

553 Stat. Res. re. dis-approval of Cess and other Taxes on Minerals (Validation) Ordinance CHAITRA 10, 1914 (SAKA) and Cess and other Taxes on Minerals (Validation) Bill 554

The question is:

"That Clauses 5 to 35 and the schedule stand part of the Bill"

*The motion was adopted*

*Clause 5 to 35 and the Schedule were added to the Bill.*

MR. CHAIRMAN: The question is:

"That clause; the Enacting formula and the Long title stand part of the Bill."

*The motion was adopted.*

*Clause 1, the Enacting Formula and the Long Title were added to the Bill*

SHRI RAMESHWAR THAKUR: I beg to move:

"That the Bill be passed".

MR. CHAIRMAN: The question is:

"That the Bill be passed".

*The motion was adopted.*

16.47 hrs.

STATUTORY RESOLUTION  
RE-DISAPPROVAL OF THE CESS AND  
OTHER TAXES ON MINERALS  
(VALIDATION) ORDINANCE  
AND  
CESS AND OTHER TAXES ON  
MINERALS (VALIDATION) BILL.

SHRI GIRDHARI LAL  
BHARGAVA (Jaipur): Mr. Chairman, Sir, I  
beg to move:

"That this House disapproves of the

Cess and other Taxes on Minerals (Validation) Ordinance, 1992 (Ordinance No.7 of 1992) promulgated by the President on the 15th February, 1992"

Certain States have been imposing cess and other taxes on miners. This had been struck down by Courts including the Supreme Court of India in different cases. As a result of the judgement in these cases, the State Governments became liable to refund cess and other taxes collected by them.

[Translation]

The Supreme Court and several High Courts of India have given judgements to refund cess and other taxes collected by the State Governments. This ordinance has been promulgated to stop the act of refunding the money because the State Government have spent the amount on their developmental activities.

Madhya Pradesh has to refund Rs.91 crore and Orissa Rs.112 crore. How will they be able to refund it? The taxpayers are lakhs in number. Who will receive it? This is a problem before the Central Government.

This is a fact that Central Government is not going to be benefited by imposing the cess. The State Government have spent it and several State Government have appealed to the Central Government to pass a law so that they may not have to refund the money.

My Submission is that there were two cases, one of them was that of Messers Fero Alloys Corporation Orissa Udyog and second was Orissa cement Vs. Orissa State - A.I.R.1991-S C 818-55 and the second was Orissa Cement Vs. State of Orissa - A.I.R.1991 SC 1671-1771. I do not mean to say that the Government does not want to get the refund but the State Governments have requested you to do so. It is essential

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to accelerate the exploration programme of oil and Natural Gas in Western Rajasthan, the area which I represent. The Centre should give up its idea to take away minor minerals from the control of State Government. Minerals covered in this category include minerals like marble, granite and sandstone. The Central Government has made up its mind to have these also under its control whereas the State Government should have control over these. If the control shifts to the Central Government, the economy of Rajasthan which is a backward State will be shattered. It will adversely affect the people belonging to scheduled Castes and Scheduled Tribes and other backward classes who depend on mining of these minerals for their livelihood. The State Government has formulated policy for granting lease on minerals keeping this social commitment in view which too will be adversely affected. The Government is going to make this amendment only because the State Governments have spent the entire amount of the cess on their development activities and it is not possible to refund that amount.

On the other hand States are being put to economic loss by not revising royalty rates. There is a provision for revision of royalty rates after every four years, while the sources of the income of the Central Government like excise duty, income tax, custom duty etc. are revised every year, the royalty remain static for seven or eight years together. There is provision of tax on mining up to 20 per cent of the selling price, but the rates have been fixed between 2 to 10 per cent only. Thus the State Governments are being deprived of principal source of income. Government's intention is good. The Orissa and Madhya Pradesh Government are making this demand. There fund of money is possible. But the Central Government is of the view that

the State Government has spent the money and it is not being refunded. The amount obtained by way of royalty is spent on developmental activities. If the Government revises it immediately, the State Government will be able to undertake developmental works with the help of the amount obtained from increased royalty. So I support the motion to repeal this ordinance though your intention is good.

[English]

MR. CHAIRMAN : Motion moved:

"That this House disapproves of the cess and other taxes on Minerals (Validation) Ordinance, 1992 (Ordinance, No. 7 of 1992) promulgated by the President on the 15th February, 1992

[Translation]

THE MINISTER OF STATE OF THE  
MINISTRY OF MINES (SHRI BALRAM  
SINGH YADAV): I beg to move."

"That the Bill to validate the imposition and collection of cesses and certain other taxes on minerals under certain State laws, be taken into consideration."

Sir, with your permission, I would like to speak a few words while commending the Bill for consideration. The division of legislative powers between the Central Government and the State Government is governed by part II of the Constitution of India. In Article 246 of the Constitution a mention has been made of the Union List -1, State List-2 and Concurrent List-3. Entries in respect of them have been made according to the Seventh schedule. Under the entry 54 of the List-1 of the Constitution, the Central Government has been empowered to regulate mines and to develop minerals to the extent

such regulation and development under the control of the Union has been declared proper by Parliament through law in the public interest. In comparison to this the powers given about regulation and development of mines under entry-2 of the State List-2 are limited to the terms of the provisions of the list -1. Under entry 45 of the State List -2 also State Governments have been empowered to determine and collect land revenue maintain land records, conduct survey for revenue purposes and enticement of revenue and transfer records. In addition to this, State Governments have powers to impose tax on land and buildings (Entry 49 of List -2) as also on mineral rights in relation to development of mineral (Entry 50 of first-2) as per the limits laid down by the parliament in this regard.

