State of M.P. V. Mahalaxmi Fabric Mills Limited, 1995

Supreme Court of India, Judgment of 1 February 1995

PETITIONER:
STATE OF M.P.

Vs.

RESPONDENT:
MAHALAXMI FABRIC MILLS LIMITED & ORS.

DATE OF JUDGMENT01/02/1995

BENCH:
MAJMUDAR S.B. (J)
BENCH:
MAJMUDAR S.B. (J)
KULDIP SINGH (J)
HANSARIA B.L. (J)

CITATION:
1995 AIR 2213 1995 SCC Supl. (1) 642
JT 1995 (3) 93 1995 SCALE (1)758

ACT:

HEADNOTE:

JUDGMENT:
MAJMUDAR, J.:
1. Leave granted in both the petitions.
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2.Two main questions are involved in these four appeals, namely, whether Section 9(3) of the Mines and Minerals (Regulation & Development) Act. 1957, (hereinafter referred to as 'the Act') is ultra vires the Constitution and secondly whether Notification dated 1st August 1991 issued by the Central Government under Section 9(3) of the Act is ultra vires, illegal and inoperative in law. On these common questions we have heard learned counsel for the contesting parties and are, therefore, disposing of these appeals by this common judgment.
3.A few relevant facts leading to these cases may be stated at the outset. Appellants in C.A. Nos. 275/94 and 276/94 being State of M.P. and Union of India respectively, were respondents before, the High Court Special Civil Miscellaneous Petition No. 10/93. The respondents in these appeals were the original writ petitioners in the High Court. These respondents are purchasers of coal form Coal India Ltd. which was respondent No.3 in writ petition. The writ petitioners complained that the Notification dated 1st August, 1991 issued by the Union of India fixing new rates of royalty on various varieties of coal was illegal and inoperative in law on various grounds, that before 1.8.91 royalty was payable at the rate of Rs.6.50 per ton vide earlier Notification but the same was sought to be increased to Rs. 120/- per ton by the new Notification. Since the said Notification was issued under Section 9(3) of the Act, it was submitted that the said provision confers unguided, unchannelized and arbitrary discretion to the Central Government to increase the rates of royalty to any higher amount and as no guidelines were provided for effecting the said increases either under this Section or elsewhere in the

Act, the Section itself is an instance of excessive delegation of essential legislative power and hence it was void. That royalty on various varieties of coal was fixed in the year 1981 vide earlier Notification issued by the Central Government under Section 9(3). Proviso to Section 9(3) permits revision of the rates of royalty once during every three years. In the year 1982, several coal producing States imposed coal development cess and started receiving revenue for effecting development of their mining areas, till they were challenged by consumers of coal by filing several writ petitions in the High Courts. The controversy ultimately came to be decided by this Court in Orissa Cement Limited v. State of Orissa (AIR 1991 SC 1674), whereby such cess was held to be invalid and beyond the legislative competence of the State Government. It appears that soon after the aforesaid invalidation of the cess the coal producing States were faced with problem of refunding the amounts obtained by them that far. They, therefore, approached the central Government for help in the matter. In pursuance to the said approach, the Parliament passed an Act validating the cess paid by the coal consumers upto the date of the judgment by issuing an ordinance styled as 'The Cess & Other Taxes of Minerals Validation Ordinance, 1992. We are not concerned with the said Ordinance and the subsequent Act in the present proceedings. It appears that since the State Government had suffered financial losses because of the invalidation of the cess, they also approached the Central Government for help in the matter. As a consequence thereof, a working group was constituted in this behalf The said working group suggested an increase in the royalty to the extent of Rs.70/- per ton of coal. The working group also found

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sufficient justification for compensating the coal producing States to the extent of 100 per cent of the loss caused by the aforesaid judgment of this Court. Since the recommendation was accepted by the Central Government, the impugned Notification was issued by the Central Government. According to the writ petitioners before the High Court the increase in the rates of royalty pursuant to the Notification was to the extent of 400 per cent to 2000 per cent as compared to the royalty fixed in 1981 on various varieties of coal. It was further contended before the High Court by the writ petitioners that the royalty fixed in the impugned Notification was payable to the concerned State Governments by the coal companies. The coal companies passed on this burden to their customers and showed this amount clearly and specifically in bills issued by them. The coal companies have no objection to ,the Notification and are supporting the Central Government in this behalf The purchasers being consumers of coal were the affected parties who challenged the said Notification. About 60 petitions were filed before the M.P. High Court by various consumers of coal. The High Court heard learned counsel for all the respective parties. The Division Bench by its judgment dated 17th December, 1993 took the view that Section 9(3) of the Act was not invalid or illegal on any ground. However, so far as impugned Notification on Section 9(3) was concerned, the High Court was of the opinion that the said Notification was lacking in bonafides and as it was issued for meeting the financial deficiency suffered by States on account of the judgment of this Court in Orissa Cement Case (supra) it was outside the scope of Section 9(3) of the Act. Having reached that conclusion, the Division Bench of the High Court quashed the impugned Notification dated 1.8.91 but so far as the ques-

tion of refund was concerned, the High Court took the view that no direction of refund of any amount could be issued as the burden of enhanced royalty was already passed on to the customers by the manufacturers. Accordingly, the writ petition was partly allowed. This order of the Division Bench dated 17.12.93 is brought in challenge by the State of Madhya Pradesh by filing C.A. No. 275/ 94 after obtaining special leave to appeal against the said order from this Court. The Union of India has also challenged the very same order in C.A. No.276/94 after obtaining special leave. So far as Special leave petition No.8190/94 is concerned, it is filed by M/s. Birla Jute & Industries Ltd., one of the consumers of coal, which has also felt aggrieved by the hike in royalty of coal as imposed by the impugned Notification. It raised the very same contention in the High Court by way of Misc. Civil Case No.833/93. The writ petition filed by M/s. Birla Jute Industries Ltd., was also partly allowed by the High Court following its order dated 17.12.93. By the order dated 28.1.94, it was held that the petitioner therein was entitled to the same benefit on the same lines as was available to the writ petitioners in matter decided on 17.12.93. The petitioner, Ws. Birla Jute Industries Ltd., by special leave has contended that the High Court was in error in not granting refund of the illegally collected royalty as impugned Notification was struck down by the High Court. In appeal, pursuant to SLP(C) No. 3395/94, the State of M.P. has brought in challenge a similar order passed by the High Court on 17.12.93 in Misc. Petition No. 7907/ 92.
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4.There are number of other civil appeals arising from the similar orders passed in the said writ petitions. But as we have heard learned counsel in these four matters, we are disposing of only these four matters in the first instance by this judgment.
S.Learned Solicitor General and Additional Solicitor General in support of C.A. Nos. 275/94, 276/94 and Civil Appeal arising out of SLP(C) No. 3 3 95/94, vehemently contended that the High Court was patently in error in striking down the impugned Notification dated 1.8.91. It was submitted by them that once this Court took the view in Orissa Cement Company's case that royalty could not be imposed by States, that it was within the domain of the Central Legislature in view of the Entry 54 of List I of Schedule VII of the Constitution and when the Parliament had already occupied the field pertaining to regulation and development of mines and minerals in the country be enacting the Act in 1957, if the rates of royalty were to be increased, it was only the Central Government which could exercise power under Section 9(3) of the Act and as the royalty had to be paid to the States, there was nothing wrong in issuing the impugned Notification under which increased rates of royalty would be made available to the concerned States. Equally, there was nothing wrong in Section 9(3) which gives enough guidance to the Central Government for issuing such Notification and that such Notification could not be said to be ultra vires or illegal or unconstitutional as wrongly held by the High Court. On the other hand, Mr. Sanghi, senior counsel appearing for the respondents, submitted that Section 9(3) of the Act was a piece of excessive delegation of legislative power of Parliament, that it laid down no guidelines for the Central Government to follow for increasing the rates of royalty. That even otherwise as it sought to tax mineral rights the said Section was beyond the legislative competence of the Parliament as such legislation would be covered by Entry 50 of the List 2 of the VIIth

