THE QUARRY OWNERS ASSOCIATION ETC. A

v.

THE STATE OF BIHAR AND ORS.

AUGUST 8, 2000

[A.P. MISRA AND N. SANTOSH HEGDE, JJ.] B

Mines and Minerals (Regulation and Development) Act, 1957 :

Sections 15(1), 15(1-A) and 13(1), (2)—Rate of royalty over minor minerals increased beyond maximum percentage prescribed in Schedule II, Item 54—High Court upheld impugned notifications of State Government—On appeal held, State Government has power to make rules in respect of minor minerals—Introduction of Section 15(1-A) illustrates the general power of the State Government to make rules—Ample guidelines are available in various provisions of the Act, Preamble and Statement of Objects and Reasons—Fixation of royalty is an inherent part of mineral development and State has to consider various factors including the fact that it is parting with its own wealth—Impugned notification valid as State Government acted within ambit of delegated power and there were sufficient guidelines and checks—Bihar Minor Minerals Concession Rules, 1972. C D

Sections 15(2) and (3)—Approval of Rules and Notifications made by State Government—As even existing rates of royalty or dead rent need approval of Parliament, it serves as a guiding factor—Proviso to Section 15(3) brings in an additional check on enhancement—Imposition of royalty not arbitrary or excessive and increase in royalty is very reasonable inspite of the power granted to the State Government. E F

Schedule II, Item 54—Rate of royalty to be within 12% of the sale price at the pits mouth—Language would only mean residual major minerals not specified in Item Nos. 1-53—Neither the residuary nor the left over major minerals could be equated to minor minerals—Maximum prescribed percentage would not apply to minor minerals, but only acts as a guideline. G

Sections 4 to 12—General restrictions over Rule making power—Guidance provided to State Government while acting as a delegatee under Section 15—Section 9 specifically refers to royalty and along with Schedule II is a good source of guidance. H

A *Section 28(1), (2) and (3)—Laying of rules and notifications before the Houses of the Legislature—Provisions regarding State Government differently worded for a purpose as it is better placed to deal with minor minerals used locally—Mere placement or laying of the rules and notifications would be sufficient check on power of State Government—Placement of rules cannot be* B *said to be of no consequence and the same is obligatory Impugned notifications are valid as they are within the ambit of delegation which is not excessive as there are enough guidelines and checks including laying them down before the houses of the Legislature—Second notification which has not been placed before the houses of the legislature should be done at the earliest, However, its non-placement would not affect its validity as the requirement is only directory.*

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Administrative Law—Delegated Legislation—State Government comes into scrutiny of concerned Legislature by mere laying of any notification or rule—House plays a positive role when it is entrusted with power to annul, modify or approve any rule or else acts as a vital and forceful check.

D *Constitution of India—VII Schedule—Entry 54, List-I and Entry 23, List II—Regulation of Mines and Minerals does not fall within Concurrent List—Conflict is resolved as Entry 23, List II provides that Union may have full or partial control over regulation of mines and minerals—Parliament has power to withdraw this control partially or fully if it so desires—A notification con-* E *cerning an item absent in the concurrent list may also be laid before the State Legislature—Mines and Minerals (Regulation and Development) Act, 1957—Section 28(3).*

Taxation—Royalty on minerals—Tax on this royalty is distinct from other forms of taxes on income, wealth, sale or production of goods etc. and it F *includes the price for the consideration of parting with the right and privileges of an owner—A strict interpretation would be harsh considering the guidelines prescribed to a delegatee who also owns the minerals—Mines and Minerals (Regulation and Development) Act, 1957.*

Interpretation of statutes—Heydon's rule—The words "Regulation of G *Mines and Minerals development" connotes a different meaning when used in different context—Words are not static but dynamic and courts must adopt the dynamic meaning which uphold the validity of any provision—True meaning and intent of the legislature has to be gathered from the Preamble, Statement of Object and Reasons and other provisions of the Act—A construction which* H *suppresses the mischief and advances the remedy must be adopted—Mines and*

Minerals (Development and Regulation) Act, 1957—Constitution of India—VII Schedule—Entry 54, List I and Entry 23, List II. A

Appellants are an association of quarry owners having permit/lease for mining operations. Respondents in exercise of their power under Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 made the Bihar Minor Mineral Concession Rules 1972 and fixed the royalty payable from time to time. The rate of royalty was increased by the two impugned notifications dated 17.8.1991 and 28.9.1994 to Rs. 12 per cubic metre and Rs. 25 per cubic metre respectively. The State was given power to make such rules and this delegation of power withstood its challenge in this Court. Section 15 was later amended in 1987 by introducing sub-section 1-A, which further clarified the rule making power. These notifications were challenged but the High Court upheld them as valid. Hence this appeal. B C

Appellants contended that the delegation of power exceeded the limits laid down by this court, that Item 54, Schedule II of the Act controls and guides the State for fixing the rate of royalty which has to be within 12% of the sale price at the pit's mouth; that Section 15(1) or (1-A) does not lay down any guideline and so it becomes mandatory to follow the provisions of Item 54, Schedule II; that Section 28(1) of the Act provides sufficient guidelines to the Centre but no guidelines are provided to the State Government in respect of minor minerals; that Section 28(3) of the Act cannot be construed to confer authority of the State Legislature to modify any notifications or rules framed by the State Government; that Entry 54 of List I of the Constitution of India regulates mines and minerals development under the control of Union keeping public interest in view and no provisions of the Act can take away this control; that the power to fix the rate of tax can be delegated provided the statute provides guidelines for fixing such rate, which may be by fixing maximum rate of tax or by consulting affected people; that the taxing statute must be interpreted as read with no additions and subtractions of words and where two opinions are possible, the one beneficial to the assessee must be adopted; and that in a delegated legislation the control and authority of the Principal to modify or cancel any act of the delegatee must remain as a living continuity and a constitutional necessity, which is absent in the present case. D E F G

Respondents contended that Section 15 (1) and (1-A) provide sufficient guidelines to the State Government; that though the phraseology of H

A Section 28(3) is differently couched than what is in Section 28(1), still it cannot be said that placement of notifications and rules before the State Legislature is only a show piece and not meaningful; that minor minerals have less importance and are used locally and so their treatment is left to the State, however, major minerals are dealt by the Centre; that Entry 54,
B Schedule II is the recognition of the State's original power to determine royalty which is in tune with the principles of federalism; that the State has to part with minerals which it owns, therefore it imposes royalty and it would be unjust to make mining cheap so that appellants derive huge profits; and that the State Government inspite of such power to impose royalty has been very reasonable throughout.

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Dismissing the appeals, the Court

HELD : 1. The impugned notifications are valid as the State Government acted within the ambit of power delegated which has sufficient guidelines and checks. Requirement of mere placement of Rules or Notifications
D before the State Legislature is a form of check on the State Government. The second notification has not been placed before the State Legislature, and shall be done at the earliest, however, its non-placement would not invalidate the same as the requirement is only directory. The imposition of royalty/dead rent can not be said to be arbitrary or excessive by the State
E Government as there is no material placed by the appellants in the writ petition to come to such a conclusion. Though by proviso to Section 15(3) it is open for the State Government to revise the royalty every three years but the history shows it has not done so. Since 1975 the State Government has increased royalty only four times and there is no increase since 28th September 1994 despite lapse of six years. [260-B; C; D; 233-G]

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D.K. Trivedi & Sons and Ors. v. *State of Gujarat and Ors.*, [1986] Supp. SCC 207, relied on.

2. Sections 4 to 12 of the Mines and Minerals (Regulation and Development) Act, 1957 are not applicable to the minor minerals, so the figura-
G tive restrictions contained therein could not be made applicable, but they serve as a guideline to the State Government while framing rules. They are available not as restrictive or limiting guidelines but are available otherwise for consideration and adoption, wherever it is necessary. Such guidelines are not just confined to Sections 4 to 12 only but are also to be found
H in the object for which such power is conferred, namely, for regulating the

grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for the purposes connected therewith. [238-F; 240-D] A

3. Section 13 gives power to the Central Government to make rules in respect of minerals other than minor minerals, while Section 15 gives power to the State Government to make rules in respect of minor minerals. The extent of exercise of power in both these sections are similar. The only difference is, Central Government exercises power in respect of all other minerals other than minor minerals, while the State Government exercises power in respect of minor minerals only. Section 13(2), particularizes the power given to the Central Government to make rules in respect of matters enumerated therein. Though they are already covered under Section 13(1) but is more focused in sub section (2). There was no such similar sub-section in Section 15, though later it was brought in through amendment by incorporating sub-section (1-A). This Court held previously that Section 13(2) which is illustrative of the general power conferred by Section 13(1) itself contains sufficient guidelines for the State Government to frame its own rules under Section 15(1). [240-E-F; 241-B] B C D

D.K. Trivedi & Sons and Ors. v. *State of Gujarat and Ors.*, [1986] Supp. SCC 207, relied on.

4. The Parliament in order to bring parity, made similar provision for the minor minerals through insertion of Section 15(1-A) to equate it with Section 13(2), which is also illustrative of the general power, conferred on Section 15(1). Therefore, as Section 13(2) was held to be the guiding force to the State Government, Section 15(1)(1-A) now acquires the similar position through infusion of its various sub-clauses. A restrictive interpretation to limit the State's power within Entry 54 of Schedule II will lead to various incongruities. [241-C; D; F] E F

5. Section 15(2) approves the rules made by the State Government as far as minor minerals are concerned, regulating the grant of quarry leases, mining leases or other mineral concessions in respect of mines and minerals prior to the enforcement of this Act and similarly Section 15(3) approves the rate of royalty/dead rent prescribed for its payment in respect of minor minerals for the time being in force, i.e., what existed prior to the coming into force of this Act. Even approval of the then existing rates of royalty or dead rent is by Parliament itself which similarly is also a guiding factor to the State Government for any subsequent modification of the rates. The G H

A proviso to Section 15(3) brings an additional check on the enhancement of rate of royalty/dead rent that it cannot be enhanced more than once during any period of three years. [246-C-D]

State of M.P. v. *Mahalakshmi Fabrics Mills Ltd. & Ors.*, [1995] Supp. 1 SCC 642, relied on.

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6. Schedule II of the Act, which refers to the rate of royalty in view of Section 9 could only refer to the minerals other than minor minerals. The language in Item 54 would only mean other residual major minerals not specified before i.e. in Item Nos. 1 to 53. This could never mean to include minor minerals so the residuary minerals under Item 54 could only be the left over major minerals. Neither the residuary nor the left over major minerals could be equated with the minor minerals nor there is any material on record to draw such inference. [239-B-C]

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7. The reference of general restrictions as contained in Sections 4 to 12 would only mean to consider the broad principle and pattern while framing rules. It cannot be doubted that Sections 4 to 12 also gives guidance to the State Government while acting as delegatee under Section 15 while fixing rate of royalty. This guidance is to be found in Section 9 itself, which refers to royalties. Each of the consideration may be taken note by the State Government while framing its own rules for the minor minerals and it may apply also the rate of royalty for the minor minerals at the same rate as what existed when this Act came into force. Schedule II with reference to Section 9 which fixes rate of royalty for various minerals, not being minerals, is also a good source of guideline. [239-E-F; H; 240-A]

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F *D.K. Trivedi & Sons and Ors.* v. *State of Gujarat and Ors.*, [1986] Supp. SCC 207, relied on.

8. Entry 54 List I of the Seventh Schedule of the Constitution and Entry 23 List II refer to the "Regulation of Mines and Minerals Development". This Entry has been reiterated both in the Preamble and the Statement of Objects and Reasons of the Act. These words clearly indicate the guidelines which the Parliament is projecting. Every word is impregnated and is flexible to connote different meaning, when used in different context. Words are not static but dynamic and courts must adopt that dynamic meaning which uphold the validity of any provision. This dynamism is the cause of saving many statutes from being declared void dissolving the on-

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slaught of any rigid and literal interpretation, it gives full thrust and satisfaction to achieve the intended object. Whenever there are two possible interpretations, its true meaning and Legislature's intent has to be gathered, from the 'Preamble', Statement of Objects and Reasons and other provisions of the same statute. In order to find the true meaning of any word or what the Legislature intended, one has to go to the principle enunciated in ***Heydon's*** case, which laid down that the Court must adopt a construction which suppresses the mischief and advances the remedy. [242-G]

Bengal Immunity Co. Ltd. v. *State of Bihar & Ors.*, AIR (1955) SC 661 (674); *Commissioner of Income Tax, Patiala* v. *M/s. Shahzada Nand & Sons and Ors.*, AIR (1966) SC 1342; *M/s. Sanghvi Teevraj Ghewar Chand & Ors.* v. *Secretary, Madras Chillies, Grains and Kirana Merchants Workers Union & Anr.*, AIR (1969) SC 530 (533); *Union of India* v. *Sankalchand Himatlal Sheth & Anr.*, AIR (1977) SC 2328 (2358) and *K.P. Varghese* v. *Income Tax Officer, Ernakulam & Anr.*, AIR (1981) SC 1922 (1929), relied on.

