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SAURASHTRA CEMENT AND CHEMICAL INDUSTRIES

v.

UNION OF INDIA AND ORS.

OCTOBER 17, 2000

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[G.B. PATTANAIK AND UMESH C. BANERJEE, JJ.]

Constitutional Law :

C *Mines and Minerals (Regulation and Development) Act, 1957—Section 9(3)—Constitutional validity—Levy of royalty on minerals—Whether power of Parliament under Entry 54 of List I to enact such law denudes right of State Legislature to levy tax on mineral rights under Entry 50 of List II—Held, it is constitutionally valid and Parliament is competent to enact such law—Constitution of India—Articles 246, 268, 269 & 270—Seventh Schedule.*

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Precedents—Applicability of the doctrine of stare decisis—Held, the doctrine is applicable to avoid confusion and uncertainty.

The appellants challenged the constitutional validity of Section 9(3) of Mines and Minerals (Regulation and Development) Act, 1957 on the ground
E **that levy of royalty on minerals is not a tax and the Parliament has no power under Entry 54 of List I to enact such a law which takes away the right of the State Legislature to levy tax on mineral rights under Entry 50 of List II of the Seventh Schedule of the Constitution. Some of the appellants contended that the matter should be referred to a larger Bench in view of the three-**
F **Judge Bench decision of this Court in** *Mahalaxmi Fabric Mills* **case. The appellants further contended that Section 9(3) of the Act should be declared** *ultra vires* **as it violates the provisions of Articles 268, 269 and 270 of the Constitution.**

Dismissing the appeals, this Court

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HELD : (Per Pattanaik, J.)

1. It is not appropriate to refer the appeals for the decision of a larger Bench. Royalty on minerals is a tax and the power of the State Legislature under Entry 50 in List II namely tax on minerals *vis-a-vis* **Section 9(3) of the**
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Mines and Minerals (Regulation and Development) Act, 1957 made by Parliament is outside the competence of the State Legislature in view of Sections 9 and 9(3) of the Act. [56-G-H] A

India Cement Ltd. & Ors. **v.** *State of Tamil Nadu & Ors.*, **[1990] 1 SCC 12;** *State of Madhya Pradesh* **v.** *Mahalaxmi Fabric Mills Ltd. & Ors.*, **[1995] Supp. 1 SCC 642 and** *State of U.P. & Anr.* **v.** *Synthetics and Chemicals Ltd. & Anr.*, **[1991] 4 SCC 139, relied on.** B

The Hingir-Rampur Coal Co. Ltd. & Ors. **v.** *The State of Orissa & Ors.*, **[1961] 2 SCR 537;** *State of Orissa* **v.** *M.A. Tulloch & Co.*, **[1964] 4 SCR 461;** *H.R.S. Murthy* **v.** *Collector of Chittoor & Anr.*, **[1964] 6 SCR 666;** *Orissa Cement Ltd.* **v.** *State of Orissa & Ors.*, **[1991] Supp. 1 SCC 430 and** *State of Orissa & Ors.* **v.** *Mahanadi Coalfields Ltd. & Ors.*, **[1995] Supp. 2 SCC 686, referred to.** C

B.A. Jayaram & Ors. **v.** *Union of India & Ors.*, **[1984] 1 SCC 168, distinguished.** D

2. Articles 268 to 272 in Part XII of the Constitution deal with the distribution of revenue between the Union and the States. In Part XII of the Constitution, Article 265 provides that there cannot be any levy of collection of tax without authority of law. The expression "authority of law" refers to a valid law which means the tax proposed to be levied must be within the legislative competence of the legislature imposing the tax; and the law must be validly enacted; the law must not be a colourable use of or a fraud upon the legislative power to tax; the law must not violate the conditions of fundamental right as that in Article 19(1)(a) or 19(1)(g); it must not also contravene the specific provisions of the Constitution which impose limitation on legislative power relating to particular matters like Articles 276 to 286 or 301 and the tax must be authorised by such valid law. The Constitutional provisions dealing with the distribution of revenue between the Union and the States contained in Articles 268, 269 and 272 depends upon the fact when a particular legislation is attacked on any one of these grounds and an examination of those assertions. The Act of 1957 and its validity has been upheld in the anvil of Article 265 in as much as it has been held that the tax levied on minerals under section 9(3) of the Act is by virtue of a valid legislation made by the Parliament in exercise of its legislative competence under Entry 54 of List I and no question of violation of fundamental right arises. [58-E-H] E F G

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A Per Banerjee, J. (supplementing) :

1.1. It is clear from a plain reading of the Mines and Minerals (Regulation and Development) Act, 1957 and upon a declaration under section 2 of the Act, the Central Government alone has the power to legislate in regard to regulation of Mines and Mineral Development. [63-F]

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1.2. Doctrine of pith and substance of the legislation stands accepted and it requires no dilation that as long as the legislation is within the permissible limit in its substance, no objection can be entertained as regards the legislative competency. The field is firmly covered by reason of the incorporation of the Act by the Parliament. [65-B]

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1.3. The mandate of the Constitution has been expressly laid down and there is no scope or authority or even jurisdiction for the law courts to read in between the lines to attribute a further authorisation though not specifically envisaged and more so by reason of specific incorporation of such a power to the State Legislature in terms of Entry 50 of List II in the Seventh Schedule to the Constitution. [65-F]

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1.4. The word 'regulation' in Entry 54 of List I cannot but be said to be of broad impact encompassing all the facets not only specifically mentioned in the Entry itself but it is inclusive of its inherent implications thereto as well. The interpretation shall have to be attributed to the words used in the Constitution having regard to the public good and public interest. It has been expressly recorded in the Entry itself that the regulation is in public interest. The regulation has to be interpreted in the context in which it is used and not de hors the context. There must be regulated development and mineral development is thus the only criteria. A Larger Bench judgment, with an express finding that section 9 of the Act of 1957 is within the legislative competence of Parliament both under Entry 54 and Entry 97 of the Union List, has a binding effect. [68-H; 69-A-D]

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India Cement Ltd. & Ors. v. *State of Tamil Nadu & Ors.*, [1990] 1 SCC 12; *State of Madhya Pradesh* v. *Mahalaxmi Fabric Mills Ltd. & Ors.*, [1995] Supp. 1 SCC 642 and *State of U.P. & Anr.* v. *Synthetics and Chemicals Ltd. & Anr.*, [1991] 4 SCC 139, relied on.

