IN THE HIGH COURT OF SINDH, AT KARACHI

Present:
Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

C.P No. D-5381 of 2021

Power Cement Limited.....Petitioner

Versus

Province of Sindh & others.....Respondents

C.P No. D-5382 of 2021

Thatta Cement Company Limited.....Petitioner

Versus

Province of Sindh & others.....Respondents

C.P No. D-5383 of 2021

Popular Cement (Pvt.) Limited.....Petitioner

Versus

Province of Sindh & others.....Respondents

C.P No. D-5384 of 2021

Lucky Cement Limited.....Petitioner

Versus

Province of Sindh & others.....Respondents

Rashid Anwer, Advocate, for the Petitioners. Salman Talibuddin, Advocate General and Sandip Mulani, Assistant Advocate General, for the Province of Sindh, along with Syed Sahib Bukhari, Law Officer Mines and Mineral Department, Govt. of Sindh and Rashid Ansari, Deputy Director, Mines and Mineral Department, Govt. of Sindh.

Date of hearing : 09.03.2022, 28.03.2022 and 29.09.2022

ORDER

YOUSUF ALI SAYEED, J. - The respective Petitioners are companies engaged in the manufacture of cement, holding mining leases granted by the Government of Sindh for the extraction of shale clay and limestone, thus profess to be aggrieved by a Notification dated 30.06.2021 issued by the Mines and Mineral Development Department (the "**Impugned Notification**") of the Government of Sindh under the Sindh Mining Concession Rules 2002 (the "**Rules**") promulgated in terms of the Regulation of Mines and Oil-fields and Mineral Development (Government Control) Act, 1948 (the "**Act**"), so as to increase the amount of royalty payable on account of those minerals.

2. The Act came into force as a Federal piece of legislation, with Section 2 thereof enabling the Central Government, as it was then known, to make rules for the grant of prospecting licenses and mining leases in respect of mines, gas fields and oil fields, and Section 4 according primacy to such rules over other enactments. The Act then came to be amended through President's Order No. 1 of 1964, with effect from 28.05.1964, so as to provide for the term "Central Government", as used in Sections 2, 3 and 5, to be replaced with "Appropriate Government", and Section 6 being added so as to define the latter term to mean the Central Government in matters relating to nuclear substances, oil fields and gas fields, and the Provincial Government in relation to all other mines and mineral development. As such, in the context of the mines and minerals within the territorial jurisdiction of this Province, the particular term connotes the Government of Sindh. For purpose of reference, Sections 2 and 4 of the Act are reproduced, as follows:

"**2. Power to make rules.--** It is hereby declared to be expedient in the public interest that the [appropriate Government] shall have the power to make rules to provide for all or any of the following matters, namely:-

(1) the manner in which, and the authority to whom, application for the grant or renewal of an exploration or prospecting licence, a mining lease or other mining concession shall be made, and the prescribing of the fees to be paid on such application;

(2) the conditions in accordance with which the grant or renewal of an exploration or prospecting licence, and mining lease or other mining concession may be made, and the prescribing of forms for the execution or renewal of such licence, lease, and concessions;

(3) the circumstances under which renewal of a licence, lease or concession as aforesaid may be refused, or any such licence, lease or concession whether granted or renewed may be revoked;

(4) the determination of the rates at which, and the conditions subject to which, royalties, rents and taxes shall be paid by licensees, lessees and grantees of mining concessions;

(5) the refinement of ores and mineral oils;

(6) the control of production, storage and distribution of minerals and mineral oils;

(7) the fixation of the prices at which minerals and mineral oils may be bought or sold; and

(8) any matter ancillary or incidental to the matters set out in the foregoing clauses of this section,

and the [appropriate Government] may, by notification in the official Gazette, make rules accordingly."

"**4. Effect of rules etc., inconsistent with other enactments.--** Any rule made under this Act, and any order made under any such rule, shall have effect notwithstanding anything inconsistent therewith contained in any enactments or in any instrument having effect by virtue of an enactment other than this act."

3. The Rules, as presently in force, thus came to be notified by the Government of Sindh pursuant to Section 2, with Rule 8 stipulating *inter alia* that "no person shall carry on exploration operations, mining operations or reconnaissance operations except under a mineral title or mineral permit granted by the licensing authority pursuant to these rules" and Rule 2 (gg) defining a "Mineral Title" to mean "a reconnaissance licence, an exploration licence, a mineral deposit retention license or a mining lease". Of the various categories of recognized mineral titles, that of Mining Leases is dealt with under Division V of Part III of the Rules, with Rule 47 delineating the rights of a leaseholder as follows:

> 47. Rights of Holder of Mining Lease — (1) Subject to these rules and the conditions of the lease, a mining lease shall confer on the lessee –
>
> (a) the exclusive right to carry on mining operations in the mining area in question in respect of a mineral to which the lease relates;
>
> (b) the right to—
>
> (i) carry on the mining area, in conjunction with mining operations referred to in paragraph (a), exploration operations in relation to the mineral;
>
> (ii) enter [and occupy] the land which comprises the mining area for the purpose of carrying on mining operations referred to in paragraph (a) and exploration operations referred to in sub paragraph (i) ;
>
> (c) the right to remove from the mining area the mineral from any place where it was found or mined in the course of mining operations referred to in paragraph (a), to any other place within or outside Sindh or, subject to such other permission as may be required under any relevant law, to any place outside Pakistan:
>
> (d) the right to take and use water on or flowing through such land for any purpose necessary for mining operations subject to, and in accordance with, the provisions of the relevant legislation relating to water but in the exercise of such right, the lease shall not• deprive any lands, villages, houses or watering of places for cattle, of a reasonable supply of water;

(e) the right to sell or otherwise dispose of the mineral subject to any conditions of the mining lease or mineral agreement relation to the satisfaction of the internal requirement of Pakistan; and

(f) the right, subject to sub-rule (2), to do all other things and carry on such other operations, including the erection or construction of ancillary works, as may be reasonably necessary for, or in connection with, the mining or exploration operations, and activities referred to in paragraph (a), (b), (c), or (e).

(2) The provisions of rule 16(2) (consent to erection or construction) shall apply with necessary modifications in relation to the lessee who wishes to erect or construct ancillary works under sub-rule (1) of this rule.