9. The words "Regulation of Mines and Mineral Development" are incorporated both in the Preamble and Statement of Objects and Reasons of the Act. The Preamble of our Constitution in unequivocal words expresses to secure for our citizens social, economical and political justice. It is in this background and in the context of the provisions of the Act, the word "regulation" may have different meaning but considering it in relation to various economic and social activities, development and excavation of mines, ecological and environmental factors including States' contribution in developing, manning and controlling such activities, and lastly parting with its wealth, viz, the minerals, the fixation of the rate of royalties would also be included within its meaning. While regulating mineral development, royalty/dead rent is an inherent part. State has before it number of factors, which guide it to fix, enhance or modify the rate of royalty/dead rent payable by a lessee. The conservation and regulation of mines and mineral development include wide activity of the State including parting with its wealth, which are all relevant factors to be taken into consideration and a guiding force for fixing such royalty/dead rent. [243-A-C; G-H]

State of Tamil Nadu v. *M/s. Hind Stone and Ors.*, [1981] 2 SCC 205 and *M/s. Bhatnagar & Co. Ltd.* v. *Union of India & Ors.*, AIR (1957) SC 478, relied on.

10. The policy of the Act is communicating loudly from its roof top through the words "Regulation of Mines and Mineral Development", with

A reference to the minor minerals, that let it be done by the delegatee's State who is fully aware of the local conditions as such minerals are also used for the local purposes and on whom this largesse falls. What delegatee should do and what it should not do is also enshrined in the Act. Section 18 is also not excluded from its application to the minor mineral development, where a duty is cast on the Central Government to take all necessary steps for the B conservation and systemic development of minerals in India and highlights the periphery of its action which itself is a guidance which 'State' may take note of while framing its own rules. [244-C-D; E]

11. It is true that royalty on minerals is a tax but the tax on this royalty, C is distinct from other forms of taxes. This is not like a tax on income, wealth, sale or production of goods (excise) etc. and includes the price for the consideration of parting with the right and privilege of the owner, namely, the State Government who owns the mineral. Both royalty and dead rent are integral parts of a lease, therefore, it does not constitute usual tax as commonly understood but includes return for the consideration for parting with its D property. It would be too harsh to insist for a strict interpretation with reference to minerals while considering the guidelines to a delegatee who is also the owner of the minerals. [245-F-H; 246-A]

India Cement Ltd. and Ors. v. *State of Tamil Nadu & Ors.*, [1990] 1 SCC 12; *Orissa Cement Ltd.* v. *State of Orissa and Ors.*, [1991] Supp. 1 SCC 430; E *State of M.P.* v. *Mahalakshmi Fabric Mills Ltd. & Ors.*, [1995] Supp. 1 SCC 642 and *P. Kannadasan & Ors.* v. *State of Tamil Nadu & Ors.*, [1996] 5 SCC 670, relied on.

12.1. It is true that language of Section 28(1) and (2) are different and F in view of difference in the language of sub-section (3), the same meaning to it as that of sub-section (1) cannot be given. This difference has been carved out for a purpose to give different projection to the said two provisions. In the case of major mineral which play an important role in the National growth and wealth and where the delegatee is the Central Government, Parliament retained its full control but for the minor minerals. Par- G liament left out minor minerals as the subject is of local use and State Government being well versed and better placed to deal with it. Mere placement or laying of rules and notifications framed by it before the State Legislature would be a sufficient check on the exercise of its powers. This difference of language gives two different thrusts as intended by the Parlia- H ment. Any act of the Parliament, far less when it introduces any new pro-

vision through amendment can be said to be in futility but the purpose has to be found. One of the reasons was that minor minerals are of less importance to the country, industry and economy. The Parliament brought this amendment also to keep a check on the exercise of power by the State Government's as delegatee. [251-F; 252-C-E; H]

12.2. In a democratic set up, every State Government is responsible to its State Legislature. When any statute require mere laying of any notification or Rule before the Legislature, its execution viz., State Government comes under the scrutiny of the concerned Legislature. Every function and every exercise of power, by the State Government is under one or other Ministry who in turn is accountable to the legislature concerned. Where any document, rule or notification requires placement before any House or when placed, the said House inherently gets the jurisdiction over the same. No doubt in the case where House is entrusted with power to annual, modify or approve any rule, it plays positive role and have full control over it, but even where the matter is merely placed before any House, its positive control over the executive, makes even mere laying to play a very vital and forceful role which keeps a check over the concerned State Government. Such placement cannot be construed to be non est. No act of Parliament should be construed to be of having no purpose. A mere check on the State Government through Section 28(3) may have been found to be sufficient by the Parliament, with reference to the minor minerals. Thus, the language of both sections 28(1) and (3) are different only for two different purposes. Thus when Parliament introduced Section 28(3) through amendment, it was to further strengthen the control over the State Governments power. [253-H; 254-A-D; 254-G; H]

M/s. Atlas Cycle Industries Ltd. & Ors. v. *State of Haryana*, [1979] 2 SCC 196; *D.K. Trivedi & Sons and Ors.* v. *State of Gujarat and Ors.*, [1986] Supp. SCC 207, relied on.

H.W.R. Wade & Forsyth, Administrative Law, 7th Ed. At 898; *Stanley De Smith and Rodney Brazier*, Constitutional and Administrative Law, 7th Ed., referred to.

13. Since impugned notifications issued by the State are within the ambit of delegation and the delegation is not excessive as there are enough guidelines and control over the State Government notwithstanding its check on the State under Section 28(3) to place rules before the Legislature, it

would not have any effect on its validity. But when a statute as under Section 28(3) requires its placement, it is the obligation of the State Government to place it with this specific note before each House of the State Legislature. The State shall now place it before each Houses of the State legislature at the earliest and will also do so in future while framing rules or issuing any notification under the rules framed under sub-section 15(1) of the Act.

[257-B-C]

M/s. Atlas Cycle Industries Ltd. & Ors. v. *State of Haryana*, [1979] 2 SCC 196, relied on.

14. Placement of any notification or rules framed by the State Government under Section 28(3) cannot be said to be something out of any novel procedure but is a well recognised principle. In a Federal structure of any Constitution, their fields are well defined, sometimes the same subject may be under the control of both legislatures as in the concurrent list of our Constitution. 'Regulation of mines and mineral development' does not fall in the Concurrent List, but still both fall in the field of the Parliament under Entry 54 List I and the State legislature under Entry 23 List II, their possible conflict is resolved by the following words in Entry 23 List II, "subject to the provisions of List I with respect to regulation and development under the control of the Union" and this control may be full or partial. Union came in full control over this subject by the 1957 Act and no field was left for the State to make the law. The covering of the entire field was by the 1957 Act itself not by any other constitutional limitation. The Act which takes the entire field can also withdraw from it both partially or fully. In the present case the power of State Legislature has been completely denuded by the Parliament and it is always open for the Parliament to withdraw partially the eclipse and if it so desires it may leave the Legislature for such part to exercise its power. Section 28(3) along with the provision to lay the rule .. notification made by the State Government before the State Legislature cannot be said to be possible only when it is in the concurrent list. This placement cannot be said to be incompetent or keeping it beyond the control of the Parliament as such placement is for a limited purpose for which the Parliament is competent and it cannot be said to be of no consequence.

[258-A-B; D-H; 259-A; B]

Baijnath Kedia v. *State of Bihar & Ors.*, [1969] 3 SCC 838, relied on.

15. In order to adjudicate, whether any delegation of power is unbridled or excessive the historical background of similar provisions which preceded the impugned provision which should be kept in mind, as it is also a relevant consideration. When the present 1957 Act came into force, the Parliament was aware that different State Governments were regulating the grant of leases in respect of minor minerals including fixation of rate of royalties. Parliament was fully aware that even in the past it was the State Governments were entrusted with and were dealing with minor minerals as a delegatee. However, earlier the State Governments which were acting as sub-delegatee of the Central Government but now they act as delegatee of the Parliament. This was the pattern adopted and approved since inception and could also be because minor minerals are more useful for local use and the State Government being the highest executive in the State knows its uses and management fully well, including the fixation of its prices. In this historical background there is nothing wrong to delegate to the State Government power to fix rate of royalty/dead rent for the minor minerals.

[249-H; 250-A; C-F]

M/s. Bhatnagar & Co. Ltd. and Anr. **v.** *Union of India and Ors.,* **AIR (1957) SC 478;** *Municipal Corporation of Delhi* **v.** *Birla Cotton and Weaving Mills Delhi & Anr.,* **[1968] 3 SCR 251 and** *D.K. Trivedi & Sons and Ors.* **v.** *State of Gujarat and Ors.,* **[1986] Supp. SCC 207, relied on.**

16. In the present case, delegation of power is on the State Government which is the highest executive in the State, which is responsible to the State Legislature. In a Parliamentary democracy every act of the State Government is accountable to its people through State Legislature which itself is an additional factor which keeps the State Government under check not to act arbitrarily or unreasonably. When a policy is clearly laid down in a statute with reference to the minor minerals with main object under the Act being for its conservation and development, coupled with various other provisions to the Act guiding it, checking it and controlling it then such delegation cannot be said to be unbridled. [246-E-F]

D.K. Trivedi & Sons and Ors. **v.** *State of Gujarat and Ors.,* **[1986] Supp. SCC 207;** *State of M.P.* **v.** *Mahalakshmi Fabrics Mills Ltd. & Ors.,* **[1995] Supp. 1 SCC 642;** *Baijnath Kedia* **v.** *State of Bihar & Ors.,* **[1969] 3 SCC 838;** *Municipal Corporation of Delhi* **v.** *Birla Cotton Spinning and Weaving Mills, Delhi & Anr.,* **[1968] 3 SCR 251;** *Avinder Singh and Ors.* **v.** *State of Punjab and Ors.,* **[1979] 1 SCC 137 and** *Corporation of Calcutta & Anr.* **v.** *Liberty Cinema,* **[1965] 2 SCR 477, relied on.**

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5089 of 1997.

From the Judgment and Order dated 16.10.96 of the Patna High Court in C.W.J.C. No. 9821 of 1994.

WITH

B Civil Appeal Nos. 5090/97, 5091/97 and 5092/97.

F.S. Nariman, S.B. Sanyal, G.L. Sanghi, P.P. Rao, R.K. Dwivedi, A.K. Pandey, B.B. Singh, Subhro Sanyal, Subhash Sharma, Ms. Manita Verma, Jamshed Buy and Kumar Rajesh Singh for the appearing parties.

C The Judgment of the Court was delivered by

MISRA, J. The issues in these appeals, apparently impress a common picturisation of usual nature but they are raised in an interesting way while challenging the fixation of the rate of royalty for the minor minerals under Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 D (hereinafter referred to as 'the Act'). The question for consideration is, the ambit of delegation of power by the Parliament to the State Government under Section 15 of the said Act. Can it be said that the delegation is unbridled without any check if it travels beyond the guidelines as spelt by this Court in the case of *D.K. Trivedi & Sons and Ors.* v. *State of Gujarat and Ors.*, E [1986] Supp. SCC 207 In the present case neither the validity of delegation under Section 15 nor it being without any guideline is under challenge but both the appellants and the respondents State stress two different orbits for the guideline, the appellants constrict it to be within what is spelt in the *D.K. Trivedi* case (supra) while the respondents stress it not to be confined to that F case. The impugned notifications dated 17th August, 1991 and 28th September, 1994 issued by the State of Bihar enhancing the rate of royalty have to be tested as in which of the two orbits it falls. If it falls within the restricted orbit, as submitted by the appellants, it may be *ultra vires* but would be valid if it falls within the other orbit. Mr. F.S. Nariman, learned senior counsel, submits that extents and limitations of the power of the delegatee have to be G read as laid down by this Court in *D.K. Trivedi* case (supra), where the validity of this very delegation of power to the State Government was under challenge. Based on this the submission is, Item 54 of the Second Schedule of the Act controls and guides the State Government (hereinafter referred to as 'the State'), for fixing or enhancing the rate of royalty which has to be within the H reasonable bounds of 12 per cent of the sale price at the pit's mouth. Admittedly

in the present case it is far beyond this, hence the submission is that the impugned notifications are liable to be struck down. On the other hand, submission for the respondents - the State of Bihar by learned senior counsel Mr. Rakesh Dwivedi is that *D.K. Trivedi's* case (Supra) neither restricts nor limits the power of enhancement of royalty to Item 54, Schedule II of the Act nor it exhaustively dealt with all other sources of guidelines which was not necessary in that case, which can be gathered from other provisions of the Act, the objects and reasons, the scheme of the Act and the nature of material etc..

