

14.33 hrs.

CONSTITUTION (AMENDMENT)
BILL* 1965

(Amendment of Preamble)

श्री कृष्ण रेव त्रिपाठी (उनाव) :
मैं प्रस्ताव करता हूँ कि भारत के संविधान
में भागे संशोधन करने वाले विधेयक
की पेश करने की अनुमति दी जाय।

Mr. Deputy-Speaker: The question
is:

"That leave be granted to intro-
duce a Bill further to amend the
Constitution of India".

The motion was adopted.

श्री कृष्ण रेव त्रिपाठी : मैं विधेयक का
पेश करता हूँ ।

14.34 hrs.

INCOME-TAX (AMENDMENT) BILL
1965—contd.

Dr. L. M. Singhvi (Jodhpur): I beg
to move:

"That the Bill further to amend
the Income-tax Act, 1961, be
taken into consideration."

Mr. Deputy-Speaker, Sir, I have
raised this matter on the floor of this
House on more than one occasion.
Each time there has been some kind
of an assurance. Unfortunately how-
ever, between these assurances and
the practice of the Ministry there is
a wide variance, and this has only
contributed to making the existing
confusion worse confounded.

The purpose of the proposed amend-
ment, as I have explained in the
Statement of Objects and Reasons to
this Bill, is to ensure that royalty
payments under Mining Leases are
allowed as deductible expenditure in
computing business income under the

parent Act. This has been a vexed
question in our own jurisprudence,
and there are several judgments of
the Privy Council and the Supreme
Court in this matter. But if I may be
permitted to recapitulate the back-
ground of the case law in this con-
text, I would like to refer to the
decision of the Full Bench of the
Lahore High Court and the decision
of the Judicial Committee of the
Privy Council which had held in 1947
and 1949 that the payment of royalty
was the price of the raw material or
stock-in-trade and therefore it should
be construed as revenue expenditure.
In the case of Pingle Industries Ltd.
the Supreme Court held, by a major-
ity judgment of two to one,
that the assessee acquired by
long-term lease a part of the
land and that the payment was
neither rent nor royalty but a lump-
sum payment in instalments for ac-
quiring a capital asset of enduring
benefit to the trade.

Building on this foundation, the
Rajasthan High Court in the recent
case, of Gotan Lime Syndicate made
a further departure and pronounced
that even the royalty and dead rent,
which were calculated with reference
to the production of the mineral,
were capital expenditure and were
therefore not allowable as deductible
expenditure.

As a result of this decision of the
Rajasthan High Court it seems that
the Department of Income-tax came
down on the entire mining industry
with an almost unprecedented gusto
and a relentless lack of appreciation
of their difficulties. Luckily, Mr.
Deputy-Speaker, only a few days ago
the Supreme Court has intervened by
laying down, in an appeal from the
case of Gotan Lime Syndicate, that
in the facts of that case obviously
this was to be construed as revenue
expenditure and was allowable as
an asset. This has naturally remov-
ed the doubt and the confusion, the

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doubt engendered by the case law which was existing in this country, and the confusion created and pervaded and spread by the Department.

Mr. Deputy-Speaker, it should have been enough ordinarily for me to cite this judgment of the Supreme Court delivered only this week, in connection with the Bill before this House and to say that now that the matters have been set at rest, now that the controversy has been resolved by the Supreme Court, it is not necessary for us to consider this Bill or for me to add anything more. The Supreme Court has very clearly laid down that the earlier cases of Pingle Industries and Abdul Kayoom were distinguishable and that in these cases royalty and dead rent have to be allowed as revenue expenditure. The judgment gives, if I may say so, complete satisfaction to the difficulties and the hardships of those concerned. I should, however, like to mention that this situation has emerged after a protracted struggle and a long travel of litigation which could have been avoided, and the pointless confusion created by the Department and the harassment caused by them could also have been prevented if the Department had taken a somewhat more reasonable attitude in this matter. But for the Supreme Court, but for this litigation and its ultimate outcome now, the genuine hardships of those concerned, the mining industry and those large number of people employed in the mining industry, because it is a labour-intensive industry in our country, would have been merely a cry in the wilderness.