Schedule. It was next contended by Shri Sanghi that the impugned Notification enhancing the royalty by almost 200 per cent was ultra vires the purpose and object of the Act as the purpose of the Notification was to increase the revenues of the State Governments in whose territories the concerned mines were situated and as it had nothing to do with the development of the mines, the Notification was beyond the scope and ambit of Section 9(3) of the Act. Mr. Sorabjee, learned senior counsel appearing for the appellant, M/s.Birla Jute Industries Ltd., adopted the arguments of Mr. Sanghi and further submitted that the Notification issued under Section 9(3) must have direct nexus with royalty which would be a payment made for the privilege of removing the minerals and it had to be charged on the quantity removed. That no Notification under Section 9(3) could be issued by the Central Government only for increasing the general revenues of the States, that such a purpose is outside the scope of Section 9(3) and in substance by the impugned Notification, the Central Government had imposed a tax for the purpose of swelling the revenues of the States and not for the purpose of increasing royalty on any permissible ground which may be within the scope of Section 9(3) of the Act. Mr. Dholakia, learned senior counsel appearing for Respondent No.1 in Civil Appeal 1994/95 arising out of SLP(C) No. 3395/ 94, broadly supported the aforesaid contentions of Shri Sanghi and Shri Sorabjee and further contended that Section 9 of
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the Act has nothing to do with mineral development and, therefore, enactment of Section 9 could not be supported under Entry 54 of the Union List but would be covered by the sweep of Entry5O of the State List. Mr. Chidambaram, learned senior counsel, appearing for some of the original writ petitioners before the High Court in companion matters, also adopted the arguments of Shri Sanghi and Shri Sorabjee and further contended that as laid down by this Court in Indian Cement case royalty is a tax, and there was no Entry in the Union List which could support such a tax and it would clearly fall within the scope and ambit of Entry 50 of the State List. He further contended that every tax should have a tax entry and as there was no specific entry regarding imposition of tax by way of royalty in the Union List such tax could be covered by Entry 50 of the State list, and so, impugned Section 9(3) is beyond the legislative power of the Parliament.

6.Mr. Ramaswamy, leamed senior counsel, who was permitted to intervene supported the contention of the aforesaid leamed counsel for the writ petitioners and further contended that the impugned Notification, even if assumed partly to be based on relevant grounds, at least partly was not based on relevant grounds as it was not wholly issued for the purpose of development of minerals but for the purpose of development of State coffers and, therefore, the entire Notification has to be struck down as invalid and incompetent. An alien purpose cannot be mixed with the relevant purpose for exercising any statutory powereven including the power to exercise delegated legislative function.

7. In the light of the aforesaid rival conditions, the following points arise for our determination:-

1. Whether Section 9(3) of the Act is ultra vires the Constitution and/or is illegal on any other ground?

2. Whether the impugned Notification is beyond scope of Section 9(3) of the Act and, therefore, incompetent and invalid?

3. Whether the impugned Notification is a piece of colourable exercise of power?
4. Whether the impugned Notification is arbitrary and confiscatory in nature?
As discussed hereinafter, answers to the above points are as follows:-

1st In the negative;
2nd In the negative,
3rd In the negative;
4th In the negative.

8. We shall deal with these points seriatim.
Point No. 1
9. So far as vires of Section 9 are concerned, it must be kept in view that a Constitution Bench of this Court has held in the case Baijnath v.State of Bihar, (AIR 1970 SC 1436) that the Act is enacted by Parliament under Entry 54 of the Union list. In this connection the Constitution Bench speaking through Hdayatullah C.J., has made the following observations:-

> "Entry 54 of the Union List speaks both of Regulation and mines and minerals development and Entry 23 of State list is subject to Entry 54 of Union list. It is open to Parliament to declare that it is ex-
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> pedient in the public interest that the control should vest in Central Government. To what extent such a declaration can go is for Parliament to determine and this must be commensurate with public interest. Once this declaration is made and the extent laid down, the subject of legislation to the extent laid down becomes an exclusive subject for legislation by Parliament. Any legislation by the State after such declaration and trenching upon the field disclosed in the declaration must necessarily be unconstitutional because that field is abstracted from the legislative competence of the State legislative.

10.Once it is held that the entire Act is within the exclusive domain of legislative power of the Parliament under Entry 54 of the Union list it becomes obvious that Section 9 which is a part and parcel of the same Act would also fall within Entry 5 which deals with regulation of mines an development of minerals and for which declaration is already found in Section 2 of the Act to the effect that such regulation of mines and minerals development under control of the Union is expedient in public interest. We may now turn to Section 9 which reads as under:-

> "9. Royalties in respect of mining leases:-
> (1) The holder of mining lease granted before the commencement of this Act shall, not withstanding anything contained in instrument of lease or in any law in force at such commencement, pay royalty in respect of an
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> 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 on or after the commencement of this Act shall 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 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 & 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 minerals 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)."

11.It becomes obvious that Parliament while enacting Section 9 has already laid down the rates of royalty to be charged on the removal and consumption of mineral by any lessee of mining lease, his agent or manager of sub-lessee, from the leased area. The rates of royalty are scheduled in the Act. So far as coal is concerned it is by Entry 11 of the Second Schedule. Separate rates of royalty are prescribed for dif-ferent types of coal. However, the Parliament felt that these rates of royalty may be required to be enhanced or reduced from time to time due to fall of money value

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with the passage of time of vice versa. For that very purpose the Central Government as per Section 9(3) is permitted by Parliament to amend the Second Schedule by Notification to be published in Official Gazette from time to time-subject to the proviso that the Central Government shall not enhance mineral and mines royalty for more than once during the period of three years. The power conferred upon the Central Government under Section 9(3) is by way of delegated legislative power. Vires of Section 9(3) was challenged on twin grounds by Shri Sanghi, learned senior counsel. In the first instance he submitted that if royalty is a tax, there should be a clear entry in the Union list permitting the Parliament to impose such a tax. He placed reliance on M/s. International Tourist Corporation & Ors., Avtar Singh & Ors Namaskar Bus Service and Others V. State of Haryana & Others, State of UP. & Others, (1981 (2) SCC 318) and State of Mysore & Others Vs. M/s D Cawasji &Co. & Others, (1971 (2) SCR 799), and submitted that there is no such entry regarding tax on royalty in the Union list; on the contrary, tax on mineral rights is found in Entry 50 of the State list. Therefore, Mr. Sanghi submitted that legislative competence in connect-ion with tax on mineral rights would be exclusively of State legislature and not of the Parliament and, therefore, Section 9(3) is beyond the legislature competence of the Parliament. The second leg of challenge was that in any case by Section 9(3) the Parliament has delegated its legislative power in favour of the Central Government by way of excessive delegation and no guidelines are found in the Section as to on what basis the Central Government once in three years can revise the

royalty rates and what would be the relevant criteria for the said exercise.