Before entering into this legal tangle, it is necessary to turn to some of the essential facts to appreciate more fully the controversies. The present appeals are directed against the judgments and orders dated 16th October, 1996 of the High Court, passed in writ petitions by which the petition of the appellants, namely, Quarry Owners Association etc. challenging the aforesaid notifications dated 17th August, 1991 and 28th September, 1994, issued by the State including challenge to the recovery of the enhanced royalty under it and for the refund of the amount already paid were dismissed.

The Preamble of the Act lays down:

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

Section 2 declares the expediency of Union to control the regulation of mines and development of minerals - Section 3(a) defines 'minerals' which includes all minerals except mineral oils. Section 3(e) defines 'minor minerals'. Section 4 refers to the prospecting or mining operations to be undertaken only under a licence or lease. Section 4A is for termination of prospecting licences or mining leases, sub-section (1) is for premature termination other than minor minerals while sub-section (2) is for minor minerals. Section 5 imposes restrictions on the grant of such licences or leases. Section 6 specifies the maximum area for which a licence and lease may be granted, while Section 7 gives period for the grant and renewal of such prospective licences. Section 8 deals with the periods for mining leases. Sub-sections (1) and (2) of Section 9 refer to the payment of royalty at the rate specified in the Second Schedule whether granted before coming into force of this Act or subsequently. Sub-section (3), empowers the Central Government to amend the Second Schedule so as to enhance or reduce the rate of royalty payable. Section 9A obliges lessee to pay the dead rent. Sections 10 to 12 deal with the procedure for obtaining prospective licence, or mining leases in respect of the land in which minerals

A vest in the Government. Section 13 empowers the Central Government to make rules in respect of minerals. Section 14 specifically excludes Sections 5 to 13 from application of quarrying leases, mining leases or other minerals concessions in respect of minor minerals. Section 15 empowers the State to make rules in respect of minor minerals. Section 16 entrusts power to modify mining leases granted before 25th October, 1949. Section 17 gives special power to the B Central Government to undertake prospecting or mining operations in certain lands. Section 18 refers to the mineral development. Licences and mining leases under the Act to be void under Section 19 if made in contravention of the Act, while Section 20 makes the Act and Rules to apply to all renewals. Section 21 imposes penalties. Section 22 refers to the cognizance of offences. C Section 23-C empowers the State to make rules for preventing illegal mining, transportation and storage of minerals. Section 26 entrusts both Central and the State to delegate its power under the Act on officer or authority of the Central or State. Sub-section (1) of Section 28 puts an obligation on the Central Government to place its rules and notifications before the Parliament which is D subject to its modifications, if any. Similarly, the State is obliged to place its Rules and notifications before each houses of State Legislature under sub-Section (3). Section 29 makes existing rules to continue so long they are not inconsistent with the Act and Rules. Section 30 empowers the Central Government to revise any order made by the State or any other authority. The First Schedule refers to the specified minerals, viz., Hydro carbons/energy minerals E - Atomic minerals and Metallic and non-metallic minerals with reference to Sections 4(3), 5(1), 7(2) and 8(2) while the Second Schedule refers to the rate of royalty in all States and Union Territories except the States of Assam and West Bengal while the Third Schedule refers to the rate of Dead Rent. Thus, the aforesaid Act expressly lays down the rates of royalty of the minerals F through Schedule II read with Section 9. It is significant that Section 14 excludes Sections 5 to 13 specifically for minor minerals which includes Section 9. Section 15, entrusts power on the State to lay down Rules in respect of the minor minerals. Original Section 15 as it stood at the time of *D.K. Trivedi* (Supra), is quoted hereunder:

G "*Section 15:* Power of State Government to make rules in respect of minor minerals:-

(1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other minerals concessions in respect of minor min- H erals and for purposes connected therewith.

(2) Until rules are made under sub-section (1), any rules made by a State Government regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals which are in force immediately before the commencement of this Act shall continue in force.

(3) The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals.

Provided that the State Government shall not enhance the rate of royalty in respect of any minor minerals for more than once during any period of four years."

This delegation of power to the State withstood its challenge in *D.K. Trivedi* case (Supra), as aforesaid. Later this section was amended on 10th February, 1987, by introducing sub-section 1-A through Act No.37 of 1986. This was in particular and without prejudice to the generality of power conferred by sub-section 1 of Section 15. This sub-section (1-A) is quoted hereunder:-

"(1-A): In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the fees to be paid therefor;

(b) the time within which, and the form in which, acknowledgement of the receipt of any such applications may be sent;

(c) the matters which may be considered where applications in respect of the same land are received within the same day;

(d) the terms on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed;

A (e) the procedure for obtaining quarry leases, mining leases or other mineral concessions;

(f) the facilities to be afforded by holders of quarry leases, mining leases or other mineral concessions to persons deputed by the Government for the purpose of undertaking research or training
B in matters relating to mining operations;

(g) the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable;

C (h) the manner in which rights of third parties may be protected (whether by way of payment of compensation or otherwise) in cases where any such party is prejudicially affected by reason of any prospecting or mining operations;

(i) the manner in which rehabilitation of flora and other vegetation,
D such as trees, shrubs and the like destroyed by reason of any quarrying on mining operations shall be made in the same area or in any other area selected by the State Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the quarrying or mining lease;

E (j) the manner in which and the conditions subject to which, a quarry lease, mining lease or other mineral concession may be transferred;

(k) the construction, maintenance and use of roads, power transmis-
F sion lines, tramways, railways, aerial ropeways, pipelines and the making of passage for water for mining purposes on any land comprised in a quarry or mining lease or other mineral concession;

(l) the form of registers to be maintained under this Act;

G (m) the reports and statements to be submitted by holders of quarry or mining leases or other mineral concessions and the authority to which such reports and statements shall be submitted;

(n) the period within which and the manner in which and the
H authority to which applications for revision of any order passed

by any authority under these rules may be made, the fees to be paid therefor, and the powers of the revisional authority; and

(o) any other matter which is to be, or may be prescribed."

The introduction of this sub-section 1-A including the Objects and Reasons, it is submitted, further enlarges the area of the guidelines to the State. Its Objects and Reasons are also quoted hereunder:-

"Act 37 of 1986 : The Mines and Minerals (Regulation and Development) Act, 1957 provides for the regulation of mines and the development of minerals under the control of the Union. Since the last amendment of the Act in 1972, many problems have come to the fore. The adverse effects of mining operation on ecology and environment have increasingly come to notice. In many cases, mining operations have been undertaken without proper prospecting resulting in unscientific mining. Further, a number of Committees have stressed the need for amending certain provisions of the Act with the object of removing bottle-necks and promoting speedy development of mineral based Industries. State Governments and representatives of trade and industry have in formal forums like the Mineral Advisory Council as well as in other forums, expressed the desirability of taking a fresh look at the various provisions of the Act with a view to making them more effective and development-oriented.

2. The suggestions made from time to time have been considered and incorporated in the present Bill, which, *inter alia*, includes the following salient features, namely :-

(i) inclusion of 11 more minerals of national importance in the First Schedule to the Act;

(ii) premature termination of prospecting licences and mining leases on ecological and other grounds:

(iii) dispensing with the Certificate of Approval, Income-tax Clearance Certificate, etc. for the grant of prospecting licences and mining leases;

(iv) prospecting of an area and preparation of mining plan as a pre-condition for the grant of a mining lease;

A (v) rationalisation of the period of mining leases, and renewals thereof;

(vi) shorter periodicity for purposes of revision of royalty and dead rent; and

B (vii) provision for increasing the quantum of punishment to curb illegal mining activities.

3. The Bill seeks to provide for the above objects."

It is also relevant to record here the rate of royalty fixed by the State for the C minor minerals through various notifications in various years. Initially on 1st April, 1975 the rate of royalty fixed was Rs.2.50 per cubic meter that is Rs.7.07 per 100 cubic ft., Rs.1.75 per cubic meter that is Rs.4.95 for 100 cubic ft. for Ballast and Boulder. Next on 3rd August, 1977 the rate of stone chips, Ballast and Boulder was increased to Rs.3 per cubic meter that is Rs.8.49 per 100 cubic ft. and from 17th August, 1991 (impugned) the rate of royalty of stone D chips, Ballast and Boulder was increased to Rs.12 per cubic meter that is Rs.33.96 per 100 cubic ft. By notification dated 28th November, 1994 (impugned) the rate of royalty was Rs.25 per cubic meter or Rs.70.75 per 100 cubic ft. for Ballast, Boulder and stone chips, which according to the appellants is more than 15 times as originally provided and more than 5 times in E excess of the maximum rate of 12 per cent of sale price at pit's mouth under Entry 54 of Schedule II. It is also not in dispute by the aforesaid Act, under Item 54 of List I, VII Schedule of the Constitution of India, the regulation of mines and minerals development both of major and minor minerals came under the control of the Union, including fixation of the rate of royalty. The challenge to the aforesaid two notifications is that the State trespassed the F limit of the guidelines as laid and spelt out in *D.K. Trivedi's* case (Supra). Further, if that guidelines have not to be, then there is no other check and control or guideline of the Union over the State Government. In contrast there is check over the other delegatee, viz., Central Government as under Section 28(1), rules or notifications by it including enhancement of royalty is to be laid G before the Parliament. The High Court repealed the contention of the appellants by holding:

"No doubt when the decision in the case of D.K. Trivedi and sons (Supra) was given there were no specific guidelines in Section 15 of the Act. However.....Amendment Act 1986 (Act No.37 of 1986) H which came into force on 10th February, 1987, guidelines have been

provided in Section 15 itself.....clause (g) of sub-section 1-A provided that the rules may be framed by the State Government for fixing and collecting rent, royalty, fees etc.....The guidelines provided for framing Rules in respect of minerals other than minor minerals do not remain relevant after insertion of sub-section (1-A) in Section 15 of the Act."

A

B

However, submission for the appellants is, sub-section (1-A) only empowers the State Government but does not lay down any guideline, hence it cannot shield the State to be providing with any guideline, for which State has only to fall under Item 54 of Schedule II of the Act, which records:-

C

"*Item 54:* All other materials not herein before specified = Twelve per cent of sale price at the pits mouth."

The submission is, this is residuary item which cover all other minerals not specified in any of the preceding items in Schedule II. The minor minerals not being specified in any of the items it would fall under this entry.

D

It is also significant to record that minor minerals are used in the local areas for local purposes while major minerals are used for the industrial development for the National purpose. The crux of the matter for consideration is, whether, is it only Sections 4 to 12 which controls or guides the State in fixing the royalty for the minor minerals and, if it is, whether Entry 54 of Schedule II places any ceiling of 12 per cent of the sale price at the pit's mouth for fixing this royalty by the State? In other words, does *D.K. Trivedi* case (Supra) fore closes the issue of guideline or is it open to travel to other fields which guides the State for fixing the royalty.

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The appellants are an association of quarry owners. They were given permit/lease for the extraction of stone in respect of their respective places of operation in pursuance to such permit/lease. The State Government in exercise of its power under Section 15 of the aforesaid Act made rules called the Bihar Minor Mineral Concession Rules 1972, (hereinafter referred to as the 'Rules') and fixed the royalties from time to time. Submission for the appellants is, since rate of royalty on building stone including stone chips , Bolder, Road medal and ballast has been increased to more than 100 per cent, the appellants are unable to pay, hence challenge this enhancement.