4. Part V of the Rules addresses the financial side, with Rules 95 to 100, incorrectly worded as they may be in certain respects, laying down the framework for the levy, payment and recovery of royalty, as follows:

95- Royalties Payable on Minerals — (1) Subject to this Part, the holder of a mineral title or mineral permit who has won or mined any mineral in the course of any exploration or mining operations carried in by the holder; shall be liable to pay to the Government, in respect of any such mineral disposed of by the holder, royalty determined in accordance with this Part.

(2) For the purpose of this Part any mineral is disposed if it is--

(a) sold, donated or bartered;

(b) appropriated to treatment or other processing without having been dealt with as provided in paragraph (a) prior to appropriation; or

(c) exported from as provided in Sindh without having been dealt with paragraph (a) or (b) prior to export.

96. Rate of Royalties- (1) Subject to this Part, royalty shall be charged on any mineral specified by the Government from time to time

(2) The existing rate of royalty on specified minerals in Sindh province is appended as Third Schedule.

97. Enhanced Royalty- Where pursuant to rule 9, a mineral agreement makes provision for the payment of royalty by the holder of a mineral title, at an enhanced rate or rates in respect of any mineral or group of minerals won, mined or found as provided in rule 95, the enhanced rate of royalty shall be determined and payable in accordance with the terms of the agreement, provided that the rate of royalty payable at any time shall not be less the rate specified in rule 96.

98. Payment of Royalty-(l) Royalty in respect of any mineral won, mine or found as provided in rule 95 and disposed of shall be payable not later than [30 days] after the end of the calendar in which the mineral is disposed of--

(2) Where the holder of a mineral title has failed to pay any, amount or royalty as required by sub-rule (1), a penalty calculated at the rate of [six][ten] percent per month on the amount or any part thereof from time to time remaining unpaid, shall be payable from the due date of payment until all 'outstanding amounts are paid.

(3) Where any outstanding amounts of royalty and applicable penalty remain unpaid for a period of four months from the due date of payment, the holder of the mineral title shall pay a further penalty of [two] per cent on the outstanding amount of the royalty and the applicable penalty.

(4) The holder of mineral title shall submit, in respect of ea month an in such form and detail as the licensing authority my determine a return showing the quantity and value of minerals produced and disposed of and the amount of royalty to be paid in "respect thereof for that month. [sic]

99. Reduction, Waiver or Deferment of Royalty. (I) Subject to sub-rule (20) the Government on the advice of the Department and with thee concurrence of the Department of Finance on application made in writing by the notice of a mining lease may be notice in writing in the holder.

a) reduce the rate of royalty on interest payable in terms of this part or

b) defer payment of any such royalty or interest
for such payment and in such conditions as may be deter mined by the Government and the specified in the notice or any refuse to so reduce or defer the royalty or interest payable.

(2) The government may reduce or defer the royalty or interest payable in accordance with sub rule(I) only when the holder of the mining lease has demonstrated to the specification of the Department and the Department of finance that in the absence of the reduction or defeat the mining operation would for economic reasons other wise permanent ally cease of the surrendered of an indefinite period. [sic]

100. Powers of licensing authority in case of failure to pay royalty.--- If the holder of a mineral title or a mineral permit referred to in rule 96 falls to pay any royalty payable by him in accordance with rule 98 or if applicable on or before such to which the payment of the royalty has been deferred under rule 99 the Licensing Authority may be notice in mining to the holder prohibit--

a) the removal of any mineral from the exploration area mining area retention area title and subject to the mining permit or in the case of the holder of an exploration permit from the place when the mineral is found won or mined.

(b) any dealing in connection with any mineral found won or mined from any such area land or place. until such time as the royalty has been paid or the payment has been reduced waved or deferred under rule 99

5. Whilst the Petitioners had been paying royalty on limestone and shale clay extracted in terms of their mining leases, in the wake of the Impugned Notification *inter alia* enhancing the royalty on shale clay from Rs.8/- to Rs. 100/- per ton and limestone from Rs.12/- to Rs.126/- per ton, the captioned Petitions have been preferred so as to assail the vires of Sections 2 and 4 of the Act as well as Rules 95 and 96 addressing the subject of royalty, with the Petitioners eliciting declarations to the effect that those provisions offend the Constitution and that the specified Rules are also repugnant to the parent statute, and it being sought that the Impugned Notification consequently be declared to be illegal and void *ab initio* and set aside.

6. Advancing his submissions, learned counsel for the Petitioners stated with reference to the judgment of the Honourable Supreme Court in the case of Federation of Pakistan through Secretary M/o Petroleum and Natural Resources and another v. Durrani Ceramics and another 2014 SCMR 1630 that all levies as could be imposed by government under a fiscal law were by their nature categorizable as either a 'tax' or a 'fee', with the primary difference being that a tax was meant to raise revenue whereas a fee was meant to serve as compensation on account of some costs incurred in providing a service. On that premise, it was contended that the royalty being imposed by the Provincial Government on the minerals extracted by the Petitioners under their mining leases was in nature of a tax, with reliance being placed on the judgment of the Supreme Court of India in the case reported as India Cement v. State of Tamil Nadu AIR 1990 SC 85 ("**India Cement**") and it being argued that such an imposition could not be made on the basis of the Rules as the power to determine and impose a levy in the nature of a tax could not be entrusted to the executive through delegated legislation. In that backdrop, it was argued that the levy of royalty in terms of Rules 95 and 96 was liable to be struck down as bad in law as there had been an unlawful delegation by Parliament to the Executive of the power to impose a tax; with no guidelines having been laid down as to how the Executive was to determine those rates.

7. In the alternative, it was argued that even if royalty was regarded to be a fee, the same necessarily had to be relatable to a service or facility provided/extended by the Executive and commensurate/reasonable, which was absent in the instant case. It was also contended that even if royalty were considered to be a rent or compensation in terms of the mining lease, the requirement of reasonableness would remain applicable so as to circumscribe and control the power of unilateral variation. It was argued that unfettered and

unstructured powers to determine the rate of royalty could not be delegated to the executive and the impugned provisions of the Act and Rules were liable to be struck down on that score as well. Reliance was placed on the judgments in the cases reported as Ayaz Textile Mills Ltd v. Federation of Pakistan through Secretary Commerce, and another PLD 1993 Lahore 194; Messrs. Shamim & Co v. Tehsil Municipal Administration, Multan City and 2 others 2004 YLR 366; Ittefaq Foundry v. Federation of Pakistan PLD 1990 Lahore 121; Waris Meah v. The State and another PLD 1957 SC. 157; Inamur Rahman v. Federation of Pakistan and others 1992 SCMR 563; Umar Ahmed Ghumman v. Government of Pakistan and others PLD 2002 Lahore 521 and Chairman, Regional Transport Authority, Rawalpindi v. Pakistan Mutual Insurance Company Limited, Rawalpindi PLD 1991 SC 14.