As the Section is silent on these vital aspects, it has to be held to be suffering from the vice of excessive delegation of legislative power.

12. In our considered opinion there is no substance in either of the twin contentions for challenging vires of Section 9(3). So far as to competence to enact Section 9 is concerned, the question is no longer res integral. It is covered by the Constitution Bench decision of this Court in the case India Cement Ltd. & Others Vs. State of Tamil Nadu & Others, (1990 (1) SCC 12). In that decision the Constitution Bench speaking through Sabyasachi Mukherji J., as he then was, expressly rules that royalty is a tax and for imposing such royalty the State legislature will have no power under Entry 50 of the Second list. Mr. Sanghi contended that strictly royalty cannot -be said to be a tax and to that extent the decision of the Constitution Bench may appear to be erroneous. It is not possible to agree with this contention. In paragraph 34 of the report the Constitution Bench has made the following pertinent observations:-

> 34. "In the aforesaid view of the matter we arc of the opinion that royalty is a tax, and -as such a cess on the royalty being a tax on royalty, is beyond the competence of the State legislature because Section 9 of the Central Act covers the field and the State legislature is denuded of its competence under Entry 23 of List H. In any event we are of the opinion that cess on royalty cannot be sustained under Entry 49 of List II as being a tax a tax on land but a payment for the user of land."

13.It is true that in paragraph 13 of the report the Constitution Bench noted the on land. Royalty on mineral rights is not

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judgments of Rajasthan, Punjab and Gujarath High Courts which had taken the view that royalty was not a tax and it is equally true that it is not expressly mentioned in the judgment of the Constitution Bench that these judgments were erroneous or were required to be over ruled. However on a conjoint reading of paras 31 and 34 of the report, it becomes obvious that the view that royalty is not a tax as expressed by these High Courts did not find favour with the Constitution Bench of this Court which took a contrary view. Therefore, these judgments necessarily stood over ruled, on this aspect. It is true that in the last line of paragraph 34 it is mentioned that royalty on mineral rights is not a tax on land but a payment for use of land but these observations are in connection with Entry 49 List II which deals with a tax on land. But so far as nature of royalty is concerned it is clearly rules to be a tax by the Constitution Bench, and that is the reason why the Constitution Bench reached the conclusion that any cess on the royalty would be a tax. It would be beyond legislative competence of the State legislature as Entry 50 in List II would be of no avail once the Parliament has occupied the field by enacting the Act, especially Section 9 thereof. The view of the Constitution Bench that royalty is a tax as found in paragraph 34 of the report can also be supported from other paragraphs of the report. In paragraph 23 of the report while agreeing with Mr. Nariman that royalty which is indirectly connected with land cannot be said to be a tax directly on land as a unit, it has been observed that no tax

can be levied or leviable if no mining activities are carried on. Hence it is manifest that it is not related to, land as a unit which is the only method of valuation of land under Entry 49 of List II but is relatable to minerals extracted. Royalty is payable on a proportion of the minerals extracted. These observations in paragraph 23 clearly indicates that in view of the Constitution Bench, royalty was a tax which had a nexus with mining activities meaning thereby it was a tax on mineral rights. Similarly in para 27 of the report, the Constitution Bench noted with approval of the decision of the Division Bench of the High Court of Mysore in Laxminarayana Mining Co. Bangalore v. Taluk Dev. Board (AIR 1972 Mysore 299). In the case the Court was concerned with the Mysore village Panchayats and Local Boards Act, 1959. Under the said act the Board had sought to levy tax on mining activities carried on by the persons holding mineral concessions. The mysore Court had observed that once the Parliament made a declaration by law that it is expedient in the public interest to make regulation on mines and minerals development under the control of the Union to the extent to which such regulation and development is undertaken by the law made by the Parliament. the' power of the State legislature under entries 23 and 50 of List II got denuded. It would, therefore, be not said that even after passing of the Central Act, the State legislature by enacting Section 143 of the Act could confer power on the Taluk Board to levy tax on the mining activities carried on by the persons holding mineral concessions. The Constitution Bench then noted that at page 306 of the report of Mysore case it was held that royalty fixed under Section 9 of the Mines and Minerals Act was really a tax. It must be kept in view that this decision of the Mysore High Court was noticed by the Constitution Bench and was not dissented from. On the other hand it got approved by it. It must, therefore, be
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held that royalty imposed had to, be treated as tax as ruled by the Constitution Bench of this Court in India Cement Case (supra). It is no doubt true that in the late decision of this Court in Orissa Cement Ltd. & Ors. etc. etc. v. State of Orissa & Ors. etc. etc., (1991 (2) SCR 105), a threeJudge Bench of this Court did not go into the question whether there was any typegraphical error in the judgment of the Constitution Bench as found in para 34 of its report when it held that royalty is a tax. But in view of what we have discussed have it becomes absolutely clear that there was no typographical error but on the contrary the said conclusion logically flew from' the earlier paragraphs of the judgment referred to by us hereinabove.

14. Once the conclusion is reached that royalty is a tax, the next question arises whether Entry 50 of the State list can at all be resorted to for imposing such a tax by the State legislature. Even that question is fully covered against the writ petitioners by the very same Constitution Bench judgment of India CementOrs. In para 24 of the report it has been observed while repelling the contention of Mr. Krishnamurthy Iyer for the State of Tamil Nadu that Entry 50 in List II of the Seventh Schedule can be of any avail, the Constitution Bench noted that Entry 23 of List II deals with regulation of mines and minerals development subject to the provision of List I with respect to regulation and development under the control of the Union and Entry 54 in List I deals with regulation of mines and minerals under the control of Union declared by the Parliament by law to be expedient in public interest Thereafter it was observed that

even if minerals are part of the State list they are treated separately and, therefore, the principle that the specific excludes the general must be applied. In this connection reference was made to the case of H.R.S. Murthy v. Collector of Chittor 1964(6) SCR 666), where it was held that cess on minerals would be covered by Entry 49 of List II. The Constitution Bench with regard to H.R.S. Murthy's case observed in paragraphs 29 and 30 of India Cement Ltd. case that attention of the Court was not invited to provisions of Mines and Minerals (Development & Regulation) Act, 1957 and Section 9(3) thereof Section 9(3) of the Act in terms states that royalties payable under the IInd 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 fact...amend IInd Schedule of the Central Act. As seen earlier inparagraph 32 of the report in India Cement Case, it has been clearly mentioned that in view of the express provisions of Mines & Minerals Act, 1957, Entry 50 cannot be of any assistance to sustain such legislation by the, State. Oza. J. in his concurring judgment has highlighted one additional dimension of the matter in para 40 of the report. It has been observed by Oza J., that it is no doubt true that mineral is extracted from the land and is available but it could only be extracted if there art three things: (1) land from which mineral could be extracted. (2) capital for providing machinery, instruments and other requirements, and (3) labour. It is, therefore, clear that unit of charge of royalty is not only land but land + labour + capital. It is also to clear that if royalty is a tax or an imposition or a levy, it is not on land alone but it is a levy or a tax on mineral, including land, labour and capital employed in extraction of the mineral. It is therefore clear that royalty if imposed by
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the Parliament could only be a tax not only on land but also on these three things stated above.