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Mr. F.S. Nariman, learned senior counsel for the appellants submits, in order to judge the validity regarding excessive delegation one has to identify

H

A the power which is sought to be delegated. The power delegated to the State Government under Section 15 of the Act is the power to fix and collect royalty. It cannot be disputed that royalty is a tax. The question is, are there any guideline to vary the rate of royalty apart from *D.K. Trivedi's* case (Supra). The submission is, this decision settles the guideline by placing the restrictions on
B State power through Section 9 read with Item No.54 of the Second Schedule of the Act. The introduction of sub-section (1A) in Section 15 of the Act makes no difference, as it is only an amplification and illustration of Section 15(1). Further, sub-clause (g) of Section 15(1A) only clothes the State with power to change the rate of royalty but it cannot be construed as giving any guideline. It is only when Legislature fixes any maximum rate, beyond which delegatee
C cannot enhance the rate, it could be said it retained sufficient control over the delegatee. The control of the Parliament in relation to the major minerals for such enhancement is enshrined in Section 28(1) of the Act, *State of M.P.* v. *Mahalakshmi Fabric Mills Ltd. & Ors.*, [1995] Supp 1 SCC 642, upheld such a delegation. The delegatee, viz., Central Government was
D entrusted with the power to amend the Second Schedule which fixes royalty but obligates the delegatee to lay such amendment before the Parliament. This is absent in the case of min r minerals.

Next it is submitted, this Court in *Baijnath Kedia's* [1969] 3 SCC 838, held that the State legislature is denuded of all its legislative power over the
E minor minerals after the passing of the said Act, hence it looses its legislative control for fixing the royalty. The State only acts as delegatee of the Parliament to enhance the rate of royalty. So Section 28(3), which is for the minor minerals, merely provides laying down procedure before the State legislature for information and not with any entrustment of power to alter or modify the
F rate of royalty, hence Section 28(3) by itself cannot save the plea of excessive delegation of the legislative power. The language used in Section 28(3) is different from what is in Section 28(1), hence both cannot be equated. There is nothing to show that, in fact, the impugned notifications, were laid before the State legislature. So far Delegated Legislation Provisions (Amendment) Act, 1983, which requies rules made by the State Government under a
G parliamentary Act for its laying before the State legislature it only relates to the subjects under Concurrent List 3 of VII Schedule of the Constitution of India and not in respect of subjects in exclusive competence of the Parliament under List I.

H Learned senior counsel Mr. P.P. Rao, also appearing for some of the

appellants submits, power to fix the rate of tax can be delegated provided the statute provides guidance for fixing such rate. The guidance may be by fixing maximum rates of tax or by providing consultation with the people, i.e., subject to the approval by them as held in *Municipal Corporation of Delhi v. Birla Cotton Spinning and Weaving Mills, Delhi & Anr.*, [1968] 3 SCR 251. Reasserting the principle as laid down in the case of *Mahalakshmi Fabrics* (Supra), it is submitted Parliament has itself laid down for the major minerals the rate of royalty in the Second Schedule of the Act and authorised the Central Government to revise the rates. In doing so the Central Government has before it the guidance, to keep in view the original rates. The fixation of royalty should have a direct nexus with the minerals throughout the country on a uniform pattern. Further, there is requirement that every rule or notification made by the Central Government is to be placed before each House of Parliament is subject to the modification by both Houses. Thus, Section 28(1) permits Parliament to veto the enhanced rate of royalty. In contrast there is no such guideline so far minor minerals are concerned, except what is contained in *D.K. Trivedi's* case (Supra). Based on that it is submitted that only provision among Sections 4 to 12 of the Act, which is relevant is Section 9(2) read with Entry 54 of the Second Schedule of the Act which fixes the limit of royalty at 12 per cent of the sale price at the pit's mouth. The very rationale of Entry 54 of List I of the Constitution is to regulate the mines and mineral development under the control of Union in the public interest. The preamble as well as Section 2 of the Act speak about the expedience of Union control of both major and minor minerals. Thus no part of the Act can be construed so as to take away the control of the Union. Section 28(3) cannot be read so as to divest the Union of its control and vest the control in the respective State Legislature. In view of difference in the language between Sections 28(3) and 28(1), the same purport what is contained in sub-section (1) cannot be brought into sub-section (3). Further the taxing statute must be interpreted as it reads with no additions or subtractions of words and where two opinions are possible the one which benefits an assessee must be adopted.

Learned senior counsel Mr. S.B. Sanyal, in addition to the adoption of the submissions by the aforesaid two learned counsels further submits that Section 28(3) which is brought in through amendment cannot be construed to confer authority on the State legislature to modify any notifications or rules framed by the State Government. But laying of such rule or notification before the State legislature is only for the purpose of information. In a delegated legislation the control and authority of the Principal to modify or cancel any

act of the delegatee must remain. Parliamentary control over delegated legislation should be living continuity as a constitutional necessity which is not to be found in the present case.

Repelling the submissions, Mr. Rakesh Dwivedi, learned senior counsel, appearing for the State of Bihar submits, in *D.K. Trivedi's* case (Supra) Section 15, as it then stood, was questioned as suffering from the vice of excessive delegation of its legislative power. This Court held that sub-section (2) of Section 13 was merely particularisation or illustration of the generality of power already contained in sub-section (1) and since Section 15(1) was similar to Section 13(1), it could necessarily contain illustrations of Section 13(2) and the provisions of Section 13(2) being in the same sub-chapter as Section 15, would furnish sufficient guidelines. Reliance was also placed on the following observations made in that case:-

> "The exclusion of the application of these sections to minor minerals means that these restrictions will not apply to minor minerals but it is left to the state governments to prescribe such restrictions as they think fit by rules made under Section 15(1)."

The submission is, Sections 4 to 12, as they stood then, cannot be construed as restricting the power of delegatee over the minor minerals in view of Section 14. In fact, they were referred by this Court as it being available to the State Government for taking note while framing the rules. They were available not as restrictive or limiting its power but for its adoption wherever necessary. In fact, while judging the validity of the notifications impugned in that case, this Court was not called upon nor did it examine whether the State power to enhance royalty is restricted to Schedule 2 and Section 9 of the Act. Further, the guideline is also to be found in the preamble, the Statement of Objects and Reasons and other provisions of the Act. Sections 4A, 17 and 18 also provide the guideline. Further after the amendment, the power of the Central Government under Section 9(3) of the Act for the modification of the rate of royalty for the major minerals is made very wide. The only difference being that under Section 28(1) Parliament has opportunity to modify the rate fixed by the Central Government. This was because the Central Government was modifying the rates fixed by the Parliament itself. Secondly, major minerals are minerals of national importance hence require uniform treatment at the national level. In contrast, the minor minerals are mostly used locally and are of local importance and hence their treatment is left to the State Government at the provincial level. This is in recognition of States original

power to determine such royalty under Entry 54 of List II of the Seventh Schedule. This is also in tune with the principle of federalism which requires local matters to be left for it being dealt with by the State Government.

Further submission is, in order to find the guidelines the nature of the subject matter is also to be considered. The product, namely, minor minerals is neither produced nor it belong to the appellants. So it is not a case of imposition of tax simplicitor on the appellants but such tax in fact includes the price of the minerals which is the property of the State. In other words, it includes the price of the property which State parts with. Thus, royalty is a unique kind of tax which is different from other taxes. Both royalty/dead rent are integral part of the lease as talked about in Section 4 of the Act and Section 105 of the Transfer of Property Act, 1882. Hence the lessee cannot insist that in spite of the minerals being parted by the State the mining should be made available cheaply so that they can derive profits, and even super profits. Further, there should have been fixation of maximum limit for royalty under Section 15 is not an absolute rule. In fact, the rate fixed has not been demonstrated to be confiscatory or arbitrary, for which the courts are there and if that be, it could be quashed. Further the history of regulation of minerals shows that royalty has always been fixed by the State Government. Under Rule 4 of the Mineral Concession Rules, 1949 framed by the Central Government under the 1948 Act, the State Governments were given power to make rules with regard to the minor minerals. In fact, what was then delegated to the State Government by the Central Government has now been delegated by the Parliament itself. Thus the status of State Government has changed from sub-delegatee to delegatee. Next it is submitted, it is true that phraseology of Section 28(3) is differently couched than what is in Section 28(1). This was done in view of the observations by this Court in *D.K. Trivedi's* case (Supra). It is also submitted that placement of such notification and rules under Section 28(3) before the State legislature cannot be said to be only a show piece but is meaningful. He also submits since 1st April, 1975 the State of Bihar has increased royalty only four times and even now it has not raised royalty since 28.9.1994, despite the lapse of six years. Thus raising of royalty only four times during 25 years despite power to revise every three years shows that the Government has been more than reasonable in fixing the royalty.

In order to scrutinise the submissions of the learned counsels for the parties, it would be appropriate first to focus as to what this Court said in *D.K. Trivedi's* case (Supra). The constitutionality of Section 15(1) of the said Act

A was raised with reference to the delegation of power to the State Government delegating essential legislative function, including charging and enhancing the rate of dead rent and royalty that it being unbridled, including challenge to the charging of the same during the subsistence of the existing leases, including the validity of Rule 21(b) of the Gujarat Minor Minerals Rules, 1966 and few notifications issued by the State Government under Section 15 in respect of the B minor minerals. The relevant notifications were, one dated 29.11.1974 by which the State Government made Gujarat Minor Minerals (Fourth Amendment) Rules, 1974 whereby Rule (1) was substituted and Schedule II was amended w.e.f. 1.12.1974. By this the rate of royalty and dead rent in respect of some of the minor minerals were specified. Through the notification dated C 29th October, 1975 the State Government brought in Gujarat Minor Minerals (Second Amendment) Rules, 1975, whereby Rule 21 of the said rules and Schedule I was substituted w.e.f. 1.11.1975, through which the rate of royalty in respect of several items were enhanced. The next notification was dated 6th April, 1976, by which the State Government made the Gujarat Minor Minerals D (Second Amendment) Rules, 1976 through which it substituted Schedule II in the said rules, by which the dead rent was enhanced. The next notification was dated 26th March, 1979, through which the State Government made the Gujarat Minor Minerals (Amendment) Rules, 1979. Through this new Rule 21-B was inserted and Rule 22 was amended and Schedules I and II were substituted. By substituted Schedule I the rate of royalty on all minor minerals were specified E as 10 p. per metric tonne and by substituted Schedule II the rate of dead rent per hectare or part thereof in respect of quarry leases was enhanced to Rs.1200 in certain cases, Rs.1500 in some other cases, Rs.2,000 in one case and Rs.3,000 in the remaining cases. The contention raised before this Court was, that Section 15(1) of the Act is unconstitutional as it suffers from the vice of F excessive delegation of the essential legislative power to the executive as it is unchannelised as there are no guidelines, which gives free hand to the State Government to act arbitrary. This submission for the lessee was rejected when this Court held:-

> "We find that this contention is based upon a fallacy inasmuch as G it is founded upon reading the provisions of Section 15(1) in isolation and without reference to other provisions of the 1957 Act and its legislative history."

This Court further held:

> H "There is no substance in the contention that no guidelines are

provided in the 1957 Act for the exercise of the rule-making power of the State Government under Section 15(1)..... A

A provision similar to sub-section (2) of Section 13, however, does not find place in Section 15. In our opinion, this makes no difference. What sub-section (2) of Section 13 does is to give illustrations of the matters in respect of which the Central Government can make rules for "regulating the grant of prospecting licences and mining leases in respect of minerals and for purposes connected therewith". The opening clause of sub-section (2) of Section 13, namely, "In particular, and without prejudice to the generality of the foregoing power", makes it clear that the topics set out in that sub-section are already included in the general power conferred by sub-section (1) but are being listed to particularize them and to focus attention on them. The particular matters in respect of which the Central Government can make rules under sub-section (2) of Section 13 are, therefore, also matters with respect to which under sub-section (1) of Section 15 the State Government can make rules for "regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith". When Section 14 directs that "The provisions of Sections 4 to 13 (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals", what is intended is that the matters contained in those sections, so far as they concern minor minerals, will not be controlled by the Central Government but by the concerned State Government by exercising its rule-making power as a delegate of the Central Government. Sections 4 to 12 form a group of sections under the heading "General restrictions on undertaking prospecting and mining operations". The exclusion of the application of these sections to minor minerals means that these restrictions will not apply to minor minerals but that it is left to the State Governments to prescribe such restrictions as they think fit by rules made under Section 15(1). The reason for treating minor minerals differently from minerals other than minor minerals is obvious. As seen from the definition of minor minerals given in clause (e) of Section 3, they are minerals which are mostly used in local areas and for local purposes while minerals other than minor minerals are those which are necessary for industrial development on a national scale and for the economy of the country. That is why matters relating to minor B C D E F G H

A minerals have been left by Parliament to the State Governments while reserving matters relating to minerals other than minor minerals to the Central Government."