8. Furthermore, it was submitted that the enhancement of royalty brought about in the instant case through the Impugned Notification was so exorbitant as to threaten the viability of the cement industry and the approval of the Provincial Cabinet for such enhancement had been obtained at a Meeting held on 04.06.2021 on the basis of misinformation, in as much as to the Cabinet had been informed that the last enhancement had taken place as far back as the year 2002, whereas the rates were revised from time to time, with the most recent enhancement having taken place in 2017. Hence the Cabinet decision could not be regarded as valid, since as per the Mustafa *Impex* decision any consent of the Cabinet based on a manifestly incorrect factual foundation was no consent in the eye of law, hence the purported approval to increase the rates of royalty was a nullity and liable to be set aside. Reference was made to the Minutes of the relevant Cabinet meeting, as filed by the Government with its comments, which *inter alia* read as follows:

"2.13 "[Secretary, Mines & Mineral Development] submitted the Department's Resource Mobilization Proposal for FY 2021-2022 in which the following issues were highlighted:

…c) The Resource Mobilisation Proposal, when adopted, will have a cumulative impact of an additional amount of Rs.1626.02 million in the form of earnings for the Sindh Government.

2.14 He submitted that the rates of Application Fees, Annual Rents and Royalties on minerals in the Sindh were last revised in the year 2002 and no revision of rates has been made since then. Currently these rates are even not at par with rates being charged by other provinces and, therefore, need to be rationalized.

2.15 "The Cabinet deliberated upon the enhanced rates of Limestone as proposed by the Secretary It was informed that limestone is the main ingredient in the cement industry and the new rate would generate substantial amount of revenue for the Government.

9. It was submitted that the Minutes reflected that the primary justification for the increase was that it would generate a substantial amount of revenue and it was argued that royalty was imposed as a tax. It was submitted that since that was the case, the power could not be delegated to the Executive but rather had to be introduced and/or altered vide an Act of Parliament. Reference was made to the judgment of the Honorable Supreme Court in the case reported as Engineer Iqbal Zafar Jhagra case 2013 SCMR 1337, where it was held as follows:

"20. It is well settled proposition that levy of tax for the purposes of Federation is not permissible except by or under the authority of Act of Majlis-e-Shoora (Parliament). Reference in this behalf is made to the case of Cynamid Pakistan v Collector of Customs (PLD 2005 SC 495), wherein it has also been held that such legislation powers cannot be delegated to the Executive Authorities.

29.... But in no case, authority to levy tax for the Federation is to be delegated to the Government/Executive."

10. Conversely, it was argued on behalf of the Government that although a condition of payment of royalty is prescribed by the rules framed by the Government to regulate the grant of mining leases, the payment of royalty formed a condition of the mining leases and essentially arose out of the contract between the grantor of the lease and the lessee, hence could not be termed a tax. Reliance was placed on the judgment of the High Courts of Punjab and Haryana and of Rajasthan in the cases reported as Shanthi Saroop Sharma v. State of Punjab AIR 1969 P&H 79 and Atma Ram Bilochi v. State of Rajasthan AIR 1981 Rajasthan 197, as well as a judgment of the Lahore High Court in the case reported as Shaukat Ali v. Government of Punjab & Ors PLD 1992 Lahore 277.

11. It was submitted that under Section 2 of the Act, the legislature had competently delegated powers to the Provincial Government to frame rules for "the determination of rates at which, and the conditions subject to which, royalties, rents and taxes shall be paid by the licensees, lessees and grantees of mining concessions", hence the Government was competent to frame the Rules for the determination of rates of royalties and revise such rates from time to time in accordance with Rules 95 and 96.

12. It was submitted that proposal for revision of rates came up before the Price Fixation Committee in its meeting held under the chairmanship of DG Mines and Minerals on 13 May 2020, where it was observed that the rates had lastly been revised on 12 June 2008 and the rates of royalty being charged in Sindh were lower as compared to the other Provinces of Pakistan. After working out a formula, the Committee recommended that the new rates for limestone and shale clay should be Rs. 126 and Rs. 100 per ton respectively. The recommendations were then forwarded to the Cabinet, and were considered and approved after due deliberation at the Cabinet meeting held on 04.06.2021, with the Impugned

Notification then having been issued accordingly. It was submitted that it was incorrect to say that the Cabinet had granted its approval on the basis of misinformation, as it had been stated in the recommendations that the rates were lastly revised in the year 2008 and the mention of the year 2002 in the minutes of the Cabinet meeting was an inadvertent mistake.

13. Having considered the arguments advanced in the matter in light of the material placed on record, it is apparent that the crux of the Petitioners case is that royalty is a tax, hence constitutes a subject that cannot be delegated to the Executive, with the delegation undertaken through the Rules being unlawful on that score. As the argument is predicated on the assertion that royalty constitutes a tax, it is necessary to firstly examine and address that question, for which we turn to the case of India Cement, as cited on behalf of the Petitioners in that regard.

14. The question that came up before a seven-member bench of the Indian Supreme Court in that case was whether the levy of cess on royalty fell within the competence of the State Legislature, with it being argued before the Court that the levy was nothing but a tax on royalty and was therefore ultra vires the State Legislature. In that context, whilst observing that the Rajasthan, Punjab, Gujarat and Orissa High Courts had held in various cases decided by them that royalty was not a tax, the Court held as follows:-

> "**34.** In the aforesaid view of the matter, we are of the opinion that royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature because Section 9 of the Central Act covers the field and the State Legislature is denuded of its competence under Entry 23 of list II. In any event, we are of the opinion that cess on royalty cannot be sustained under Entry 49 of list II as being a tax on land. Royalty on mineral rights is not a tax on land but a payment for the user of land."