15.Inview of the decision of Constitution Bench it is no longer open to the writ petitioners to submit that Entry 50 of -List II can still be available to State legislature. It is easy to visualise that once the Parliament has, occupied the field in connection with regulation of mines and minerals development in the country and when the Parliament declares that it is expedient in the public interest so to do, Entry 23 of the State list regarding regulation of mines and minerals development would be of no avail to the State legislature as Entry 23 List II is subject to the provision of List 1, nor will Entry 50 of the State list can be of any assistance to the State authorities. In short, both the entries will be out of way in enacting appropriate legislation imposing the rates of royalty to be paid by those who extract minerals in the country. Once, these Entries are out of picture, it is Entry 54 in the Union list which will operate and the imposition of tax on minerals ex-tracted would be squarely got covered by Entry 54 of the Union list. To recapitulate, as the entire Act has been upheld by this Court in its earlier decisions to which we, have made reference in the light of Entry 54 of the Union list, Section 9 being part and parcel thereof cannot be out of the sweep of Entry 54. However, even assuming that there should be a specific taxing entry regarding taxing of royalty on mineral rights which can sustain such legislation under the said entry, being a topic of legislative power, we find that there is no such specific entry in Union list nor in State list or concurrent list which can be of any

assistance in this connection. Entry 50 in the State list is out of picture as we have seen earlier. In- these circumstances the State legislature cannot rely on any entry in the State list or concurrent list for imposing such a tax once a valid legislation by Parliament under Entry 54 of the Union list is holding the field. In the alternative imposition of such hybrid tax on mines + capital + labour would be covered by residuary Entry 97 of the Union list which empowers the Parliament to enact laws on topics not covered by others specific entries in List II or List III. This conclusion squarely flows from the observations made by Oza J., in his concurring judgment in India Cement Ors.... It must, therefore, be held that Section 9 of the Act is within the legislative competence of the Parliament both under Entry 54 of the Union list as well as Entry 97 thereof The first ground of attack on Section 9 by Shri Sanghi is thus devoid of substance and is, therefore, -rejected.

16. Mr. Sanghi next submitted that Section 9(3) is an piece of 'delegated legislation and it should not suffer from the vice of excessive delegation. No exception can be taken to this submission of Shri Sanghi. Let us try to see whether Section 9(3) suffers from any such vice. It must be kept in view that Parliament itself has laid down the rates of royalty in the IInd schedule of the Act. However, the Parliament felt that with passage of time these rates of royalty may have to be suitably modified. This is obvious as the Act was enacted years back in 1957. The purchasing power of rupee went on failing year after year and decade after decade. Therefore, instead of Parliament itself every time being required to increase the rates, it left to the Central Government to do so but it imposed certain fetters on the power of the Central Government. Firstly, the proviso of Section

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9(3) clearly lays down that such enhancement should not be made before the end of four years and now after-amendment before the end of three years. This itself indicates a guideline laid down by the Parliament that the rate of inflation and fall of money value of the rupee should be considered once in three years and that the royalty should be enhanced only once in three years. The second guideline in Section 9(3) is pertaining to the very topic of delegation of such legislative power. The Central "Government has to keep in view the original rates mentioned in End Schedule in connection with different types of minerals and to suggest suitable enhancement once in the three years depending upon the requirements of the States concerned for whom the royalty is meant. It is to be paid by holder of mining lease who extracts minerals. If a person is merely in occupation of land which contains mines and minerals, he is not liable to pay any royalty but it is only when he holds a mining lease and by virtue of that extracts one or more minerals then only he is called upon to pay royalty to the State Government as the lease is in respect of the land in which minerals vest in the State Government. This exercise is to be carried out keeping in view the very object and purpose of the Act, namely, regula- tion of mines and development of minerals which are the catch words of Entry 54 of List II under which the Act is enacted. Therefore, fixation of royalty should have a direct nexus with the minerals through out the country on uniform pattern so that activity of winning the minerals for the benefit of the lessees of such mining leases in the first instance and ultimately for the economy as a whole should not get in any way frustrated. There are sufficient

guidelines from the Act to enable the Central Government to exercise its delegated legislative function in a just and proper manner keeping in view the uniform development of minerals through out the country. In this connection it is also necessary to keep in view Section 28 subsection (1) which provides that every rule or notification made by the Central Government be placed before each House of Parliament for a total period of 30 days in one session or two more successive session and if both Houses agree in making any modification in the rule or Notification should not be made, the rule or Notification shall thereafter have effect only in such modified form or be of no effect, as the case may be. When such a safety valve is provided it cannot be said that the exercise of delegated legislative power by Central Government in the first instance under Section 9(3) would suffer from any excessive delegation of legislative power or effacement of legislative power of the Parliament.

17. In our view the High Court correctly held that Section 9(3) does not suffer from any excessive delegation of legislative power. Before parting with this discussion we may deal with one more submission of Shri Sanghi. He submitted that earlier the legislation had itself provided in Section 9(3) a ceiling for enhancement of rates of royalty and to that extent there was a safety valve or guideline by Parliament. But after amendment this ceiling is given a go bye and hence the Section has become arbitrary. It is not possible to agree with this contention for the obvious reason that whatever enhanced rate of royalty is fixed by Notification by the Central Government under Section 9(3), it has got to be filtered through the process of Section 28(1) and if the Parliament finds the proposed hike to be uncalled for it may

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veto it out. There are sufficient guidelines as to for what purpose the royalty can be enhanced as discussed hereinabove, once in three years. In this connection we may profitably refer to the decision of this Court in the Case N.K. Papiah & Sons. v. The Exercise Commissioner and another, (AIR 1975 SC 1007). In that case this Court was concerned with the question of constitutional validity of Section 22 of Karnataka Excise Act. Section 22 conferred power on the Government to fix rates of excise duty. There was no guideline in Section 22 about upper limit of the duty which could be fixed. Repelling the contention that this had resulted in excessive delegated power, Mathew J. speaking for this Court held that power conferred on the Government by Section 22 was valid. From the mere fact that it is not certain whether the preamble of the Act gives any guidance for fixing the rate of excise duty, it cannot be said that the legislature has no control over delegate; that requirement of laying of rules before the legislature is control over delegated legislation. The legislature may also retain its control over its delegate by exercising its power of repeal.

