

Supreme Court of India

Mineral Area Development ... vs M/S Steel Authority Of India & Ors on 30 March, 2011

Bench: S.H. Kapadia, K.S. Panicker Radhakrishnan, Swatanter Kumar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE/ORIGINAL JURISDICTION

CIVIL APPEAL NOS. 4056-4064 OF 1999

Mineral Area Development Authority etc. ...

Appellant(s)

versus

M/s Steel Authority of India & Ors. ...

Respondent(s)

with

Civil Appeal Nos. 4710-4721 of 1999, Civil Appeal Nos. 4722-4724 of 1999, Civil Appeal No. 1883 of 2006, Transfer Petition (C) No. 722 of 2006, Civil Appeal No. 4745 of 2006, Civil Appeal No. 4990 of 2006, Civil Appeal No. 4991 of 2006, Civil Appeal No. 4992 of 2006, Civil Appeal No. 4993 of 2006, Transfer Petition (C) No. 951 of 2006, Civil Appeal No. 5649 of 2006, Civil Appeal No. 5599 of 2006, Civil Appeal No. 378 of 2007, Civil Appeal No. 665 of 2007, Civil Appeal No. 1180 of 2007, Transfer Petition (C) No. 481 of 2007, Transfer Petition (C) No.

906 of 2007, Civil Appeal No. 3400 of 2008, Civil Appeal No. 3401 of 2008, Civil Appeal No. 3402 of 2008, Civil Appeal No. 3403 of 2008, Civil Appeal No. 2055 of 2009, Civil Appeal No. 2174 of 2009, Civil Appeal No. 6498 of 2008, Civil Appeal No. 6137 of 2008, S.L.P. (C) No. 26160 of 2008, Civil Appeal No. 6499 of 2008, Civil Appeal No. 6497 of 2008, Civil Appeal No. 7397 of 2008, Civil Appeal No. 96 of 2009, Civil Appeal No. 97 of 2009, Civil Appeal No. 98 of 2009, S.L.P. (C) No. 3849 of 2006), S.L.P. (C) No. 763 of 2007, S.L.P. (C) No. 15900 of 2007, Transfer Petition (C) No. 613 of 2009, Transfer Petition (C) No. 626 of 2009, Civil Appeal No. 4478 of 2010, Civil Appeal No. 4479 of 2010 and S.L.P. (C) No. 4191 of 2011.

O R D E R

Having heard the matter(s) for considerable length of time, we are of the view that the matter needs to be considered by the Bench of Nine Judges. The questions of law to be decided by the larger Bench are as follows:

1. Whether 'royalty' determined under Sections 9/15(3) of the Mines and Minerals (Regulation & Development) Act, 1957 (Act 67 of 1957, as amended) is in the nature of tax?
2. Can the State Legislature while levying a tax on land under Entry 49 List II of the Seventh Schedule of the Constitution adopt a measure of tax based on the value of the produce of land? If yes, then would the Constitutional position be any different insofar as the tax on land is imposed on mining land on account of Entry 50 List II and its interrelation with Entry 54 List I?
3. What is the meaning of the expression "Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development"

within the meaning of Entry 50 of List II of the Seventh Schedule of the Constitution of India? Does the Mines and Minerals (Regulation & Development) Act, 1957 contain any provision which operates as a limitation on the field of legislation prescribed in Entry 50 of List II of the Seventh Schedule of the Constitution of India? In particular, whether Section 9 of the aforementioned Act denudes or limits the scope of Entry 50 of List II?

4. What is the true nature of royalty / dead rent payable on minerals produced / mined / extracted from mines?
5. Whether the majority decision in *State of West Bengal v. Kesoram Industries Ltd. and Ors*, (2004) 10 SCC 201, could be read as departing from the law laid down in the seven Judge Bench decision in *India Cement Ltd. and Ors. v. State of Tamil Nadu and Ors.*, (1990) 1 SCC 12?
6. Whether "taxes on lands and buildings" in Entry 49, List II of the Seventh Schedule to the Constitution contemplate a tax levied directly on the land as a unit having definite relationship with the land?
7. What is the scope of the expression "taxes on mineral rights" in Entry 50, List II of the Seventh Schedule to the Constitution?
8. Whether the expression "subject to any limitation imposed by Parliament by law relating to mineral development" in Entry 50, List II refers to the subject matter in Entry 54, List I of the Seventh Schedule to the Constitution?
9. Whether Entry 50, List II read with Entry 54, List I of the Seventh Schedule to the Constitution constitute an exception to the general scheme of Entries relating to taxation being distinct from other Entries in all the three Lists of the Seventh Schedule to the Constitution as enunciated in *M.P.V. Sundararamier & Co. v. State of Andhra Pradesh & Anr.*, (1958) 1 SCR 1422 at 1481 (bottom)?
10. Whether in view of the declaration under Section 2 of the Mines and Minerals (Development & Regulation) Act, 1957 made in terms of Entry 54 of List I of the Seventh Schedule to the Constitution and the provisions of the said Act, the State Legislature is denuded of its power under Entry 23 of List II and/or Entry 50 of List II?
11. What is the effect of the expression "...subject to any limitation imposed by Parliament by law relating to mineral development" on the taxing power of the State Legislature in Entry 50 of List II, particularly in view of its uniqueness in the sense that it is the only entry in all the entries in three Lists (Lists I, II and III) where the taxing power of the State Legislature has been subjected to "any limitation imposed by Parliament by law relating to mineral development".

Before concluding, we may clarify that normally the Bench of five learned Judges in case of doubt has to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger coram than the Bench whose decision has come up for consideration (see: *Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr.* - 2005 (2) SCC

673). However, in the present case, since prima facie there appears to be some conflict between the decision of this Court in *State of West Bengal v. Kesoram Industries Ltd. & Ors.* (supra) which decision has been delivered by a Bench of five-Judge of this Court and the decision delivered by

seven-Judge Bench of this Court in India Cement Ltd.

and Ors. v. State of Tamil Nadu and Ors. (supra) reference to the Bench of nine-Judge is requested. Office is directed to place the matter on the administrative side before the Chief Justice for appropriate orders.

.....CJI (S. H. Kapadia)J.

(K.S. Panicker Radhakrishnan)J.

(Swatanter Kumar) New Delhi;

March 30, 2011.