

Power of States to Tax Mines and Mining

Why in News?

A significant judgment delivered in a 8:1 ratio by a nine-judge Constitution Bench headed by Chief Justice of India (CJI) held that the power of State Legislatures to tax mining lands & quarries is not limited by the Parliament.

How mines and mining activities are regulated in India?

- **Mining** - It is the process of extracting useful materials from the earth.
- **Regulation** - It is listed under *both the Union List and the State List* of the Seventh Schedule.
 - **List I (Union List)** - Entry 54
 - **List II (State List)** - Entry 23
- **Entry 54 of list I** - It *gives the Parliament the power* to deal with regulation of mines & mineral development by law to be expedient in the public interest".
 - Accordingly, the Parliament enacted the *Mines and Minerals (Development and Regulation) Act, 1957*.
- **Entry 23 of list II** - It *allows state legislatures* to deal with regulation of mines & mineral development *subject to the provisions of List I* under the control of the Union.
- **Power of state** - The state governments could impose tax under Entry 49 and Entry 50 of the State List.
 - **Entry 49** - It is a general entry that allows states to collect tax on lands and buildings.
 - **Entry 50** - State can make laws for collecting tax on mines & minerals but allows the Parliament to impose any limitations.
- It can *impose cess on mining activities*, and this power is not restricted by Parliament's 1957 law.

What is the issue of taxing on mines?

- **Issue** - The question of taxing mining leaseholders in addition to the royalty paid them to the lease.

Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDRA) mandates that mining leaseholders pay royalty for any mineral removed to the landowner or corporation leasing the land.

- **Historical background** - The case has its roots in a dispute between India Cement Ltd. and the Tamil Nadu Government.
- India Cement had secured a mining lease in Tamil Nadu and was paying royalty to the

State Government.

- The *State Government had imposed a cess in addition to royalty* which India Cements contended that a cess on royalty meant a tax on royalty which was beyond the remit of the State Legislature.
- In **1989, a seven-judge Bench** of the SC held that the *Centre was the primary authority* under the MMDRA with regard to regulating mines and mineral development and rule in favour of India Cements.
- **Current case** - Over 80 more petitions were filed in the Supreme Court over the years.
- Since the India Cement case was dealt with by a seven-judge Bench, the matter was ***referred to a nine-judge Bench***.
- It had the task to decide *whether royalty was a type of tax* or there was an error in the India Cement case judgment.

What is the judgement?

- **Majority argument** - State derive their *power to tax mines and quarries* under Article 246 read with Entry 49 in the State List.
 - Mineral bearing lands fall within the description of 'lands' in Entry 49 in the State List.
- The Parliament, *through the MMDR Act, cannot limit* the power of the State to legislate on the taxation of mines as there is *no specific stipulation in the Constitution* to that effect".
- The Parliament *cannot use its residuary powers* with respect to that subject matters.
- *Royalty* paid by those who lease mines to the government ***is not tax***.

Royalty is a contractual consideration paid by the mining lessee to the lessor for enjoyment of mineral rights.

- Even *arrears cannot be deemed to be a payment of tax*.
- The tax payable to the State Government depends on the "yield" of the mineral-bearing land.
- **Dissent opinion-** Royalty paid by a holder of a mining lease under the 1957 law is in the *nature of a tax paid on mineral rights*, the State legislature cannot, on the basis of royalty paid, levy any other tax, cess or surcharge on cess.
- It *relied on the Sarkaria Commission* report on Centre-State relations.

What are the impacts of this judgement?

Positive Impacts

- **Promotes state autonomy** - It ensures that states have full autonomy in managing natural resources and levying taxes on minerals and mineral-bearing lands.
- **Boost revenues of states** - It is expected to boost the revenues of mineral-bearing states, particularly those in eastern India.
- **Ensures financial sufficiency** - It empowers states to generate significant revenue from their natural resources, enhancing their ability to fund welfare schemes and services.

Negative Impacts

- **Overexploitation of minerals** - It would result in mineral development in the country in an uneven and haphazard manner.
- **Unhealthy completion** - It increase competition between the States to derive additional revenue.
 - This would engage them into what has been termed by Louise Tillin in a 'race to the bottom' in a nationally sensitive market".
- **Demote mining activities** - It could lead to a slump in mining activity in states which have mineral deposits owing to huge levies that have to be met by holders of mining licenses.
- **Induce inflation** - The steep increase in prices of minerals would result in a hike in prices of all industrial and other products dependent on minerals as a raw material or for other infrastructural purposes.
- **Impact economy** - The overall economy of the country would be affected adversely which may result in certain entities or even non-extracting States resorting to importing minerals which would hamper foreign exchange reserves of the country.
- **Double taxation** - There is a potential instances of double taxation by states and the Centre.

Taxes are meant for public purposes such as welfare schemes and creating public infrastructure, whereas the payment of royalties is to a lessor in exchange for parting with their exclusive privileges in minerals.

What lies ahead?

- **Clarity on division of powers**- It marks a significant step in clarifying the division of fiscal powers between the states and the Centre.
- **Future Projections**- Country's mining businesses can achieve the target of a **2.5 per cent contribution** to the country's Gross Domestic Product (GDP) by **2026-27**.

References

1. [The Hindu | States have unlimited right to tax mineral-rich lands](#)
2. [The Print| Impacts of Allowing States to Tax on Mines](#)