18. In the case of Delhi Cloth and General Mills Co.Ltd., M/s. Arvind Mills Ltd. etc. etc. v. Union of India & Ors,etc. etc. (AIR 1983 SC 937) another Bench of this Court speaking through Desai J. held that the provision of Sections 58A and 642 of the Companies Act requiring every rule enacted in exercise of the power conferred by it must be placed before each House of Parliament for a period of 30 days and both Houses have power to suggest modification in the proposed rules to check any transgression of permissible limits of delegated legislation by the delegate, made the challenge on the, ground of excessive delegation

unsustainable. In view of this settled legal position it cannot be held that Section 9(3) suffers from any excessive delegation of legislative power. 'Mere is full control of Parliament under Section 28 for checking such exercise of the delegate and for correcting the same, if found necessary. The second ground canvassed by Shri Sanghi for challenging the vires of Section 9(3) is also without any substance and stands rejected. Therefore,, point no. 1 is answered in the negative.

Point No.2

19. Sofaras this point is concerned, wehaveto see the, background in which the impugned Notification dated 1.8.1991 saw the light of the day. After 1981 there was no enhancement of royalty though a clear power was conferred on the Central Government by Section 9(3) to enhance the rates of royalty at the end of every four years and then amended after every three years. Almost a decade had passed when the impugned Notification was issued, on 1.8.1991. In the meantime, at least on three occasions rates of royalty as found in earlier Notification of 1981 of the Act could have been enhanced by the Central Government in exercise of its power under Section 9(3) but that was not done. That was because the States themselves who were the owners of the minerals and were entitled to receive the amounts of royalty on extracted minerals by the concerned lessee tried to help themselves by imposing various cesses on royalties by different legislations. It is no doubt true that, that would swell the exchequer of the States but the said exercise was undertaken with a view to obtain appropriate rates of royalty commensurate with the price of the

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extracted minerals as charged from time to time by the lessees. This imposition of cesses by the States on royalty as originally fixed by the Central Government under Section 9(3) was frowned upon by this Court and held to be beyond the legislative. competence of the State legislature. It is under these circumstances that the States requested the Centre to repair the damage or loss to the State exchequer in the light of the decision of India Cement Case (supra) and that is the reason why a study group to look into the matter was formed by the Central Government in this connection. The report of the study group clearly shows that rates of royalty as earlier enhanced in 1981 had not been, however, further enhanced for all these years and that in the meantime attempts by the States to raise the rates of royalty by way of imposed cesses on royalty were found to be ultra vires the State legislature and in these circumstances it was necessary in enhance the rates of royalty on various types of coal. It is thereafter that the said Notification was issued by the Central Government invoking its power under Section 9(3). It was vehemently contended by Mr. Sanghi, Mr. Sorabjee and Mr. Ramaswamy that the impugned Notification is beyond the scope of Section 9 of the Act as it has nothing to do with the development of minerals but it was issued only for compensating the States who have suffered loss because of striking down of cesses imposed on royalty by this Court. Mr. Sorabjee invited our attention to various decisions of High Courts and this Court for submitting that royalty is levied on the minerals extracted by the' holders of the mining leases. In the first instance lie took us to decision of Punjab in case Dr. Shanti Saroop Sharma and Another v. State of Punjab & Others (AIR 1969 Punjab & Haryana 79), Gurudev J. in paragraph 14 of the report held that royalty is not defined either in the Act or the Rules framed thereunder by the Central or the State Gov-

ernment. Learned Judge has referred to what is stated at page 893 of (Wharton's Law Lexicon (14th edition) in para 15 to the following effect:-

> " royalty is payment to a patentee by agreement on every article made according to his patent; or to an author by a publisher on every copy of his book sold; or to the owner of minerals for the right of working the same on every ton or other weight raised."

The learned Judge also referred to various dictionary meanings of the term royalty. According to Stroud's Judicial Dictionary of Words and Phrases (3rd Edition)

> "In its secondary sense the word 'royalty' signifies, in mining leases, that part, of the reddendum, which is variable and depends upon the quantity of minerals gotten (Att. Gen. Ontario V. Mercer (18838AC 767) Sup: see Hereon Greville Nugent V Mackenzie (1900) AC 83, cited RENT; Listowel v. Gibbings (1858-9 Ir CLR 223) Sup; or the agreed payment to a patentee on every article made according to the patent. "

According to Mozley and Whiteley's Law Dictionary (7th Edition) page 328

> "A pro rata payment to a granter or lessor on the working of the property leased, or otherwise on the profits of the grant or lease. The word is specially used in reference to mines patents and copyrights."

According to Prem's Judicial Dictionary (Volume IV) 1964 Edition, page 1457:
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> "Royalty is inter alia, a charge by the owner of minerals from those to when he gives the concession to remove them, and the charge is o
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> production, the rate being fixed according to weight: Behru Lal v. State of Rajasthan AIR 1956 Raj 161."

According to Wharton's Law Lexicon royalties are payments which the Government may demand for the appropriation of minerals, timber or other property belonging to the Government. Two important features of royalty have to be noticed, they are, that the payment made for the privilege of removing the articles is in proportion to the quantity removed and the basis of the payment is an agreement. In para 22 learned Judge has concluded that the word Royalty has a well recognised and defined meaning which means share of produce or profit paid to the owner of the land for being granted privilege of producing minerals therefrom and excludes the concept of fee simple title to minerals in place. The same meaning has been given to the term royalty in the cases Saurashtra Cement & Chemical Industries Ltd., Ranavav v. Union of India (AIR 1979 Gujarat 180) Laxmi Narayan Agarwalla & Others etc. v. State of Orissa & Others, (AIR 1983 Orissa 21 0) and Surajdin Laxmanlal v.State of M.P. Nagpur & others (AIR 1960 M.P. 129). Shri Sorabjee also took us through the decision in case D.K. Trivedi and Sons and Ors. etc. etc. v. State of Gujarat & 0rs. etc. etc. (1986 (1) SCR 479), wherein at page 532 of the report the dictionary meanings as found in various dictionaries were noticed. Ultimately Madon J. speaking for the Court made the following observations at page 534 of the report:-

> "In a mining lease the consideration usually moving from the lessee to the lessor is the

> rent for the area leased (often called surface rent), dead rent and royalty. Since the mining lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lease but also to extract minerals from the land and to appropriate them for his own use or benefit, in addition to the usual rent for the area demised, the lessee is required to pay a certain amount in respect of the minerals extracted proportionate to the quantity so extracted. Such payment is called 'royalty'."

In the light of the aforesaid meaning of the term 'royalty', it was submitted by Shri Sorabjee that the Central Government under Section 9(3) can enhance the rates of royalty payable on the extracted minerals by the lessee and it is to be paid to the lessor, the State concerned in whose territory/jurisdiction the mines are situated but the impugned Notification was issued in exercise of that power not for developing mines but it is solely issued for the purpose of compensating the States exchequers for the loss of revenue suffered by them and that such a Notification has nothing to do with the development of minerals and therefore, is beyond the scope and ambit of Section 9(3). Same view was canvassed by learned counsel Shri Sanghi and Shri Ramaswamy.