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Orissa Cement Ltd. v. *State of Orissa & Ors.*, [1991] Supp. 1 SCC 430; *Krishna Chandra Gangopadhyaya & Ors.* v. *The Union of India & Ors.*, [1975] 2 SCC 302; *Chandeswar Prosad Singh & Anr.* v. *Sub-Divisional Land*

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Reforms Officer, Barrackpore and Ors., **AIR (1986) Calcutta 1 and** *Municipal Committee, Malerkotla* **v.** *Haji Ismail & Anr.*, **AIR (1967) Punjab 32, referred to.** A

Corpus Juris Secundum (vol. 76:615), **referred to.**

2. Distribution of revenue as mandated under the Constitution cannot possibly be interpreted to whittle down Entry 54 of List I. Entry 54 of List I cannot but be read as the authorisation as conferred on to the Central Government pertaining to regulation of Mines and Minerals Development and as declared by Parliament by law in public interest. It is in pursuance of this authorisation that the Act of 1957 came into the Statute Book and on the wake of the Legislation of 1957, Entry 50 of List II cannot but be read subject to the provisions of the Act of 1957 and when so read, there is an inescapable conclusion that the field in issue under Entry 50 already stands covered by Parliamentary legislation of 1957. [70-B-C] B C

3. Taking recourse to the doctrine of stare decisis would be an imperative necessity, so as to avoid uncertainty and confusion, since the basic feature of law is its certainty and in the event of any departure therefrom the society would be in utter confusion and the resultant effect of which would be legal anarchy and judicial indiscipline - a situation which always ought to be avoided. The Central legislature introduced the legislation in the year 1957 and several hundreds and thousands of cases have already been dealt with on the basis thereof and the effect of a declaration of a contra law would be totally disastrous affecting the very basics of the revenue jurisprudence. It is true that the doctrine has no statutory sanction but it is a rule of convenience, expediency, prudence and above all the public policy. It is to be observed in its observance rather than in its breach to serve the people and sub-serve the ends of justice. [70-E-G] D E

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Mishri Lal (d) by LRs. **v.** *Dhirendra Nath (d) by LRs. & Ors.*, **[1999] 4 SCC 11 and** *Kattite Valappil Pathumma & Ors.* **v.** *Taluk Land Board & Ors.*, **[1997] 4 SCC 114, referred to.**

Admiralty Commrs. **v.** *Valverda Owners*, **(1938) Appeal Cases 173 at 194;** *Button* **v.** *Director of Public Prosecution* **and** *Swain* **v.** *Director of Public Prosecutions*, **(1966) Appeal Cases 591, referred to.** G

4. The direction to pay interest @ 18% per annum must be held to be unreasonable in the contextual facts since the validity of the legislation itself is in question before this Court. The same is modified to the extent that the H

A **interest would be paid @ 9% per annum. [73-B-C]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7000 of 1994.

From the Judgment and Order dated 25.7.94 of the Gujarat High Court in S.C.A. No. 3370 of 1992.

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C.A. Nos. 7001-02/94, 7192/94, 7472, 7389, 7388, 7387, 8166-67, SLP. (C) No. 21620/94, C.A. Nos. 3117-18/95, 3119/95, 4010, 4071-79/95, 6637/95, 7607, 5133/95, W.P. (C) No. 14861/97.

C WITH

I.As. 5 & 6 in C.A. Nos. 3117-18/95.

R.N. Trivedi, Additional Solicitor General, P. Chidambaram, V.A. Bobde, Shanti Bhushan, A.K. Chitale, Sudhir Chandra, S.K. Gambhir, K.N. Shukla, D S.K. Dholakia, B.V. Desai, Siddhartha Choudhury, Ms. Kumud Singh, Ravinder Narain, Sanjiv Sen, Ranjan Narain, Ms. Pooja, M.L. Lahoty, P.K. Sharma, Himanshu Shekhar, Niraj Sharma, Amitabh Verma, Mannan, Anupam Verma, Anil K. Sharma, Awanish Sinha, R.K. Maheshwari, Jana Kalyan Das, T.N. Singh, S.K. Dwivedi, K.K. Dhawan, D.S. Mehra, S.K. Agnihotri, Adhyaru Yashank P., Ms. Hemantika Wahi, P.H. Parekh, Amit Dhingra and Rohit Alex E Advocates with them for the appearing parties.

The Judgments of the Court were delivered by

PATTANAIK, J. These appeals raise a common question of law as to the Constitutional validity of Section 9(3) of the Mines and Minerals F (Regulation and Development) Act, 1957 [hereinafter referred to as 'the Act'], *inter alia* on the ground that the levy of royalty on minerals is not a tax and the Union Legislature do not have the powers under Entry 54 of List I to enact such a law which denudes the right of the State Legislature to levy tax on mineral rights under Entry 50 of List II. A further contention also has been advanced in some of these appeals that the enactment of the Act, violates G the provisions of Articles 268, 269 and 270 of the Constitution, and, therefore, Section 9(3) must be declared to be *ultra vires*. When the writ petition, challenging the vires of the provisions of Section 9(3) of the Act was filed before the Gujarat High Court, a Bench of the Gujarat High Court, dismissed the same, following the decision of the Supreme Court in the case of *India* H *Cement Ltd. and Ors.* v. *State of Tamil Nadu and Ors.*, [1990] 1 SCC 12, and

following an earlier decision of the said High Court in Special Civil Application No. 6226/94. Subsequent to the decision of this Court in *India Cement*, all the questions raised in these appeals have been considered by a three Judge Bench in the case of *State of Madhya Pradesh* v. *Mahalaxmi Fabric Mills Ltd. and Ors.*, [1995] Supp. 1 SCC 642, and this Court in *Mahalaxmi's* case, rejecting the contentions raised by the consumers of minerals, upheld the validity of the Act and set aside the order of the High Court. Since the judgment of this Court in Mahalaxmi, deals directly on all issues raised in this batch of appeals, Mr. Chidambaram, the learned senior counsel, submitted with force that this batch of appeals should be referred to a larger Bench, as the Bench while disposing of *Mahalaxmi's* case, had assumed some legal position erroneously, to be the law laid down by this Court in *India Cement*. Mr. Shanti Bhushan, the learned senior counsel, appearing for the appellants in some other appeals, however contended that the Constitutional validity of Section 9(3) of the Act has not been tested in the anvil of Articles 268, 269 and 270 of the Constitution and, therefore the matter remains wide open for being re-considered by this Court notwithstanding the three Judge Bench judgment in *Mahalaxmi*.

Before dealing with the contentions raised by the learned counsel, appearing for the appellants, we think it appropriate to briefly notice how this Court has dealt with the law relating to the Mines and Minerals (Regulation and Development) Act, 1957 in different cases. The first decision which requires to be noticed in this connection is the case in The *Hingir-Rampur Coal Co., Ltd. and Ors.* v. *The State of Orissa and Ors.*, [1961] 2 S.C.R. 537. In the said case, the competency of the State Legislature to enact Orissa Mining Areas Development Fund Act, 1952, was under consideration and one of the contentions in this Court was such a legislation made by the State Legislature is *ultra vires* the law made by Parliament under Entry 54 of List I. The majority judgment answered the question and held that in the absence of requisite parliamentary declaration necessary under Entry 54 of List I, the State Legislature cannot be denuded of its power under Entry 23 of List II and the competence of the State Legislature under Entry 23 read with Entry 66 of List II was not impaired in any manner. The Court, therefore, upheld the validity of the legislation made by the State Legislature. In elaborating the discussion, this Court had observed that the limitation imposed by the latter part of Entry 23 of List II is a limitation on the legislative competence of the State Legislature itself and the test whether a statute passed by the State Legislature thereunder was *ultra vires* would be whether the requisite declaration under Entry 54, List I has been made by Parliament by law *covering,*

A *the same field or not.* Considering the effect of Entries 23 and 66 of List II and Entry 54 of List I, the Court observed:

> "The effect of reading the two Entries together is clear. The jurisdiction of the State Legislature under Entry 23 is subject to the limitation imposed by the latter part of the said Entry. If Parliament by its law has declared that regulation and development of mines should in public interest be under the control of the Union, to the extent of such declaration the jurisdiction of the State Legislature is excluded. In other words, if a Central Act has been passed which contains a declaration by Parliament as required by Entry 54, and if the said declaration covers the field occupied by the impugned Act, the impugned Act would be *ultra vires*, not because of any repugnance between the two statutes but because the State Legislature had no jurisdiction to pass the law."