The parliament passed Mines and Mineral (Regulation and Development), Act 1957 with a view to bring the regulation of mines which was later called the set of 1957 and development of minerals under the Union under Entry 54 of List-1.

Therefore, the powers granted to State Government under entry -23 of the List 2 have been limited to the extent to which the Union Government has taken over those powers under the Act of 1957.

Sections 9 and 9 (A) of the Act of 1957 provide that the rates of royalty or dead rent shall be those as will be determined by the second and third schedules respectively of the Act. These rates of royalty or dead rent are notified by the Central Government. But its collection and utilisation of the amount thus collected is made by the concerned State Governments. In the above said situation, a question regarding the competence of the State Legislatures about imposition of any other levy on minerals has arisen.

Various State Governments have levied cess and other taxes on minerals on the

basis of laws passed by their respective State Legislatures. Such levies are in addition to royalty notified by the Central Government under Mines and Minerals (Regulation and Development) Act, 1957. The legality of these levies was suspect and these suspicions were raised under the provisions of division of powers as provided in the Constitution of India and the provisions of Section 9 and 9(A) of the Act of 1957. Some persons challenged the State Governments' powers in courts regarding imposition of such cesses and other taxes on minerals.

Various courts and the Supreme Court in two special cases have repealed the corresponding provisions of various Acts passed by various States with regard to imposition of cesses and other taxes on minerals. The first judgement was given by the Supreme Court on 25-10-89 in India Cement Ltd. Vs Tamilnadu State case. The Supreme Courts stated in its verdict that royalty is a tax and cess having been a tax on royalty is beyond the jurisdiction of State Legislatures because all of their powers have been superceded under Section 9 of the Act of 1957. In its second decision on 4.4.91 in the case of Messers Orissa Cement Ltd Vs. Orissa State and other the Supreme Court settled several cases relating to the State of Orissa, Bihar and Madhya Pradesh.

The Supreme Court opined that levies imposed by these States violate the provisions of the Constitution. In its above judgement the Supreme Court issued instructions for compulsory refund of the levies collected on minerals upto the date of the repealment of the levy. Such dates for Bihar, Orissa and Madhya Pradesh were 4/4/91, 22/12/89 and 28/3/86 respectively.

Following the Supreme Courts decision on 4.4.91, the Orissa and Madhya Pradesh Governments will have to refund huge amount collected by them. Since refund of this money will involve severe adverse affect on the

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of Cess and other Taxes on Minerals  
(Validation) Ordinance and Cess and  
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revenue of these States, I propose to introduce a suitable law for the validation of the levies already collected. In the case of Bihar the date upto which the levies were allowed to be retained was 4.4.91. It is also worth noting that it will be very difficult to ensure that the collected levies are refunded to various owners of those minerals who have to bear the burden of these levies.

After examining the above points and also taking into account the pressure from some State Government about refund of levy, the President of India promulgated the Mineral cess and other Taxes (Validation) Ordinance, 1992 on February 15, 1992. Through this Ordinance seven State Governments will have to validate the collection of cess and other taxes on minerals upto 4.4.91.

[Translation]

These seven State Government such as Andhra Pradesh, Bihar, Karnataka, Madhya Pradesh, Maharashtra, Orissa and Tamil Nadu cannot recover levies after this date.

MR. CHAIRMAN: Hon. Minister, Your statement is too lengthy.

SHRI BALRAM SINGH YADAV Sir, I am just concluding. This Bill will replace that ordinance and validate the Acts of the State Government to make them free from responsibility of refunding recovered cess. The Bill is being introduced on the request of affected states, so that their difficulties may be removed. Therefore, I introduce the Bill for the consideration of the House.

[English]

MR. CHAIRMAN : Motion Moved:

"That the Bill to validate the imposition and collection of cesses and certain other taxes on minerals under certain State laws, be taken into consideration."

There are amendments to the Motion for consideration,

SHRI DAU DAYAL JOSHI-not present.

SHRI GIRDHARI LAL BHARGAVA.

[Translation]

SHRI GIRDHARI LAL BHARGAVA: I beg to move-

"That the Bill be circulated for eliciting opinion there on by the 25th June, 1992."

[English]

MR. CHAIRMAN: Now the Minister to make a statement.

17.02 Hrs.

STATEMENT BY MINISTER  
Bofors by investigation

[English]

THE MINISTER OF EXTERNAL AFFAIRS (SHRI MADHAVSINH SOLANKI): Sir, in the morning, hon. Shri Jaswant Singh, hon. Shri Somnath Chatterjee and other hon. Members have sought clarification on my visit to Davos.

I have read the report which has appeared in a newspaper today, I wish to make a brief statement clarifying my position.

Neither the Ministry of External Affairs nor I deal with the Bofors investigation. I am not aware of the details of the pending