15. While it was contended on behalf of the Petitioners that the question as to the nature of royalty and its status as a tax stood answered in their favour through the opinion expressed in India Cement, upon our delving further into the case law on the subject it has come to the fore that in the case reported as The State of West Bengal vs. Kesoram Industries Ltd and Ors (2004)10 SCC 201 "**Kesoram Industries**"), the judgment in India Cement was subsequently considered by a five-member bench of the Indian Supreme Court to suffer from a typographical error, with the Court then going on in the case of Mineral Area Development Authority and Ors. Vs. Steel Authority of India and Ors (2011) 4SCC 450 to grant leave and refer the matter to a larger Bench of Nine Judges to consider certain questions, including:

> "1. Whether "royalty" determined under Sections 9/15(3) of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957, as amended) is in the nature of tax?
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> 2. ...
>
> 3. ...
>
> 4. ...
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> 5. Whether the majority decision in State of WB v. Kesoram Industries Ltd, could be read as departing from the law laid down in the seven Judge Bench decision in India Cement Ltd. v. State of TN?

16. Under the given circumstances, it would be expedient to reproduce certain pertinent paragraphs of the judgment in Kesoram Industries regarding the perceived conflict in India Cement, with it being observed that as royalty is income and a State Legislature is not competent to impose a tax thereon, that single ground was enough to have struck down the levy of cess with nothing more having been needed. Those paragraphs read as follows:

"**The Conflict - a cautious evaluation of "India Cement"**

51. We will now refer to and deal with those cases which have led to the three learned Judges of this Court, placing the matter for consideration by a Constitution Bench. We would refer to the cases mentioned in the order of reference and also to those cases which were heavily relied upon on behalf of the respondents, disputing the validity of the impugned tax. Immediately, we take up *India Cement.*

52. In *India Cement Ltd.* v. *State of TN*, what was impugned was a levy of cess on royalty and the question was, whether such cess on royalty is within the competence of the State Legislature. The appellant was required to pay, by the Tamil Nadu Panchayats Act, 1958, local cess at the rate of 45 paise per rupee of the royalty already being paid. The question formulated by the Court, as arising for decision was: is cess on royalty a demand of land revenue or additional royalty? The Court found that the royalty was payable by the appellant as prescribed under the lease deed. The rates of the royalty were fixed under the Mines and Minerals (Regulation and Development) Act, 1957, which is a Central Act, passed under Entry 54 in List I, by which the control of mines and minerals has been taken over by the Central Government. The State Legislature sought to justify and sustain the levy by reference to Entries 49, 50 or 45 in List II. Cess is a tax and is generally used when the levy is for some special administrative expense, suggested by the name of the cess, such as health cess, education cess, road cess etc. This is a well-settled position of law. The levy was sought to be justified under Entry 45 in List II by including it within the meaning of land revenue, and in the alternative under Entry 49 in List II as tax on lands. The challenge to the constitutional validity of the levy was upheld. We would briefly state the reasoning which prevailed with the learned Judges.

53. G.L. Oza, J. delivered a separate concurring opinion. The majority opinion expressed through Sabyasachi Mukharji, J. (as His Lordship then was), first clarified the distinction between "royalty" and "land revenue". "Land revenue" is connotative of the share in the produce of land which the king or the Government is entitled to receive. "Royalty" is a charge payable on the extraction of minerals from the land. A cess on royalty cannot, therefore, be called additional land revenue and as such the State was disabled from imposing tax on royalty. There is a clear distinction between "tax directly on land" and "tax on income arising from land". Royalty is indirectly connected with land and a cess on royalty cannot be called a tax directly on land as a unit. The levy could also not be sustained under Entry 50 in List II which deals with

taxes on mineral rights subject to limitation imposed by Parliament relating to mineral development. Assuming that the tax in pith and substance fell under Entry 50 in List II, it would be controlled by a legislation under Entry 54 in List I.

54. A Division Bench decision of Mysore High Court in *Laxminarayana Mining Co., v. Taluk Development Board* was cited with approval in *India Cement*. The Mysore High Court struck down as violative of MMDR Act, 1957 a licence fee on mining manganese or iron ore etc. imposed by a State Legislation. A perusal of the judgment of the Mysore High Court shows that the impost was by way of licence fee on the mining of certain minerals. Regulation and development of mines and minerals were undertaken by the Central Legislation and therefore the power of the State Legislature under Entries 23 and 52 in List-II got denuded in the field of regulation and development covered by the Central Legislation. The Division Bench vide AIR p. 301, para 6 held:

> "It is, therefore, clear that to the extent the Central Act makes provision regarding the regulation and development of minerals, the powers of the State Legislatures under Entry 23 of List II stand curtailed."
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> (emphasis supplied)

The State Government had sought to defend the licence fee on the ground that it was in the nature of a tax and not a licence fee. This plea has been specifically noted by the High Court and dealt with. However, what is significant to note is the revelation, made by careful reading of the judgment, that provision for licence fee was made in the Central Legislation and licence fee was sought to be imposed by the State too. In fact, the licence fee was a step trenching upon the field of regulation and therefore was liable to be struck down on this ground alone. Yet another reasoning which prevailed with the High Court was that Section 143 of the State Act, which was not inconsistent with the Central Act, was relied on by the State Government as conferring power on it to levy the impugned licence fee. On that plea the High Court formed an opinion that on the framing of Section 143 of the State Act it did not in express terms authorize a levy of fee or tax. The High Court observed: (AIR p. 306, para 15)

> "It (Section 143) cannot also be construed as conferring such a power on the respondents to levy a tax or fee on mining, in view of the well-settled and statutory construction that a Court construing a provision of law must presume that the intention of the authority in making it was not to exceed its power but to enact it validly".

The ratio of the decision of the Mysore High Court is that provision for licenses and license fees, operating in the field of regulation of mines and minerals is not available to be made by State legislation – in view of the declaration in terms of Entry 54 in List I.

55. In our view, the decision by the Mysore High Court cannot be read so widely as laying down the law that the Union's power to regulate and control results in depriving the States of their power to levy tax or fee within their legislative competence without trenching upon the field of regulation and control. There is a distinction between power to regulate and control and power to tax, the two being distinct and that difference has not been kept in view by the Mysore High Court.

(A diversion from the main issue) Royalty, if tax?