In the case of *State of Orissa* v. *M.A. Tulloch and Co.,* [1964] 4 S.C.R. 461, the question for consideration before this Court was whether the continued operation of the Orissa Mining Areas Development Fund Act, 1952 and the continued exigibility of the fees leviable from mine-owners under the said enactment, is legally and constitutionally permissible. The contention raised was that the Mines and Minerals (Regulation and Development) Act, 1957 called the Central Act was brought into force from June 1, 1953 and the Orissa Act which had been enacted by virtue of the legislative power conferred by Entry 23 of the State Legislative List would ceased to be operative, once the Parliament made a declaration and enacted the law. The High Court of Orissa had upheld the contention and came to hold that the Orissa Act should be deemed to be non-existent as from June 1, 1958 for every purpose, with the consequence that there was lack of power to enforce and realise the demands for the payment of the fee at the time when the demand was issued and was sought to be enforced. After noticing the Entry 23 in List II and Entry 54 in List I, the Court observed that it does not need much argument to realise that to the extent to which the Union Government had taken under "its control" "the regulation and development of minerals" so much was withdrawn from the ambit of the power of the State Legislature under Entry 23 and legislation of the State which had rested on the existence of power under that entry would to the extent of that "control" be suspended or be rendered ineffective, for here we have a case not of mere repugnancy between the provisions of the two enactments but of a denudation or deprivation of State legislative power by the declaration which Parliament is empowered to make and has

made. It would, however, be apparent that the States would lose legislative competence only to the "extent to which regulation and development under the control of the Union has been declared by Parliament to be expedient in the Public interest." But having held so, as the liability to pay the fee, which was the subject of the notices of demand had accrued prior to June 1, 1958, the date on which the Central Legislation occupied the field , the Court held that those notices were valid and the amount due thereunder would be recovered notwithstanding the disappearance of the Orissa Act by virtue of the superior legislation by the Union Parliament. In *India Cement Ltd. and Ors.* v. *State of Tamil Nadu and Ors.*, [1990] 1 S.C.C., 12, the question for consideration was whether levy of cess on royalty is within the competence of the State Legislature? In the aforesaid case, under Section 115 of the Madras Panchayats Act, as amended by the Madras Act 18 of 1964, the lessee of minerals was required to pay local cess @ 45 paise/rupee, as royalty. The contention on behalf of the State, relying upon the observation made by this Court in *H.S.R. Murthy's case,* [1964] 6 S.C.R., 666, was repelled and it was held:

> "It seems, therefore, that attention of the Court was not invited to the provisions of Mines and Minerals (Development and Regulation) 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. In the premises, it cannot be right to say that tax on royalty can be a tax on land, and even if it is a tax, if it falls within Entry 50 will be ultra vires the State legislative power in view of Section 9(3) of the Central Act."

The Court also rejected the contention on behalf of the State that under Entry 50 of List II, there is no limitation to the taxing power of the State and held that in view of express provisions of Section 9(2) of the Mines and Minerals (Regulation and Development) Act, 1957, the submission cannot be accepted and the field is fully covered by the Central Legislation. In paragraph 34 of the judgment, the Court concluded:

> "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 Section 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

A cannot 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 land."

In *Orissa Cement Ltd.* v. *State of Orissa and Ors.*, [1991] Supp. 1 S.C.C. 430, the levy of cess on royalty, charged for mining lease under Orissa Cess B Act, came up for consideration. After elaborate discussion of the legislative entries as well as the history leading to the enactment and considering the different decisions right up to the decision of the Supreme Court in *India Cement*, the Court held in para 39:

C "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 MMRD Act, 1957, is - there can be no doubt about this - a law of Parliament relating to mineral development. Section 9 of the said Act empowers the Central Government to fix, D 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, E 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."

Considering, the provisions of Entry 23 of List II, the Court observed:

F "But Entry 23, it will be seen, is "subject to the provisions of List I with respect to regulation and development" of mines and minerals under the control of the Union. Under Entry 54 of List I, regulation of mines and mineral development is in the field of Parliamentary legislation "to the extent to which such regulation and development G under the control of the Union is declared by Parliament by law to be expedient in the public interest". Such a declaration is contained in Section 2 of the MMRD Act, 1957, which has been set out earlier. It, therefore, follows that any State legislation to the extent it encroaches on the field covered by the MMRD Act, 1957, will be *ultra vires*. The assessees contend, in this case, that the legislation in question is H beyond the purview of the State legislature by reason of the enactment

of the MMRD Act. It would appear, *prima facie* that the contention has to be upheld on the basis of the trilogy of decisions referred to at the outset *viz.* Hinger-Rampur, Tulloch and *India Cement.* They seem to provide a complete answer to this question."

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In *State of Orissa and Ors.* v. *Mahanadi Coalfields Ltd. and Ors.*, [1995] Supp. 2 S.C.C., 686, the validity of the Orissa Rural Employment, Education and Production Act, 1992 was under challenge and the Orissa High Court had struck down the Act on the ground that the levy is a tax on minerals and mineral rights and the subject is fully covered by the Central Legislation by enacting Mines and Minerals (Regulation and Development) Act. This Court examined the different relevant entries in List I and List II, more particularly, Entry 54 of List I and Entry 23 and Entry 50 of List II and came to hold :

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"It appears to us that Entry 49 of List II is the general entry which enables the State Legislature to impose taxes on lands and buildings. A particular category or specie is taken out of the general entry, and is provided by Entry 50 of List II. But the tax that can be levied under List II Entry 50 is subject to limitations imposed by Parliament by law relating to regulation of mines and mineral development. Similarly, under List II Entry 23, though the State Legislature can enact a law relating to regulation of mines and mineral development, it is subject to the provisions of List I (Legislation by Parliament) with respect to regulation and development under the control of the Union. In other words, if the impugned Orissa Act 36 of 1992 falls either under List II Entry 50 or List II Entry 23, it is subject to the law made by Parliament relating to the regulation of mines and mineral development (List I Entry 54). A perusal of the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act 67 of 1957), Section 2, 3(a) and 3(d), Section 9 and 9-A and Second and Third Schedules to the Act, quoted in para 3 (supra) will clearly point out that taxation on mineral and mineral rights, *viz.* any tax, royalty, fee or rent are provided in the said Act. In particular, Section 9A provides payment of dead rent as provided therein by the holder of a mining lease to the State Government at the rates specified in the Third Schedule to the Act. And the proviso thereto states that in cases where the holder of the mining lease is to pay royalty under Section 9, he shall be liable to pay either royalty under Section 9 or the dead rent, as provided under Section 9-A, whichever is greater. Section 9-A enables the Central Government to enhance or reduce dead rent by amending the Third

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A Schedule. The Second and the Third Schedules provide varying rates for different minerals including coal. Since exhaustive provisions as also the Parliamentary declaration, contemplated by List I Entry 54, have been made in the Mines and Mineral (Regulation and Development) Act, 1957, regarding all kinds of taxation on minerals and mineral rights - tax, royalty - fee—dead rent etc., the State B Legislature is denuded or deprived of the power to enact any law or to impose any tax or other levy with reference to List II Entry 23 or List II Entry 50."