This Court finally upheld the validity of sub-section (1) of Section 15 by holding that power conferred upon the State Governments does not amount B to excessive delegation of any essential legislative power. It further held, there are sufficient guidelines for the exercise of rule-making power which are to be found in the object for which such power is conferred, namely, for regulating the grant of quarry leases, mining leases or mineral concessions in respect of minor minerals and for the purposes connected therewith. It also held that C power to make rules under Section 15(1) includes to amend the rules so as to enhance the rates of royalty and dead rent. Further there is a check on the State Government not to enhance the rate of royalty/dead rent more than once during any period of four years in view of proviso to Section 15(3). It upheld notification dated 29th November, 1974, but held notification dated 29th October, 1975 as void as it offends the prohibition contained in the proviso to Section D 15(3). It also similarly holds notification dated 6th April, 1976 as void as the same enhances the rates of dead rent for the second time during the same period of four years. It however, holds notification dated 26th March, 1979 to be valid.

E Strong hammering has been done by the learned counsels for the appellants with reference to the observation made by this Court in *D.K.Trivedi's* case (supra), where this Court records that the guidelines for the exercise of rule-making power under Section 15(1) are to be found in the restrictions and other matters contained in Sections 4 to 12 of the Act. Based on this, submission is that this restriction could only be, what is contained in Item 54 F Schedule II read with Section 9 of the Act. The submission is, Item 54 refers to "all other mines and minerals not hereinbefore specified" which would include minor minerals as Section 3(a) defines "Minerals" very widely to mean all minerals except minerals oil. Hence the restriction which is stated, is really the restriction not to enhance the royalty beyond the rate specified G in Item 54 which could only be upto 12 per cent of sale price at the pit's mouth.

In our considered opinion such a restrictive interpretation is not to be found in the *D.K. Trivedi's* case (Supra). In that case, through the aforesaid 1979 notification, rate of dead rent was enhanced by substituting the then H existing Schedule II. The then existing rate of dead rent in Schedule II was:

"Schedule II
Rates of Dead Rent
[See Rule 22 (I)(b)]

"1. For specified minor minerals

For every 100 sq. metres or part thereof, up to 5 hectares	.. Re. 0.35
For each additional hectare or part thereof, exceeding 5 hectares	..Rs.50.00

2. For other minor minerals

For every 100 sq. metres or part thereof upto 5 hectares	..Re. 0.20
For each additional hectare or part thereof exceeding 5 hectares	..Rs.35.00"

This was substituted and the rate of dead rent per hectare was enhanced to Rs.1200, 1500, 2,000 and 3,000 in various cases. Though the enhancement through this notification of 1979 was enormous yet no submission was made, nor this Court adverted or recorded that this enhancement has to be restricted to 12 per cent of the sale price at pit's mouth in terms of Item 54 of Schedule II. In fact, in spite of this large enhancement, notification of 1979 was upheld. The question, whether any such increase is arbitrary, excessive or violative of Article 14 is to be tested on a different pedestal. Any excessive exercise or arbitrary exercise of power by a delegatee could be controlled by the courts and if there are any, the courts would not hesitate to strike it down. Mere possibility of an abuse of power or arbitrary act, cannot invalidate any statute. To reach this, one has to make foundation with specific plea with reference to the facts and figures based on the circumstances of each case. In the present case, however, we are testing the submissions of the appellants, whether the said decision restricts the exercise of power by the State Government in enhancing the rate of royalty or dead rent to the rate as specified in Item 54 of Schedule II of the Act. This submission is based on the misconstruction of the statute and relying only on a part of the observation what is recorded in para 34 of that decision. This Court further records in the same para 34 that the guidelines with reference to Section 15(1) are to be found in the object for which such power is conferred, the illustrative matters set out in sub-section (2) of Section 13 and in

A the restriction and other matters contained in Section 4 to 12. Para 34 of the said decision records:-

> "The guidelines for the exercise of the rule-making power under Section 15(1) are, thus, to be found in the object for which such power is conferred (namely, "for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith"), the meaning of the word "regulating", the scope of the phrase "for purposes connected therewith", the illustrative matters set out in sub-section (2) of Section 13, and in the restrictions and other matters contained in Sections 4 to 12."

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It is relevant to refer here the preceding paragraph 33 with reference to Sections 4 to 12 where this Court records:

> "Sections 4 to 12 forms a group of sections under the heading "General restrictions on undertaking prospecting and mining operations". The exclusion of the application of these sections to minor minerals means that these restrictions will not apply to minor minerals but that is left to the State Governments to prescribe such restrictions as they think fit by rules made under Section 15(1)."

D

E Thus this Court not only did not tie down the State Government to such restrictions, on the contrary left it open for it to prescribe such restrictions as it thinks fit.

In other words Sections 4 to 12, not being applicable to the minor
F minerals, the figurative restrictions what is contained there could not be made applicable, but of course they are available as a guideline to the State Government to take note of in other respects, while framing its rules. So, they are available not as restrictive or limiting guidelines but are available otherwise for its consideration and adoption, wherever it is necessary. If submission for the appellants is accepted, it would militate against the express mandate of Parlia-
G ment as contained in Section 14 which excludes Sections 4 to 12 from its application to minor minerals.

The fallacy of this submission that the rate of royalty and dead rent, for the minor minerals, is to be what is contained in Item 54 of Schedule II, is
H based on misconstruing both the said judgments of this Court and the provi-

sions of the Act. The submission is, as Section 3(a) defines "minerals" which would include minor mineral, hence Item 54 as it records: "all other minerals not hereinbefore specified" would include minor minerals. It is an interpretation in abstract without taking into consideration Section 14. Section 14 specifically excludes Sections 5 to 13 (earlier it was Sections 4 to 13) from its application to minor minerals. Thus Second Schedule which refers to the rate of royalty in view of Section 9 could only refer to the minerals other than minor minerals. The language as recorded in Item 54, as aforesaid would only mean other residual major minerals not specified hereinbefore meaning that what is not specified in Item Nos. 1 to 53. This could never mean to include minor minerals. Thus the residuary mineral under Item 54 could only be the left over major minerals. Neither the residuary nor the left over major mineral could be equated with the minor minerals nor there is any material on record to draw such inference. When this Court records : "guidelines for the exercise of rule-making power under Section 15(1) is to be found in the restrictions and in the other matters contained in Sections 4 to 12". The use of word "restriction" is in view of the same words being used in the heading of this group of Sections 4 to 12. The heading states, "General 'restriction' on undertaking, prospecting and minor operations". In other words, the restriction referred to in para 34 co-relates to this heading of general restrictions to be taken note while framing the rules.

We may visualise this from another angle. This reference of general restrictions as contained in Sections 4 to 12 for it being taken note would only mean to consider its broad principle and pattern while framing its own rules. It cannot be doubted that Sections 4 to 12 also gives guidance to the State Government while acting as delegatee under Section 15 while fixing rate of royalty. This guidance is to be found in Section 9 itself which refers to the royalties. Sub-section (1) of Section 9 provides, holder of a mining lease granted before the commencement of this Act to pay royalty in respect of any mineral removed or consumed from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral notwithstanding anything to the contrary contained in the instrument of lease and similarly sub-section (2) provides, after the commencement of this Act the holder of a mining lease shall pay royalty at the rate specified for the time being in the Second Schedule in respect of any particular mineral. Each of the aforesaid considerations itself may be taken note by the State Government while framing its own rules for the minor minerals. In other words, it may apply also the rate of royalty for the minor minerals at the same rate as the

A then existing rate, when this Act came into force. Schedule II with reference to Section 9 fixes rate of royalty for various minerals not being minor minerals, is also a good source of guideline. There we find various methods applied for fixing or charging the royalty on the various minerals. It demonstrates charging of royalties per tonne, per unit per cent, per tonne of ore on prorata basis, per cent of sale price at the pit's mouth etc.. In the case of gold, it is per one gram B of gold per tonne of ore and on pro rata basis on the basis of per 100 kg. With reference to Uranium it is for dry ore with U3 O8 content of 0.05 per cent with pro rata increase/decrease @ Re.1.00 per metric tonne of ore for 0.01 per cent.

This pattern of charging also reveals a good guiding force while fixing C any royalty by the State Government for the various minor minerals.

This apart, the guidelines even in the *D.K. Trivedi's* case (Supra) does not confine itself to Sections 4 to 12 but further records, it to be found in the object for which such power is conferred, (namely, for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor D minerals and for the purposes connected therewith the meaning of the word 'regulating' the scope of the phrase 'for purpose connected therewith' and the illustrative matters as set out in sub-section (2) of Section 13. We find that Section 13 gives power to the Central Government to make rules in respect of minerals other than minor minerals, while Section 15 gives power to the State E Government to make rules in respect of minor minerals. The extent of exercise of power in both these sections are similar. The only difference is, Central Government exercises power in respect of all other minerals other than minor minerals, while the State Government exercises power for the minor minerals only. Section 13(2), particularizes the power to the Central Government to make rules in respect of matters enumerated therein. Though they are already F covered under Section 13 (1) but is more focused in sub section (2). There was no such similar sub-section in Section 15 when *D.K. Trivedi's* case (Supra) was decided, though later it was brought in through amendment by incorporating sub-section (1A) through Act No.37 of 1986 w.e.f. 10th February, 1987. This Court very clearly held in that case:-

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> "The ambit of the power under Section 13 and under Section 15 is, however, the same, the only difference being that in one case it is the Central Government which exercises the power in respect of minerals other than minor minerals while in the other case it is the State Governments which do so in respect of minor minerals. Sub-
H section (2) of Section 13 which is illustrative of the general power

conferred by Section 13(1) contains sufficient guidelines for the State Governments to follow in framing the rules under Section 15(I)." A

So, this Court held that sub-section (2) of Section 13, which is illustrative of the general power conferred by Section 13(1) itself contains sufficient guidelines for the State Government to frame its own rules under Section 15(1). B

It seems the Parliament in order to bring on parity, made similar provision for the minor minerals through insertion of Section 15(1-A) to equate it with Section 13 (2). This sub-section (1-A) similarly as Section 13 (2) is also illustrative of the general power conferred on Section 15 (1). Thus as sub-section (2) of Section 13 was held to be the guiding force to the State Government is now applicable to this sub-section (1-A) through the infusion of various sub-clauses in sub-Section (1-A). The submission that it is only a power, is equally applicable to sub-section (2) of Section 13. Even this sub-dividing the exercise of power through there various sub-clauses, both in Section 13 (2) and sub-Section (1-A) of Section 15 implicitly gives guideline to the delegatee. In fact, the Parliament itself through various amendments has been strengthening the guidelines to the State Government. Not only sub-Section (1-A) of Section 15 but even Section 4A and Section 17A were inserted through the same amending Act No.37 of 1986. Similarly, sub-section (3) was inserted in Section 28 by Act No.25 of 1994 and Section 23-C was inserted by Act No.38 of 1999. Even Section 14 was amended by the aforesaid Act No.37 of 1986. Earlier Sections 4 to 13 were excluded for the minor minerals but through this amendment, the exclusion shrunk to Sections 5 to 13. In other words, both Sections 4 and 4A were made applicable even to the minor minerals. Further Section 4(1-A) which was inserted through Act No.38 of 1999 covers transport or storage of any mineral in accordance with the Act and Rules. In case the restrictive interpretation, as submitted for the appellants, to limit the State's power within Entry 54 of Schedule II is accepted, it will lead to various incongruities. Section 6 fixes the maximum area of lease to be twenty-five square kilometers under sub-Section (a) and ten square kilometers under sub-section (b). Section 7 fixes 3 years for prospecting licence and Section 8 fixes maximum period of 30 years for mining lease. If the State Government has to take literally what is contained there then even for the minor Minerals State Government has to issue leases of such area for such a long period. This would be impracticable, in view of difference in the nature of major and minor minerals. Thus the fixation of period, area of leases and the rate of royalty for the major minerals is not equitable with that of the minor minerals. C D E F G H

A Half hearted submission was also made by Mr. Sanyal, one of the learned senior counsels, that proviso to Section 9(3) limits the power of the Central Government to fix the rate of royalty not exceeding 20 per cent while there is no such limitation on the power of the State Government. It is sufficient to record here that this limitation has been lifted by amending sub-section (3) of Section 9. Now there is no such limitation on the power of the Central Government.

