

PETITIONER:
STATE OF ORISSA AND ORS.

Vs.

RESPONDENT:
MAHANADI COALFIELDS LTD. AND ORS.

DATE OF JUDGMENT 24/04/1995

BENCH:
A.M. AHMADI, CJI., S.P. BHARUCHA & K.S. PARIPOORNAN, JJ.

ACT:

HEADNOTE:

JUDGMENT:
PARIPOORNAN, J.:
1. The State of Orissa and the authorities in the Mines Department of the State are the appellants in this batch of appeals. M/s. Mahanadi Coalfields Ltd., a Government company, in whom the lands in question vests in accordance with section 11 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (Central Act 20 of 1957), and Union of India are the respondents in the main appeal. In the other appeals, the consumers of coal who purchase coal from Mahanadi Coalfields Ltd. for their own consumption as well as some traders in coal are the respondents. The Mahanadi Coalfields Ltd., the consumers of coal who purchase coal from Mahanadi Coalfields Ltd. and some traders in coal assailed the validity of the Orissa Rural Employment, Education and Production Act, 1992 (Orissa Act 36 of 1992), as amended, hereinafter referred to as 'the Act', before the High Court of Orissa in a series of writ petitions. The main controversy in the cases was regarding the levy of tax under the Act on "coal bearing lands". By a common Judgment dated 26.4.1994 the Division Bench of the High Court held that the State Legislature did not have the competence to levy the tax on coal bearing lands and struck down section 3(2)(c) of the Act as well as the schedule attached to the Act levying tax of Rs.32,000/- per acre on coal bearing lands and also the consequential demand notices and certificate proceedings. As a sequel thereto, the demands raised by Mahanadi Coalfields Ltd. against the traders and consumers on account of additional burden of tax on lands were also quashed. The High Court also took the view that the levy would be hit by section 9A of Mines and Minerals (Regulation and Development) Act, 1957, (Act 67 of 1957) hereinafter referred to as 'M.M.R.D. Act' and the levy is also discriminatory and hit by Article 14 of the Constitution of India. The question of passing on the burden by Mahanadi Coalfields Ltd. was left open, though the High Court opened that if the tax is on lands, the burden cannot be passed on to the consumer or the trader. A few other pleas taken up by the petitioners were also negatived. The High Court allowed the batch of writ applications. In S.L.P.(C) Nos.12477-12751 of 1994, by an order dated 10. 1.

1995, a three Member Bench of this Court granted leave to appeal to the State of Orissa against the aforesaid Judgment of the High Court dated 26.4.1994. Apart from the competence of the Orissa Legislature to enact the law, M/s. Mahanadi Coalfields Ltd. raised various other pleas to assail the levy under Orissa

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Act 36/1992 as invalid. Important among such pleas, involved interpretation of Article 285 of the Constitution read with Sections 9, 10 and 11 of Coal Bearing Areas (Acquisition and Development) Act, 1957 and the provisions of Colliery Contract Order framed under Section 3 of the Essential Commodities Act. The said pleas were negatived by the High Court by the same common judgment of 26.4.1994 and M/s. Mahanadi Coalfields Ltd. have come up in appeals against that portion of the judgment, which repelled their pleas aforesaid, amongst others. The appeals so filed are C.A. Nos. 42-43/94, 605/95 and 26602932/95. Accordingly the above Civil Appeals and special leave petitions have come up before this bench for hearing.

2. We heard counsel for the appellants Sri B. Sen, Senior Advocate and counsel who appeared for the respondents, the learned Attorney General of India Sri M.K. Banerjee, Senior counsel Sri Shanti Bhushan, Sri A.K. Ganguli & others. Sri B. Sen, learned counsel who appeared for the appellants contended in the main that the High Court was in error in holding that Orissa Rural Employment, Education and Production Act, 1992, is without legislative competence and is also discriminatory and hit by Article 14 of the Constitution of India. It was argued :

(a) That the levy of tax in the instant case would squarely fall under Entry 49, List 11 of the Seventh Schedule (Taxes on land and buildings). It was alternatively contended that even if it is not so, the levy of tax in the instant case will fall under Entry 23 or 50, List II of the Seventh Schedule (Regulation of mines and mineral development; taxes on mineral and mineral rights).

(b) That the High Court erred in holding that the levy is discriminatory and so hit by Article 14 of the Constitution, since there is no material much less a finding to the effect that the levy is confiscatory. On the other hand, learned Attorney General Sri M.K. Banerjee and the other counsel who supported him, contended that in substance, the levy is on minerals and mineral rights alone and not a tax on land covered by Entry 49, List II of the Seventh Schedule. Since substantially the levy is on minerals or on mineral rights, even if the levy falls under Entry 23 or 50, List II of the Seventh Schedule (Regulation of mines & mineral development or Tax on mineral rights), it is subject to limitation imposed by Parliament under the law relating to regulation of mines and mineral development. Parliament has legislated on the subject under Entry 54, List I of the Seventh Schedule and has enacted the M.M.R.D. Act, which covers the field. In this view, the Orissa Act 36 of 1992 is ultra vires and beyond legislative competence. It was also contended that in effect and substance the levy is only on coal bearing lands without any basis, and so arbitrary and hit by Article 14 of the Constitution. Various other pleas taken up before the High Court to assail the levy were also taken up before us.

