CHAPTER XIII
MINES AND MINERALS

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CHAPTER XIII
MINES AND MINERALS

1. *INTRODUCTION*

13.1.01 Industrialisation has brought in its wake an ever increasing demand for mineral resources. These resources are non-replenishable and mostly scarce. Proper control over regulation and development of mines and minerals is therefore, a matter of national concern.

2. *CONSTITUTIONAL PROVISIONS*

13.2.01 Entry 23 of the State List relates to "Regulation of mines and mineral development". However, it is expressly subject to the provisions of the Union List with respect to regulation and development under the control of the Union. Entry 54 of the Union List provides for "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". It is significant that Entry 23 of List II has not been made subject to any specific Entry of List I. This means that apart from Entry 54, there are other Entries in List I which may, to an extent, overlap and control, the field of Entry 23 of List II.

13.2.02 The Constitutional arrangements regarding the regulation of Mines and Minerals Development are generally on the lines of Government of India Act, 1935, except that the Entry relating to "Oil fields" has been dealt within a separate Entry, of the Union List in the Constitution. (Entry 53 List I).

13.2.03 Parliament has enacted the Mines and Minerals (Regulation and Development) Act, 1957 (MMRD Act) to "provide for regulation of mines and the development of minerals under the control of the Union" in public interest.

13.2.04 Conflicts do arise as to how much of the field of Entry 23 of List II has been taken over by Parliament by enacting the MMRD Act, 1957 by virtue of Entry 54 of List I. Conflicts can also arise when States impose taxes under Entries 18, 49 and 50 of List II. The Constitutional position with regard to Entries on regulation of mines and minerals development and the related Entries in List I and II, therefore, needs to be examined. The Supreme Court has considered these points in a number of reported cases, the salient features of which are given in the Annexure XIII.[1]

13.2.05 The power of the State legislature under Entry 23 has been made subject to the provisions of List I with respect to regulation and development under the control of the Union. Parliament enacted the MMRD Act. A question arose in regard to the extent of the legislative power of the State following an enactment under Entry 54 of List I[1]. It was held by the Supreme Court:

> "The jurisdiction of the State legislature under Entry 23 is subject to the limitations imposed by the latter part of the 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 such declaration covers the field occupied by the impugned Act, the impugned Act, will be *ultra vires* not because of any repugnance between the two statutes but because the State legislature has no jurisdiction to pass a law. The limitations imposed by the latter part of Entry 23 is a limitation on the legislative competence of the State Legislature itself"[2].

The findings in this case have been followed in other cases. In a subsequent case, the Supeme Court held:

> "Subject to the provisions of List I, the power of the State to enact Legislation on the topic of "mines and minerals development" is plenary. To the extent to which the Union Government had taken under "its control" "the regulation and development of minerals" under Entry 54 of List I so much was withdrawn from the ambit of the power of the State Legislature under Entry 23 of List II and legislation of the State which had rested on the existence of power under that Entry would, to the extent of the "control", be superseded or be rendered ineffective; for here we have a case not of mere repugnancy between the provisions of the two enactments but of denudation or deprivation of State legislative power by the declaration which Parliament is empowered to make under Entry 54 of List I

and has made. The Central Act 67 of 1957 covered the entire field of minerals development, that being the "extent" to which Parliament had declared by law that it was expedient that the Union should assume control"[3].

13.2.06 The result, therefore, of Parliament having occupied the entire field is that the State legislature thereafter lacs legislative competence and consequentially, executive authority in regard to regulation and development of mines and minerals. Therefore, where a law is attributable in pith and substance to Entry 23 of List II, it would not be valid in as much as Parliament has occupied the entrie field.[4]