Mr. Deputy-Speaker, in these cases, assessments of many years were reopened by the Department, executive instructions issued by the Department were reversed and wilfully flouted, penalties were imposed, and mining in short was brought to the brink of destitution and virtual collapse. The threat of large-scale unemployment loomed large in a number of States in our country, but the

Finance Ministry did not show any mercy. Thousands of representations were made, hundreds and thousands of telegrams were sent, Chief Ministers of various States wrote to the Finance Ministers and the Government, even the Ministry of Mines in the Government of India took the position that if royalty payments were not allowed as deductible expenditure, as revenue expenditure, it would create havoc to the entire mining industry. The question was raised in this House and in the Informal Consultative Committee times without number, but all this virtually to no avail.

I cited the solemn assurances of the former Finance Minister which were on all fours in this matter; I substantiated what I had to say by the recommendations of the Taxation Enquiry Commission of 1933-34 and the Direct Taxes Administration Enquiry Committee which took the same position. I reminded the Finance Minister of his own assurances on the floor of this House in this respect given to my friend Shri Dandekar and to myself. I adduced the practice followed in various countries of the world in this respect and showed that those concerned in the mining industry and those employed by the mining industry, their careers and their lives, were put in jeopardy.

But, Mr. Deputy-Speaker, it seems that the Government had made up its mind to turn a deaf ear to all these reasonable representations; it seems that the bureaucracy had not been properly propitiated as a preliminary to a proper and reasonable decision in this matter; it seems as if the Government had made a creed of cussedness; it seems as if, because of the various assurances given on the floor of the House by responsible Ministers, they preferred to live in oblivion and enveloped in layers of amnesia.

I raise this matter now in this context, because the very authority of

[Dr. L. M. Singhvi]

this House is undermined by this neglect, indifference and persistent turning of a deaf ear to reasonable representations. The very essence of a democratic government is that it is a government by debate, by criticism. It is not only a responsible government, but is also supposed to be a responsive government. I should like the Finance Minister and Mr. Bhagat to lay their hands on their hearts and say sincerely whether any reasonable consideration was given to these representations. I want the ministry for once to consider what havoc they can create for those who are involved in this long litigation and on whom the sword of Damocles was hanging all the time for payment of various instalments. In many cases it has virtually brought about destitution and financial collapse of the parties, and a large number of workers and their families would have been without employment as a consequence of the attitude taken by the government.

Even while the litigation was pending, the government, in spite of its assurances and the recommendations of various committees, would not even make this much allowance that the penalties and assessments may be paid in after the final outcome of the case. Of course, now they will have to refund it and I hope they will do it with good grace and all possible expedition. It would have been far better if this matter had been attended to in the quarters in which it should have been attended to, by the people who should have attended to it in the first instance, in the manner in which it should have been attended to. What are we here for? Representation of the people means representation of their grievances and difficulties, of their reasonable points of view. No one could say that on this question the government was unable to appreciate the burden of the song of all those various committees which were appointed to go into it and who had unanimously supported consideration for the mining industry in this

country, which is still in an embryonic form. Instead of providing those incentives and encouragement to the mining industry, the Finance Ministry acted in a way which could have virtually brought about an impasse and stalemate for it.

I should like briefly to refer to what two well-known authors have said recently in a book entitled *Recent Mining Legislation* by A. S. Comyns Carr and Wilfred Fordham. In respect of the nature of royalty payment, they have said:

"A Royalty is, properly speaking, not a rent at all, but in part at least a payment for the substance actually removed, and from the tenant's point of view, the raw material of his industry, the royalty being one of the working expenses...."

The position under the income-tax law of our country, particularly of other countries, was quite clear in this respect. The recommendations of various taxation committees are highly pertinent in this connection. I should like particularly to invite reference to what the Taxation Enquiry Commission (1953-54) had to say:

"It was represented before the Commission that certain items of expenditure which were not allowed as 'deductible' for taxation purposes, but which were peculiar to and essential for mining operations should be allowed. One of the items of expenditure claimed before the Commission was royalty payable by mining industries."