3. In order to evaluate the merits of the rival pleas urged before us, it is necessary to bear in mind the relevant provisions of the Constitution of India, the Orissa Rural Employment, Education and Production Act, 1992 (Orissa Act 36 of 1992, as amended) and M.M.R.D. Act. The relevant

provisions of the Constitution of India are as follows:

"246. Subject-matter of laws made by

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Parliament and by the Legislatures of States.-

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the 'Union List').

(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1) the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the 'Concurrent List').

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matter

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enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List')."

"SEVENTH SCHEDULE

(Article 246)

List I - Union List

xxx xxx xxx xxx xxx xxx

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

xxx xxx xxx xxx xxx xxx

97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists."

"List II - State List

xxx xxx xxx xxx xxx xxx

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.

xxx xxx xxx xxx xxx xxx

49. Taxes on lands and buildings.

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

The relevant provisions of the Orissa Rural Employment, Education and Production Act, 1992 (Orissa Act 36 of 1992) which came into force on 1.2.1993, are as follows:

ORISSA ACT 36 OF 1992

THE ORISSA RURAL EMPLOYMENT, EDUCATION AND PRODUCTION ACT, 1992

AN ACT TO PROVIDE FOR ADDITIONAL RESOURCES FOR PROMOTION OF EDUCATION AND EMPLOYMENT IN RURAL AREAS AND FOR IMPLEMENTING RURAL EMPLOYMENT, EDUCATION AND PRODUCTION PROGRAMMES.

Be it enacted by the Legislature of the State of Orissa in the Forty-third Year of the Republic of India as follows:-

2. In this Act, unless the context otherwise requires,-

(a) "annual value" in relation to a finan-

cial year means-

- (i) in relation to land held by a raiyat,
the rent payable by such raiyat to the landlor

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immediately under whom he holds the land:
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.....
(a-1) 'coal-bearing land' means any land
acquired or declared from time to time under
any law for the purpose of obtaining coal;

.....
(c) 'land' means land of whatever descrip-
tion which is cultivated, uncultivated or
covered with water, and includes all benefits
to arise out of land and things attached to
the earth or permanently fastened to anything
which is attached to the earth, but does not
include crops of any kind, or houses, shops or
other buildings;

(d) 'mineral-bearing land' means mineral
bearing land or quarry held for carrying on
mining operations,

(e) 'prescribed' means prescribed by rules;"

"3.(1) On and from the commencement of this
Act, all lands shall be liable to payment of
rural employment, education and production tax
assessed in the prescribed manner subject to
provisions hereinafter contained.

Provided that any land which is liable to
payment of cess under the Orissa Cess Act,
1962 shall not be liable to payment of rural
employment, education and production tax.

(2) The rate per year at which such tax
shall be levied shall be-

(a) in the case of land other than mineral
bearing land, fifty per centum of the annual
value thereof,

(b) in the case of any mineral- bearing land
other than coal bearing land, the rate as may
be prescribed from time to time in respect
thereof,

(c) in the case of coal-bearing land, the
rate as specified in the Schedule, and

(3) The State Government may, by notifi-
cation, amend the Schedule from time to time
so as to enhance or reduce the rate of tax
specified therein;

Provided that every such notification shall,
as soon as it is published, be laid before the
State Legislature for a total period of
fourteen days which may be comprised in one or
more sessions.

(4) The rate of tax that may either be
prescribed in pursuance of clause (b) of sub-
section (2) or enhanced or reduced by
amendment of the Schedule under subsection
(3), shall be so prescribed or, as the case
may be, enhanced or reduced that the rate
fixed in the case of-

(i) any mineral bearing land other coal-
bearing land, does not exceed the average
annual income from all such mineral bearing
lands in the State during the two consecutive
years immediately preceding the year in which
the rate is so fixed; and

(ii) coal bearing land, does not exceed, in the aggregate, fifty per cent of the rate specified in the Schedule on the date of publication of this Act in the Gazette.

"SCHEDULE

Clause (c) of sub-section (2) of section 31

Description of mineral bearing land	Rate of tax per year per acre.
(1)	(2)

1. Coal bearing land 668	Rs. 32,000
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4. It may be noted at this juncture that Government of Orissa constituted a Committee to recommend rates of taxes on mineral bearing lands (other than coal bearing lands) levied under section 3(2)(b) of the Act, as per Notification dated 4.3.1993 and in pursuance to the report of that Committee, the Government promulgated Notification dated 26.9.1994, No. 12372-VII(A)SM-23/94/SM, adding Schedule C prescribing rates of taxes for various mineral bearing lands (Annexure B, page 270 of Paper Book). (This is subsequent to the decision of the High Court). Schedule C is as follows:

"SCHEDULE-C
(See rule 2-A)

Serial No.	Description of mineral bearing lands.	Rate of tax per acre.
1.	Land bearing Asbestos	Rs. 20.00
2.	Land bearing Bauxite	Rs. 4,965.00
3.	Land bearing Chromite	Rs. 26,960.00
4.	Land bearing Graphite	Rs. 702.00
5.	Land bearing Lead Ore	Rs. 9,942.00
6.	Land bearing Mica	Rs. 710.00
7.	Land bearing Quartz and Quartzite	Rs. 217.00
8.	Land bearing Sand (Stowing)	Rs. 5,312.00

The relevant provisions of the Mines and Minerals (Regulation and Development

Act, 1957 (Act 67 of 1957) are as follows:

"An Act to provide for the regulation of mines and development of minerals under the control of the Union.....

