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