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Now, we may proceed to examine another perceivable guideline to the State Government. It is significant, both Entry 54 List I of the Seventh Schedule of the Constitution and Entry 23 List II refer to the "Regulation of mines and minerals development". This Entry has been reiterated both in the Preamble and the Statement of Objects and Reasons of this Act. This 'regulation of mines and minerals development' clearly indicates the guidelines which the Parliament is projecting. Every word of a language is impregnated with and is flexible to connote different meaning, when used in different context. That is why it is said, words are not static but dynamic and courts must adopt its that dynamic meaning which uphold the validity of any provision. This dynamism is the cause of saving many statutes of it being declared void, it dissolves the onslaught of any rigid and literal interpretation, it gives full thrust and satisfaction to achieve the objectivity which the legislature intended. Whenever there are two possible interpretations, its true meaning and Legislatures intent has to be gathered, from the 'Preamble', Statement of Objects and Reasons and other provisions of the same statute. In order to find true meaning of any word or what the legislature intended, one has to go to the principle enunciated in the *Heydon's* case, 76 E.R. 637 = (1584) 3 Co. Rep. 7a 9.7; which laid down the following principle as early in the sixteenth century. (1) What was the law before making of the Act; (2) What was the mischief or defect for which the law did not provide; (3) What is the remedy that the Act has provided; and (4) What is the reason of the remedy. The Court must adopt that construction which suppresses the mischief and advances the remedy. This Court has followed this principle in *Bengal Immunity Co. Ltd.* v. *State of Bihar & Ors.*, AIR (1955) SC 661 (674); *The Commissioner of Income tax, Patiala* v. *M/s Shahzada Nand & Sons & Ors.*, AIR (1966) SC 1342 (1347); *M/s. Sanghvi Jeevraj Ghewar Chand & Ors.* v. *Secretary, Madras Chillies, Grains and Kirana Merchants Workers Union & Anr.*, AIR (1969) SC 530 (533); *Union of India* v. *Sankalchand Himatlal Sheth & Anr.*, AIR (1977) SC 2328 (2358) and *K.P. Varghese* v. *Income Tax Officer, Ernakulam & Anr.*, AIR (1981) SC 1922 (1929).

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Returning to the present case we find the words "Regulation of Mines and Mineral Development" are incorporated both in the Preamble and Statement of Objects and Reasons of this Act. Before that we find Preamble of our Constitution in unequivocal words expresses to secure for our citizen, social, economical and political justice. It is in this background and in the context of the provisions of the Act, we have to give meaning of the word 'regulation'. The word "regulation" may have different meaning in different context but considering it in relation to the economic and social activities including the development and excavation of mines, ecological and environmental factors including States' contribution in developing, manning and controlling such activities, including parting with its wealth, viz., the minerals, the fixation of the rate of royalties would also be included within its meaning. This Court in *State of Tamil Nadu* v. *M/s Hind Stone and Ors.*, [1981] 2 SCC 205 held:-

> "Word 'regulation' has not got that rigidity of meaning as never to take in 'prohibition'. In modern statutes concerned as they are with economic and social activities, 'regulation' must of necessity, receive so wide an interpretation that in certain situations, it must exclude competition to the public sector from the private sector. More so in a welfare State, must depends on the context in which the expression is used in the statute and the object sought to be achieved by the contemplated legislation. Each case must be judged on its own facts and in its own setting of time and circumstances and it may be that in regard to some economic activities and at some stage of social development, prohibition with a view to State monopoly is the only practical and reasonable manner of regulation. The Mines and Minerals (Development and Regulation) Act aims at the conservation and the prudent and discriminating exploitation of minerals and prohibiting of leases in certain cases is part of the regulation contemplated by Section 15 of the Act."

So in regulating mineral development, the royalty/dead rent is the inherent part of it. State has thus before it number of factors, as aforesaid, which would guide it to fix, enhance or modify the royalty/dead rent payable by a lessee. The conservation and regulation of mines and mineral development include wide activity of the State including parting with its wealth, are all relevant factors to be taken into consideration as a guiding force for fixing such royalty/dead rent. For interpretation of a Statute with reference to 'Preamble' we may usefully refer the case of *M/s. Bhatnagar & Co. Ltd.* v. *Union of India & Ors.*,

A AIR (1957) SC 478 where Constitution Bench held:

> "...In other words, in considering the question as to whether guidance was afforded to the delegate in bringing into operation the material provisions of the Act by laying down principles in that behalf, the Court considered the statement of the principles contained in the preamble to the Act as well as in the material provisions of s. 3 itself. This decision shows that if we can find a reasonably clear statement of policy underlying the provisions of the Act either in the provisions of the Act or in the preamble, then any part of the Act cannot be attacked on the ground of delegated legislation by suggesting that questions of policy have been left to the delegate....".

With reference to the 'Regulation of Mines and Mineral Development, with reference to the minor minerals the policy of the Act is communicating loudly from its roof top, that let it be done by the delegatees State who is fully aware of the local conditions as such minerals are also used for the local purposes and on whom this largese falls. What delegatee should do and what it should not do is also enshrined in the Act. Section 18 is also not excluded from its application to the minor mineral development. Under it, duty is cast on the Central Government to take all necessary steps for the conservation and systemetic development of minerals in India. Its sub-section (2) focuses the periphery within which it has to do and what not to do. This itself is a guidance which 'State' may take note of while framing its own rules. Similarly Section 23-C gives detail guidance what State should provide to check illegal, mining, storage and transportation.

We have said Sections 4-A, 17, 18 and 23-C also provides for the guidelines. Sub-section (2) of Section 4-A empowers the State Government to premature terminate any prospecting licence or mining lease if it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment, control of floods, prevention of pollution or for avoiding danger to public health or communications or to ensure safety of buildings, monuments, structures or for other purposes. Under sub-section (2) of Section 17, the Central Government undertakes reconnaissance, prospecting or mining operations in any area not already covered by any licence or lease, after consultation with the State Government but sub-section (3) obligates it to pay the permit fee, prospecting fee, royalty, surface rent or dead rent, at the same rate at which it would have been payable by any other person under this Act. This also is a check on the State Government, while fixing the rate of the

royalty. Similarly, Section 18 which refers to the mineral development as aforesaid casts an obligation on the Central Government to take all such steps for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution for which it may make rules and sub-section (2), in particular, specifies large list on which such rules may be framed, which has been framed (the Mineral Conservation and Development Rules), 1988, which would be binding on the Government including the State Government. In conserving or regulating the development of any mineral resources, the price factor is inherent. Any development requires, planning, execution, management and with reference to the excavation of mines, controlling the extent and manner of mining, to check its wastage, protecting environment and controlling pollution etc. which are provided in this Act. This all require expenditure to be incurred by the State coupled with considerations for parting with the wealth of the State, as minerals belongs to the State except on private land. They are all guiding factors in fixing, modifying or enhancing the rate of royalty. Thus development of mineral resources inherently refers to the price factor to be recovered by the owner.

One of the submissions for the appellant is, since royalty is a tax, delegation for its enhancement cannot be left unbridled on the delegatee and if two interpretations are possible, the one which favours an assesee should be accepted. It is true that this Court has held royalties on the minerals to be a tax in *India Cement Ltd. and Ors.* v. *State of Tamil Nadu and Ors.*, [1990] 1 SCC 12, *Orissa Cement Ltd.* v. *State of Orissa and Ors.*, [1991] Supp.(1) SCC 430, *State of M.P.* v. *Mahalaxmi Fabric Mills Ltd. and Ors.*, [1995] Supp. 1 SCC 642 and *P. Kannadasan & Ors. etc. etc.*v. *State of Tamil Nadu & Ors.*, [1996] 5 SCC 670.

In considering this submission we have to keep in mind, tax on this royalty, is distinct from other forms of taxes. This is not like a tax on income, wealth, sale or production of goods (excise) etc. This royalty includes the price for the consideration of parting with the right and privilege of the owner, namely, the State Government who own the mineral. In other words, the royalty/dead rent, which a lessee or licensee pays, includes the price, the minerals which is the property of the State. Both royalty and dead rent are integral parts of a lease. Thus, it does not constitute usual tax as commonly understood but includes return for the consideration for parting with its property. In view of this special nature of the subject under consideration, namely, the minerals, it would be too harsh to insist for astrict interpretation with reference to minerals while considering the guidelines to a delegatee who is

A also the owner of its mineral. In the present case, we are not considering any liability of tax on the assessee but whether delegation to the State by the Parliament with reference to minor minerals is unbridled.

One of the guidelines in the case of *Mahalaxmi Fabric Mills Ltd. and Ors.* (Supra) was that the Parliament had itself laid down with reference to
B major minerals, the rates of royalty in the Second Schedule of the Act and authorised the Central Government to revise the rates from time to time. So far minor minerals, also we find sub-section (2) of Section 15 approves the rules made by the State Government, regulating the grant of quarry leases, mining leases or other mineral concessions in respect of mines and minerals prior to
C the enforcement of this Act and similarly sub-section (3) approves the rate of royalty/dead rent prescribed for its payment in respect of minor minerals for the time being in force, i.e., what existed prior to the coming in force of this Act. Thus, even approval of the then existing rates of royalty or dead rent is by the Parliament itself is also similarly which a guiding factor to the State Government for any subsequent modification of the rates. The proviso to sub-
D section (3) brings an additional check on the enhancement of rate of royalty/ dead rent that it cannot be enhanced more than once during any period of three years. Prior to the Act No.37 of 1996 this period was of four years.

We have to keep in mind, in the present case, delegation of power is
E on the State Government which is the highest executive in the State, which is responsible to the State Legislature. In a Parliamentary democracy every act of the State Government is accountable to its people through State Legislature which itself is an additional factor which keeps the State Government under check not to act arbitrarily or unreasonably. When a policy is clearly laid down in a statute with reference to the minor minerals with main
F object under the Act being for its conservation and development, coupled with various other provisions to the Act guiding it, checking it and controlling it then how such delegation could be said to be unbridled. With reference to *Municipal Corporation of Delhi* v. *Birla Cotton, Spinning and Weaving Mills, Delhi*, [1968] 3 SCR 251, the question of delegation of power to the Munici-
G pal Corporation and the State Government was considered in which *Avinder Singh and Ors.* v. *State of Punjab and Ors.*, [1979] 1 SCC 137 was referred and relied as under:

> "In the Municipal Corporation of Delhi case, the proposition that where the power conferred on the corporation was not unguided,
H although widely worded, it could not be said to amount to excessive

delegation, was upheld. *Delegation coupled with a policy direction is good.* Counsel emphasised that the court had made a significant distinction between the local body with limited functions like a municipality and Government:

> The needs of the State are unlimited and the purposes for which the State exists are also unlimited. The result of making delegation of a tax like sales tax to the State Government means a power to fix the tax without any limit even if the needs and purposes of the State are to be taken into account. On the other hand, in the case of municipality, however, large may be the amount required by it for its purposes it cannot be unlimited, of the amount that a municipality can spend is limited by the purposes for which it is created. A municipality cannot spend anything for any purposes other than those specified in the Act which creates it. Therefore in the case of a municipal body, however large may be its needs, there is a limit to those needs in view of the provisions of the Act creating it. In such circumstances there is a clear distinction between delegating a power to fix rates of tax, like the sales tax, to the State Government and delegating a power to fix certain local taxes for local needs to a municipal body....
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> It is too late in the day to contend that the jurisprudence of delegation of legislative power does not sanction parting with the power to fix the rate of taxation, given indication of the legislative policy with sufficient clarity. In the case of a body like a municipality with functions which are unlimited and the requisite resources also limited, the guideline contained in the expression "for the purposes of the Act" is sufficient, although in the case of the State or Central Government a mere indication that taxation may be raised for the purposes of the State may be giving a carte blanche containing no indicium of policy or purposeful limitation."
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> [Emphasis supplied]

With reference to the question what is the "policy of the legislature" this very decision holds:

> "We are clearly of the view that there is fixation of the policy of the legislation in the matter of taxation, as a close study of Section 90 reveals; and exceeding that policy will invalidate the action of the

A delegate. What is that policy? The levy of the taxes shall be only for the purposes of the Act. Diversion for other purposes is illegal. Exactions beyond the requirements for the fulfilment of the purposes of the Act are also invalid. Like in Section 90(1), Section 90(2) also contains the words of limitation 'for the purposes of this Act' and that limiting factor governs sub- sections (3), (4) and (5).....The expression "purposes of this Act" is pregnant with meaning. It sets a ceiling on the total quantum that may be collected. It canalises the objects for which the fiscal levies may be spent. It brings into focus the functions, obligatory or optional, of the municipal bodies and the raising of resources necessary for discharging those functions - nothing more, nothing else."