2. Declaration 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.

3. Definitions:- In this Act, unless the context otherwise requires-

(a) 'minerals' includes all minerals except mineral oils;

(d) 'mining operation' means any operations undertaken for the purpose of winning any mineral;"

"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 instrument of lease or in any law in force at

such commencement, 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 after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.

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(2-A) The holder of a mining lease, whether granted before or after 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.

(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;

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."

"9-A. Dead rent to be paid by the lessee:- (1) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, (56 of 1972), shall, notwithstanding anything contained in the instrument of lease or in any other law for the time being in force, pay to the State Government, every year, dead rent at such rate as may be specified for the time being, in the Third Schedule, for all the areas included in the instrument of lease.

Provided that where the holder of such mining lease becomes liable, under Section 9, to pay royalty for any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area, he shall be liable to pay either such royalty or the dead rent in respect of that area, whichever is greater.

(2) The Central Government may, by notification in the Official Gazette, amend the Third Schedule so as to enhance or reduce the rate at which the dead rent shall be payable in respect of any area covered by a mining lease and such enhancement or reduction shall take effect from such date as may be specified in the notification:

Provided that the Central Government shall not enhance the rate of the dead rent in respect of any such area more than once during any period of three years."

(emphasis supplied)

"THE SECOND SCHEDULE

(See Section 9)

RATES OF ROYALTY

- | | |
|--|--|
| 1. Agate | Fifty five rupees per tonne. |
| 2. All precious and Semiprecious stones (except agate and diamond) | Twenty percent of the sale price at the pit's mouth. |

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3. Apatite and Rock
Phosphate:

(a) Ores with
more than 27%

P205

(b) Ores with 20%
P205 to 27% P205

(c) Ores with less
than 20% P205

4. Asbestos:

(a) Chrysotile

(b) amphibole

5. Barytes:

(a) White (including
snow white & super
snow white)

(b) off-colour.

6. Bauxite

7. Cadmium

Forty five rupees per
tonne.

Twenty five rupees
per tonne.

Ten rupees per tonne.

Two hundred and eighty five
rupees per tonne.

Fifteen rupees per tonne

Twenty rupees per tonne

Ten rupees per tonne.

Ten rupees per tonne.

Sixteen rupees per unit
percent of cadmium met
per tonne of ore and on
prorata basis.

Fifteen rupees per tonne.

8. Calcite

9. China clay; also
called kaolin
(including ball clay)
and white shale;

(a) Crude

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(b) Processed
(including washed)

10. Chromite (both
lumpy non-friable ore
and concentrates)

(a) containing
48% Cr2O3 and above.

(b) Containing
less than 48%

Cr2O3 and more
than 40% Cr2O3

(c) Containing 30%
to 40% Cr2O3

(d) Containing less
than 30% Cr2O3

11. Coal.

(i) Group I Coals:

(a) Coking Coal

Steel Grade I

Steel Grade II,

Washery Grade I

(b) Hand picked

Coal produced

in Assam,

Arunachal Pradesh,

Meghalaya and

Nagaland.

(ii) Group II Coal:

(a) Cooking Coal

Washery Grade II

Coking Coal

Washery Grade III

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(b) Semi-Coking

Eight rupees per tonne.

Thirty five rupees
per tonne.

Sixty rupees per tonne.

Thirty rupees per tonne.

Seven rupees per tonne

Coal Grade I
Semicoking Coal
Grade 11
(c) Non-coking Coal
Grade A non-coking Coal
Grade B
(d) ungraded R.O.M.
Coal produced in
Assam, Arunachal Pradesh,
Meghalaya
& Nagaland.

Six rupees and
Fifty Paise per
tonne

(iii) Group III Coals:

(a) Coking Coal
Washery grade IV
(b) Non-coking coal
Grade C

Five rupees and fifty
paise per tonne.

(iv) Group IV Coals:

Non-coking coal
Grade D
Non-coking coal
grade E

Four rupees and
Thirty paise per tonne

(v) Group V coals:

Non-coking coal
Grade F
Non-coking coal
Grade G

Two rupees and fifty paise
per tonne

(vi) Group VI Coals:

Coal produced
in Andhra Pradesh
(Singareni
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Five rupees per tonne

Collieries Company
Limited)"

"THE THIRD SCHEDULE

(See Section 9A)

Dead Rent

(1) The rates of dead rent applicable to the leases other than those obtained for supply of raw material to the industry owned by the concerned lessee:

(RATES OF DEAD RENT IN RUPEES PER HECTARE PER ANNUM)

Category of the Mining Lease	1st year of the lease	2nd to 5th year of the lease	6th to 10th year of the lease	11th year of the leases & onwards
1	2	3	4	5
1. Lease area upto 50 hectares	Nil	30	60	90
2. Lease area [above 50 hectares but not exceeding 100 hectares.]	Nil	40	80	120
3. Lease area above 100 hectares.	Nil	60	100	150

(2) In the case of lease obtained for the supply of raw material for the industry owned by the concerned lessee, the rates of dead rent would be applicable as given in respect of item No. 1 above, irrespective of the lease

area."