56. We would like to avail this opportunity for pointing out an error, attributable either to a stenographer's devil or to sheer inadvertence, having crept into the majority judgment in *India Cement Ltd. case*. The error is apparent and only needs a careful reading to detect. We feel constrained – rather duty-bound – to say so, lest a reading of the judgment containing such an error – just an error of one word – should continue to cause the likely embarrassment and have adverse effect on the subsequent judicial pronouncements which would follow *India Cement Ltd. case*, feeling bound and rightly, by the said judgment having the force of pronouncement by a seven-Judges Bench. Para 34 of the Report reads as under: (SCC p.30).

> "34. In the aforesaid view of the matter, we are of the opinion that royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State legislature because Section 9 of the Central Act covers the field and the State legislature is denuded of its competence under Entry 23 of List II. In any event, we are of the opinion that cess on royalty cannot be sustained under Entry 49 of List II as being a tax on land. *Royalty on mineral rights is not a tax on land* but a payment for the user of land."
>
> (underlining by us)

57. In the first sentence the word "royalty" occurring in the expression – "royalty is a tax", is clearly an error. What the majority wished to say, and has in fact said, is "cess on royalty is a tax". The correct words to be printed in the judgment should have been "cess on royalty" in place of "royalty" only. The words "cess on" appear to have been inadvertently or erroneously omitted while typing the text of judgment. This is clear from reading the judgment in its entirety. Vide paras

22 and 31, which precede para 34 above said, Their Lordships have held that "royalty" is not a tax. Even the last line of para 34 records "royalty on mineral rights is not a tax on land but a payment for the user of land". The very first sentence of the para records in quick succession ".....as such a cess on royalty being a tax on royalty, is beyond the competence of the State legislature....". What their Lordships have intended to record is ".....that cess on royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature.....". That makes correct and sensible reading. A doubtful expression occurring in a judgment, apparently by mistake or inadvertence, ought to be read by assuming that the Court had intended to say only that which is correct according to the settled position of law, and the apparent error should be ignored, far from making any capital out of it, giving way to the correct expression which ought to be implied or necessarily read in the context, also having regard to what has been said a little before and a little after. No learned Judge would consciously author a judgment which is self-inconsistent or incorporates passages repugnant to each other. Vide para 22, Their Lordships have clearly held that there is no entry in List II which enables the State to impose a tax on royalty and, therefore, the State was incompetent to impose such a tax (cess). The cess which has an incidence of an additional charge on royalty and not a tax on land, cannot apparently be justified as falling under Entry 49 in List II.

58. It is of significance for the issue before us, to determine the nature of royalty and whether it is a tax, and if not, then, what it is. Until the pronouncement of this Court in *India Cement*, it has been the uniform and unanimous judicial opinion that royalty is not a tax.

59. First we will refer to certain dictionaries oft-cited in courts of law: Words and Phrases, Permanent Edn (Vol.37-A, p. 597):

> " 'Royalty' is the share of the produce reserved to owner for permitting another to exploit and use property. The word 'royalty' means compensation paid to landlord by occupier of land for species of occupation allowed by contract between them. 'Royalty' is a share of the product or profit (as of a mine, forest, etc.) reserved by the owner for permitting another to use his property."

Stroud's Judicial Dictionary of Words and Phrases (6th Edn, 2000, Vol.3, p. 2341):

"The word 'royalties' signifies, in mining leases, that part of the reddendum which is variable, and depends upon the quantity of minerals gotten or the agreed payment to a patentee on every article made according to the patent. Rights or privileges for which remuneration is payable in the form of a royalty".

Words and Phrases, Legally Defined (3rd Edn, 1990, Vol.4, p. 112):

"A royalty, in the sense in which the word is used in connection with mining leases, is a payment to the lessor proportionate to the amount of the demised mineral worked within a specified period".

Wharton's Law Lexicon (14th Edn, p. 893):

"Royalty. – Payment to a patentee by agreement on every article made according to his patent; or to an author by a publisher on every copy of his book sold; or to the owner of minerals for the right of working the same on every ton or other weight raised."

Mozley & Whiteley's Law Dictionary (11th Edn, 1993, p. 243):

"A pro rata payment to a grantor or lessor, on the working of the property leased, or otherwise on the profits of the grant of lease. The word is especially used in reference to mines, patents and copyrights."

Prem's Judicial Dictionary (1992, Vol.2, p. 1458):

"Royalties are payments which the Government may demand for the appropriation of minerals, timber or other property belonging to the Government. Two important features of royalty have to be noticed, they are, that the payment made for the privilege of removing the articles is in proportion to the quantity removed, and the basis of the payment is an agreement."

Black's Law Dictionary (7th Edn, p.1330):

"Royalty – A share of the product or profit from real property, reserved by the grantor of a mineral lease, in exchange for the lessee's right to mine or drill on the land.

Mineral royalty: - A right to a share of income from mineral production."

60. In *D.K. Trivedi & Sons v. State of Gujarat*, a Bench of two learned Judges of this Court dealt with "rent", "royalty" and "dead rent" and held as follows: (SCC pp. 53-54, paras 38-39)

> "38. Rent is an integral part of the concept of a lease. It is the consideration moving from the lessee to the lessor for demise of the property to him.
>
> 39. In a mining lease the consideration usually moving from the lessee to the lessor is the rent of the area leased (often called surface rent), dead rent and royalty. Since the mining lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lease but also to extract minerals from the land and to appropriate them for his own use or benefit, in addition to the usual rent for the area demised, the lessee is required to pay a certain amount in respect of the minerals extracted proportionate to the quantity so extracted. Such payment is called "royalty". It may, however, be that the mine is not worked properly so as not to yield enough return to the lessor in the shape of royalty. In order to ensure for the lessor a regular income, regardless of whether the mine is worked or not, a fixed amount is provided to be paid to him by the lessee. This is called "dead rent". "Dead rent" is calculated on the basis of the area leased while royalty is calculated on the quantity of minerals extracted or removed. Thus, while dead rent is a fixed return to the lessor, royalty is a return which varies with the quantity of minerals extracted or removed. Since dead rent and royalty are both a return to the lessor in respect of the area leased, looked at from one point of view dead rent can be described as the minimum guaranteed amount of royalty payable to the lessor but calculated on the basis of the area leased, and not on the quantity of minerals extracted or removed."

In H.R.S. Murthy v. Collector of Chittor, too the Constitution Bench of this Court had defined Royalty to mean "the payment made for the materials or minerals won from the land".