Discussing this, the Commission said:

"Where royalty is payable on the basis of production, it is clearly admissible. Where, however, it is payable on the basis of profits, the Income-tax Officer will have to consider its true nature by construing properly the agreement under which it is payable."

The Direct Taxes Enquiry Committee, otherwise known as the Tyagi Committee was even more explicit in this respect. The report came in 1958-59 and it says:

(d) It was brought to our notice that some hardship was caused to the assesses engaged in mining industry on account of the disallowance, for Income-tax purpose, of the amount of Royalty which was initially or periodically to be paid in connection with the leases of extracting minerals or the right to work mines. Initially, a capital payment may have to be made either in lieu of or in addition to royalty, in the form of a premium on lease. Periodically, royalty may be payable on the basis of production or profits or on the basis of a combination of both. But out of all these payments, only the royalty payable on the basis of output is clearly admissible under the Income-tax Act. When it is payable on any other basis, its admissibility is determined by properly constructing an agreement which regulates such royalty. There is a long line of judicial dicta laying down broad principles for determining this question. But it was pointed out that these payments of royalty, whatever their mode of calculation and howsoever they may be judicially interpreted, have to be made for the purposes of working the mines and extracting minerals. There is great force in these arguments and we feel that disallowance of royalties in the assessment cases of mining industry would obviously hamper its development and ability to compete in the world markets. Since the Mineral Concession Order, 1949, prohibits the payment of any capital sum as premia or Salami and also requires that the royalty payable should be related to output, these difficulties are not likely to arise in future. We also understand that most of the old

deeds which provided for royalties based on criteria other than output have been replaced by new deeds drawn up in accordance with the Mineral Concession Order, 1949. However, in the few cases where the lease deeds continue on old basis, royalty may not be taxed to the extent of the amount which would have been admissible if it were calculated as prescribed in Mineral Concession Order, 1949."

Shri Himatsingka (Godda): In view of the Supreme Courts judgment, is it necessary to stress the point further?

Dr. L. M. Singhvi: I am coming to that also. I should like to refer to an assurance given on August 28, 1961 by the then Finance Minister, Shri Morarji Desai:

"As regards the amendment of Shri M. R. Masani, may I say that the provision of such depreciation for mines, quarries, oil wells, patents and copyrights, as he has suggested, is not warranted in view of the facts that obtain. As regards mines, under the present policy, consideration for mining rights is not payable in a lump sum. It is payable in the form of royalty. Royalty is also eligible for deduction in computing the taxable income of a business. Therefore, that is already provided for."

This assurance and clarification was given on the floor of this House and Mr. T. T. Krishnamachari himself said, "if there is an assurance or clarification given by my predecessor, I am in honour bound to respect it". But unfortunately when the time came, no attention was paid to those earlier commitments and to the compelling economic reasons and the compelling persuasiveness of allowing this as deductible expenditure.

Mr. Himatsingka has rightly pointed out that now that there is the decision of the Supreme Court, there could be an end of the matter. I agree with him. I took the time of the House to point out a very serious

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lapse in this kind of cases. What kind of consideration does our representation or do our letters and communications to the ministers receive? This is a glaring case in which bureaucracy sits tight and the ministers are unable, unwilling to take notice of reasonable representations sent to them. I raised it only in that context of things. The Supreme Court has now clarified the matter and removed all doubts. I only hope that the government will implement the status quo ante, which has been restored, in good grace and without raising any further difficulties or harassment for those concerned, which if done would undermine the interests of the mining industry in this country, which is still in its infancy.

Mr. Deputy-Speaker: Motion moved:

"That the Bill further to amend the Income-tax Act, 1961, be taken into consideration."

The Minister of Planning (Shri B. R. Bhagat): May I say.....

Dr. L. M. Singhvi: If he says something, I will withdraw it.

Shri N. Dandekar (Gonda): I shall take only five minutes.

Mr. Deputy-Speaker: All right.