20. Having given our anxious consideration we find there is no substance in this contention. The reasons are obvious. The legislature has entrusted the Central Government with the power to enhance the rates of royalty from time to time. It is of course true that traditionally speaking royalty is an amount which is paid under contract of lease by the lessee to the lessor, namely, the State Governments concerned and-it is commensurate with the quantity

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of minerals extracted. But we cannot lose sight of the fact that since 1981 such enhancement of royalty has not been done by the Central Government. Rates of royalty fixed before a decade, with the passage of time and fall in money value and increase in inflation would naturally become illusory. Therefore, the States would legitimately claim for increasing the rates or royalty. They unsuccessfully tried to do so themselves by imposing cesses on royalty. In these circumstances, it was perfectly open to the Central Government to exercise its power under Section 9(3) and enhance the rates of royalty so that loss to the States exchequer of the amounts which otherwise would have been available to the States could be compensated. It is not that the States were otherwise not entitled to the royalty amounts; but because of the operation of Section 9, the power of the States to enhance the royalty get vested in the Central Government. But once the rates are enhanced by the Central Government, the enhanced royalty was to be received by the State and same is to recovered from concerned lessee of minerals. In fact Mr. Sanghi was right when he contended that there is no question of the royalty amounts being distributed by the Centre to the States as per Articles 268 and 269 of the Constitution. That once royalty amounts are fixed by the Central Government under Section 9(3), the States automatically become entitled to receive the same from lessees of minerals who are allowed to extract them on payment of such amounts of royalty to the State which is the owner-lessor of these minerals. Enhancement of rates of royalty cannot be said to have no nexus with the development of minerals as contended by learned counsel for the writ

petitioners, only because the enhanced rates of royalty are to go to swell the exchequers of concerned States. In the case of Orissa Cement Limited (supra), while interpreting Entry 50 in the light of Section 9 of the Act, Ranganathan J. speaking for this Court has observed as under:-

> "To take up Entry 50 first, a perusal of Entry 50 would show that the competence of the State Legislature with respect thereto is circumscribed by 'any limitations imposed by Parliament by law relating to mineral development'. The M.M.R.D. Act 1957 is - there can be no doubt about this, a law of Parliament relating to mineral development. S. 9 of the said Act empowers the Central Government to fix, alter, enhance or reduce the rates of royalty payable in respect of minerals, removed from the land or consumed by the lessee. Sub-Section (3) of Section 9 in terms states that the royalties payable under the Second Schedule to that Act shall not be enhanced more than once during a period of three years. India Cement has held that this is a clear bar on the State Legislature taxing royalty so as, in effect, to amend the Second Schedule to the Central Act and that if the cess is taken as a tax falling under Entry 50 it will be ultra vires in view of the provisions of the Central Act."

At page 168 of the said report while dealing with the topic of development of minerals, Ranganathan J. examined the contention that imposition of such cesses had no nexus with the development of mineral. Relying upon the observations found in earlier judgment of this Court it was observed that these observations establish on the one hand that the distinction sought to be made between mineral development and mineral area development is not a real one as the two types of development are inextricably and integrally interconnected and, on the other, that fees of the nature

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we are concerned with, squarely fall within the scope of the provisions of the Central Act. The object of Section 9 of the Central Act cannot be ignored. The terms of Section 13 of the Central Act extracted earlier empower the Union to frame rules in regard to matters concerning roads and environment. Section 18(1) empowers the Central Government to take all such steps may be necessary for the conservation and development of minerals in India and for protection of environment. These in the very nature of things cannot mean such amenities only in the mines but take in also the areas leading to and all around the mines. The development of mineral areas is implicit in them. Section 25 implicitly authorises the levy of rent, royalty, taxes and fees under the Act and the rules. The scope of the powers thus conferred is very wide. The purpose of the Union control envisaged by Entry 54 and the M.M.R.D. Act, 1957, is to provide for proper development of mines and mineral areas and also to bring about a uniformity all over the country in regard to the minerals specified in Schedule 1 in the matter of royalties and, consequently, prices. Ranganathan J. agree with Mr. Bobde who appeared for Central Government that prices of minerals for exports were fixed and could not be escalated with the enhancement of the royalties and that if different royalties were to be charged by different States, their working would become impossible. There appeared to be force in this submission. As pointed out in India Cement

Case, the Central Act bars an enhancement of the royalty directly or indirectly, except by the Union and in the manner specified by the 1957 Act.

21. It becomes, therefore, clear that enhancing uniformlyrates of royalty for the entire country even though minerals might be extracted from different State's territory is necessary for having uniform pattern of price of minerals and that has a direct linkage with the development of minerals. It is also to be kept in view that regulating the rates of royalty on extraction of minerals has also an important role to play in opening up new 1 mining areas for winning minerals. In this connection we may refer to Section 18 of the Act which deals with mineral development. Sub-section (1) of Section 18 lays down that it shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operation and for such purposes, the Central Government may by Notification in the Official Gazette, make such rules as it thinks fit. Sub-Section (2) thereof lays down that in particular and v. without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely, (a) the opening of new mines and the regulation of mining operations in any area (b) the regulation of the excavation or collection of minerals from any mine. It is obvious that rules framed under Section 18 (2) have a direct nexus with the development of minerals. In this connection we may refer to Minerals Conservation And Development Rules, 1988 framed under Section 18 sub-section (2) of the Act. It is true that these rules do not apply to coal but as laid down by Section 18(1) read with Section 30 A even for mining leases for coal such rules in appropriate cases may be made applicable. Rule 45 of these rules deals with monthly, quarterly and an-

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nual returns by owners of every mine. When we refer to prescribed return from the owner of the mine we find from Form 1-9 that Form 1-1 will govern the monthly return for other mines and various information sought for iron ore in Part 1 of the form. Item no.4 in that part deals with rent and royalty paid. Thus royalty amount has to be mentioned in the form. It becomes, thus, clear that fixation of royalty rates is in the realm of development of minerals as envisaged by Section 18 of the Act. It is, therefore, not possible to agree with the learned counsel for the writ petitioners that fixation of rates of royalty has nothing to do with the development of minerals.

22.That takes to the contention that even if it were so the impugned Notification is ultra vires Section 9(3) as it has nothing to do with the development of minerals. As we have already seen earlier, to have a uniform pattern of rates of royalty to be charged for extracting different qualities and quantities of minerals from different parts of the country is a very vital aspect of the development of minerals. It is true that one of the main objects of the Notification was for recompensing the loss suffered by States, but the facts remains that they suffered loss since the last hike in royalty was done in 1981 by the Central Government. It cannot be said that even as purchasing power of rupee had fallen and inflation had risen including the prices of coal in national and international market, there was no felt for raising the rates of royalty to be charged for extraction of minerals like coal from the lease holders when the mineral

belonged to the State. If the amount of royalty is so enhanced, it has to go to the coffers of the State concerned which is the owner of the mineral.