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This case clearly lays down that fixation of the policy under the Act in the matter of taxation itself is a guidance to a delegatee, which is also to be found in the present case, when its preamble, State of objects and reasons and various other provisions clearly lays down policy when it refers to for the development and regulation of mines and minerals. The fixation of rate thus has to co-relate with the purpose of the Act and not beyond it.

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With reference to another submission that only purposeful guidance with control over the State Government would be to fix maximum limit of rate of royalty, which is not there in the present case. Similar question was also submitted and this Court in the case of *Corporation of Calcutta* v. *Liberty Cinema*, [1965] 2 SCR 477 held:

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"No doubt when the power to fix rates of taxes is left to another body, the legislature must provide guidance for such fixation. The question then is, was such guidance provided in the Act? We first wish to observe that the validity of the guidance cannot be tested by a rigid uniform rule; that must depend on the object of the Act giving power to fix the rate. It is said that the delegation of power to fix the rates of taxes authorised for meeting the needs of the delegate to be valid, must provide the maximum rate that can be fixed, or lay down rules indicating that maximum. We are unable to see how the specification of the maximum rate supplies any guidance as to how the amount of the tax which no doubt has to be below the maximum, is to be fixed. Provision for such maximum only sets out a limit of the rate to be imposed and a limit is only a limit and not a guidance.

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> It seems to us that there are various decisions of this Court which support the proposition that for a statutory provision for raising revenue for the purposes of the delegate, as the section now under consideration is, the needs of the taxing body for carrying out its functions under the statute for which alone the taxing power was conferred on it, may afford sufficient guidance to make the power to fix the rate of tax valid." A B

Before we take up the history of delegation of the power of the State Government as delegatee, it is necessary to refer to two decisions of this Court in M/s. *Bhatnagar & Co. and Anr.* v. *Union of India and Ors.*, AIR (1957) SC 478. These cases also considered the history of the earlier provisions of the Act intesting the challenge of vires of a provision. It held: C

> "...Thus, if the preamble and the relevant section of the earlier Act are read in the light of the preamble of the present Act, it would be difficult to distinguish this Act from the Essential Supplies Act with which this Court was concerned in *Harishankar Bagla's* case, AIR 1954 SC 465. Incidentally we may also observe that in *Pannalal Binjraj* v. *Union of India, Petns. Nos. 97 and 97A etc.*, of (1956) 8 AIR (1957) SC 397, (B), where the vires of s. 5 (7-A) of the Income tax Act were put in issue before this Court, the challenge was repelled and during the course of the judgment delivered on December 21, 1956, the previous history of the earlier Income tax Acts was taken into account to decide what policy could be said to underlie the provisions of the impugned section." D E

This Court in *Municipal Corporation of Delhi* (Supra) also referred to the history of enactment while examining and testing vires of the Act. It records: F

> "According to our history also there is a wide area of delegation in the matter of imposition of taxes to local bodies subject to controls and safeguards of various kinds which partake of the nature of guidance in the matter of fixing rates for local taxation. It is in this historical background that we have to examine the provisions of the Act impugned before us." G

We may further examine this question from another angle. In order to adjudicate, whether any delegation of power is unbridled or excessive, the historical background of similar provisions which preceded the impugned provision which should be kept in mind as it is also a relevant consideration. H

A In fact, *D.K. Trivedi's* case (supra) itself has taken the note of its historical background. It is significant that Entry 54 List I of the Seventh Schedule of the Constitution of India, reproduces Entry 36 in the Federal Legislative List in the Government of India Act, 1935, except by omitting the words "and oil fields". Under this Entry 36 the Mines and Minerals (Regulation and Development) Act, 1948 was enacted as we have now the present 1957 Act under
B Entry 54 List I. This Act conferred very wide rule making power upon the Central Government, for regulating and granting of mining leases. The constitutional maker also knew that Central Government in exercise of this rule making power, made the Minerals Concession Rules, 1949 and by Rule 4 the extraction of minor minerals was left to be regulated by the rules made by the Provincial Governments. When the present 1957 Act came into force, the
C Parliament was aware that different State Governments in pursuance of this Rule 4 were regulating the grant of leases in respect of minor minerals including fixation of rate of royalties. This Parliament approved in the present Act through sub-sections (2) and (3) of Section 15, then existing Rules which were in force immediately before the commencement of this Act which included the rate of royalty/dead rent for it to be continue in force, unless superseded by the
D Rules made under sub- section (1). Thus, the Parliament was fully aware that even in the past it was the State Governments which were entrusted and were dealing with minor minerals as a delegatee. The only difference being, earlier the State Governments were acting as sub-delegatee of the Central Government but now they act as delegatee of the Parliament. This was the pattern adopted and approved since inception. This seems to be also because minor minerals
E being more useful for the local uses and the State Government being the highest executive in the State knowing fully well of its uses, management including fixation of its prices. Thus, in this historical background there is nothing wrong to delegate to the State Government to fix rate of royalty/dead rent for the minor minerals.

F In *D.K. Trivedi's* case (supra) this Court records:

> "...To take into account legislative history and practice when considering the validity of a statutory provision or while interpreting a legislative entry is a well established principle of construction of
G statutes : see, for instance, *State of Bombay* v. *Narothamdas Jethabai,* [1951] SCR 51 and *State of Madras* v. *Gannon Dunkerley & Co. (Madras) Ltd.,* [1959] SCR 379."

This takes us to the next submission, whether the introduction of sub-section (3) of Section 28 by the Parliament in any way strengthen the guide-
H line and put a check on the exercise of power by the State Government. Sub-

section (1) of Section 28 refers to the placement of every rule and every notification made by the Central Government before each House of Parliament for a period of 30 days when the same becomes effective, subject to its modification, if any. Sub-section (3) of Section 28 directs placement of every rule or notification made by the State Government before each House of State Legislature. The submission is, there is no provision in sub-section (3) as in sub-section (1), of such rule being subject to scrutiny for its approval or modification by the State Legislature. The submission is, sub-section (3) in no way places any check on the State Government, as State Legislature is not entrusted with power to approve or modify. In other words, introduction of sub-section (3) is merely for the sake of information and nothing more. Further it is submitted, when language of two different sub-sections in the same Section are different it has to be differently interpreted, which cannot be construed to connote same meaning and same effect. It is also submitted, even if sub-section (3) was brought on the Statute Book, it was not sufficient for the State, as it has to show that in fact both the impugned notifications were so laid before both the Houses of the Legislature. The submission is, actually they were not so laid. Further reliance is placed in the case of *M/s. Atlas Cycle Industries Ltd.* v. *State of Haryana*, [1979] 2 SCC 196 (para 30) where this Court held that a mere laying procedure is directory not mandatory. On the other hand, submission on behalf of the State is that this laying procedure before the Legislature cannot be a mere show, but it is for a purpose, the effect of which it has to be given. In our considered opinion, the incorporation of this by the Parliament cannot be said to be in futility. In fact, this was brought in, in view of the observation made by this Court in the case of *D.K. Trivedi's* (supra).

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It is true that the language of both sub-sections (1) and sub-sections (3) of Section 28 are different. They are reproduced below:

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> "28. Rules and notifications to be laid before Parliament and certain rules to be approved by Parliament. - (1) Every rule and every notification made by the Central Government under this Act shall be laid, as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form

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A or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule or notification.

xxx xxx xxx

B (3) Every rule and every notification made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House."

C There is no difficulty for us to uphold their submission that in view of difference in the language of sub-section (3), the same meaning to it as that of sub-Section (1) cannot be given. This difference has been carved out for a purpose to give different projection to the said two provisions. In the case of major mineral which plays important role in the National growth and wealth and where the delegatee is the Central Government, Parliament re-
D tained its full control but for the minor mineral, Parliament felt for the minor minerals as the subject is of local use and State Government being well versed to deal with it in the historical background, mere placement of rules, notifications framed by it before the State Legislature would be a sufficient check on the exercise of its powers. Thus, this difference of language gives two
E different thrust as intended by the Parliament. Any act of the Parliament, far less when it introduces any new provision through amendment, it could be said for it to be in futility. The purpose has to be found. What could be the purpose for such an amendment? One of the reasons is that this was brought in, in view of the observation made by this Court in *D.K. Trivedi's* (supra). This Court records:

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> "...It was, therefore, for Parliament to decide whether rules and notifications made by the State Governments under Section 15(1) should be laid before Parliament or the legislature of the State [illegible]. It, however, thought it fit to do so with respect to minerals other than minor minerals since these minerals are of vital importance to the
G country" industry and economy, but did not think it fit to do so in the case of minor minerals because it did not consider them to be of equal importance....".

The Parliament through its wisdom, apart from above brought this amendment also to keep a check on the exercise of power by the State Government's as
H delegatee. The question is whether mere laying rules and notification before

the legislature, as in the present case, can be construed as a check on the State Government power. Laying before House of Parliament are made in the three different ways. Laying of any rule may be subject to any negative resolution within specified period or may be subject to it confirmation. This is spoken as negative and positive resolution respectively. Third may be mere laying before the House. In the present case, we are not concerned with either affirmative or negative procedure but consequence of mere laying before the legislature.

Administrative Law by HWR Wade & Forsyth, 7th Edition, page 898 records with reference to mere laying:

> "Laying before Parliament
>
> An Act of Parliament will normally require that rules or regulations made under the Act shall be laid before both Houses of Parliament. Parliament can then keep its eye upon them and provide opportunities for criticism. Rules or regulations laid before Parliament may be attacked on any ground. The object of the system is to keep them under general political control, so that criticism in Parliament is frequently on grounds of policy. The legislation concerning 'laying' has already been explained.
>
> Laying before Parliament is done in a number of different ways. The regulations may merely have to be laid; or they may be subject to negative resolution within forty days; or they may expire unless confirmed by affirmative resolution."

Constitutional and Administrative Law, Stanely De Smith and Rodney Brazier, 7th Edn., records:

> "...If the instrument has merely to be laid, or laid in draft, before Parliament, it will be delivered to the Votes and Proceedings Office of the House of Commons. No opportunity is provided by parliamentary procedure for the instrument to be discussed, but its existence will at least be brought to the notice of members and the Minister is more likely to be questioned about it than if it is not laid before Parliament at all."

In a democratic set up, every State Government is responsible to its State Legislature. When any statute require mere laying of any notification or Rule

before the Legislature its execution, viz., State Government comes under the scrutiny of the concerned Legislature. Every function and every exercise of power, by the State Government is under one or other Ministry who in turn is accountable to the legislature concerned. Where any document, rule or notification requires placement before any House or when placed, the said House inherently gets the jurisdiction over the same. Each member of the House, subject to its procedure gets right to discuss the same, they may put questions to the concerned Ministry. Irrespective of the fact that such rules or notifications may not be under purview of its modification, such members may seek explanation from such Ministry of their inaction, arbitrariness, transgressing limits of their statutory orbit on any such matter. Short of modification power, it has a right even to condemn the Ministry. No doubt in the case where House is entrusted with power to annual, modify or approve any rule, it plays positive role and have full control over it, but even where the matter is merely placed before any House, its positive control over the executive, makes even mere laying to play a very vital and forceful role which keeps a check over the concerned State Government. Even if submission for the appellant is accepted that mere placement before a House is only for the information, even then such information, inherently in it makes legislature to play an important role as aforesaid for keeping a check on the activity of the State Government. Such placement cannot be construed to be non est. No act of Parliament should be construed to be of having no purpose. As we have said mere discussion and questioning the concerned ministry or authority in the House in respect of such laying would keep such authority on guard to act with circumspection which is a check on such authority, specially when such authority is even otherwise answerable to such Legislature. Further examining the scheme of the Act, with its historical background, we find there is clear demarcation in dealing between the Major minerals and the Minor minerals. For minor minerals all its activity from before this Act has been delegated to the State Government as it having all conceivable knowledge over it, as it being of local use and not being of much national importance. For this difference also stricter control is made for the Major minerals through Section 28(1) than for the minor minerals. Thus, this mere check on the State Government, as aforesaid, may have been found to be sufficient by the Parliament, with reference to the minor minerals. Thus, the language of both sub-section (1) and sub-section (3) though different, this is only for two different purposes. Thus when Parliament introduced sub-section (3) through amendment, it was to further strengthen the control over the State Government power. Any other submission, the one made by the appellants, makes such an Act of the Parliament meaningless, which cannot be attributed to the Parliament.