13.2.07 States have legislative competence with respect to land and connected matters under Entry 18 of List II and regarding taxes on lands and buildings under Entry 49 of List II. Conflicts have arisen in the matter of levies under Entries 18, 49 and 50 of List II on the ground that they impinge upon Entry 54 of List I. These Entries should also be read with Entry 54 of List I. The State Legislatures' competence is not taken away unless it is shown that in pith and substance the enactment relates to Entry 23 of List II. Dealing with the validity of demand for payment of land cess under Sections 78 and 79 of the Madras District Boards Act (1920), the Supreme Court held that these Sections had nothing to do with the development of mines and mineral or their regulation because the proceeds of the land cess were to be used for providing amenities to the people of the area like education, health, etc. It was also observed that the land cess was not a tax or mineral right but was in pith and substance a tax on lands under entry 49 of List II.[5]

13.2.08 Entry 50 of List II relates to taxes on mineral rights. However, this has been made expressly subject to any limitations imposed by Parliament, by law, relating to mineral development. Taxes under Entry 50 of List II do not include royalty and cess.

3. *GENERAL FRAMEWORK OF THE MMRD ACT*

13.3.01 The MMRD Act, 1957 mainly deals with general restrictions on prospecting and mining operations and the rules and procedures for regulating grants of prospecting licences and mining leases. Section 2 of the Act makes a declaration 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 provided in the said Act. In Section 3, the words "Minerals", "Mineral Oils", "Minor Minerals" have been separately defined. State Governments are competent to give licences for prospecting and for granting mining leases. The Act specifically provides that in the case of minerals included in the First Schedule to the Act, the State Governments shall not grant or renew, prospecting licences or mining leases without the prior permission of the Union Government. Sections 4 to 12 of the Act deal with the conditions and procedures and other allied matters regarding the prospecting or mining operations under licence or lease. Sections 13 and 13A deal with the rule making power of the Central Government.

13.3.02 It is, however, significant that Section 14 provides that Sections 4 to 13 of the Act shall not apply to minor minerals. Further, Section 15 provides that the State Government's may by notification in the Official Gazette make rule for regarding grant of quarry-lease, mining-lease or other mineral concessions in respect of minor minerals and for the purposes connected therewith. A combined reading of Section 4 to 13 and Section 14, 15 and 18 show that while Parliament's enactment (viz., the MMRD Act) has occupied the entire field, it has specifically exempted minor minerals from the application of Sections 4 to 12 and has also empowered the State Governments in respect of minor minerals.

4. *THE ISSUES*

13.4.01 None of the State Governments, excepting one, has suggested any change in the scheme of distribution of legislative powers with respect to this subject. This State Government has suggested that Entries, 53, 54 and 55 in List I should be transferred to the Concurrent List. However, no corresponding change has been suggested with regard to Entry 23 in List II. Two State Governments have complained that in respect of regulation of mines and mineral development, legislative jurisdiction of the States has been completely taken over by the Union. Mostly the criticism is directed against the operations of the MMRD Act, 1957. Complaints against the operation of the MMRD Act relate to the method of fixation of royalty in the mineral development. One State Government has questioned the desirability of retaining Section 30 of the Act dealing with Union Government's power to hear revision petitions against orders of State Governments.

13.4.02 Government of India (Department of Mines) has pointed out the adverse effects on mineral development, and the difficulties arising out of the imposition of different levies by the States. It has drawn attention to the fact that while the Union Government can revise the royalty rates once in four years only and such rates are uniform throughout the country, concept of stability and uniformity in imposts is defeated when State Governments impose taxes at very different rates and changes frequently.

5. *EXAMINATION OF ISSUES*

13.5.01 We have considered the suggestion that Entries 53, 54 and 55 should be transferred to the Concurrent List in our Chapter on Legislative Relations. We have pointed out there in that the regulation and development of oil fields, is a matter of national importance. The State Government, referred to above, has not indicated the precise aspects for which it desires to have legislative competence. Regulation of labour and safety in mines, etc. is also related to Entries 53 and 54. For the reasons stated therein we are unable to agree to this suggestions.

13.5.02 The remaining issues relating to mines and minerals are:

(i) Manner of fixation of royalty and need for revising the same.

(ii) Cesses and other charges on mines and minerals levied by the States under Entries 49 and 50 of List II.