This is a logical corollary of enhanced rates of royalty. It cannot be said to be an irrelevant consideration as tried to be suggested by the learned counsel for the petitioners. On the contrary, it was a relevant consideration because the States have to monitor the working of the mines and the income generating from extraction of minerals within their respective territories. If the Central Government exercised its power under Section 9(3) of the Act though belatedly in 1991 for bringing out this result, it cannot be said that it has done what is ultra vires or beyond the scope of Section 9(3) of the Act. In this connection we may keep in view the basic fact that minerals as found in the bowels of the earth or attached to earth surface by itself cannot develop. For developing it, it has to be brought on the surface and separated from the crust of the mother earth and that can be done by mining operation for winning these minerals. In this connection it is profitable to look at Section 3 of the Act. It defines minerals to include all minerals except mineral oils including natural gas and petroleum. Mining lease is defined to mean a lease granted for the purpose of undertaking mining operations and includes a sub-lease granted for such purpose. Mining operation means any operations undertaken for the purpose of winning any mineral. It is obvious that development of mineral as envisaged by Section 18 of the Act and even by Entry 50 of List 11 of the Seventh Schedule of the Constitution, necessarily would mean extraction of mineral out of the bowels of earth or from crust of earth by mining operations. Therefore, the term development of minerals has a direct linkage with mining operation. Without that minerals cannot develop by themselves. In Words and Phrases, Permanent Edition, Volume No.27

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issued by West Publishing Company, St. Paul Minn., the term mineral is defined at page 21 0 as follows:

> "A mineral is a natural body destitute of Organisation or life." It has also been shown that a mineral is anything that grows in mines and contains metals.- It is further mentioned therein that the mineral as used in a deed will be restricted to that given it by the custom of the country in which the deed is to operate. Mineral in ordinary and common meaning is comprehensive term including every description of stone and rock deposit whether containing metallic or nonmetallic substance. The word mineral in popular sense means those inorganic constituents of the earth's crust which are commonly obtained by mining or other process for bringing them to the surface for profit. Mineral hidden in the bowel of the earth by themselves cannot yield profit to anyone and they become minerals when they are brought out on the surface of the earth buy mining operations.

23.It must therefore be held that regulation of mines and development of minerals are interconnected concepts. Consequently, it is not possible to agree with the contention of the learned counsel for the writ petitioners that imposition of royalty has nothing to do with the development of minerals or that enhancing the rates of the royalty by the impugned Notification is extraneous to the

purpose of developing mines but is solely for swelling the coffers of the States. Once that conclusion is reached, there would survive no question of Notification being issued partly for legitimate purpose of enhancing royalty rates after a decade from 1981 and partly for an irrelevant purpose of swelling the State exchequer. In fact the entire purpose of this exercise is for a legitimate relevant purpose for developing the minerals and enabling the State which are the owners thereof to properly manage the mining leases so that minerals can develop on a uniform pattern throughout the country. In that view of the matter the submission made by Shri Ramaswamy relying on case S. Pratap Singh v. The State of Punjab (1964 (4) SCR 733) that alien purpose cannot be mixed with statutory purpose is of no avail to him. The argument of Shri Sanghi relying upon the decision of this Court in case Chanan Mal & Others, State of Haryana & Others (1977 (1) SCC 340) in para 23 at page 350 that declaration, under Section has a limited coverage also cannot be of any assistance to him for the simple reason that whatever may be covered by Section 2 declaration, it has definitely covered the imposition of royalty by the Parliament as held in the Constitution Bench decision of this Court in India Cement Case (supra). As a result of this discussion it must be held that the impugned Notification cannot be said to be ultra vires of Section 9(2) of the Act. The second point is, therefore, answered in the negative.

Point No. 3

24. The question is whether the impugned Notification is a piece of colourable exercise of power and, therefore, null and void. It has to be kept in view that it is an exercise of delegated legislative function entrusted to the Central Government by Parliament under Section 9(3). The concept of colourable legislation has a well defined connotation so far as parent legislation is concerned. If the legislation trespasses on a field not reserved for it under the relevant entry of the. Seventh Schedule it can be said to be

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a colourable legislation meaning thereby it purports to get covered by an entry which does not give legislative competence to the legislature concerned to enact such a law. Adverting to the concept of colourable legislation a Constitution Bench of this Court in case of Federation of Hotel & Restaurant v. Union of India & Others (AIR 1990 SC 1637), made the following pertinent observations:-

> "The constitutionality of the law becomes essentially a question of power which in a federal constitution, unlike a legally omnipotent legislature like the British Parliament, turns upon the construction of the entries in the legislative lists. If a legislature with limited or qualified jurisdiction transgressed its powers, such transgression may be open direct and overt or disguised indirect and covert. The latter kind of trespass is figuratively referred to as 'colourable legislation', connoting that although apparently the legislature purports to act within the limits of its own powers yet
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> in substance and in reality, it encroaches upon a field prohibited to it, requiring an examination, with some strictness, the substance of the legislation for the purpose of determining what is that the legislature

> was really doing. Wherever legislative powers are distributed between the Union and the States situations may arise where two legislative fields might apparently overlap. It is the duty of the Courts, however, difficult it may be, to ascertain to what degree and to what extent, the authority to deal with matters failing within these classes of subjects exists in each legislature and to define in the particular case before them, the limits of the respective powers."

5.It is obvious that this aspect of colourable legislation would not strictly ply while judging the legality of the exercise of the delegated legislative function.

In fact it could not be contended by learned counsel for the writ petitioners that the Central Government had no power to act under Section 9(3). Therefore, in the strict sense, there is no question of the said Notification being a piece of colourable legislation touching upon the power of some other authority functioning under any other provision of delegated legislation. However, it has also to be observed that even in cases of delegated legislation, there are well defined limitations beyond which if such an exercise projects itself, it would become ultra vires the provision permitting such an exercise. We may profitably refer to a decision of this Court in case Indian Express Newspapers (Bombay) Pvt. Ltd. and Others etc. etc. v. Union of India & Others. (AIR 1986 SC 515). A Bench of three learned Judges of this Court speaking through Venkataramaiah J., as he then was, in connection with Notification issued under Section 25 of the Customs Act which was a piece of subordinate legislation has made the following observations:-

> "A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a Statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned in the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable not in the sense of not being reasonable but in the sense that it is manifestly arbitrary. "

Keeping in view this legal position, let us
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examine the challenge to the impugned Notification on the ground that it is a colourable device. It was submitted by the writ petitioners that though purporting to act under Section 9(3) of the Act and by which an effort was made by the Central Government to raise the rates of royalty, in substance they wanted only augment the coffers of the State Government and nothing more and in that manner it was a colourable exercise of power on the part of the Central Government. While discussing Point No.2, we have already repelled this contention. For the reasons recorded therein even this contention has to be rejected. Our attention was invited by &fr. Sorabjee, learned counsel for the appellants, M/s. Birla Jute and Industries Limited, to the counter filed by the Union of India and the State Government in the High Court for justifying the impugned Notification.