61. The judicial opinion as prevailing amongst the High Courts may be noticed. A Full Bench of the High Court of Orissa held in *Laxmi Narayan Agarwalla v. State of Orissa*, (AIR p. 224, para-12) "[R]oyalty is the payment made for the minerals extracted. It is not tax". In *Surajdin Laxmanlal v. State of M.P., Nagpur* a Division Bench of the High Court of Madhya Pradesh referred to the *Wharton's Law Lexicon and Mozley & Whiteley's Law Dictionary* and said (at AIR p. 130 para-7), "royalties are payments which the Government may

demand for the appropriation of minerals, timber or other property belonging to the Government". The High Court opined that there are two important features of royalty: (i) the payment is in proportion to the quantity removed; and (ii) the basis of the payment is an agreement.

62. Drawing a distinction between "royalty" and "tax", a Division Bench of the High Court of Punjab and Haryana held in Dr. Shanti Saroop Sharma (Dr.) v. State of Punjab as under (AIR p. 90, para-45).

> "If a person is merely in occupation of land which contains minor minerals, he is not liable to pay any royalty, but it is only when he holds a mining lease and by virtue of that extracts one or more minor minerals that he is called upon to pay royalty to the Government where the lease is in respect of the land in which minor minerals vest in the Government. Royalty thus has its basis in the contract…. (for) payment to the owner of the minerals for the privilege of extracting the minor minerals computed on the basis of the quantity actually extracted and removed from the leased area. It is more akin to rent or compensation payable to an owner by the occupier or lessee of land for its use or exploitation of the resources contained therein. Merely because the provision with regard to royalty is made by virtue of the rules relating to the regulation of the mining leases and a uniform rate is prescribed, it does not follow that it is a compulsory exaction in the nature of tax or impost."

63. A Division Bench of Gujarat High Court in *Saurashtra Cement & Chemical Industries Ltd. v. Union of India* emphatically said: (AIR p. 184, para 7)

> Royalty may not be a fee but it is not a tax. It is a payment for the mineral which is removed or consumed by the holder of the mining lease. The minerals themselves, - the property beneath the soil - belong to the Union. When the holder of a mining lease removes these minerals or consumes them, he can do so only on payment of its price or value. Therefore, royalty is a share which the Union claims in the minerals which have been won from the soil by the lessee and which otherwise belong to it. Royalty is a share in such minerals and not a tax in the form of a compulsory exaction. It is not compulsory because anyone who applies for a mining lease to win minerals for being removed or consumed must pay its price. If he does not want to pay the price, he may not apply for a mining lease. Royalty which is a share of the owner of the minerals -

> the Union – won by the lessee from the soil with the authority of the Union can never be said to be an imposition on the holder of a mining lease.

64. We need not further multiply the authorities. Suffice it to say that until the pronouncement in *India Cement*, nobody doubted the correctness of "royalty" not being a tax.

65. Such has been the position even subsequent to the pronouncement in *India Cement.*

66. In *Inderjeet Singh Sial v. Karam Chand Thapar* a Bench of two learned judges held that: (SCC p.168, para 2).

> In its primary and natural sense "royalty", in the legal world, is known as the equivalent or translation of *jura regalia or jura regia*. Royal rights and prerogatives of a sovereign are covered thereunder. In its secondary sense the word "royalty" would signify, as in mining leases, that part of the reddendum, variable though, payable in cash or kind, for rights and privileges obtained. It is found in the clause of the deed by which the grantor reserves something to himself out of that which he grants. It may even be a clause reserving rent in a lease, whereby the lessor reserves something for himself out of that which he grants."

67. In *Ajit Singh v. Union of India* another Bench of two learned Judges held that the grant of mining lease involves grant of a privilege by the State. In both these decisions *India Cement* is not noticed.

68. In *Quarry Owners' Assn v. State of Bihar* a Bench of two learned Judges was faced with a submission, based on *India Cement* and subsequent decisions following it, that royalty is a tax. The learned Judges found it difficult to accept the concept but tried to wriggle out of the situation by observing: (SCC pp. 683-84, para 34)

> "….royalty includes the price for the consideration of parting with the right and privilege of the owner, namely, the State Government who owns the mineral. In other words, the royalty/dead rent, which a lessee or licensee pays, includes the price of the minerals which are 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.

69. In *India Cement* (vide para 31, SCC) decisions of four High Courts holding "royalty is not tax" have been noted without any adverse comment. Rather, the view seems to have been noted with tacit approval. Earlier (vide para 21, SCC) the connotative meaning of royalty being "share in the produce of land" has been noted. But for the first sentence (in para 34, SCC) which we find to be an apparent error, nowhere else has the majority judgment held royalty to be a tax.

70. How the above-noted inadvertent error in *India Cement* has resulted into throwing on the loop line the movement of later case-law on this point may be noticed. In *State of M.P. v. Mahalaxmi Fabric Mills Ltd.* (decision by a Bench of three learned Judges) and *Saurashtra Cement and Chemicals Industries Ltd. V. Union of India* (decision by a Bench of two learned Judges) para 34 (of SCC) in *India Cement* has been quoted verbatim and dealt with. In *Mahalaxmi Fabric Mills Ltd. case* the Court noticed several dictionaries defining royalty and also the decisions of High Courts available and stated that traditionally speaking royalty is an amount which is paid under contract of lease by the lessee to the lessor, namely, the State Governments concerned and it is commensurate with the quality of minerals extracted. But then (vide para 12), the Court felt bound by the view taken in *India Cement*, reiterated in *Orissa Cement*, to hold that royalty is a tax. The point that there was apparently a "typographical error" in para 34 in *India Cement* was specifically raised but was rejected. In *Saurashtra Cement and Chemicals Industries* too the Court felt itself bound by the decision in *Mahalaxmi Fabric Mills Ltd.* backed by *India Cement*, and therefore held royalty to be tax.

71. We have clearly pointed out the said error, as we are fully convinced in that regard and feel ourselves obliged constitutionally, legally and morally to do so, lest the said error should cause any further harm to the trend of jurisprudential thought centering around the meaning of "royalty". We hold that royalty is not tax. Royalty is paid to the owner of land who may be a private person and may not necessarily be a State. A private person owning the land is entitled to charge royalty but not tax. The lessor receives royalty as his income and for the lessee the royalty paid is an expenditure incurred. Royalty cannot be tax. We declare that even in *India Cement* it was not the finding of the Court that royalty is a tax. A statement caused by an apparent typographical or inadvertent error in a judgment of the Court should not be misunderstood as declaration of such law by the Court. We also record our express dissent with that part of the judgment in *Mahalaxmi Fabric Mills Ltd.* which says (vide para 12 of SSC report) that there was no "typographical error" in *India Cement* and that the said conclusion that royalty

is a tax logically flew from the earlier paragraphs of the judgment."