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5. During the course of arguments, it was fairly agreed by all parties that if the Orissa Rural Employment, Education and Production Act, 1992 (Orissa Act 36 of 1992) as amended is without legislative competence, it is unnecessary to adjudicate upon the other points raised before the High Court and reiterated before us. Therefore, we shall first go into the question as to whether Orissa Act 36 of 1992 is within the legislative competence. According to the appellants the Act in question would fall under "Entry 49", List II of the Seventh Schedule (Taxes on buildings), and even if it is not so, it will fall under "Entry 23 or 50", List II of the Seventh Schedule. The respondents emphatically contend that in reality and substance the levy is on mineral lands and particularly on coal bearing lands and mineral rights. The legislation has no nexus with land. It concerns only minerals. The legislation purports to be one on "lands" and the nomenclature states so; but it is only a colourable device. The legislation being one on mineral lands and mineral rights and Parliament having enacted The Mines and Mineral (Regulation and Development) Act, 1957, the field is entirely covered and Orissa State Legislature is incompetent to enact Orissa Act 36 of 1992. To substantiate their respective pleas, emphasis was placed on the following three decisions of this Court: (1) India Cement Ltd. Vs. State of Tamil Nadu, 1989 Supp.(1) SCR 692 = 1990 (1) SCC 12 = AIR 1990 SC 85, (2) Orissa Cement Ltd. vs. State of Orissa and Ors. 1991 (2) SCR 105 = AIR 1991 SC 1676 = 1991 Supp. (1) SCC 430, (3) Buxa Dooars Tea Company Ltd. and others vs. State of West Bengal 1989 (3) SCR 793 = 1989 (3) SCC 211 = AIR 1989 SC 2015.

6. At this juncture, it will be useful to remember the following well settled principles in Constitutional law. In Harakchand Ratanchand Bantia and Ors. vs. Union of India and Ors., AIR 1970 SC 1453, at page 1458, a Constitution Bench of this Court stated thus:

"The power to legislate is given to the appropriate legislatures by Article 246 of the Constitution. The entries in the three lists are only legislative heads or fields of legislation; they demarcate the area over which the appropriate legislatures can operate. It is well established that the widest amplitude should be given to the language of the entries. But some of the entries in the different lists or in the same list may overlap or may appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring about a harmonious construction. In *re The Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938*, 1939 FCR 18 = (AIR 1939 FC 1), Sir Maurice Gwyer proceeded to state:

'Only in the Indian Constitution Act can the particular problem arise which is now under consideration; and an endeavour must be made to solve it, as the Judicial Committee have said by having recourse to the context and scheme of the Act, and a reconciliation attempted between two apparently conflicting jurisdictions by the two entries together and by interpreting, and, where necessary modifying, the language of the one by that of

the other. "

In K. C. Gajapati Narayan Deo and Ors. v. The State of Orissa, 1954 SCR 1, the Constitution Bench of this Court stated at page 11 thus:

"If the Constitution of a State distrib-
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utes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression 'colourable legislation' has been applied in certain judicial pronouncements. The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. "

Again at page 12 the Court stated:

"...it is the substance of the Act that is material and not merely the form or outward appearance, and if the subject matter in substance is something which is beyond the powers of the legislature to legislate upon, the form in which the law is clothed would not save it from condemnation. The legislature cannot violate the constitutional prohibitions by employing an indirect method. In cases like these the enquiry must always be as to the true nature and character of the challenged legislation and it is the result of such investigation and not the form alone that will determine as to whether or not it relates to a subject which is within the power of the legislative authority. For the purpose of this investigation the Court could certainly examine the effect of the legislation and take into consideration its object, purpose or design. But these are only relevant for the purpose of ascertaining the true character and substance of the enactment and the class of subjects of legislation to which it really belongs and not for finding out the motives which induced the legislature to exercise its powers.

(emphasis supplied)

Speaking for the Constitution Bench in A.S. Krishna and others v. State of Madras, AIR 1957 SC 297, at page 303, Venkatarama Ayyar, J., stated thus:

"When a- law is impugned on the ground that it
is ultra vires the powers of the legislatur

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which enacted it, what has to be ascertained

is the true character of the legislation. To do that, one must have regard to the enactment as a whole, to its objects and to the scope and effect of its provisions. If on such examination it is found that the legislation is in substance one on a matter assigned to the legislation, then it must be held to be valid in its entirety, even though it might incidentally trench on matters which are beyond its competence."

(emphasis supplied)

7. In Buxa Dooars Tea Company Ltd. and Ors. (supra) a Bench of two Judges of this Court held that in order to determine the true nature of a levy, the substance of the legislation should be ascertained from the relevant provisions of the statute.

8. In K. P. Varghese v. Income Tax Officer, Ernakulam and Anr. AIR 1981 SC 1922, in explaining the extent to which external aid can be resorted to in the interpretation of a statute, this Court held at page 1930, thus:
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"...the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation, and the object and purpose for which the legislation is enacted This is in accord with the recent trend in juristic thought not only in Western countries but also in India that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. "

(emphasis supplied)

9. In Diwan Brothers vs. Central Bank of India, Bombay and others, AIR 1976 SC 1503, (pp. 1507 & 1508), the learned Judges took the view that a perusal of the speech of the Minister, who introduced the Bill in Parliament, will give a clear insight into the various objects of the Act and the main purposes which the legislation sought to achieve. It was further held that this will have an important bearing on the interpretation of the provisions of the Act.

10. In Shashikant Laxman Kale and Anr. v. Union of India and Anr., AIR 1990 SC 2114, Verma, J., speaking for a Three Member Bench, stated at page 2119:

"For determining the purpose or object of the legislation, it is permissible to look into the circumstances which prevailed at the time when the law which necessitated the passing of that law was passed and For the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation, i

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is permissible to look into the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady."