Shri N. Dandekar: Sir, I do not wish to traverse the ground which has been so effectively covered by my hon. friend, Dr. Singhvi. But I am reluctant to advise him forthwith to withdraw his Bill because of the way in which the department has hitherto been handling this matter as illustrated by a circular which they have issued as to the circumstances in which royalties of the kind under consideration would be admissible. It is a very curious circular. I have not got the original here, but I have it almost by heart—somehow my correspondence is missing. They issued a letter from the Central Board of Direct Taxes to the Maha Vidarbha Chamber of Commerce and Industry, Nagpur. The purport of it was that if royalties were paid for acquisition of revenue assets, raw materials or

things of that kind, then the royalties would be admissible for tax purposes. That entirely begs the question. I would like the hon. Minister's assurance, in view of the very recent decision of the Supreme Court which is quite clear in its import, I would like his unqualified assurance,—that the admissibility of these royalties will not be restricted in that very curious way in which it has been described in that letter to the Maha Vidarbha Chamber of Commerce and Industry; but that it will be in terms of the Bill that Dr. Singhvi has introduced in the House.

Sir, the Bill makes quite clear what it is that it seeks to achieve; and if the Minister would be pleased to say that that is precisely what the Government now proposes to direct, in view of the judgment of the Supreme Court, then I should certainly agree with Dr. Singhvi and my hon. friend, Shri Himatsingka that no further action on this Bill would be necessary. The Bill is in these terms:

"In section 38 of the Income-tax Act, 1961, in sub-section (1) after clause (viii), the following clause shall be, and shall be deemed always to have been, inserted, namely:

"(ix) any rent or royalty paid by the assessee to the Central Government or to any State Government or local authority . . ."

I have an amendment here which seeks to add the words: "or to any other person"—

" . . . for mining rights granted to him under a mining lease executed under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 or the Rules made by the Central Government, or any State Government in exercise of powers conferred under the said Act."

I have a further amendment which seeks to add at the end the words: "or otherwise."

The reason why I say this is this. The law relating to the admissibility of royalties is very complicated and tricky. Being complicated and tricky, thousands of people who are engaged in this particular industry, from the smallest lime maker to the large plants,—like the steel plants which are concerned with exploiting iron ore, limestone, manganese ore and so on, and also cement plants and others,—cannot be expected, when the grant of lease itself is within the discretion of the Government, to quibble with Government and to say that the form in which they have chosen to grant the lease does not conform to what view the Government may later take about the admissibility of these payments for purposes of taxation. The form is a prescribed form. It is form 'k' under the Mineral Concession Rules made under the Mines and Minerals (Regulation and Development) Act, 1957. This is the form in which the Government itself insist in granting the mining leases. And then they have the nerve to take these matters in dispute before courts of law and drag small people like these to the Supreme Court and say that what we have given you, and what you are paying us for, is not the price of raw material but the price for the right to go there and extract the raw material. It is an astonishing proposition, a proposition around which people cannot get.

Today, Sir, most of the mining rights and most of the quarrying rights and so on are at the disposal, and quite rightly so, of the Central Government, the State Government and sometimes the local authorities. If they insist on mining leases of this kind and then drag the wretched assesses into courts of law, the High Courts and the Supreme Court, it is an astonishing example of *mala fides*. Having now got the decision of the Supreme Court, if even now the Finance Minister is unable to give an assurance that what is now intended, in view of the Supreme Court judgment, is to concede precisely what this Bill seeks to give, then I would advise Dr. Singhvi not to withdraw

his Bill. If, on the other hand, the Minister were to say, now that the air has been cleared but the grant of mining leases is still at the discretion and under the sole control of the Government and the forms are also prescribed by the Central Government, if he is now prepared to give an assurance that there will be no tricky business about re-drawing and re-wording of these forms of leases, so that in that process the whole thing is again turned into a turmoil, I would advise Dr. Singhvi to withdraw the Bill.

