a public authority, imposed under statutory power without the taxpayer's consent, enforceable by law, levied for public purposes without reference to any special benefit to the payer, and forming part of the common burden. Whereas in contrast, royalty's characteristics were found as a consideration paid under a mining lease, arising from contractual terms, as a return for the grant of the right or privilege to extract minerals, and represents compensation for the value of minerals removed.

Hence, the Court held that royalty determined under Section 9 read with Section 15(1) of the Mines and Minerals (Development and Regulation) Act (MMDR Act) is not in the nature of a tax.

Scope of Entry 50 of List II and the limitations of Entry 54 of List I

This issue concerns the ambit of the power given to Parliament under Entry 50 of List II to impose 'limitations' on the State's power to tax mineral rights, and whether Section 9, or any other provision of the MMDR Act, itself operates as such a limitation.

The Court held that the expression "any limitations imposed by Parliament by law relating to mineral development" is wide enough to cover restrictions, conditions, or principles that circumscribe the State's taxing power, and can extend even to an outright prohibition on the levy of tax. Parliament's power under Entry 50 is therefore not confined to merely capping the rate or quantum of the tax.

Applying this to the MMDR Act as it presently stands, however, the Court held that neither Section 9 nor any other provision of the Act constitutes such a limitation. Section 9 merely fixes the royalty payable by the lessee to the lessor under the mining lease; it does not restrict, condition, or prohibit the State's independent power to tax mineral rights under Entry 50. The State legislatures' taxing power under Entry 50 therefore remains unfettered by the MMDR Act as it currently stands.

In dissent, Justice Nagarathna held that Sections 9, 9A and 25 of the MMDR Act do constitute the 'limitation' contemplated by Entry 50, leaving the States no legislative competence to impose any other tax, impost, or fee on the exercise of mineral rights.

Entry 50 of List II and the *Sundararamier* Principle on Distribution of Legislative Powers

This issue asks whether Entry 50 being made 'subject to any limitations' imposed by Parliament pro tanto imports Entry 54 of List I, a general, non-taxing entry, into Entry 50, thereby departing from the principle in ***M.P.V. Sundararamier & Co. v. State of Andhra Pradesh***[7]**,** that taxing entries are separate and exhaustive, and that a general entry cannot be read to include a power to tax.

The Court held that Entry 50 does not carve out an exception to the *Sundararamier* principle. The power to tax mineral rights remains squarely within Entry 50, a specific taxing entry vested in the State legislatures. Parliament's competence over mines and minerals flows from Entry 54, a general entry that is not a taxing entry, and it cannot invoke its residuary power under Article 248 to tax mineral rights merely because Entry 50 subjects the State's taxing power to 'limitations' Parliament may impose. The distribution of legislative powers between the Union and the States over mineral rights was accordingly held to remain undisturbed.

In dissent, Justice Nagarathna reached the opposite conclusion, holding that Entry 50, being made subject to Entry 54, is itself an exception to *Sundararamier*, since that case never considered the specific effect of Entry 54 on a taxing entry like Entry 50.

Whether the State Legislature can Levy Tax Based on the Value of Produce of Land

This issue asks whether the State Legislature can levy a tax on land under Entry 49 of List II by reference to the value of its produce, and whether the position differs where the land in question is mineral-bearing.

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[7] (1958) SCR 1422

Tracing the land revenue system in India and reaffirming settled principles on the taxation of land under Entry 49, the Court held that mineral-bearing land is 'land' within the meaning of Entry 49, and that the State legislatures have legislative competence under Article 246 read with Entry 49 to tax such land.

On the permissible measure of such tax, the Court held that a tax need not be measured by reference to the precise subject-matter being taxed, the yield of mineral-bearing land, i.e., the quantity of mineral raised or the royalty paid on it, can validly be adopted as the measure for a tax on the land itself under Entry 49. The decision in ***Goodricke Group Ltd. v. State of West Bengal***[8], was clarified to this extent.

In dissent, Justice Nagarathna held that Entry 49 covers only the taxation of land and buildings generally and does not extend to mineral-bearing land at all, so that a levy measured by the value or quantity of minerals could not be sustained under Entry 49.

Whether Entry 50 of List II is a Specific Entry vis-à-vis Entry 49

The final issue was whether Entry 50 of List II, being said to be a more specific entry dealing with mineral rights, excludes or subtracts mineral-bearing land from the scope of Entry 49 altogether.

The Court rejected this argument. Entries 49 and 50 were held to occupy distinct fields, Entry 49 taxes land as an asset, while Entry 50 taxes the right to extract minerals from it, and a limitation validly imposed by Parliament under Entry 50 does not, absent an express constitutional stipulation, also curtail the States' taxing power under Entry 49. Entry 50 was accordingly held not to subtract mining land from Entry 49's scope.

In dissent, Justice Nagarathna took the opposite view, holding that Entry 50, read with Entry 54 and Section 2 of the MMDR Act, is a specific entry that does subtract mining land from the scope of Entry 49.

CONCLUSION

The Supreme Court (9-Judge Bench) held that royalty under the MMDR Act is not a tax, and States retain the constitutional power to levy taxes on mineral-bearing land and mineral rights, subject to constitutional limitations.

[8] 1995 Supp (1) SCC 707