This takes us to the next submission. It is submitted that the State Government, in spite of the mandate under sub-section (3) of Section 28, to place the rules and the notifications framed by it before each House of Legislature, the impugned notifications have not been placed. Appellants' case is, they were not placed, while for the respondent-State submission is, it were placed. Subsequent to the conclusion of the hearing, learned counsel for the State sought leave of this court, which was granted, to place affidavit with annexures to substantiate to its submission. An additional affidavit by Mr. Anand Vardhan, District Mining Officer dated 1st May, 2000 was filed on behalf of the respondent State of Bihar. A reply affidavit dated 4th June, 2000 was filed by one Mr. Subhash Kumar, Secretary of the appellant's association.

It may be pointed here, out of the two impugned notifications only one notification dated 28.9.1994 was required to be placed before the House of the State Legislature since sub-section (3) of Section 28 was only brought in the year 1994. As per the State affidavit, on the date the arguments concluded in this case, a fax message was received by the Standing Counsel that the notification dated 28.9.1994 had been placed before two houses in the May-June 1994 and 1995 session through Administrative Report of the Department of Mines and Geology. The affidavit further states, every year Department of Mines and Geology prepares Administrative Report, which includes the revenue earned from mining and there is a section in the office which reports the prevailing rates of royalty and the notifications under which it is fixed. This report is sent every year to both the houses of the State Legislature through their respective Sections. In 1994-95 Administrative Report, the impugned notification dated 28.9.1994 is mentioned in para 4.40 of Chapter IV at page 6 and notification as a whole is included as Annexure 6 at page 29. Similarly, the Administrative Report for 1995-96 mentions the fixation of royalty as fixed by notification dated 28.9.1994, is mentioned in para 4.4 of Chapter at page 7. Similarly, Administrative Report for 1996-97 also mentions fixation of royalty on mines minerals through notification dated 28.9.1994. Each year these reports were supplied to the Secretary, Bihar Vidhan Sabha with sufficient number of copies to enable its circulation to the members of the two Houses. About 400 copies were sent to Vidhan Sabha and 100 copies to Vidhan Parishad. Based on the aforesaid averment in the concluding para of the affidavit it is averred:

> '.....it is clear that the notification dated 28.9.1994 fixing royalty had been laid before the two houses of the State legislature as required by Section 28(3) of the Mines and Minerals (Regulation and Development) Act, 1957".

A In the reply affidavit for the appellants one Mr.. Subhash Kumar, a letter dated 4.6.2000 which is in response to a quary is annexed, which is of under Secretary, State Minister Homes, annexing letter No. 4/99-4-7 dated 27th May, 2000 of the Dy. Secretary, Bihar Legislative Assembly, which records:

> ".....as per direction (1) have to inform that Bihar Legislative
> B Assembly has no knowledge of Bihar Minor Mineral Concession Rules, 1972 and amendment made therein of any regulation made in this connection:"

The perusal of the two affidavit makes it clear that truly as required by sub section (3) of Section 28 the impugned notification dated 28.9.1994 was
C not placed. It seems various departments of the Government sends its administrative report every year with respect to its functioning and revenue earned. It is in this context department of Mines and Geology prepared and sent its administrative report for 1994-95, 1995-96 and 1996-97 and the notification dated 28.9.1994 is referred in these reports. Further 400 copies for the Vidhan Sabha and 100 copies for Vidhan parishad were sent for circulation. There-
D after there are no other document showing it was actually placed before the House. Even if these reports were sent and placed before the House it were administrative reports through which did contain the said notification dated 28.9.1994. In fact, the letter dated 27th May, 2000 from Shri Jagdish Prasad Yadav, Dy. Secretary Bihar Legislative Assembly, reveals that the House has
E no knowledge of the Bihar Mineral Concessions Rule 1972 and amendment made thereunder or any regulation made in this connection.

So, it is not possible to hold, based on affidavits of the parties that the impugned notification dated 28.9.1994 was actually placed in terms of Section 28(3). It being part of some administrative report cannot constitute to be
F a fact to hold its placement in terms of said sub-section (3). Though the affidavit on behalf of State reveals that under rules of procedure and conduct of business of the Bihar Vidhan Sabha, there is a delegated legislation committee, which examines, all the rules which are required to be laid before the House, which also inspects and examines the working of such personals involved under it.

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M/s Atlas Cycle Industries Ltd. and Ors. (Supra). In this case also one of the contentions was that the notifications were not placed before the Parliament as required by sub-section (6) of Section 3 of the Essential Commodity Act 1955 - The sub-section (6) of Section 3 of this Act requires that every order made under this section by the Central Government or by any
H officer or authority of the Central Government shall be laid before both houses

of Parliament, as soon as may be, after it is made. This is similar to the provision which we are considering under sub-section (3) of Section 28. The Court held such provision to be directory and hence for this default of not placing the Iron and steel control order 1956 and notification under clause 15(3) before the Parliament the order shall not become invalid. A

However, since we have upheld that impugned notifications issued by the State to be within the ambit of delegation and that delegation is not excessive as there are enough guidelines and control over the State Government notwithstanding its check on the State under sub-section (3) of Section 28, it would not have any effect on its validity. But we make it clear when a statute as under sub-section (3) of Section 28 requires its placement, it is the obligation of the State Government to place such with this specific note before each Houses of Parliament. Even if it has not been done, the State shall now do place it before each houses of the State legislature at the earliest the notification dated 28.9.1994 and will also do so in future while framing rules or issuing any notifications under the rules framed under sub-section (1) of Section 15 of the Act. B C D

Another submission for the appellants is that the delegator or the Parliament must retain its control over the delegatee and such delegatee cannot be entrusted to another Legislature, namely, State Legislature as in the present case. To repel this submission learned counsel for the State, referred to the 'The Delegated Legislation Provisions (Amendment) Act, 1983'. This Act amended various Parliament Acts to implement the recommendations of the Committees on Subordinate Legislation regarding laying of certain rules framed by the delegatee before the State legislatures. The Schedule of this Act, refers to the large number of such amendments made by the Parliament. Few of them are being referred hereunder, namely, The Religious Endowments Act, 1863, amendment Section 8 which requires "Every rule framed under this section shall be laid, as soon as it is framed, before the State Legislature." By amending Section 20 of the Press and Registration of Books Act, 1867 it directs, "Every rule made by the State Government under this Section shall be laid, as soon as may be after it is made, before the State Legislature." Similarly Section 83 of the Indian Christian Marriage Act, 1872, requires that "Every rule made by the State Government under this Section shall be laid, as soon as may be after it is made, before the State Legislature." The Registration Act, 1908 amended Section 91 (1) through which the following was brought in "Every rule prescribed under this Section or made under Section 69 shall be laid, as soon as it is made, before the State Legislature." E F G H

A We are not further enumerating such is large number of cases recorded in the Schedule itself. Each one of them were the act of Parliament in which with reference to a delegatee, provisions are made for placing its rules framed by it, before the State Legislature. Thus, placement of any notification or rules framed by the State Government under sub-section (3) of Section 28 cannot be said to be something out of any novel procedure but is a well recognised B principle. The submission was how can a delegatee under one legislature, viz., the Parliament be placed under the control of another legislature. This submission has no merit. In a Federal structure of any constitution, their fields are well defined, sometime same subject may be under control of both legislatures as in the concurrent list of our Constitution. Thus in a given case, C as in the above, large number of such cases were a delegatee is of the Parliament were put under the control of the State legislature. This submission is sought to be challenged by learned senior counsel Mr. Nariman that the cases in the Schedule under the 1983 Act are all cases falling under the Concurrent List of the Seventh Schedule of our Constitution. This was because both the Parliament and the State Legislature had the plenary power to D make laws over the same subject. This in our considered opinion would make no difference. It is significant to record, though the subject we are dealing with, viz., 'Regulation of mines and mineral development' does not fall in the Concurrent List, but still both falls in the field of the Parliament under Entry 54 List I and the State legislature under Entry 23 List II, their possible E conflict is resolved by the following words in Entry 23 List II, "subject to the provisions of List I with respect to regulation and development under the control of the Union". This control may be full, or partial. In the present case when this 1957 Act was passed, Union came in full control over this subject and no field was left for the State to make the law. But this covering of the entire field was by the 1957 Act itself not by any other constitutional limi- F tation. Then the Act which takes the entire field can also withdraw from it both partial or fully. In the present case since the Parliament has exercised its discretion under Item 54 List I, the State Legislature is denuded of its power under Entry 23 List II. It may be said so long that Act remains in force it eclipses the power of the State Legislature. In the present case as held in *Baij Nath Kedia's* case (supra) after passing of the aforesaid 1957 Act the G power of State Legislature has been completely denuded by the Parliament. If that be so, it is always open for the Parliament to withdraw partially the eclipse if so desires, may leave the Legislature for such part to exercise its power which it originally have by virtue of Item 23 of List II. It is in this light when we examine the amendment by introducing sub-section (3) of Section H 28, with provision to lay the rule or notification made by the State Govern-

ment before the State Legislature it cannot be said it can only be when it is in the concurrent list. Thus such placement cannot be said to be incompetent or keeping if beyond the control of the Parliament. As we have said this placement before the State legislature is for a limited purpose for which the Parliament is competent. Thus introduction of sub-section (3) in Section 28, in this light cannot be said to be of no consequence. It was done for a purpose, as aforesaid, and that purpose, is sufficient to hold the State Government under check while exercising its power as a delegatee.

We also find there are few provisions in our Constitution which require mere laying before the Parliament. Article 151 requires laying of the report of the Comptroller and Auditor-General of India before each House of Parliament and with reference to the State, to be laid before the Legislature of the State. Article 338 (5) requires placing of the report of the Commission before each House of Parliament and with reference to the State Government, under sub-Article (7) it to be laid before the Legislature of the State. Though they are mere provisions of mere laying before the Parliament, but it is always open to any Member of the House to discuss and comment on the said report.

Next coming to the quantum of imposition, on the facts of this case, the imposition of royalty/dead rent could be said to be arbitrary or excessive by the State Government. We do not find any material placed by the appellants in the writ petition to come to such a conclusion. Though by proviso to sub-section (3) of Section 15 it is open for the State Government to revise the royalty every three years but the history shows it has not done so. Since 1975 the State Government has increased royalty only four times and there is no increase since 28th September 1994 despite lapse of six years, in other words, raising royalty only four times during 25 years. Even in the case of *D.K. Trivedi's* case (supra) as we have recorded above a large percentage of increase in royalty has been made yet it was not struck down on that account.

Before concluding we would like to record our appreciation in the manner in which learned counsels for the parties made their valuable submissions which made our task easy. Though at times their ingenuity made us to think and rethink but the precision through which the submissions were made helped us to conclude to the best of our conscience.

In view of the aforesaid discussion and findings we conclude:

(a) The impugned two notifications dated 17th August, 1991 and 28th September, 1994 are valid.

(b) The State Government while acting as delegatee under Section 15(1) of the Act is not confined to fix the royalty/dead rent within the peripheral ambit of Entry 54 Schedule II of the Act. Neither *D.K. Trivedi* (Supra) has said so, nor can it be construed to be so.

(c) The State Government has acted within the ambit of the power delegated to it and such delegation is with sufficient guidelines and check in view of the Preamble, object and reasons and various provisions of the Act.

(d) Requirement of mere placement of the Rules or the Notifications before the State Legislature is also one of the form of check on the State Government to exercise its powers as a delegatee.

(e) In this case the impugned notification dated 28.9.1994 has not been placed as required by sub-section (3) of Section 28 of the Act. The State Government is directed to do so now at the earliest.

(f) However, non-placement of the said notification would not invalidate the same, as this requirement is only directory.

(g) The enhancement of royalty on the facts and circumstances of this case cannot be said to be arbitrary or otherwise illegal.

In view of the aforesaid findings, we do not find any merit in these appeals and accordingly they are dismissed. We uphold the judgment of the High Court but on a different reasoning as recorded by us earlier. The appeals stand dismissed with costs.

A.Q. Appeals dismissed.