I, therefore, hope that when the Minister replies to the debate he will be good enough to say that the Supreme Court has now set everything at rest, that these royalties which are payable annually are accepted as payments for raw material, irrespective of whether they are paid on tonnage basis or whether, in the absence of production of certain quantities, they are paid in fixed lump sums but they are paid annually, that these will be accepted as revenue expenditure and, further, that there will be no monkey business by attempting to change these mineral rules and concession rules and also the form of lease whereby the Government may again attempt to get round all this by such changes of forms as will again put the whole matter in doubt and which will then entitle the department, once again, to attempt a trial of strength in the Supreme Court. If we have these two assurances from the Minister, I will be very glad to advise Dr. Singhvi to withdraw the Bill.

Shri Kashi Ram Gupta (Alwar): Mr. Deputy-Speaker, Sir, while Dr. Singhvi is to be congratulated for bringing forward this Bill, the actions of the Central Board of Direct Taxes are to be lamented. I am one of those who have taken up this matter with the Board of Direct Taxes and with the Finance Minister since April or May, 1964. There is no time to give the details given in the letters, but one or two points are very specific. I asked them categorically whe-

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ther the leases under MC Rules and MM Rules of the State and the royalties paid for these leases are to be treated as revenue expenditure or not. The Secretary of the Board has from the very beginning been writing that there are leases which are to be treated as revenue expenditure and that the Department of Income-tax would not be a competent authority to decide whether one lease is of this sort or that sort. Then he referred this to another Ministry. The Ministry of Mines also wrote that this is to be treated as revenue expenditure. Still the Board of Direct Taxes would not agree. The most lamentable fact was that they opened up old cases and they asked the people concerned to file returns in respect of those cases which had already been decided. They did that under the plea that otherwise they would have to be taken to task by the Public Accounts Committee. The Public Accounts Committee has nothing to do with these cases. Their only consideration was to get money out of the people at any cost.

Sir, if things happen like that, then there is no law in the country. The Finance Ministry and the Board of Direct Taxes have taken the law into their own hands and they are handling things in their own way. The result has been that so many assesseees had to mortgage their houses and their ornaments to pay the taxes. Last time, when we took it up with the Finance Minister he said that it was a question of revenue to the tune of Rs. 3 crores. How could he visualise this amount of Rs. 3 crores. Then he did not have the knowledge that the Board of Direct Taxes had opened up old cases. Now the whole process shall have to be reversed.

The basic point now is this. If the Finance Minister is agreeable, then he should declare in clear words that the leases governed by M. C. rules of the Government of India and the leases governed by MM rules of the

State should be treated under this category and the payments of royalties in respect of those leases should be treated as revenue expenditure so far as income-tax is concerned. Unless and until that directive is given things will again happen in the same old way. In this very case the Income-tax Officer, even though he knew the previous decision, took this stand and finally the whole thing had to be reversed by the Supreme Court. Everybody cannot go to the Supreme Court. If Dr. Singhvi's Amendment Bill is not accepted, the result will be that again individual cases shall have to be treated like that. And, how can everybody be expected to go there?

15 hrs.

Another important factor is that there is a big public sector and the main difficulty of the public sector will be that the cost structure will be upset. After all, in all senses this is revenue expenditure; there is nothing to depreciate. Everything depreciates yearly and nothing remains to be depreciated afterwards. When this is the condition, the cost structure of the public sector steel plants and others shall be upset.

I had brought all these factors to the notice of the hon. Finance Minister. He only used to pass those letters on to the Board of Direct Taxes and sometimes the Secretary or the Deputy Secretary or the Under Secretary would reply, "It is under consideration". People had been ruined and they were only writing this much that it is under consideration.

If the Supreme Court had not come to the rescue of the people, what would have been their fate? After all, Dr. Singhvi very correctly said that we are representatives of the people; we do not represent any one section. It is not a question of some capitalists; it is a question of the industry as a whole. The labour is

affected. I know the case of a co-operative society in Alwar District. Those poor fellows have not got a capital of Rs. 10,000 and the payment of Tax would be about Rs. 20,000. Wherefrom will they pay it? What about the rate of the labour which is about 300 to 400 people?

Then, those who are the smallest people are the hardest hit. The smallest people have to pay even from their pocket. There is no such law in the whole world where anybody wants tax to be paid from the pocket of a person and from his assets. Not only the whole income is taken but they say, "Let me have your assets also". If a man takes a quarry for Rs. 1 lakh and earns Rs. 20,000, he has to pay tax on Rs. 1,20,000.