11. It is in the light of the above principles of law laid down by this Court, we have to scan the provisions of the Orissa Act 36 of 1992 and adjudicate as to whether it really falls within "Entry 49" or "Entry 23 or 50" of List II of the Seventh Schedule of the Constitution, as contended by the appellant, and the legal effect flowing therefrom.

12. Earlier similar legislations in the State of Orissa and judicial decisions which adjudicated the validity or otherwise of those legislations are relevant in order to understand the historical background.

13. The legislations are Orissa Mining Areas Development Fund Act, 1952 (Act 27 of 1952), and Orissa Cess Act, 1962 (Act 2 of 1962) as amended by Act 40 of 1966. Of the two, the earlier legislation Act 27 of 1952 came up for consideration before this Court on two occasions. On the first occasion, Orissa Mining Areas Development Fund Act, 1952 (Act 27 of 1952) was considered in the light of the Mines and Minerals (Regulation and Development) Act, 1948 (Central Act 53 of 1948). In *Hingir Rampur Coal Company v. State of Orissa & Ors.*, 1961 (2) SCR 537, the cess or fee on minerals, levied by the Orissa Act was held to be neither a tax nor a duty of excise but a fee. The question turned on the impact of MMRD Act, on the States power to levy fee under Entry 66 read with Entry 23 of List II as a consequence of the declaration contained in section 2 of the Central Act 53 of 1948. The Court held that the declaration by Parliament in terms of Entry 54 of List I of the Seventh Schedule operated as a limitation on the legislative competence of the State Legislature itself. The

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Court was inclined to the view that if Central Act 53 of 1948 contained the declaration referred to in Entry 23 of the List II, there would be no difficulty in holding that the declaration covered the field of conservation and development of minerals and the said field was indistinguishable from the field covered by the Orissa Act. But it was found by the Court that the declaration made by section 2 of the Central Act (Act 53 of 1948) did not constitutionally amount to the requisite declaration by "Parliament" and that the declaration did not cover the field covered by the Orissa Act, and so the limitation imposed by Entry 54 of List I does not come into operation. On the second occasion, when Orissa Act 27 of 1952 came up for consideration of this Court in *State Orissa v. MA. Tulloch & Company*, AIR 1964 SC 1284 = 1964 (4) SCR 461, "MMRD Act" of 1957 (Central Act 67 of 1957) had been enacted in place of the earlier 1948 Act. The validity of the very same cess was considered in the light of the declaration in section 2 of the M.M.R.D. Act of 1957 (Central Act 67 of 1957) and this Court held after a detailed analysis of the State Act as well as the Central Act, that the levy of cess under the Orissa Act was invalid from 1.6.1958, on which date the MMRD Act of 1957 came into force. This Court reached the conclusion that the Central Act 67 of 1957 contained the requisite Parliamentary declaration in section 2 of the Act to occupy the entire field of legislation covered under Entry 54 of List I, and since the aforesaid Central Act covered the same field as the State Act of 1952 in regard to mines and mineral development, the earlier decision in *Hingir Rampur Coal Company v. State of Orissa & Ors.* AIR 1961 SC 549, concluded the matter and the State legislature was denuded of its powers to enact any law on the subject. It is thereafter, Orissa Cess Act, (Act 2 of 1962), as amended, was enacted, and it came up for consideration before this Court in *Orissa Cement Ltd. v. State of Orissa*, AIR 1991 SC 1676 = 1991 Supp. (1) SCC 430. By then, the law on the subject has been considered in detail by a 7-Judge Bench of this Court in *India Cement Ltd. & ors. v. State of Tamil Nadu & ors.* 1989 Supp. (1) SCR 692 = 1990 Suppl. (1) SCC 12. The matter was also discussed in detail in *Orissa Cement*

case (supra). Section 4 of the Orissa Act, (Act 2 of 1962), as amended in 1976, imposed a cess on all lands (including mineral lands) determined and payable as provided in the Act. With regard to lands held for carrying on mining operations, in relation to any mineral, the amendment of section 5 (2) (a) of the Act read with the Notification issued, prescribed a percentage of the royalty or the dead rent, (as the case may be) as the cess in respect of various items of specified minerals. The Court held that the measure of the levy is the royalty paid in respect of the land by the assessee to his lessor, and considering the change in the scheme of taxation effected in 1976, the importance and magnitude of the revenue by way of royalties received by the State, the charge of the cess as a percentage and, indeed, as multiples of the amount of the royalty, and the mode and collection of the cess amount along with the royalties and as part thereof, would point out that the legislation in that regard is with respect to royalty rather than with respect to land. It was held that the levy could not be justified under Entries 45, 49 and 50 of List II of the Seventh Schedule. Even if the levy was one which could fall under Entry 50 of List II, it was held that the MMRD Act of 1957 covered

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the entire field and so the State legislation to the extent it encroached on the field covered by MMRD Act of 1957, will be ultra vires. Sections 5, 6 & 7 of Orissa Act, (Act 2 of 1962) as amended in 1976, were held to be beyond the competence of State legislature in view of the Parliamentary declaration contained in MMRD Act of 1957 (Central Act 67 of 1957). It is only appropriate to notice in this connection that under section 8 of the Orissa Cess Act 1962 read along with sections 18 & 19 of the Orissa Surveys and Settlement Act, lands, except those held for carrying on mining operations, were subject to levy of cess depending upon the "surface characteristics" of the land, whereas the levy on lands held for carrying on "mining operations" was made on the basis of "minerals extracted" in view of the amendment of Orissa Cess Act, 1962 by Act 42 of 1976.