(iii) Review of provisions relating to hearing of revision petitions under Section 30 of the MMRD Act.

13.5.03 Section 9 of the MMRD Act deals with royalty. It states that the holders of mining leases shall pay royalty in respect of any mineral removed or consumed by them from the leased area at a rate for the time being specified in the Second Schedule of the MMRD Act. Proviso to Section 9 states that the Union Government shall not enhance the rate of royalty in respect of any mineral "more than once during any period of four years". Any amendment to the Second Schedule enhancing or reducing the rate of royalty is required to be published in the Official Gazette.

13.5.04 A Study Group set up by the Government of India in 1966 recommended that for administrative convenience clearly defined rates on tonnage basis will be desirable for fixation of royalty of coal. Consequently assessment on tonnage basis was introduced with effect from 1968. Another Study Group appointed by the Mineral Advisory Board came to the conclusion that fixation of royalty on *ad valorem* basis was "administratively clumsy."[6] Recently, another Study Group has gone into this question. The Study Groups included representatives of State Governments besides others. Therefore, the Union Government have acted in consultation with State Governments in respect of the method of fixation of royalty, though no such requirement is enjoined on the Union Government under the Act.

13.5.05 Royalty from minerals is an important source of revenue for States. The total revenue under "royalty on minerals and mineral concession fees" for 1986-87 (BE) is Rs. 643.68 crores.[7] The concerned States have mostly complained that the rates of royalty do not reflect the rising value of the minerals. They feel that they are deprived of additional revenue and are in favour of fixation of royalty on *ad valorem* basis which will automatically adjust the royalty rates according to the value of minerals.

13.5.06 The MMRD Act earlier restrained the Union Government from enhancing the rates of royalty, more than once in any period of four years. Following an amendment of the Act in 1986, this period has been reduced to three years.[8] Initially, there was a four-year restriction under the Petroleum Products (Regulation and Development) Act, 1948, on enhancing the royalty rates of petroleum products. This period has also been reduced to three years since 1984 by an amendment of the relevant Act.[9]

13.5.07 The State Governments contend that while there is no restriction on increase of prices of minerals, the restrictions imposed on enhancement of royalty under the MMRD Act is against the interests of the States. The Union Government has, on the other hand, pointed out that the royalty is a form of rentand hence there should be some restrictions on it.

13.5.08 We agree that royalty rates should remain constant for a reasonable period of time and frequent changes would not be in the interests of the economy. However, there should also be some proximate relationship between price increase and royalty rates. This can be illustrated by considering the case of

royalty on coal. Coal prices have been adjusted four times between 1982 and 1986 and total increase has been approximately Rupees 100 per tonne. But the royalty paid has remained unchanged around Rs. 5 per tonne. We find much substance in the States argument that if the economy can bear an increase of Rupees 100 per tonne, then a marginal increase due to enhancement of royalty is not going to hurt it. We understand a Study Group was set up in 1984 by the Department of Mines in regard to revision of royalties amongst other things. A decision on its report (submitted in 1985) was taken in March, 1987. MMRD Act now contemplates revision of royalty rates once every three years. There is no restriction on Parliament even now in changing the royalty rates at more frequent intervals. We are of the view that the period should be reduced to 2 years.

13.5.09 The next issue for consideration is the imposition of cesses, surcharges and other charges by State Governments by virtue of their powers under Entries 49 and 50 in List II of the 7th Schedule, which directly or indirectly affects the prices of minerals. The Department of Mines in its memorandum to us has pointed out that in addition to cesses, surcharges have been levied under Entry 49 List II. Levy of various cesses, surcharges at different rates, it is alleged has an adverse impact on the development of minerals. This affects uniformity and introduces uncertainty in mineral prices, some of whom may have to compete not only in the national market but also in international market. Cesses are usually levied as a percentage of royalty, and therefore, when levied at different rates in different States they distort the uniformity in royalty rates.