This is a matter of very simple commonsense which has been juggled like this by this Ministry and the Board of Direct Taxes. This is a supreme dictatorship that has been created under the plea that we should try to have as much realisation of taxes as possible. The evaders cannot be caught; only the poor people under the name of some law can be caught in this way. I had told the Finance Minister that even if you say that Rs. 3 crores will be there, the result will be that after two or three years there would not be even Rs. 1 crore. Every industry will go down.

I have nothing much to say. The Finance Minister should give a categorical assurance that either he will incorporate this in the coming Finance Bill or, so far as the present Act is concerned, he will very clearly give a directive to the Board of Direct Taxes not only to refund in all the previous cases but, at the same time, say that all such leases which are governed by the Government of India MC Rules, 1960 or 1949 or the MM Rules of the States shall be covered by this decision and this will be treated as revenue expenditure so far as dead rents and royalties of those leases are concerned.

Shri Sham Lal Saraf (Jammu and Kashmir): Sir, I stand to lend my full support to the Bill moved by my learned friend, Dr. Singhvi. I have had a little experience of running these mining leases in my State while I happened to be one of the Cabinet Ministers there. A Bill like this regulating all these mines was moved in the State Assembly and I had the honour of piloting it, with the simple idea that expenditure like this as payment of royalty is always to be considered as part of revenue expenditure. At that time the Central income-tax was not applicable to our State, the State of Jammu and Kashmir. Later, when this became applicable, the same position has arisen there.

Dr. Singhvi comes from a State where communications are easier when compared to my State and there are other facilities also. Since the introduction of these rules and the levying of income-tax I may assure the hon. Minister, the position has altered in my State in two ways. Firstly, revenues are falling, as far as bidding for royalties is concerned. You can see that from statistics. In my State small leases are being given and even then the revenue is falling. Secondly, competent men are not coming forward to work the mines. On the one hand, Government itself suffers and, on the other, in places where mining is at a very low stage, is yet being developed, is still in development, it is not encouraged. It is very, very important that steps are taken that encourage mining leases, that encourage the working of mines so that it helps the employment factor in those areas. Keeping that in view it is very, very important that this aspect is taken into consideration.

Dr. Singhvi has placed before this House a number of angles with regard to the working of these mines. People have been agitating for the last few years, but nothing has happened. I would lay stress upon this point with all the emphasis at my disposal that the sooner this law is altered, the sooner the spirit of this

[Shri Sham Lal Saraf]

Bill is accepted, the better it will be for mining as such and also for the general development of the country.

May I submit that in areas that are farflung, that are mountainous, that are so to say backward, which at the moment are in various stages of development; or where there is some expectation of mining potential, this mining potential is curbed in its very bud and, I think, the results will be next to nothing. Therefore, I will again urge upon and submit to the Government that they pay attention to this and accept his Bill or give this assurance that the purpose of this Bill will be served by the measures that the Government may be bringing forward at its earliest convenience.

With these few words, I hope the Government will accept this.

Shri N. C. Chatterjee (Burdwan): Sir, so far as I know the law, it was settled by the Privy Council many years back in the great Ramgarh Raj case. There they clearly pointed out that when you pay royalty in lump sum, say Rs. 1 lakh, for getting a lease, say of 999 years or 1,000 bighas, that will be for acquiring the capital asset. That stands on a different footing; but when it is linked to production then it must be revenue; it must be deductible expenditure. Since then the law was settled. My hon. friend, Dr. Singhvi, has pointed out the Lahore Full Bench decision which delivered its judgement in 15 ITR 185 in 1947. Then, the Privy Council again reiterated the law that the payment of royalties was the price of the raw material or stock-in-trade and therefore, it must be revenue expenditure. The law was fairly settled. The same observations were there in a judgement of the Supreme Court.