That counter is found at page 52 in SLP(C) No, 8190/94. A combined counter was filed on behalf of the respondent nos. 1, 3 and 4 in Misc. Petition No.2907 of 1992 before the High Court in the case of Ws. Saurashtra Cement & Chemicals India Ltd. and Another and it was relied upon by the concerned authorities in all the other cases. In the said counter at paragraph 'Q' it has been averred that the State Government tried various methods for increasing their revenue from time to time a.-, stated in the petition. The State Government enacted various Laws imposing Minerals Area Development and other cesses. These have been struck down by the Hon'ble Supreme Court and the State Governments, therefore, were left with practical difficulties in making necessary financial arrangement, The matter was examined in details on the representation made by the various State Governments and after considering all aspect of the matter, a reasonable increase in the royalty was found justified and, therefore, the Central Government has issued the said Notification. That after revision of rates of royalty on coal in February, 1981 the next revision was due in February, 1985, Study group was appointed in 1984 to consider all aspects in depth regarding revision of rates of royalty on coal. The study group met representatives of the State Government and ascertained their views. It also issued a questionnaire to the State Governments, calling for data relating to production of coal, rates of royalty, cesses, if any levied by them and other relevant information. The study group found that most of the coal producing States were levying cesses and taxes on coal the incidence of which was much higher than that or royalty. Some of these taxes cesses were being levied as a percentage of the pit-head value of coal by the State Governments. All the State Governments representated to the study group that the rates of royalty on coal should bear a close correlation with the prices of coal. The coal producing States, particularly West Bengal and Bihar pressed for fixation of royalty on ad valorem basis instead of the existing specific rates. The study group expressed its views that any levy of royalty on ad valorem basis, without a commitment from the State Governments to refrain from levying cesses, would not be equitable as it would have a cascading effect on the prices of coal paid by the consumers. Thereafter the counter referred to the striking down of cesses imposed by various State legislatures by this Court and then at paragraph 'T' it is stated that Governments whose cess Acts were declared unconstitutional and collection of cesses was stopped were suffering substantial losses of revenues, they approached
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the Central Government to revise the rate of royalty on coal immediately to help the to get out of the financial crisis. It is further averred in the counter that in order to examine the requests of State Governments to increase the rates of royalty Department of Coal appointed yet another study group on 6th February, 1991 to examine the report of the earlier study group and recommend appropriate increase in royalty in the wake of the Supreme Court's Judgment in India Cements Case and subsequent judgments of the High Courts. The study group discussed the issues with the representatives of the coal producing States Governments and considered their views. Then follows paragraph 'U' which states that after considering the report of the second study group the rates of royalty on coal have been revised from an average of Rs.5.30 per tonne to Rs.70/- per tonne w.e.f 1.3.1991. These rates have not been made applicable to the States of Assam and West Bengal because these States are

levying/collecting cesses on coal as their Cess Acts have not been struck down by the Courts so far.

26.Placing reliance on these averments, of the concerned authorities it was vehemently contended by Mr.Sorabjee and Mr. Ramaswamy that the impugned Notification is issued not for the purpose of development of mineral as contemplated by Section 9(3) but entirely for a collateral purpose of compensating the State Governments for the loss of cess revenues and for welling their coffers. It is not possible to agree with this contention. The aforesaid averments clearly indicate that from 1981 rates of royalty were not increased further and there was a demand from all States to make suitable increase in rates of royalty be commensurate with the rising prices of coal. That is why the first study group was appointed in 1984 and that was followed by second study group of 1991 Naturally the second study group came the conclusion that the cesses impose were struck down by this Court and, there fore, there was a need for properly enhancing royalty rates. As Section 9(3) is the only Section remaining in field which could permit such an exercise and it only the Central Government which could do so, accordingly the impugned Notification has been issued. It tried to enhance the rates of royalty which earlier the States unauthorisedly tried to bring about. If the original writ petitioner's contentions are accepted, it could even be contended that neither the Central Government under Section 9(3) nor the State Governments could increase the rates of royalty and 1981 rates which have become illusory with the passage of time would continue to hold the field ad infinitum. It has to be kept in view that a fresh exercise of delegated legislative function in all the facts and circumstances did justify such enhancement at lease after 10 years of the earlier revision in 1981. The motive underlying the said enhancement to compensate the States for loss of revenue which they have suffered cannot be said to be totally irrelevant or having any vitiating effect on the exercise of power under Section 9(3) which is otherwise required to be resorted to in the facts and -circumstances of the case. The motive of legislature or for that matter that of the delegate in exercising delegated legislative function for enacting a provision within its competence cannot be considered to be in any way having any relevant nexus to the efficacy of the product of such an exercise. As we have already discussed earlier, the mineral belongs to the States, and so, if the Central Govern-

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ment has taken into consideration the fact that the States revenues are required to be re-compensated on account of the loss suffered by them in their abortive efforts to escalate the royalty, it cannot be considered to be an irrelevant consideration. It clearly appeared that after 10 years from 1981 during which the royalty rates remained static there was a crying need of the day for the Central Government to exercise its power under Section 9(3) and to revise upward the royalty rates in conformity v. with the rising prices of the minerals around as mentioned in the counter and for which there was a strong representation by the various States Governments to the Central Government. With respect we are not in a position to endorse the view of the High Court that the impugned Notification was a colourable devise and was issued for extraneous purpose. Equally, we are not in a position to agree with the contention of Shri Ramaswamy that the said Notification was issued for an alien purpose. The third point for our consideration is, therefore, answered in the negative.

Point No.4

27.So far as this point is concerned, it is true that even the exercise of delegated power can be challenged on the ground that it is highly arbitrary, irrational and confiscatory in nature and would not stand the test of Article 14 and 19(1)(g). Learned counsel for the writ petitioners submitted that as compared to the rates of royalty fixed in 198 1, the present rates have gone up by 200 to 400 per cent and, therefore, they have become confiscatory in nature. It is not possible to agree with this contention as the writ petitioners have laid no evidence to show as to how this escalation of rates for different types of coal extracted by the lessee of mines had adversely affected their business or that they are thrown out of business because of such heavy burden of escalated royalty. It is not the case of any of writ petitioners that their mining operations had to be closed down because of such high rates of royalty as enhanced by the impugned Notification. Also there is nothing on record to show whether the burden of this enhanced rates of royalty is borne only by the lessee of the mines who have extracted the minerals and has not been passed on to the customers by adding it to the price of coal. As all these are questions of facts there should be clear pleading and proof There is no such material on the record from which on the basis of such arguments any decision can be rendered. Only on this short ground, we must hold that the original writ petitioners have failed to show how the enhanced rates of royalty as per the impugned Notification have become unreasonable or confiscatory in nature. Point No.4 is, therefore, answered in the negative.

28.As all the points raised by the writ petitioners are answered against them, the inevitable result is that the orders passed by the High Court in their favour by partly allowing the writ petitions will have to be quashed and set aside and their writ petitions will have to stand dismissed. In the result Civil Appeal Nos.275/94 and 276/ 94 are allowed. The judgment and order of the High Court in M.P.No. 10/93 dated 17.12.93 are quashed and set aside and the writ petition is dismissed. Similarly, appeal No. 1994/95 from SLP(C) No. 3395 of 1994 moved by, the State of Madhya Pradesh is also allowed. The judgment and order of the High Court in Misc. Peti-

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tion No.7907/92 dated 17.12.93 are quashed and set aside and the said petition is also dismissed. Civil Appeal No.1995/95 arising out of SLP(C) No. 8190/94 moved by M/s. Birla Jute and Industries Ltd. is dismissed. In the facts and circumstances of the case, there will-be no order as to costs in all these matters.

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