13.5.10 So far as Entry 50 in List II is concerned, States' rights are subject to any limitation imposed by Parliamentary law relating to mineral development. As far as we have been able to ascertain no such limitation has been imposed. We are informed by the government of India that one State has levied mineral rights tax, approximately 300 percent of royalty on coal and lime-stone and 100 percent of royalty on other minerals. The Union Government, while conceding the States rights under Entries 49 and 50 (subject to such limitation as may be imposed by Parliament), has pointed out the need for the States to exercise restraint on imposition of such levies, so as not to affect uniformity or competitiveness. Recently, a State Government levied a cess not exceeding 20 percent of the annual value of all lands used for carrying on business for the purpose of obtaining industrial crude oil and petroleum. This action of the concerned State Government is under challenge in the Supreme Court. Nevertheless, the fact remains that such imposts adversely affect the prices of petroleum products.

13.5.11 Here we have a situation where the States are complaining about the inadequacy of royalty rates as they do not reflect the increasing prices of minerals. On the other hand, the Union Government has complained against the imposts levied by the States under Entries 49 and 50 as they directly and indirectly affect the prices of minerals. Neither the Union nor the States have questioned the competence of one another. The dispute is only regarding the manner in which these powers should be utilised.

13.5.12 The controversy, is therefore, not of legal interpretation of their respective jurisdiction, but one of evolving an understanding in regard to the extent to which these sources of revenue can be exploited keeping in view the overall national interest. Such issues can best be sorted out through consultation and consensus. We are of the view that the NEDC proposed by us will be the best forum for this purpose. It is, however, quite clear that the issues are inter-linked. Mutual trust and confidence can be built up only if, on the one hand, the Union Government promptly revises royalty rates at reasonable intervals and on the other, the States abstain from arbitrary action in levy of cesses, etc.[10] Parochial considerations must yield to the larger interests of the nation in such matters.

13.5.13 The third issue relates to hearing of revisions by the Union against orders of the States under Section 30 of the MMRD Act. The Department of Mines has designated a panel of two officers one from Mines Department and another from Law Department to hear the revision petitions. The number of revision petitions is large. According to the concerned Department, nearly 1,300 revision applications were received in the period from April to December 1982.[11]

13.5.14 Under the MMRD Act, 1957 certain powers have been given to State Governments subject to the overall superintendence and control of the Union Government. Viewed in that context, the arrangements envisaged in the MMRD Act under Section 30 are consistent with objectives of the Act. However, the number of revision petitions before the Mines Department show that such a procedure has overburdened the system. Determination of the issues in a revision petition under this Act is intrinsically a

quasi-judicial function. We would, therefore, suggest that Section 30 should be amended so that the present arrangement is substituted by a judicial Tribunal for hearing the revision petitions under this Act.

13.5.15 Exploitation of mineral resources will continue to increase. There is general agreement that minerals are national resources and they should be exploited and developed for the benefit of the country as a whole. Only Union legislation can ensure such regulation and development of minerals. The States have been given an unrestricted field in respect of 'minor minerals' which have little all-India implications. There is, however, need for periodic review of the First Schedule to the MMRD Act, in consultation with the States, say after every three years, as there is a possibility that a particular mineral, not included in the Schedule, may become a matter of national concerned or *vice versa.* Any amendment of the Act should normally be preceded by consultation in the NEDC.

