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HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 6393 of 2011

- Steel Authority of India Limited, A company incorporated under the Provisions of Companies Act 1956 having its registered office at Ispat Bhawan, Lodhi Road, New Delhi 110003 through the Managing Director Bhilai Steel Plant, Bhilai Dist. Durg, Chhattisgarh

----Petitioner

VERSUS

1. State of Chhattisgarh through its Secretary, Mines and Minerals Department, Raipur C.G.
2. State of Chhattisgarh through: Secretary Law and Legislative Affairs, Raipur, C.G.
3. Union of India, through Secretary Ministry of Mines Shastri Bhawan, New Delhi
4. Mining Officer Durg, through Collector, Durg, C.G.

-------**Respondents**

For Petitioner	:	Dr. N.K. Shukla, Sr. Advocate
For Respondents	:	Mr. Siddarth Dubey, Deputy G.A.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per P.R. Ramachandra Menon, C.J.

01/10/2019

1. The prayers made by the petitioners in the writ petition are in the following terms:

> "10.1 That this Hon'ble Court may kindly be pleased to issue a writ of to strike down the impugned Act namely Chhattisgarh (Adhosanrachna Vikas Evam Paryavaran) Upkar Adhiniyam, 2005 (Annexure P/1) as well as the notification (Annexure P-2) issued under section 3 of the impugned Act as ultra-vires.
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> 10.2 That this Hon'ble Court may kindly be pleased to issue a writ of appropriate writ or direction directing the respondent No. 1 and its officers not to initiate any action pursuant to sub-section 2 of Section 3 of the impugned act.

10.3 That this Hon'ble Court may kindly be pleased to issue a writ of appropriate nature quashing the demand notice dated 05-09-2011 (Annexure P-6).

10.4 Cost of the petition may also granted to the petitioner.

10.5 That nay other relief deemed fit, may also kindly be granted."

2. Heard learned senior counsel appearing for the petitioner as well as Deputy Government Advocate representing the State.

3. During the course of hearing, it is brought to the notice of this Court that the question raised by the petitioner for consideration before this Court now remains a matter which is to be considered and decided by the Apex Court because of the pendency of similar matters there, particularly, as Civil Appeal No. 3869/2014, arising out of SLP(C) No. 33790/2012 and several other connected matters.

4. Learned counsel representing the State submits that no interim order has been issued by the Supreme Court, to the knowledge of the State, in Civil Appeal No. 4056/1999 from 10-05-2001 to 30-03-2011.

5. Learned Senior counsel for the petitioner submits that as per the order dated 30-03-2011 of the Apex Court, various questions have been raised to be decided by the larger Bench of 9 Judges and the said questions are in the following terms:

"1. Whether 'royalty' determined under Sections 9/15(3) of the Mines and Minerals (Regulation & Development) Act, 1957 (Act of 67 of 1957, as amended) is in the nature of tax?

2. Can the State Legislature while levying a tax on land under Entry 49 List II of the Seventh Schedule of the Constitution adopt a measure of tax based on the value of the produce of land? If yes, then would the Constitutional position be any different insofar as the tax on land is *imposed on mining land on account of Entry 50 List II and its interrelation with Entry 54 List I?*

3. What is the meaning of the expression "Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development" within the meaning of Entry 50 of List II of the Seventh Schedule of the Constitution of India? Does the Mines and Minerals (Regulation & Development) Act, 1957 contain any provision which operates as a limitation on the field of legislation prescribed in Entry 50 of List II of the Seventh Schedule of the Constitution of India? In particular, whether Section 9 of the aforementioned Act denudes or limits the scope of Entry 50 of List II?

4. What is the true nature of royalty / dead rent payable on minerals produced / mined / extracted from mines?

5. Whether the majority decision in ***State of West Bengal v. Kesoram Industries Ltd. and Ors****, (2004) 10 SCC 201, could be read as departing from the law laid down in the* <u>*seven Judge Bench*</u> *decision in* ***India Cement Ltd. and Ors. v. State of Tamil Nadu and Ors.****, (1990) 1 SCC 12?*

6. Whether "taxes on lands and buildings" in Entry 49, List II of the Seventh Schedule to the Constitution contemplate a tax levied directly on the land as a unit having definite relationship with the land?

7. What is the scope of the expression "taxes on mineral rights" in Entry 50, List II of the Seventh Schedule to the Constitution?

8. Whether the expression "subject to any limitation imposed by Parliament by law relating to mineral development" in Entry 50, List II refers to the subject matter in Entry 54, List I of the Seventh Schedule to the Constitution?

9. Whether Entry 50, List II read with Entry 54, List I of the Seventh Schedule to the Constitution constitute an

> *exception to the general scheme of Entries relating to taxation being distinct from other Entries in all the three Lists of the Seventh Schedule to the Constitution as enunciated in* ***M.P.V. Sundararamier & Co. v. State of Andhra Pradesh & Anr.****, (1958) 1 SCR 1422 at 1481 (bottom)?*
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> *10. Whether in view of the declaration under Section 2 of the Mines and Minerals (Development & Regulation) Act, 1957 made in terms of Entry 54 of List I of the Seventh Schedule to the Constitution and the provisions of the said Act, the State Legislature is denuded of its power under Entry 23 of List II and/or Entry 50 of List II?*
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> *11. What is the effect of the expression "...subject to any limitation imposed by Parliament by law relating to mineral development" on the taxing power of the State Legislature in Entry 50 of List II, particularly in view of its uniqueness in the sense that it is the only entry in all the entries in three Lists (Lists I, II and III) where the taxing power of the State Legislature has been subjected to "any limitation imposed by Parliament by law relating to mineral development".*

6. In the above facts and circumstances, we are of the view that no separate or parallel adjudication does require to be made in these cases and the issue, once decided by the Apex Court, will be applicable to all concerned, by virtue of its binding force, particularly, under Article 141 of Constitution of India.
7. It is made clear that the fate of the petitioner will also stand governed by the law to be declared by the Supreme Court, as above.
8. The writ petition stands closed.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

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