It is no doubt true that in all the aforesaid decisions, it is only the C validity of the Legislation made by State Legislature, which was under challenge but that will not in any way alter the ratio of the cases, referred to above, in construing the different legislative entries and the competence of the Union Legislature as well as the State Legislature. In *Mahalaxmi's* case, [1995] Supp. 1 S.C.C. 642, the validity of the Central legislation was under challenge and the three Judge Bench upheld the legislative competence of the Union D Legislature, in enacting Mines and Minerals (Regulation and Development) Act, 1957, more particularly, Section 9 thereof as well as the power of the Central Government to enhance or reduce the rate of royalty, payable in respect of minerals and it was held that the parliamentary legislation under 1957 Act, having occupied the entire field, neither Entry 23 of List II nor Entry E 50 of the said List, could be attracted. The Court also in addition, came to hold that the royalty being a tax on mineral including land, labour and capital employed in extraction of the mineral, it would fall under the residuary Entry 97 of List I.

In view of the aforesaid decisions of this Court, on interpreting the F different legislative entries, conferring power on the Union Legislature as well as the State Legislature and the law made by the Parliament in enacting the Mines and Minerals (Regulation and Development) Act, 1957, we would now examine the contentions raised by Mr. Chidambaram and Mr. Shanti Bhusan, appearing for the appellants. According to Mr. Chidambaram, Entry 50 of List G II deals with the power of the State Legislature to levy taxes on mineral rights subject to any limitation imposed by Parliament by law relating to mineral development. Entry 54 of List I is the competence of the Union Legislature to make law, regulating Mines and Minerals 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 and the H Mines and Minerals (Regulation and Development) Act, 1957 has been enacted,

which can be referable to the aforesaid Entry 54 in List I. In List II, the Regulation of Mines and Minerals Development is provided under Entry 23, and, therefore, State Legislature would have the power to make law, regulating Mines and Minerals Development, but it would be subject to the provisions of List I with respect to Regulation and Development under the control of the Union. It cannot be disputed that the Mines and Minerals (Regulation and Development) Act, 1957 is a legislation made for the development of mines and minerals and has been declared by Parliament to be expedient in the public interest. Mr. Chidambaram contends that the aforesaid Act of 1957 covers the field, so far as Entry 23 in List II is concerned but does not, in any way affect the competency of the State Legislature in the field covered by Entry 50 of List II and in that view of the matter, the provisions of Section 9(3) of the Act which purports to denude the power of the State Legislature from levying tax on mineral rights, must be held to be unconstitutional. Mr. Chidambaram, also contends that the power of regulation and control, referable to Entry 54 of List I is separate and distinct from the power of taxation, referable to Entry 50 of List II and such specific power of the State Legislature under Entry 50 of List II, cannot be cut down or fetter in any manner by the general power of control exercised by Parliament by a legislation on a matter falling under Entry 54 of List I. In support of this contention, reliance has been placed on the decision of this Court in the case of *State of U.P. and Anr.* v. *Synthetics and Chemicals Ltd. and Anr.*, [1991] 4 S.C.C.139. Mr. Chidambaram, also urged that in a federal system of governance, as in our country, the Constitution itself has clearly demarcated the legislative field for levying tax by the Union and the State and so far as, the Union is concerned, those entries are Entries 82 to 92 in List I and so far as the State is concerned, those entries are Entries 45 to 63 in List II of the Seventh Schedule. The field of levy of tax having been clearly demarcated and limitations and restrictions having also mentioned therein, the Mines and Minerals (Regulation and Development) Act, 1957, cannot be held to be an Act, authorising levy of tax on minerals, as the competence of the Union Legislature in the aforesaid legislation is referable to Entry 54 of List I and by such general enactment, the distinct taxing power of State on Minerals under Entry 50 of List II of the Seventh Schedule, cannot be obliterated and denuded and, therefore, the provisions of the 1957 Act, purporting to taking away the power of the State Legislature must be struck down. Mr. Chidambaram, being conscious of the Three Judge Bench of this Court in *Mahalaxmi*, submitted that it would be only appropriate to refer the matter to a larger Bench. Mr. Chidambaram, also lastly urged that in Mahalaxmi, the Court was not sure about the legislative

A competence of the Parliament under Entry 54 of List I, for upholding the validity of Section 9 of the 1957 Act and that is why, it took recourse to the residuary power under Entry 97 of List I and in view of the specific taxing power under Entry 50 of List II, the residuary power of the Parliament under Entry 97 of List I will not over-ride.

B Mr. Shanti Bhusan, the learned senior counsel for the appellants in some of these appeals, contended that in none of the cases, this Court has considered the provisions of Articles 268 to 272, contained in Part XII of the Constitution, and, therefore, the matter requires further examination.

C After the conclusion of the arguments on behalf of the appellants, the decision of this Court in *B.A. Jayaram and Ors.* v. *Union of India and Ors.*, [1984] 1 SCC 168, has been brought to the notice, where-under the Court was construing Entry 57 of List II and Entry 35 of List III and the power of levying tax on vehicles suitable for use on roads and the Court held that it is the State Legislature, which has the power to levy taxes on vehicles suitable for use D on roads, though it may be open to Parliament to lay down the principles on which taxes may be levied on mechanically propelled vehicles.

Mr. S.K. Dholakia, the learned senior counsel, appearing for the State of Gujarat as well as the learned counsel, appearing for the Union of India, on the other hand submitted that Entry 50 of List II itself contains an in-built E limitation, the same being limitation imposed by the Parliament by law relating to mineral development. Since MMRD Act is a law made by Parliament, relating to minerals development, any provision in the aforesaid Act would over-ride the taxing power of the State on minerals and in this view of the matter, the MMRD Act, must prevail. It was also contended that this Central Legislation has been in the field for more than 45 years and the provisions F thereof have been interpreted by this Court in several cases, as referred to, both in *India Cement* and *Mahalaxmi*, and, therefore, it would be futile to refer the matter to a larger Bench for reconsideration. According to Mr. Dholakia, the Three Judge Bench Judgment in *Mahalaxmi*, covers all the points urged and, therefore, these appeals should be dismissed.

G Having considered the rival submissions, although, we find the arguments advanced by Mr. Chidambaram are attractive, but in view of the series of decisions, already referred to, we do not think it appropriate to refer these appeals for the decision of a larger Bench and in our opinion, the contentions raised have been fully covered by the Three Judge Bench Judgment of this H Court in *Mahalaxmi*. Royalty on minerals is a tax, is concluded by the Seven

Judge Judgment of this Court in *India Cement*. The power of State Legislature under Entry 50 in List II namely tax on minerals vis-a-vis Section 9(3) of the MMRD Act, 1957 made by Parliament under Entry 54 of List I was also considered in the case of *India Cement* and it was held that in any event, it would be outside the competence of the State Legislature in view of Sections 9 and 9(3) of the Mines and Minerals (Regulation and Development) Act, 1957. In fact, the Court in *India Cement*, did not accept the earlier judgment of this Court in *H.S.R. Murthy's* case, on the ground that in *Murthy*, the attention of the Court had not been invited to MMRD Act and Section 9 thereof. In paragraph 30 of the Judgment in *India Cement*, the Court held:

> "It is, therefore, a clear bar on the State legislature taxing royalty so as to in effect amend Second Schedule of the Central Act."