6. REGULATION OF MINES AND MINERAL DEVELOPMENT IN NAGALAND

Views of the State Government

13.6.01 The Government of Nagaland has pointed out that all laws made by Parliament in respect of the four matters enumerated in sub-clause (a) of Article 371(1), irrespective of whether the laws were made before or after the Article came into force, viz, December 1, 1963, do not apply to the State of Nagaland unless the Legislative Assembly of the State so decides. According to the State Government, if the State. Assembly decides that a particular Parliamentary law in respect of any of the four matters should not apply to the State of Nagaland, such a matter will fall within the legislative competence of the State Assembly. Also, the State Government will then have full executive power in respect of that matter. The State Government has also pointed out that, while no difficulty was experienced in regard to matters referred to in (i) to (iii) of the sub-clause, item (iv), *viz.,* “ownership and transfer of land and its resources” posed certain problems. According to the State Government, the limitation on the power of a State Legislature in terms of Entry 23 of List II does not apply to the State of Nagaland, so long as the Nagaland Legislative Assembly does not decide that any of the Parliamentary laws relating to Entries 53 and 54 of List I should apply to the State. The State, therefore, is empowered to legislate on mines and minerals, including mineral oil, as these are resources of land. This legislative power stands untrammelled by Entries 53 and 54 List I. The State Government has suggested that these conclusions, which are at present implicit in Article 371A(1)(a), should be explicitly provided for by amending that Article.

Constitutional Provision

13.6.02 Sub-clause (a) of Article 371A(1) reads as follows:—

"371A(1) Notwithstanding anything in this Constitution,**—**

(a) no Act of Parliament in respect of—

(i) religious or social practices of the Nagas,

(ii) Naga customary law and procedure,

(iii) administration of civil and criminal justice involving decisions according to Naga customary law,

(iv) ownership and transfer of land and its resources,

shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides”.

13.6.03 The above sub-clause was intended to give effect to Clause 7 of the “Sixteen Point Agreement” between the Government of India and the leaders of the Naga People's Convention. (The Agreement led to the Naga Hills—Tuensang AREA, A PART 'B' TRIBAL area within the State of Assam, being constituted as a separate State of Nagaland and to the incorporation of Article 371A in the Constitution).

History of Sub-Clause (a) of Article 371A(1)

13.6.04 The Sixteen Point Agreement purported to set forth agreed conclusions on demands which were placed by the delegates of the Naga People's Convention before the then Prime Minister, Pandit Jawaharlal Nehru, on July 26, 1960, and which were finally recast by the Delegation in the light of discussion on 27th and 28th July, 1960 with the Foreign Secretary to the Government of India. The Agreement was signed by the President, Naga People's Convention, on 29th July, 1960. Point 7 of the Agreement provided as follows:—

"No Act or law passed by the Union Parliament affecting the following provisions shall have legal force in the Nagaland unless specifically applied to it by a majority vote of the Naga Legislative Assembly.

(1) ....

(2) ....

(3) ....

(4) The ownership and transfer of land and its resources."

13.6.05 Besides listing the sixteen points, the Agreement gave, point-wise, an agreed record of the discussions which took place on July 27 and 28, 1960 between the Delegation and the Foreign Secretary to the Government of India. An excerpt from the said record of discussion of Clause (4) of point 7 is reproduced below:—

"There was a discussion on the question of resources. It was explained to the Delegation that while there is no intention to disturb the ownership of the underground resources, Parliament must retain the power to regular and develop such resources in accordance with Entries 53and 54 of List I—Union List in the Seventh Schedule of the Constitution. The attention of the delegation was also drawn to Entry 23 in List II—State List—in the Seventh Schedule."

13.6.06 The Constitution (Thirteenth Amendment) Act, 1962 inserted Article 371A in the Constitution to give effect to the Agreement.

The Constitutional Issues

13.6.07 Several constitutional questions have been raised. These are:—

(i) Whether the implication of the expression "no Act of Parliament" in the opening part of sub-clause (a) of Article 371A(1) is that no Act of Parliament in respect of matters referred to in that sub-clause, whether passed before or after 1st December, 1963, shall apply to the State of Nagaland unless the Legislative Assembly of that State by a resolution so decides.

(ii) Whether the expression "its resources" used in conjunction with "land" within the contemplation of Article 371A(1)(a)(iv) includes mines, minerals and mineral oil found below the surface.

(iii) Whether the ambit of sub-clause (a) (iv) of Article 371A(1) is confined to "ownership and transfer" of land and its resources.