14. In order to meet the situation, the State of Orissa enacted the instant legislation -- The Orissa Rural Employment, Education and Production Act, 1992. The speech made by the Minister in moving the Bill will throw light on the objects of the Act and the main purposes which the legislation sought to achieve. It is contained in the paper book (vol. C) Annexure 1, pages 10-12. The relevant portions of the same are as follows:-

"... this Bill has been brought to increase the income of the State or to compensate the loss that the State Exchequer has lost due to Orissa Cement Case, a Judgment pronounced by the Supreme Court. By virtue of that judgment, the State lost nearly Rs. 150.00 crores and for a State like ours losing Rs. 150.00 crores is not a small thing. Even though the Central Government later on revised the rate of royalty on coal and thereby loss could be compensated to the extent of Rs. 30 to Rs. 40 crores, still we are in short of Rs. 100.00 crores. Because of that judgement, Government has come out with this Bill for imposing tax on all types of land, agriculture, non-agriculture including mineral bearing lands. You know under item 49 of the State list of the Constitution of India, the

State is empowered to impose tax on lands and exercising power this Bill has been brought, wherein Government once assume the power of imposing tax on all lands. However, State have taken all steps to safeguard the interest of the cultivators and agriculturists. Provision has been made in the Bill that under the Orissa Cess Act, 1962 one who has paid tax/cess will not be further liable to pay tax under the present Bill. Therefore there should be no apprehension in the mind of the Hon'ble Members that either it will be double taxing or the cultivators who have already overburdened with tax will be further liable to pay any tax. Stress has been given on imposing tax particularly on the mineral bearing lands. You know, Sir, ours is a State which is full of mineral resources. Even though we are rich in that way we are unable to exploit our minerals and increase the income of the State because of several legal hindrances, constitutional and statutory. Therefore, we have to act within the purview of the law which authorises the State Government to impose tax and take resort to that and keeping in view the Orissa Cement Case and India Cement case, the two judgments of the Supreme Court, this Bill has been introduced. "

(emphasis supplied)

15. Let us examine the crucial provisions of Orissa Act 36 of 1992. The charging section provides that all lands shall be liable to payment of rural employment

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education and production tax assessed in the prescribed manner subject to provisions thereafter contained. The proviso to section 3(1) of the Act states thus:-

"Provided that any land which is liable to payment of cess under the Orissa Cess Act, 196

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shall not be liable to payment of rural employment, education and production tax."

Though the charging section provides for a levy on all lands, land which is liable to payment of tax under the Orissa Cess Act, 1962 shall not be liable to payment of the rural employment, education and production tax. Section 4 of the Orissa Cess Act, 1962, as it originally stood, is as follows:

"4. All lands to be liable to payment of cess.
(1) From and after the commencement of this Act all lands shall be liable to the payment of cess determined and payable as herein provided:

Provided that no such cess shall be payable in respect of lands which were not liable to payment of rent or revenue prior to the 1st day of April, 1977 or lands in respect of which a tax on holding is assessed under the Orissa Municipal Act, 25 of 1950.

Provided further-that nothing in the preceding proviso shall apply to lands held for carrying on mining operations. "

The definition of 'land' in section 3(vi) at the relevant time stood as follows:

"3(vi) 'land' means land of whatever

description and includes land which is covered with water, but does not include houses or buildings."

Later the second proviso to section 4 was deleted and simultaneous the definition of 'land' in section 3(vi) was substituted by Act 10 of 1994 thus:

"3(vi) 'land' means land of whatever description and includes land which is covered with water, but does not include-

(a) mineral bearing land as defined in the Orissa Rural Employment, Education and Production Act, 1992; and

(b) houses or buildings."

16. From the above, it will be seen that the combined effect of section 3(1) of Orissa Act 36 of 1992 and the Orissa Cess Act of 1962, as amended by Act 10 of 1994, is that only mineral bearing land and coal bearing land will be subject to the levy of tax under Orissa Rural Employment, Education and Production Act, 1992 (Orissa Act 36 of 1992). It is not all types of land that will be subject to the levy but only the two types of land mentioned above which will be caught by the taxing-net. This is in accord with what the Hon. Minister stated in introducing the Bill to the effect that "stress has been given on imposing tax particularly on the mineral bearing lands." The earlier levy in that regard was rendered futile by the decisions referred to by the Hon. Minister himself in his speech and the main purpose of the legislation was only to levy the tax on mineral bearing and coal bearing lands. We may incidentally observe that it is common ground that 85% of the coal bearing lands are in "F" and "G" category in the State of Orissa.