In the aforesaid *India Cement* case, the Court had also further held that since the control of mines and minerals development were taken over by Parliament, the impost by the State Legislature either under Entry 49 or 50 of List II, cannot be upheld. The Court had also held that tax on minerals is covered by Section 9 of the Central Act and the entire field is thus covered. Though, the validity of a State legislation was under consideration, but the conclusion of this Court was that for levying a tax on minerals under the MMRD Act, the Central Legislature was fully competent in view of the declaration made by the Parliament and on the other hand State Legislatures have been denuded of its power. In *Mahalaxmi*, however, as already stated, the validity of the Central Legislation was under challenge, as in the present case and the Court upheld the provisions of MMRD Act and Section 9 and 9(3) thereof, by holding that by Entry 54 of List I, it was within the legislative competence of Parliament to make the law in question and neither Entry 23 of List II nor Entry 50 of List II would be attracted. It is no doubt true that in the aforesaid case, the Court had also held that Entry 97 of List I will confer the legislative competence, but not because the Parliament has no competence under Entry 54 of List I, but that was an additional prop, and, therefore Mr. Chidambaram is not right in his submission that the Court took recourse to the residuary power under Entry 97 of List I. In *Synthetic Chemicals'* case, (1991) 4 S.C.C. 139, this Court no doubt had observed that the power of regulation and control is separate and distinct from power of taxation, but while considering Entry 50 of List II and comparing with Entry 54 of List II, this Court had observed that the wide taxing power of the State under Entry 54 of List II and its conditional or restricted taxing power, for example, over mineral rights, mentioned in Entry 50 of the said List is *significantly different*.

A Thus, the Court itself noticed the conditional or restricted taxing power of the State Legislature under Entry 50, the same being limitations imposed by Parliament by law, relating to mineral development and the MMRD Act being a law made by Parliament relating to mineral development, obviously because of Section 9 in the Central Act, the State Legislature is denuded of its power and at the same time, the Parliament's competence to have the law made, no B longer remains in doubt. The aforesaid decision, therefore is of no assistance. In *B.A. Jayaram and Ors.* v. *Union of India and Ors.*, [1984] 1 S.C.C., 168, the two entries, which were for consideration before this Court were Entry 57 of List II and Entry 35 of List III. Entry 57 is itself subject to Entry 35 of List III and, therefore, question for consideration was, what was the content and C extent of power under Entry 35 of List III which reads: "Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied." In construing Entry 35 of List III, this Court held that it would be open to Parliament to lay down the principles on which taxes may be levied on Mechanically propelled vehicles, but Parliament, while enacting the Motor Vehicles Act, more particularly, Section 63(7) thereof, refrain from indicating D any such principles, either expressly or by necessary implication and, therefore, the State's power to tax on such motor vehicles under Entry 57 of List II was left un-inhabited. But in the case in hand, the Seven Judge Bench judgment in *India Cement* as well as the other decisions including the three Judge Bench Judgment in *Mahalaxmi*, have already held that the Union Legislature E did have the competence under Entry 54 of List I to enact MMRD Act, 1957 and Section 9 and 9(3) thereof provide for levy of royalty on minerals and, therefore, we are bound by the same and the aforesaid decisions relied upon by Mr. Chidambaram will not assist the appellants.

Articles 268 to 272 in Part XII of the Constitution deal with the F distribution of revenue between the Union and the States. In Part XII of the Constitution, Article 265 provides that there cannot be any levy of collection of tax without the authority of law. The expression "authority of law" refers to a valid law which means the tax proposed to be levied must be within the legislative competence of the legislature imposing the tax ; and the law must G be validly enacted; the law must not be a colourable use of or a fraud upon the legislative power to tax; the law must not violate the conditions of fundamental right as that in Article 19(1)(a) or 19(1)(g); it must not also contravene the specific provisions of the Constitution which impose limitation on legislative power relating to particular matters like Articles 276 to 286 or 301 and ; the tax must be authorised by such valid law. The constitutional H provisions dealing with the distribution of revenue between the Union and

the States contained in Articles 268, 269 and 272 depends upon the fact when a particular legislation is attacked on any one of these grounds and an examination of those assertions. The legislation in question namely the MMRD Act and its validity has been upheld as already stated in the anvil of Article 265 inasmuch as it has been held that the tax levied on minerals under Section 9(3) of the Act is by virtue of a valid legislation made by the Parliament in exercise of its legislative competence under Entry 54 of List I and no question of violation of fundamental right arises. In one of the judgments, it has been held that the power cannot be held to be in colourable use of legislative power. In that view of the matter on the submissions made by Mr. Shanti Bhushan, we are unable to persuade ourselves to refer these matters for decision of a larger Bench. In the aforesaid premises, these appeals fail and are accordingly dismissed.

A group of writ petitions had been disposed of by the Gujarat High Court, dismissing the same, following the judgment of the said High Court dated 22nd of June, 1994 in Special Civil Application No. 6226 of 1994. While dismissing the writ applications, though the interim orders stood vacated, the Court had not passed any order with regard to payment of interest. But in Special Civil Application No. 6226/94, while vacating the interim order and discharging the rule, the Court has specifically ordered for payment of interest @ 18% per annum. On application for clarification being filed in those group of writ petitions, where no order with regard to payment of interest had been made, the High Court directed the payment of interest @ 18% per annum, which direction had not been made while disposing of the writ petitions. Those orders of the High Court, clarifying the earlier order directing payment of interest @ 18% per annum, are also subject matter of appeals in some of these appeals including Civil Appeal No. 3119/95. We have heard the learned counsel for the parties and in our considered opinion, the direction to pay interest @ 18% per annum must be held to be unreasonable. We, therefore, modify the same and direct that the interest would be paid @ 9% per annum.

Civil Appeal Nos. 7607/95 & 7472/94 and SLP(Civil) No.21620/94:—

These Civil Appeals and the Special Leave Petition arise out of judgment of the Madhya Pradesh High Court. The High Court had followed the earlier decision in *Mahalaxmi's* case. The said decision in *Mahalaxmi*, has been upheld by the Supreme Court in [1995] Supp. 1 S.C.C.642. Consequently, these appeals and the special leave petition stand dismissed.

BANERJEE, J. I have had the privilege of going through the judgment

A of my learned Brother Pattanaik, J. and while recording my concurrence therewith, I however, wish to state my own reasonings as below :

The decision of this Court in India Cement *India Cement Ltd. & Ors.* v. *State of Tamil Nadu & Ors.*, [1990] 1 SCC 12 apparently set at rest, the debate involving the true attributes of Entry 54 of List I and Entries 23 and B 50 of List II. Mr. Chidambaram appearing in support of the Appeal, however, contended that the power to regulate and power to tax cannot be identified as similar to each other. Before, however, delving into the issue a significant feature in the matter under consideration is worth noticing - admittedly by reason of the decision of this Court in *Mahalaxmi Fabric Mills's,* case (*State* C *of M.P.* v. *Mahalaxmi Fabric Mills Ltd. & Ors.*, [1995] Supp. 1 SCC 642, the issue as canvassed in the Appeal is no longer *res integra* and it is on this later count that Mr. Chidambaram rather emphatically contended that the decision in the case of *Mahalaxmi* (supra) needs a re-look and a fresh consideration since the decision of *India Cement* (supra) as also the decision of this Court in *Orissa Cement Ltd. Orissa Cement Ltd.* v. *State of Orissa &* D *Ors.*, [1991] Suppl. 1 SCC 430 have been applied not in accordance with the true intent and spirit of the decisions but on adaptation of interpretations alien to ratio decedendi.