17. As best as we can understand, the judgment of the Nine Member Bench in the Mineral Area Development Authority case is still awaited, and under such circumstances, where the judgment in India Cement remains under a cloud, we are not inclined to adopt the view taken in that matter.

18. On the contrary, considering the corpus of case law and other material available on the subject of royalty, whether as cited by the Respondents or referred to in Kesoram Industries, we are of the considered opinion that the extraction and removal of minerals is essentially a right of enjoyment of immovable property conferred by the lease deed and is in the nature of a *profit a prendre*, with royalty being the amount charged for the transfer of the right to extract the mineral resource, thus constituting payment made in consideration of the extraction and removal of those minerals. Indeed, a lease of a mine to be worked by the lessee usually itself sets out the conditions as to the amount and character of work to be done and the compensation reserved to the lessor, either in the form of a fixed rent or a royalty on the tonnage of minerals mined, and the uniform lease deeds placed on record in respect of the various mining leases of the Petitioners contain a standardized clause in that respect, envisaging the payment of royalty and the aspect of enhancement, in stipulating that:

> "The Lessee will pay Royalty @ the rate of Rs._____/- per ton on the mineral produce and carried away, not later than 30 days after the end of calendar month in which the material disposed of on monthly basis. This rate of royalty subject to revision by the Government from time to time. The amount of royalty will be deposited in to any treasury of the Sindh Government under the head of account "C-03808 OTHER RECEIPT UNDER THE MINES & OIL FIELDS & MINERAL DEVELOPMENT" and the original receipt of treasury challan sent to Directorate under intimation to its concerned regional office. If the royalty is not paid within the grace period of one month the penalty under the rule 98 of Sindh Mining Concession Rule will be charged"

19. The Rules thus treat royalty as a payment for the minerals that are removed or consumed by the holder of a mining lease, and when examining that construct it is to be borne in mind that the holder of a mining lease cannot claim that the minerals lying beneath the surface of the leased land are his own property merely by virtue of the mining lease. Basically and fundamentally, the minerals are the property of the Province, and whilst the holder of a mining lease wins the minerals subject to the lease through the labour and the enterprise expended in bringing them to the surface, he is required to share the spoils with the owner of those minerals in the shape of royalty. Therefore, in our opinion, royalty is a share in such minerals and not a tax in the form of a compulsory exaction or a fee as that term is understood, but is a payment made in consideration of the minerals removed or consumed by the holder of the mining lease, as per the mining lease and subject to the Act and Rules.

20. That being said, we would turn to the question of whether the Rules suffer from arbitrariness in the sense of allowing an unfettered and excessive discretion to the executive to determine and enhance the rates of royalty. As can be seen, Section 2(4) of the Act itself envisages the formulation of rules for the payment of royalty, with Rules 95 and 96 advancing that very purpose, and the Petitioners having specifically accepted in terms of the clause of the standardized mining lease reproduced herein above that the rate of royalty would be subject to revision by the Government from time to time. While that particular clause does not contain a reference to the Rules, yet another clause of the mining leases specifically provides that:

> "The Lessee shall observe and abide by all the provisions of the Sindh Mining Concession Rules-2002 including schedule there to (related to large scale mining) in force or as may be amended or revised from time to time."

Thus, there can be no cavil that those Rules apparently provide a supporting framework for the basic obligation arising under the mining lease and advance an object set out in the Act.

21. In relation to the argument of excessive delegation, reference may be made to the judgment in the case reported as Shaukat Ali v. Govt. of Punjab through Secretary, Industries and Mineral Department and 8 others, PLD 1992 Lahore 277, being a matter where the vires of the Punjab Minor Minerals Concession Rules, 1990 and a Notification imposing certain conditions for participation in the auctions of minor minerals being held at various places by the Government of the Punjab were impugned on the ground that those rules suffered from vice of excessive delegation. The relevant paragraphs of that judgment reflect the argument advanced in that regard as well the finding of the Court read as follows:

> "8. The learned counsel for the petitioner has maintained that as no guidelines have been provided in the section (2) for the Government while framing rules, the provisions of section 2 as also the rules framed thereunder are hit by the principle of excessive delegation as it is well settled that a, legislature cannot abdicate its authority in favour of the Executive Government.
>
> This contention of the learned counsel is not well founded.
>
> 9. A reading of section 2 of the Act would show that it authorises the appropriate Government to frame rules to provide for all or any of the matters specified therein. Some of the matters so specified or the manner in which; and the authority to whom applications for the grant or renewal of an exploration or prospecting licence, a mining lease or other mining concession are be made; and the prescribing of the fees to be paid on such applications. Similarly, clauses (2) and (3) of rule 2 authorise the appropriated Government to prescribe by rules the conditions in accordance with which the lease or licence, as the case may be, are to be granted or refused.

> 10. A reference to the preamble of the Act would show that the object in promulgating the same was to provide for matters connected with Regulation of Mines and Oilfields and Mineral Development under Government Control. The power vested in Government under section 2 of the Act is regulatory in character. It is in fulfillment of that objective that Punjab Mining Concession Rules, 1990, have been framed. These rules lay down the necessary details and the manner in which the application for grant of lease and licence is to make the authority to whom the application is to be addressed, the necessary documents which must be filed along with the application and the procedure for deciding the application and the conditions subject to which the lease/ licence is to be granted.
>
> 11. It is by now well settled that in the modern day complex society, it is impossible for the legislature to provide for each and every eventuality which may arise and it may competently delegate some of its powers to another or a subordinate authority."