17. The above aspect can be looked at from a different angle also. The Orissa Rural Employment, Education and Production Act, 1992 (Orissa Act 36 of 1992) provided that all lands shall be liable to

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the payment of tax under the Act. Land is defined in section 2(c) of the Act to mean, "land of whatever description.... and includes all benefits to arise out of land". Lands held for carrying on mining operations would be taken in by the said definition. It is patently clear that "minerals", which are benefits to arise out of land, will be roped in within the purview of the levy under section 3(1) read with section 2(c) of the Act. So the charging section of the impugned Act imposes a tax on the "minerals" also and not confined to a levy on land or surface characteristic of the land. Yet another aspect that is self-evident is that for all lands, other than mineral bearing land, the tax is levied at a percentage of the "annual value of the land". So far as tax on mineral bearing land is concerned, it is for the State Government to prescribe the same and it has been so fixed in accordance with section 3(4)(i) of the Act based on "average annual income". As stated in paragraph 3 (supra), by adding Schedule C as per Notification dated 26.9.1994 (Annexure-B, page 270 of Paper Book), the rates of tax are fixed for different kinds of minerals per acre, obviously based on "average annual income". With regard to coal bearing land, as per section 3(2)(c), the statute itself has specified the rate of tax in the Schedule at Rs.32,000/- per acre. We have already seen that lands other than mineral bearing lands and coal bearing lands will fall outside the purview of the impugned Act since they are dealt with under the Orissa Cess Act, 1962. It is only the "coal bearing land" and "mineral bearing land", as defined in section 2(a-1) and

section 2(d), which have to bear the brunt of taxation. In the light of the above, we have no doubt in our mind that the substance of the levy under the Orissa Rural Employment, Education and Production Act, 1992 is really on "mineral bearing land" and "coal bearing land".

18. The main contention of the appellants' counsel Mr. B. Sen was that the levy of the tax under Orissa Act 36 of 1992 will come under Schedule 7, List II Entry 49 "Taxes on lands and buildings". In the alternative, it was contended that the levy will fall under List II Entry 23 or Entry 50 of the Seventh Schedule.

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

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

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 of List II Entry 23, it is subject to the law made by Parliament relating to the regu-
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lation of mines and mineral development. (List I Entry 54). A perusal of the Mines and Minerals (Regulation & Development) Act, 1957 (Central Act 67 of 1957), sections 2, 3(a), & 3(d), sections 9 and 9-A and Second and Third Schedules to the Act, quoted in paragraph 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 9-A 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 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 Minerals (Regulation & Development) Act, 1957, regarding all kinds of taxation on mineral and mineral rights tax, royalty fee dead rent etc., the State 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. We have already held that levy of tax under Orissa Act 36 of 1992 is in substance on minerals and mineral rights, which has nothing to do with surface characteristic of the land. In this view of the matter, the levy of tax, on mineral bearing lands and coal bearing lands, under section 3 read

with section 2(a)(1) and 2(d) of the Act is beyond the competence of the State Legislature and is ultra vires.

19. In this connection reference may be made to a seven-Member Bench decision of this Court in *India Cement Ltd. v. State of Tamil Nadu* 1989 Supp. (1) SCR 692. In that case, the Madras Legislature levied a cess on royalty. Royalty was payable on extraction of minerals. Section 115(1) of the Madras Panchayats Act, 1958 levied a local cess at the rate of 45 paise on every rupee of land revenue payable to the Government in respect of any land for every fasli. The Explanation thereto stated that "land revenue" means public revenue due on land and includes..... royalty, lease amount or other sum payable to the Government..... The levy of cess was sought to be sustained as a tax on lands under Schedule VII List II Entry 49. Incidentally the scope and impact of List I Entry 54, List II Entries 23, 49 & 50 and in particular, the scope of section 9 of Mines and Minerals (Regulation & Development) Act came up for consideration. The Court held at page 710 of the report thus:

"In this connection learned Attorney General appearing for the Union of India submitted before us that in order to sustain the levy, the power of the State Legislature has to be found within one or more of the entries of List II of the 7th Schedule. The levy in question has to be either a tax or a fee or an impost. If it, is neither a tax nor a fee then it should be under one of the general entries under List II. The expression 'land' according to its legal significance has an indefinite extent both upward and downwards, the surface of the soil and would include not only the face of the earth but everything under it or over it. See the observations in *Anant Mills Co. Ltd. v. State of Gujarat & Ors.* (1975 3 SCR 220 at 249), The minerals

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which are under the earth, can in certain circumstances fall under the expression 'land' but as tax on mineral rights is expressly covered by entry 50 of List II, if it is brought under the head taxes under entry 49 of List II, it would render entry 50 of List II redundant. Learned Attorney General is right in contending that entries should not be so construed as to make any one entry redundant. It was further argued that even in pith and substance the tax fell to entry 50 of List II, it would be controlled by a legislation under entry 54 of List I.."

After referring to H.R.S. Murthy's case (1964 (6) SCR 666), at page 712 of the report the Court held thus:

"...attention of the Court was not invited to the provisions of Mines and Minerals (Development & Regulation) Act 1957 and s.9 thereof. S9(3) of the Act in terms states that royalties payable under the 2nd Schedule of the Act shall not be enhanced more than once during a period of 4 years. It is, therefore, a clear bar on the state legislature taxing royalty so as to in effect amend 2nd 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 legislature power in view of s. 9(3) of the Central Act."

"It was contended by Mr. Krishnamurthy Iyer that the State has a right to tax minerals. It was further contended that if tax is levied, it will not be irrational to correlate it to the value of the property and to make some kind of annual value basis of tax without intending to tax the income. In view of the provisions of the Act, as noted hereinbefore

this submission cannot be accepted. Mr. Krishnamurthy Iyer also further sought to urge that in entry 50 of List II, there is no limitation to the taxing power of the State. In view of the principles mentioned hereinbefore and the expressed provisions of s. 9(2) of the Mines & Minerals (Regulation & Development) Act, 1957, this submission cannot be accepted. This field is fully covered by the Central legislation.