(iv) If the answer to the preceeding questions be in the affirmative, whether the Mines and Minerals (Development and Regulation) Act, 1957, is an Act relating to "ownership and transfer of land and its resources" and, as such, would not apply to Nagaland, unless the State Legislative Assembly by a resolution so decides.

(v) Whether the Legislative Assembly of Nagaland has plenary power to legislate with respect to matters in Entries 18, 23 and 50 of State List without being subject to any control exercisable by Parliament by law.

A Practical View

13.6.08 As the constitutional issues involved are highly complex, the conventional method of resolving them, say, by reference to the Supreme Court under Article 143 or by instituting a suit in that Court under Article 131, will mean that the detailed arguments to be put foward by the Union Government, the Government of Nagaland and any other State Government will have to be heard by the Court after due notice to the parties concerned. Needless to say, this process will be unduly protracted.

13.6.09 Apart from this, strictly legal answers to issues such as these may give rise to practical difficulties for both the Union Government and the State Government. In the present case, for instance, two types of such difficulties are likely to be encountered.

13.6.10 In Nagaland, each tribe is confined to a well-demarcated territory within which villages have well-defined, permanent boundaries, Broadly, the house-sites, places of public worship and forest land constitute the "common village land", which is managed by the Village Council.[12] If minerals and mineral oil resources are to be developed, regulated and properly exploited, the willing cooperation of the village communities in whose territory mining, drilling etc. are to be carried out, will be essential for this.

Adequate compensation may have to be paid to them. Thus, assuming the State Government to be competent to legislate on matters covered by Entries 53 and 54 of List I, it would have to contend with problems of ownership and transfer of land and its resources, peculiar to Nagaland.

13.6.11 Secondly, development of major minerals and mineral oil resources, and their exploitation require financial invest-ment, technical know-how, technical manpower, etc. of an order which is clearly beyond the reach of an individual State Government. The Government of Nagaland, even if it were to be made exclusively responsible for all these matters, would face insurmountable problems of implementation, unless very large financial, technical and other assistance were to be provided by the Union Government over a length of time.

Need for Co-operation & Concerted Action

13.6.12 It is, therefore, clear that no mutually beneficial arrangement for the regulation and development of mines and minerals, including mineral oil resources, can be evolved, unless the Union Government and the Government of Nagaland adopt an approach of cooperation and concerted action. We would emphasise that a mere legalistic approach to these sensitive problems may not lead to solutions; rather, it may exacerbate suspicion and mistrust. It is, therefore, advisable not to take a rigid stand on technicalities or legalities but to find out, through dialogue and discussions between the Union Government and the Government of Nagaland, the modifications and exceptions, if any, that would be necessary in the Acts of Parliament relating to Mines and Minerals, Coalfields, Oilfields and Land Acquisition, so as to make them acceptable to the State Government and its Legislative Assembly, in the peculiar conditions relating to ownership and transfer of land prevailing in that State. We would also urge that such dialogue and discussions should be carried out in a spirit of give and take and trust, as symbolised by the Sixteen Point Agreement between the Government of India and the Naga People's Convention in 1960. The needs of the State and national interest would be best served by adopting a pragmatic approach to the whole issue.

7. *RECOMMENDATIONS*

13.7.01 Proviso to Section 9 of the MMRD Act should be amended to reduce the period specified therein for revision of royalty rates from four years to two years.

(Paragraph 13.5.08)

13.7.02 There should be periodic dialogue between the Union and the States in respect of revision of royalty rates under MMRD Act and impost under Entries 49 and 50 of List II.

(Paragraph 13.5.12)

13.7.03 A Judicial Tribunal should replace the existing administrative body under Section 30 of the MMRD Act for hearing the revision petitions, etc.

(Paragraph 13.5.14)

13.7.04 There should be periodic review of the First Schedule of the MMRD Act, in consultation with the States, every three years.