Incidentally, these batch of appeals arise out of the conflicting views between two different Division Benches of the Gujarat High Court. In the E impugned judgment (Civil Appeal No. 7000 of 1994), the Gujarat High Court has held that royalty is a tax on minerals and the Union Government has the power to impose such a tax. On the other hand in the earlier judgment, the same High Court in the case of *Tata Chemicals* v. *State of Gujarat* sounded a contra note and against which the Union Government is in appeal being F Appeal Nos. 8166 and 8167 of 1999 by reason of the finding that the State legislature is clearly entitled to impose a tax on mineral rights and it is, therefore, obvious that the State Legislature has the power to levy taxes on mineral rights.

Needless to record here that since the stand of the Appellant in C.A. G No. 7000 of 1994 and that of the Respondent in Appeal Nos. 8166-67 of 1994 is identical in nature, we need not delve into the issue twice over and as such the judgment of ours would cover both the appeals.

It has been the contention of the appellant that the decision of this Court in *India Cement* (supra) did not as a matter of fact specifically deal with H the legislative competence of the Union Government to levy royalty since the

power to levy is vested exclusively with the State Legislature under Entry 50 of List II of the Seventh Schedule to the Constitution and rejection of the appellant's case solely on the basis thereof was wholly unwarranted and the same is liable to be set aside.

A

The interpretations of the entries noted above (Entry 54 of List I, and Entries 23 and 50 of List II) being the focal point for consideration, the same are set out herein below for proper appreciation:

B

LIST I (Seventh Schedule)

Entry 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 (Seventh Schedule)

Entry 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.

C

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

D

While interpreting these entries however this Court in *India Cement's* case (supra) recorded as below :

E

> "16. Courts of law are enjoined to gather the meaning of the Constitution from the language used and although one should interpret the words of the Constitution on the same principles of interpretation as one applies to an ordinary law but these very principles of interpretation compel one to take into account the nature and scope of the Act which requires interpretation. It has to be remembered that it is a Constitution that requires interpretation. Constitution is the mechanism under which the laws are to be made and not merely an Act which declares that the law is to be. See the observations of Justice Higgins in the Attorney General for the *State of New South Wales* v. *Brewery Employees' Union of New South Wales,* (1908) 6 CLR 469, 611-12.

F

G

> ....
>
> 18. Certain rules have been evolved in this regard, and it is well settled now that the various entries in the three lists are not powers but fields of legislation. The power to legislate is given by Article 246 and other

H

A articles of the Constitution. See the observations of this Court in *Calcutta Gas Co.* v. *State of West Bengal,* (1962) Supp. 3 SCR 1 : AIR (1962) SC 1044. The entries in the three lists of the Seventh Schedule to the Constitution, are legislative heads or fields of legislation. These demarcate the area over which appropriate legislature can operate. It is well settled that widest amplitude should be given to the language B of these entries, but some of these entries in different lists or in the same list may overlap and sometimes may also appear to be in direct conflict with each other. Then it is the duty of the court to find out its true intent and purpose and to examine a particular legislation in its pith and substance to determine whether it fits in one or the other C of the lists. See the observations of this Court in *H.R. Banthia* v. *Union of India,* [1969] 2 SCC 166 and *Union of India* v. *H.S. Dhillon,* [1971] 2 SCC 779, 792. The lists are designed to define and delimit the respective areas of respective competence of the Union and the States. These neither impose any implied restriction on the legislative power conferred by Article 246 of the Constitution, nor prescribe any duty D to exercise that legislative power in any particular manner. Hence, the language of the entries should be given widest scope [*DC Rataria* v. *Bhuwalka Brothers Ltd.,* [1955] 1 SCR 1071 = AIR 1955 SC 182 to find out which of the meaning is fairly capable because these set up machinery of the government. Each general word should be held to E extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. In interpreting an entry it would not be reasonable to import any limitation by comparing or contrasting that entry with any other one in the same list. It is in this background that one has to examine the present controversy."

F A cursory look even at the decision of this Court in *India Cement* (supra) depicts that the question before this Court was whether levy of cess on royalty is within the competence of the State Legislature and the same was answered by the Court in the manner following.

"34. In the aforesaid view of the matter, we are of the opinion that G 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 Section 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 cannot be sustained under Entry 49 H 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."

The royalty admittedly is fixed under the Mines and Minerals Development Act 1957 which happens to be a Central Legislation. Legislation of 1957 is to provide for the regulation of Mines and Development of Minerals under the control of the Union. Section 2 of the Act of 1957 reads as below :"

> "2. *Declarations 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.

Krishna Iyer, J. in *Krishna Chandra Gangopadhyaya & Others* v. *The Union of India and Ors.,* [1975] 2 SCC 302 had this to state for proper conspectus of statutory interpretation :

> "9. We listen largely to the language of the statute but where, as here, clearing up of marginal obscurity may make interpretation surer if light from dependable sources were to beam in, the court may seek such aid. What has been described as the sound system of construction, excluding all but the language of the text and the dictionary as the key, hardly holds the field especially if the enactment has a fiscal or other mission, its surrounding circumstances speak and its history unfolds the mischief to be remedied. The Court, in its comity with the Legislature, strives reasonably to give meaningful life and avoid cadaveric consequence. We have set out the story of the rebirth, as it were, of the law of minor mineral royalty levy to drive home the propriety of this method of approach. No doubt, there is some remissness in the drawing up of what professes to be a validating law and the neglected art of drafting bills is in part the reason for subtle length of submissions where better skill could have made the sense of the statute luscent and its validity above-board. Informed by a realistic idea of shortfalls in legislative drafting and of the social perspective of the statute but guided primarily by what the Act has said explicitly or by necessary implication we will examine the meaning and its impact on Counsel's contention."

On a plain reading of the language of the statute (Section 2: Act of 1957) and upon a declaration under Section 2, the Central Government alone has the power to legislate in regard to regulation of Mines and Mineral Development. The Calcutta High Court in the case of *Chandeswar Prasad Singh and Anr.* v. *Sub Divisional Land Reforms Officer, Barrackpore and Ors.,* AIR (1986) Calcutta 1) stated that a

A person has no right over and in respect of the earth and clay or other mines and minerals even contained in the sub soil of the land as tenants therein and as such no right or proprietory right can be spelt out in favour of such person. And it is in this context that definition of 'Mining Lease' in terms of Section 3(C) of the Act of 1957, ought to be noticed and which reads that Mining Lease means a lease B granted for the purpose of undertaking mining operation and includes a sub-lease granted for such purpose. Needless to record that Section 9 of the Act of 1957 stands interpreted both in the Constitution Bench judgment in India Cement (supra) and *Mahalaxmi* (supra) to the effect that cess on royalty being a tax on royalty, the State legislature stands C denuded of its power more so by reason of Section 9 of the Act of 1957. The field being occupied, question of empowerment of the State Government to collect does not arise. For a proper appreciation of the issue of occupied field, a reference to Section 9 would be very apposite, Section 9 reads as below:

D *"9. Royalties in respect of mining leases -*

(1) the holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in E 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 on or after the commencement F 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 the G 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.