I was amazed to know that the Rajasthan High Court judges—I have very great respect for Mr. Justice Modi and I have read the judgement very carefully—were relying on a judgement of Viscount Cave in British Insulated and Helsby Cables Limited

Vs. Atherton, which runs as follows:—

“But when an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, I think that there is very good reason...for treating such an expenditure as properly attributable not to revenue but to capital”. (1926 A. C. 205).

Mr. Justice Modi has relied on this judgement and came to the conclusion, therefore, that it would not be deductible expenditure. However, the Supreme Court pointed out that it never meant that enduring benefit; it meant something like a lease acquisition of the property, but not the actual daily working of the property. Therefore, the Supreme Court has now made the position perfectly clear that Viscount Cave never meant that. Enduring advantage is one thing and daily working, periodical working or monthly working is another; therefore, when you pay royalty for something which you produce in the course of a year, that is really a part of the working for getting the marketable thing which you put on the market. Therefore, when it is linked to production of that kind, there is no question of any capital expenditure.

What pains us deeply is—my hon. friends have pointed it out; Shri Dandekar has also emphasized it and I want to emphasize that—that in spite of the clearest possible assurance unfortunately people in the mining industry have been harassed. If you have made a profit of Rs. 50,000 a year and you have got to pay a royalty of Rs. 60,000, then you have got to pay tax ignoring completely the payment of royalty etc. That is an absurd thing. That should not have been done. What is the recommendation of the Tyagi Committee? I am appealing to the Minister and I hope he will say that they will work on that footing and that what was done was thoroughly wrong and that they were misled by that judgement. Why

did they not refer it to the Law Ministry? The Law Minister should have clarified the position. The judge of the Rajasthan High Court, however eminent he may be, however learned he may be, cannot over rule all the Privy cases and all the judgments of all the High Courts. What did the Tyagi Committee say? It observed:

".....that disallowance of royalties in the assessment cases of mining industry would obviously hamper its development and ability to compete in the world markets."

That is exactly what has happened. This has led to untold misery and harassment which was thoroughly improper. If necessary, if you have so much respect for the rule of law, you prosecute that man, proceed against the man, who has lost the case. But you should not have utilised the judgment of the Rajasthan High Court as a Magna Carta for everybody nullifying all the judgments and nullifying all the deductible expenditure which has been allowed for so many years and which directly come within the concept of revenue.

I think the Minister should reiterate what has been said in the Tyagi Committee Report and in the Taxation Enquiry Commission Report. The Finance Minister had also said that the royalty for mining is certainly eligible for deduction in computing the taxable income. The only thing that we want is that this categorical assurance should be reiterated by the Minister—it had been given on the floor of the House but violated and conveniently forgotten by the Department—that royalty for mining, that is, royalty for the purpose of production in mining industry, is eligible for deduction in computing the taxable income. That is all that we demand. It is fair, logical, consistent with principles and consistent with the view taken by the the Income-Tax authorities throughout the world. In every civilised country, they treat this as an expenditure and, therefore, they deduct it. Otherwise it will be an absurd posi-

tion. If you call it capital expenditure, then it means you are getting some assets which are not really assets but meant for your business profits for a particular year.

I would ask Dr. Singhvi to withdraw the Bill only if an adequate assurance comes from the Minister.

Shri B. R. Bhagat: Mr. Deputy-Speaker, Sir, I have not to make a long speech. Now, since the matter, as the hon. Member himself pointed out, has been settled finally by the highest court in the land and the status quo ante is restored, I would request him to withdraw the Bill. I can give him the assurance that we will observe the judgment of the Supreme Court not only in letter but also in spirit.

As for the assurance claimed by the hon. Member, I have not been able to lay my hands on the circular which he referred to.

Dr. L. M. Singhvi: It is here.

Shri B. R. Bhagat: I know the Finance Minister gave the assurance that he would honour the commitments or the assurances given by his predecessors. But then the judgment of the High Court was there and the matter had been taken to the Supreme Court. He was awaiting the decision there. Meanwhile—I concede somewhat belatedly—instructions were issued that collection of the disputed amount in such cases should be stayed....

Shri Kashi Ram Gupta: This is not a fact

Shri B. R. Bhagat: The instructions were issued. In the meanwhile, he had issued certain instruction that recovery proceedings in such case should be stayed.