(Paragraph 13.5.15)

13.7.05 Any amendment to the MMRD Act should normally be preceded by consultation in NEDC.

(Paragraph 13.5.15)

13.7.06 With reference to the issue raised by Government of Nagaland concerning sub-clause (a) (iv) of Article 371A(1), dialogue and discussions should be carried out between the Union and the State Government in a spirit of give and take and trust, as symbolised by the Sixteen Point Agreement between the Government of India and the Naga People's Convention in 1960. The needs of the State and national interest would be best served by adopting a pragmatic approach to the whole issue.

(Paragraph 13.6.12)

ANNEXURE XIII—1

A BRIEF REVIEW OF IMPORTANT CASES RELATING TO ENTRY 54 OF LIST I AND ENTRY 23 OF LIST II AND OTHER RELATED MATTERS, 1961(2) SCR 537

1. **HINGIR-RAMPUR COAL CO. Vs. STATE OF ORISSA**

In December 1952, the Legislature of the State of Orissa passed the Orissa Mining Areas Development Fund Act. The Act received assent of the Governor. Rules were also duly notified under the Act.

The Administrative Officer concerned with the enforcement of the Act called upon the petitioners to submit the monthly returns for the assessment of the cess. Subsequently, a warning was issued for non-submission of the returns and threatening prosecution under Section 9 of the Act. The petitioners, therefore, filed a petition challenging , *inter alia,* the validity of the Act.

The validity of the Act was challenged on several grounds. One of the grounds was that the State Legislature had no jurisdiction under Entry 23 of List II of the Seventh Schedule of the Constitution since that Entry is subject to provisions of List I with respect to Regulation and Development under the control of the Union; that is Entry 54 of List I. The Court held that a combined reading of Entry 54 of List I and Entry 23 of List II had the following effect:

> The jurisdiction of the State Legislature under Entry 23 is subject to the limitations imposed by the latter part of the 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 such declaration covers the field occupied by the impugned act, the impugned act will be *ultra vires* not because of any repugnance between the two statues but because the State Legislature has no jurisdiction to pass a law. The limitations imposed by the latter part of Entry 23 is a limitation on the legislative competence of the State Legislature itself.

2. **STATE OF ORISSA Vs. M.A. TULLOCH & CO. (AIR 1964 SC 1284)**

The above Company, incorporated under the Indian Companies Act, was working in the Manganese Mine in the State of Orissa under the lease granted by that State under the provision of Mines and Minerals (Development & Regulation) Act, 1948, i.e., Central Act 53 of 1948 and the Rules framed therefrom. While so, the Legislature of State of Orissa passed and act called the Orissa Mining Areas Development Fund Act, 1952 [the same Act was under challenge in Hingir—Rampur Coal Co. Vs. State of Orissa 1961 (2) ACR 537]. The fee under this Act which became due between July 1951 and March 1952 became the subject matter of litigation. A demand was made from the Company. The Company filed a petition before the High Court impugning the legality of the demand and claimed certain assets. The writ petition was allowed by the High Court.

The question arose whether the Mines and Minerals (Development & Regulations) Act, 1948 which is a Central Act has rendered the Orissa Act ineffective. The Supreme Court held as follows:

> "Subject to the provisions of List I, the power of the State to enact Legislation on the topic of "mines and mineral development" is plenary. To the extent to which the Union Government had taken under "its control" "the regulation and development of minerals" under Entry 54 of List I so much was withdrawn from the ambit of the power of the State Legislature under Entry 23 of List II and legislation of the State which had rested on the existence of power under that Entry would, to the extent of that "control", be superseded 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 under Entry 54 of List I and has made. The Central Act 67 of 1957 covered the entire field of mineral development, that being the "extent" to which Parliament had declared by law that it was expedient that the Union should assume control".

Relaying on the provisions of Sec. 18(1) which cast a duty upon Union Government "to take all such steps as may be necessary for the conservation and development of minerals in India" and "for that purpose the Central Government may, by notification, make such rules as it may deem fit", it was contended that the entire field of mineral development including the provision of amenities to workmen employed in the mines, vested with the Union Government. The Court was inclined to agree to this contention but held that this position has been concluded by its decision in Hingir-Rampur Coal Co. Vs. State of Orissa [1961 (2) SCR 537].