H (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. A

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." B

It is in this perspective that Part IX Chapter I and, in particular, Articles 245 and 246 of the Constitution ought to be noticed and it be noted that in a long catena of cases, doctrine of pith and substance of the legislation stands accepted and it requires no dilation that as long as the legislation is within the permissible limit in its substance, no objection can be entertained as regards the legislative competency. The field concerned, in our view, stands firmly covered by reason of the incorporation of the Mines and Minerals Development Act, 1957 by the Parliament. The decision in *India Cement* (supra) concerning royalty covers squarely and evenly with the factual matrix of the matter in issue. C D

Mr. Chidambaram however, relying upon the wordings of Entry 54 in List I and Entry 23 of List II contended that regulation of Mines cannot possibly be interpreted to various legislations of cess or tax or levy. It has been contended that language itself of Entry 50 of List II categorically rules out the conferment of power on to the Union Government as regards the imposition of taxes on mineral rights since there is no similar and analogous entry in List I. We have been taken through various Entries of List I, in particular, however, from Entries 82 to 96 which speak of tax, duties or fees and it is on this score Mr. Chidambaram contended that in the event the founder fathers of our Constitution wanted conferment of power on to the Parliament to legislate pertaining to the taxes on minerals there was existing no embargo in explicitly declaring the same as has been done in the cases covered under Entries 82 to 96. The mandate of the Constitution has been expressly laid down and there is no scope or authority or even jurisdiction for the law courts to read in between the lines to attribute a further authorisation though not specifically envisaged and more so by reason of specific incorporation of such a power on to the State legislature in terms of Entry 50 of List II in the Seventh Schedule to the Constitution. E F G

Admittedly an ingenious effort on the part of appellant herein to interpret the constitutional provision in the manner as above, except however that the same would render the M.M.R.D. Act of 1957 wholly *ultra virus* the Constitution H

A and consequently steps taken in terms therewith would be rendered totally nugatory. Before expressing any opinion in regard thereto, let us however, also consider the case of *Mahalaxmi Fabric Mills* (supra) wherein this Court was concerned with two main questions *viz.*, whether Section (3) of the Mines and Minerals Act of 1957 is *ultra virus* the Constitution and secondly whether Notification dated 1st August, 1991 issued by the Central government under B Section 9(3) can be termed to be illegal and inoperative in law. As regards the first question pertaining to Section 9, this Court stated:

> "8. 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 of C *Baijanth Kedia* v. *State of Bihar,* [1969] 3 SCC 838 that the Act is enacted by Parliament under Entry 54 of the Union List. In this connection the Constitution Bench speaking through Hidayatullah, CJ. has made the following observations: [SCC p. 847-48, para 13)
>
> "Entry 54 of the Union List speaks both of Regulation of mines and D minerals development and Entry 23 is subject to Entry 54. It is open to Parliament to declare that it is expedient in the public interest that the control should rest 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, E 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 Legislature."
>
> F 9. Once it is held that the entire Act is within the exclusive domain of legislative power of 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 54 which deals with Regulation of mines and development of minerals and for which a declaration is G 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:
>
> (Not repeated herein since already noted earlier in this judgment).
>
> H 10. It becomes obvious that Parliament while enacting Section 9

has already laid down the rate of royalty to be charged on the removal and consumption of mineral by any lessees of mining lease, his agent or manager or sub-lessee, from the leased area. The rates of royalty are schedule in the Act. So far as coal in concerned it is by Entry 11 of the Second Schedule. Separate rates of royalty are prescribed for different types of coal. However, Parliament felt that these rates of royalty may be required to be enhanced or reduced from time to time due fall of money value with the passage of time or *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 the Official Gazette from time to time subject to the proviso that the Central Government shall not enhance mineral and mines royalty for more that 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.

11. In our considered opinion there is no substance in either of the twin contentions for challenging vires of Section 9(3). So far as competence to enact Section 9 is concerned, the question is no longer *res integra.* It is covered by the Constitution Bench decision of this Court in the case *India Cement Ltd.* v. *State of T.N.,* [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."

Mahalaxmi's decision also noted the decision of *Orissa Cement,* [1991] SCC Suppl. 1 471 wherein this Court repelled the contentions of the State Government justifying the levy under Entries 45, 49 and 50 of the List II of the Seventh Schedule. This Court went on to add however as below:

"39 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 MMRD Act, 1957, is there can be no doubt about this - a law of Parliament relating to mineral development. Section 9 of the said Act empowers the Central Government to fix, alter, enhance or reduce the rates of royalty payable in respect of

A minerals removed from the land or consumed by the lessee. Sub-section 3 of Section 9 in terms states that the royalities 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 State legislature taxing royalty so as, in effect, to amend the Second Schedule to the Central Act and that if the cess B is taken as a tax falling under Entry 50 it will be *ultra virus* in view of the provisions of the Central Act."

And it is on this perspective this Court in *Mahalaxmi's* case (supra) stated:

C "13. 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 restored 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 Cement *India Cement Ltd.* v. D *State of T.N.*, [1990] 1 SCC 12. 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 of 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 E 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 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 F specific excludes the general must be applied."

The learned Additional Solicitor General Mr. Trivedi appearing for Union of India and Mr. Dholakia for the State of Gujarat, submitted in similar vein though in contra to the appellant's contention that by reason of the express finding of this Court, question of having a further consideration of the issue G does not and cannot arise. Mr. Dholakia with his usual lucidity contended that the word 'regulation' appearing in Entry 54 cannot be given a restricted meaning neither can be attributed the ordinary common parlance but shall have to be given a much wider and broader interpretation on the total circumspection of the constitutional mandate having due regard to the intent expressed under Section 2 of the M.M.R.D. Act of 1957. A broader H interpretation according to Mr. Dholakia is the only justifiable interpretation

that is possible and thus regulation also includes a power to levy. A

The word 'regulation' as used in Entry 54 cannot but be said to be of broad impact encompassing all the facets not only specifically mentioned in the Entry itself but it is inclusive of its inherent implications thereto as well. The interpretation shall have to be attributed to the words used in the Constitution having regard to the public good and public interest. As a matter B of fact, it has been expressly recorded in the Entry itself that the regulation is in public interest. The word 'regulation' thus has to be read in the context in which it has been used. In *Corpus Juris Secundum (vol. 76 : 615)* the word 'regulation' has been defined as a rule or order prescribed for management or governance (see in this context the decision of the Punjab High Court in C the case of *Municipal Committee, Malerkotla* v. *Haji Ismail and Another,* AIR 1967 Punjab 32). As a matter of the fact the regulation has to be interpreted in the context in which it is used and not de hors the context. There must be a regulated development and mineral development is thus the only criteria. The finding of its Court in Mahalaxmi's (Three Judges' Bench judgment) case in fact negates the appellant's contention pertaining to Entry D 50 of List II. As noticed above in the event the contention of the appellant stands accepted this Court is left with no option but to declare the legislation (M.M.R.D. Act of 1957) as an invalid piece but the Larger Bench Judgment stares at us with an express finding that Section 9 of the Act of 1957 is within the legislative competence of Parliament both under Entry 54 and Entry 97 of E the Union List. The appellant's contention on this score that it needs a re-look, however, cannot be sustained. A Larger Bench Judgment has a binding effect on this score and there is existing a long catena of judicial precedents on this count.