22. Reference may also be made to the case of Messrs. Pioneer Cement Ltd v. Secretary, Industries and Mineral Development Department, Lahore and others 2004 SCMR 576, where a judgment of the Lahore High Court dismissing a petition challenging the vires of Rule 50(2) of the erstwhile Punjab Mining Concession Rules, 1990, came to be assailed before the Honourable Supreme Court, with the leave refusing Order *inter alia* reading as follows:

> "2. The petitioner-Company which runs a cement manufacturing plant holds the lease from the Directorate of Industries and Mineral Development, Punjab, for mining limestone. The petitioner-Company was required to pay royalty to the respondent-Government initially at the rate of Rs.1.50 per ton which was increased to Rs.5 per ton in the year 1993 and was further increased to Rs.15 per ton in January, 1998. Having not paid the royalty in terms of the rate fixed in January, 1998, the petitioner was directed to pay the differential amount of money who challenged the said order before the Secretary by way of an appeal which was dismissed on 22.9.1999. The petitioner then approached the Lahore High Court through Writ Petition No.3772 of 2000 which was dismissed on 6.3.2000 as having been withdrawn. The petitioner thereafter filed a fresh petition in the Lahore High Court bearing Writ Petition No.7171 of 2000

questioning the vires of Rule 50(2) of the Punjab Mining Concession Rules, 1990 which petition was dismissed through the impugned judgment. Hence this petition.

3. The Lahore High Court had dismissed the petitioner's above mentioned writ petition after it had found that Section 2 of the Regulation of Mines and Oilfields and Mineral Development (Government Control) Act of 1948 did authorize the Government to frame rules and Section 3 of the said Act further authorized the making of rules envisaging imposition of penalty. The learned High Court had also noticed that Paras. XIV and XXII of the contract of lease obliged the petitioner-Company to abide by all the provisions of Punjab Mining Concession Rules, 1986 and was obliged to pay all taxes, rates, etc. which were required to be paid to the Government.

4. We have heard the learned counsel for the petitioner at some length who has not been able to point out any illegality in the impugned judgment of the Lahore High Court. This petition is, therefore, dismissed. Leave refused."

23. Looking to the question raised as to the reasonableness of the Governments conduct vis-à-vis the enhancement of royalty, it merits consideration that the minutes of the meeting of the Rate Fixation Committee reflects that a rational process was adopted in considering the subject of enhancement of royalty in as much as a comparative analysis was made between the rates or royalty of various major minerals prevailing in this Province as compared to the other Provinces of the country, with it coming to the fore that the domestic rates of shale clay and limestone were significantly lower, albeit the quality of those minerals being either the same or of higher grade than what was found elsewhere, and the rates that were then proposed by way of enhancement were either commensurate to or even lower than the rates prevailing in the other Provinces. Under the circumstances, it cannot be said that the exercise was carried out capriciously or that the enhancement was made arbitrarily so as to pluck certain figures out of thin air.

24. As to the contention that the Cabinet Decision approving the enhancement of royalty flowed on the basis of misinformation, so as to render the same unsound and unreasonable, whilst this was not a ground advanced on behalf of the Petitioners at the initial stage, but came to be raised at the time of arguments on the basis of the Minutes of the Cabinet Meeting at which approval was accorded for enhancement in the rates of royalty. Whilst the case of the Petitioners in that regard is that those Minutes reflect that the Cabinet was wrongly given to understand that the last enhancement had been made as far back as the year 2002 and had been swayed in its decision by such incorrect information, it was pointed out on behalf of the Respondents that prior to the summary being put up before the Provincial Cabinet for consideration, the matter of enhancement of rates and royalties had been looked into by the notified Rate Fixation Committee at its meeting held on 13.05.2020, and the recommendations of that Committee had then been placed before the Provincial Cabinet for consideration and approval. Those recommendations inter alia state as follows:

> 6. The Director General Mines and Mineral Development further stated that the Rule-96 (1) of Sindh Mining Concession Rules-2002, reads as "Royalty shall be charged on any mineral specifies by the Government from time to time". This reflects that the Government may revise the rates of royalty from time to time (Annexure-I). The rates of royalty on excavated mineral were specified in the third & fourth schedule of Sindh Mining Concession Rules-2002. Copies of the schedules are enclosed as (Annexures-J&K). On 12th June-2008 rates of royalty on some minerals were revised, in which rate of royalty on mineral limestone for industrial purpose / cement factories was raised from Rs.9/- per ton to Rs.12/- per ton. Apart from that, rates of royalty on limestone, ordinary Sand, Reti / Bajri, Gravel, Mouram, Ordinary Stone, Aggregate Stone for small scale mining were raised from Rs.4/- per ton to Rs.6/- per ton. Copy of Notification is enclosed as (Annexure-L).

> 8. Thereafter, on 20th March 2017 rates of royalty on small scale mining were raised, in which rate of royalty on Reti / Bajri, Gravel, Lime Stone, Ordinary Sand, Mouram, Silica Sand were enhanced from Rs.6/- per ton to Rs.8/- per ton, beside the rate of royalty on Fullers Earth from Rs.8/- per ton to Rs.16/- per ton, Lake Salt and Laterite from Rs.6/- per ton to Rs.12/- per ton, Clay, Shale Clay, Bentonic Clay from Rs.4/- per ton to Rs.8/- per ton were increased. Copy of notification referred is already enclosed as (Annexure-M). Further the meeting was informed that rates of royalty collected on excavated minerals in Punjab and Baluchistan Provinces are quiet high as compared to Sindh Province. Copy of the notifications dated 28th June, 2013 and 20th November 2015 and 16th July 2019 issued by Mines and Mineral Development, Government of Punjab and Copy of notification dated 3rd March, 2020 issued by Mines and Mineral Development Department, Government of Baluchistan, as well as copy of notification dated 18th July, 2014 issued by Mines and Mineral Development Department, Government of Khyber Pakhtunkhaw were seen by the members of the committee (Annexures N, O & P). [sic]

25. From a reading of the aforementioned excerpts of the recommendations of the Rate Fixation Committee, it is apparent that the Cabinet was not misinformed, as alleged, and the discrepant noting pointed out by the Petitioners in the minutes of the Cabinet meeting does not of itself make out a cogent case for the matter to be reconsidered.

26. Turning lastly to the contention that the enhancement of royalty brought about through the Impugned Notification is so exorbitant as to threaten the very viability of the cement industry, if that be so, such a concern would fall within the parameters of Rule 99 and the Petitioners may and ought to firstly make a representation to the competent authority in that regard in terms of that Rule.

27. In view of the foregoing discussion, we find the Petitions to be bereft of force and dismiss the same accordingly.

Judge

Chief Justice

Karachi.
Dated: 17.10.2022