3. **H.R.S. MURTHY Vs. COLLECTOR OF CHITTOOR AND OTHERS (AIR 1965 SC 177)**

The appellant's father had obtained a mining lease from the Government of Madras. He was permitted to work on the mines and mine the ore in the leased property. It is material to point out that under the lease, the lessee was bound to pay certain rent per year if he used the land for the extraction of iron ore and higher amount if he used the land for other purpose. Besides, he also bound himself to pay certain royalty per ton of iron ore if the ore was used for extraction or if the iron ore was used for any other purpose for sale at the rate of Re. 1 per ton (or a higher amount). In addition, there was a stipulation that there was a payment for surface rent.

To raise finance for carrying out local administration in the District Board, several taxes are leviable. Among them, Section 78 of the Madras Distribution Act of 1920 imposes a land cess on lands in the State.

After his father's death, two notices were issued on the appellant demanding payment of the land cess by the District Board for the years 1952—54 and 1955—57 and threatening action in the event of non-payment. The appellant challenged the validity of the notices in the High Court of Andhra Pradesh. The Petition was dismissed. The matter came in appeal before the Supreme Court. One of the contentions was that with the passing of Mines and Minerals (Development and Regulation) Act, 1957, the land cess that could be levied under the District Board Act must be exclusive of royalty under the mining lease.

It was held that there was no connection between regulations and development of mines and minerals dealt with in the Central Act of 1957 and the levy and collection of land cess for which the provision was made by Sections 78 and 79 of the District Boards Act. Therefore, there was no scope at all for the argument that there was anything common in between the District Board's Act and Central Act of 1957 so as to require a detailed examination of these enactments for discovering whether there was any overlapping.

It was further held that land cess imposed by the Madras District Board Act was in truth a tax on land as per Entry 49 of State List and not a tax on minerals under Entry 50 of State List.
The Court also relied on its earlier decisions AIR 1961 SC 459 (Hingir-Rampur Coal Co. Vs. State of Orissa and AIR 1964 SC 1284—State of Orissa Vs. M.A. Tullock and Company).

4. **BAIJNATH KEDYA Vs. STATE OF BIHAR AND REST (AIR 1970 SC 1436)**

The appellant was the transferee of a lease-hold right, the lessor being one Babu Bijan Kumar Pande. The rent accruing on the lease was deposited upto September 1965.

On coming into force of the Bihar Land Reforms Act, 1950, the lessor Babu Bijan Kumar Pande ceased to have any interest from the date of vesting of the property in the State of Bihar because as per provisions of that Act, the State of Bihar was deemed to be the new lessor.

In its capacity as the new lessor, the rent and royalty, etc. in respect of mining and minerals irrespective of the date on which the lease was granted were to be paid by all categories of lessees to the State of Bihar according to the rates given in the rules framed under Bihar Act referred to above. A demand was made according to these rules which became the subject matter of controversy.

The main question that came up for consideration before the Supreme Court was the effect of the combined reading of Entry 54 of the Union List and Entry 23 of the State List of the Seventh Schedule to the Constitution. The Court held—

"....it is open to Parliament to declare that it is expedient in the public interest that the control should rest in the Central Government. To what extent such a declaration can go is for the Parliament to determine and this must be commensurate with the public interest. Once this declaration is made and 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 Legislature".
The Court also relied upon its own decisions in Hingir-Rampur Coal Company Vs. State of Orissa (AIR 1961 SC 459) and State of Orissa Vs. M.A. Tulloch & Co. (AIR 1964 SC 1284). The Court further held: "these two cases binding and apply here. Since the Bihar Legislature amended the land reforms Act after coming into force of Act 67 of 1957, the declaration in the latter Act would carve out a field to the extent provided in that Act and to that extent Entry 23 would stand cut down. To sustain the amendment, the State must show that the matter is not covered by the Central Act. The other side must of course, show that the matter is already covered and there is no room for legislation".