On the other count Mr. Shanti Bhushan appearing in C.A. Nos. 8166- F 8167/94 upon adaptation of the contentions of Mr. Chidambaram, further contended that as a matter of fact, a plain look at Articles 265, 266, 267, 268, 269 and 270 unmistakably depict the intent of the framers of the Constitution in the matter of taxes and levies collected by the Government of India being assigned to States and as such question of depriving the State in the matter G of levying of a fee under Entry 50 of the List II of the Seventh Schedule does not arise. Mr. Shanti Bhushan contended that the distribution of revenue between the Union and the State clearly indicate the authorisation of the State for introduction of such a levy by State legislation. It has further been contended that this particular issue as regards the constitutional mandate for distribution of revenue has not been delved into by any of the decisions of H

A this Court and as such the decisions not having considered the constitutional mandate cannot be said to be of any significance warranting a follow up judgment. In any event by reason of absence of consideration of a constitutional mandate, *Mahalaxmi's case* (supra) ought to be re-considered. We are, however, not impressed with the submission. Distribution of revenue as mandated under the Constitution cannot possibly be interpreted to whittle B down Entry 54 of List I. Entry 54 of List I cannot but be read as the authorisation as conferred on to the Central Government pertaining to regulation of Mines and Mineral Development and as declared by Parliament by law in public interest. It is in pursuance of this authorisation that the M.M.R.D. Act of 1957 came into the Statute Book and on the wake of the C Legislation of 1957, Entry 50 of List II cannot but be read subject to the provisions of the Act of 1957 and when so read, there is an inescapable conclusion that the field in issue under Entry 50 already stands covered by Parliamentary legislation of 1957.

D On the other count Mr. Chidambaram's submission pertaining to delegated legislation in taxing statute however, does not call for any detail discussion since the authority of the legislature in introducing the Act of 1957 cannot be doubted in any way and in any event is a settled proposition of law for more than a decade and it is on this score that the doctrine of stare decisis has its due application in the contextual facts and in this context the E decision of this Court in Mishri Lal's case *Mishri Lal (d) by LRs.* v. *Dhirendra Nath (d) by LRs and Others,* [1999] 4 SCC 11 seem to be rather apposite. This Court observed :

> 11. It is further to be noted that *Meharban Singh's* case came to be decided as early as 1970 and has been followed for last three decades F in the State of Madhya Pradesh and innumerable number of matters have been dealt with on the basis thereof and in the event, a different view is expressed today, so far as this specific legislation is concerned, it would unsettle the situation in the State of Madhya Pradesh and it is on this score also that reliance on the doctrine of 'stare decisis' G may be apposite. While it is true that the doctrine has no statutory sanction and the same is based on a Rule of convenience and expediency and as also on 'Public Policy' but in our view, the doctrine should and ought always to be strictly adhered to by the courts of law to sub-serve the ends of justice.

H 12. This Court in *Mukul* v. *Ms. Manbhari & Ors.*, [1959] SCR 1099,

explained the scope of the doctrine of stare decisis with reference to Halsbury's Laws of England and Corpus Juris Secundum in the manner following :- A

"The principles of 'Stare Decisis' is thus stated in Halsbury's Laws of England:

B

"Apart from any question as to the Courts being of co-ordinate jurisdiction, a decision which has been followed for a long period of time, and has been acted upon by persons in the formation of contracts or in the disposition of their property, or in the general conduct of affairs, or in legal procedure or in other ways, will generally be followed by courts of higher authority than the court establishing the rule, C even though the court before whom the matter arises afterwards might not have given the same decision had the question come before it originally. But the supreme appellate Court will not shrink from overruling a decision, or series of decisions, which establish a doctrine plainly outside the statute and outside the common law, when no title D and no contract will be shaken, no persons can complain, and no general course of dealing be altered by the remedy of a mistake."

The same doctrine is thus explained in Corpus Juris Secundum :-

"Under the stare decisis rule, a principle of law which has become E settled by a series of decisions generally is binding on the courts and should be followed in similar cases. This rule is based on expediency and public policy, and, although generally it should be strictly adhered to by the courts, it is not universally applicable."

13. Be it noted however that Corpus Juris Secundum, adds a rider that F "previous decisions should not be followed to the extent that grievous wrong may result; and, accordingly, the courts ordinarily will not adhere to a rule or principle established by previous decisions which they are convinced is erroneous. The rule of stare decisis is not so imperative or inflexible as to preclude a departure therefrom in any case, but its application must be determined in each case by the G discretion of the court, and previous decisions should not be followed to the extent that error may be perpetuated and grievous wrong may result.

14. The statement though deserves serious consideration in the event of a definite finding as to the perpetration of a grave wrong but that H

A by itself does not denude the time tested doctrine of Stare Decisis its efficacy."

The two English decisions *Admiralty Commrs.* v. *Valverda Owners,* (1938) Appeal Cases 173 at 194; *Button* v. *Director of Public Prosecution* and *Swain* v. *Director of Public Prosecutions,* (1966) Appeal Cases 591 also
B sound a similar note.

Recently Paripoornan, J. in *Kattite Valappil Pathumma & Ors.* v. *Taluk Land Board & Ors.,* [1997] 4 SCC 114 in paragraph 18 observed :

"We are further of the view, that even if another view is possible, we
C are not inclined to take a different view at this distance of time. Interpretation of the law is not a mere mental exercise. Things which have been adjudged long ago should be allowed to rest in peace. A decision rendered long ago can be overruled only if this Court comes to the conclusion that it is manifestly wrong or unfair and not merely on the ground that another interpretation is possible and the court
D may arrive at a different conclusion. We should remember that the law laid down by the High Court in the above decision has not been doubted so far. The Act in question is a State enactment. These are weighty considerations to hold that even if a different view is possible, if it will have the effect of upsetting or reopening past and closed
E transactions or unsettling titles all over the State, this Court should be loathe to take a different view. On this ground as well, we are not inclined to interfere with the judgment under appeal."

On the wake of the aforesaid, we do feel it expedient to record that taking recourse to the doctrine as above would be an imperative necessity,
F so to avoid uncertainty and confusion, since the basic feature of law is its certainty and in the event of any departure therefrom the society would be in utter confusion and the resultant effect of which would be legal anarchy and judicial indiscipline - a situation which always ought to be avoided. The central legislature introduced the legislation (MMRD Act) in the year 1957
G and several hundreds and thousands of cases have already been dealt with on the basis thereof and the effect of a declaration of a contra law would be totally disastrous affecting the very basics of the revenue jurisprudence. It is true that the doctrine has no statutory sanction but it is a rule of convenience, expediency, prudence and above all the public policy. It is to be observed in its observance rather than in its breach to serve the people
H and sub-serve the ends of justice.

As regards the other appeals before this Court, of course, we need not dilate ourselves to any further extent save what is noticed hereinabove by reason of the identical situation of facts and law and by reason of adoptation of the submissions as noted except however on one, to wit, the grievance pertaining to the award of interest at the rate of 18% at a stage subsequent to the pronouncement of the judgment. While recording our concurrence to the respondent's contention and rejection of the same in support of the appeal, the issue pertaining to interest seem to be rather harsh. The imposition of 18% interest with yearly rests cannot in our view find support in the contextual facts since the validity of the legislation itself is in question before this Court. The payment of interest being in the discretion of the Court, we, therefore, do not wish to interfere with the award of interest as such though the rate at which it has been awarded needs some modification in the contextual facts and as such we direct that the rate of interest be 9% simple interest and not as directed by the High Court.

Save the modification of the rate of interest from 18% with yearly rests to 9% simple interest, we are not in a position to lend any concurrence to the submissions of the appellants in these batch of cases and as such the appeals fail and stand dismissed save however, the modification pertaining to interest as directed above. There shall be no order as to costs.

B.S. Appeals and Petitions disposed of.