In any event, royalty is directly relatable only to the minerals extracted and on the principle that the general provision is excluded by the special one, royalty would be relatable to entries 23 & 50 of list 11, and not entry 49 of list II. But as the fee is covered by the Central power under entry 23 or entry 50 of list II, the impugned legislation cannot be upheld."

20. In Federation of Mining Associations of Rajasthan v. State of Rajasthan and Anr., 1992 Supp.(2) SCC 239, the Rajasthan Land Tax Act of 1985 (Act 6 of 1985) by section 3 read with section 2(a) & (d) of the Act, imposed a tax on annual value of mineral bearing land based on dead rent or royalty whichever is higher. Holding that the levy in the said case is practically on all fours with the levy in Orissa Cement's case (supra), a three Member Bench of this Court observed at page 244 thus:

"The question of validity of levies of this type has come up for consideration by a seven Judge bench of this Court in India Cement Ltd. v. State of Tamil Nadu and by a three Judge bench in Orissa Cement Ltd. v. State of Orissa."

"...For the reasons set out in India Cement and Orissa Cement cases, we are of the opinion that the State legislature did not have the competence to legislate for the levy of a tax on mineral bearing lands based on the royalty derived from the land.

21. In the light of the aforesaid decisions, we have no hesitation to hold that Orissa Act 36 of 1992 purports to impose a tax on coal bearing land and mineral bearing land as defined in section 2(a-1) and 2(d) of the Act, which is fully covered by Parliamentary legislation Mines and Mineral (Regulation & Development) Act, 1957,

22. Mr. B. Sen, Counsel for the appellants submitted that in India Cement's case (1989 Supp. (1) SCR 692 = 1990 (1) SCC 12) the sole question that arose for consideration was whether royalty was a tax and whether cess on royalty amounts to a tax on tax thereby denuding the legislation of its true character as a tax on land. It was held that royalty being within the purview of section 9 of Act, the

levy was invalid. But, in the instant case, tax is levied on land, and so clearly within List II Entry 49. Support was sought from certain observations in Orissa Cement case (1991 Supp. (1) SCC 430) and also the latest decision in Goodricke Group Ltd. (JT 1994 (7) SC 577) and in particular, the following observations contained in paragraph 29 of the latter Judgment:

"It is thus clear from the aforesaid decisions that merely because a tax on land or building is imposed with reference to its income or yield, it does not cease to be a tax on land or building. The income or yield of the land/building is taken merely as a measure of the tax; it does not alter the nature or character of the levy. It still remains a tax on land or building. There is no set pattern of levy of tax on lands and buildings indeed there can be no such standardization. No one can say that a tax under a particular entry must be levied only in a particular manner, which may have been adopted hitherto. The Legislature is free to adopt such method of levy as it chooses and so long as the character of levy remains the same, i.e., within the four corners of the particular entry, no objection can be taken to the method adopted. "

Stress was also laid on the fact that the decisions in India Cement's and Orissa Cement's case were distinguished in Goodricke case. On the other hand, counsel for the respondents submitted that reliance placed on Goodricke case is erroneous since the Orissa Rural Employment, Education and Production Act, 1992 is in substance and effect a levy on minerals and mineral rights and not on land; and in Goodricke case, the Act was held to be a law relating to tax on land and that makes all the difference. The respondents also took up the plea that some of the observations in Goodricke case are not in accord with India Cement's case and the Orissa Cement's case. We are of the view that it is unnecessary to consider the rival pleas on this score, since we have held that the levy under Orissa Rural Employment, Education and Production Act, 1992 is not on land, but on minerals and mineral rights.

23. We concur with the conclusion of the High Court of Orissa that section 3 (2) (c) of the impugned Act as well as the Schedule attached to the impugned Act, levying a tax of Rs. 32,000/- per acre of coal bearing land, should be declared illegal and ultra vires. The consequential notices issued in Form V and the demand notices in Form VII and the certificate proceedings pending before any forum for the realisation of the dues under the impugned Act are also illegal and infirm. We further concur with the decision of the High Court that the demands raised by the Mahanadi Coalfields Ltd against the traders and consumers on account of the additional bur-

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den of tax on land are invalid and illegal. The judgment of the High Court of Orissa dated 26.4.1994 is affirmed but in the circumstances of the case without any order as to costs.

24. We should hasten to add that we have not pronounced on any other question raised either before the High Court of Orissa or before us by any of the parties, in this batch of cases, and they are left open for consideration in the future as and when occasion arises therefore. It is unnecessary to pronounce on those questions at this stage, in

view of the fundamental infirmity regarding the competency of the State Legislature to enact Orissa Act 36 of 1992 as stated by us earlier. Mr. Shanti Bhushan, senior counsel, submitted that M/s. Mahanadi Coalfields Ltd. should be afforded sufficient time to return the amounts collected from the traders and consumers of coal, as, more than one crore of rupees has been collected and unless sufficient time is given, it will cause irreparable hardship. We see force in this plea. We are of the view that it is only appropriate to afford a breathing time to Mahanadi Coalfields Ltd. in that behalf. In our opinion, the amount so collected may be refunded to persons entitled to the same, within a period of one year from today, failing which they shall pay interest at 18% p.a. on expiry of one year. All the above civil appeals and the special leave petitions are disposed of as above.

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