Now certainly the assessments made under this will be revised and many of them are with the appellate courts. They will certainly be revised. There is no doubt about it. As for the change in the rules and in the mining leases, that is for the other Ministry

[Shri B. R. Bhagat.]

to do it. We are studying the judgment and we will observe it being in letter and spirit. There is no intention of putting a brake on this industry. I can also assure the House that when this dispute had arisen it was not out of cussedness or anything else but there was a genuine dispute. The very fact that the High Court gave one judgment and it went to the Supreme Court shows that.

Dr. L. M. Singhvi: But you, as the Government, must have taken larger considerations into view. The Government should have taken into consideration what the Taxation Enquiry Commission had said and what the Direct Taxes Administration Enquiry Committee had said. All that should have been taken into consideration. The Government should not have raised this dispute and put the small people to great hardship.

Shri B. R. Bhagat: I think, in view of this I would request the Member to withdraw his Bill.

Shri Warior: What was the amount already collected? What is the approximate amount?

Shri B. R. Bhagat: That will be revised.

Dr. L. M. Singhvi: Mr. Deputy-Speaker, Sir, I have only to make a few observations I am extremely thankful to the hon. Members who have contributed to this debate and who have lent their full support to the submissions I had made.

I am particularly grateful to Mr. Dandekar who had taken keen interest in the matter from the very outset. As a matter of fact, he had himself brought forward an amendment to the last Finance Bill. He is one of the most distinguished ex-civil servants, if I may say so, in the country and one concerned with matters of taxation. I think his word should have been taken and respected.

I am grateful to my friend Shri Sham Lal Saraf who has the experience of mining leases from another point of view as a former Cabinet Minister in the Government of Jammu and Kashmir. I am also grateful to my friend Shri Kashi Ram Gupta who has experience of this matter from the point of view of one who is in the business. I am grateful to my hon. friend Shri Chatterjee, an eminent jurist of our country, who has analysed the case and who has lent very powerful support to this very reasonable case of mine.

I only want to say this that in these matters the duty is cast on the Government to take larger consideration into view and I only hope that these larger considerations would be borne in mind in future for the very future of mining industry in this country and thousands and thousands of people who are employed by this industry.

As a matter of fact, the bigger people in the mining industry might perhaps have been able to provide for this heavy dose of taxation. But the smaller people were really brought to brink and precipice of ruin. I say this from my personal observation. I otherwise cannot claim any expert knowledge of mining. I am nowhere near it. But it seemed to me, as a lawyer and as a public man, that this was an extremely just case and a case which was supported by all economic considerations as well as considerations of Government keeping its word to this honourable House.

I only hope that there will be the further petty-fogging about it and that the forms and the various of the rules will be brought in line not only with the letter but with the spirit of the judgment of the Supreme Court as also the advice tendered by the Taxation Enquiry Commission and the Direct Taxes Administration Enquiry Committee.

In view of the assurance given by the Minister and above all of course, in view of the judgment of the Supreme Court which is binding, I would seek leave of the House to withdraw my Bill.

The Bill was, by leave, withdrawn.

15.20 hrs.

ADVOCATES (AMENDMENT) BILL,
1965

(Amendment of sections 24 and 25)

Shri Parashar (Shivpuri): Sir, I beg to move:

"that the Bill further to amend the Advocates Act, 1961, be taken into consideration"

Through this Bill I have to raise a very substantial anomaly created by the passage of the Advocates Act, 1961. Under this Act, Mukhtars who were practising in criminal courts prior to the enactment of the Act have been conferred the title of Advocates, of course, with certain restrictions. But a very substantial class of Revenue Agents, who have been practising in revenue courts has been omitted. I would like to point out to the House that Revenue Agent is a class of Advocates who has been recognised as a legal practitioner, as good a legal practitioner as Mukhtars, under the Legal Practitioners Act. I shall refer to it later on and I shall also quote the definition of a legal practitioner....

This Revenue Agent comes in touch and contact with the peasants of this country, with the farmers or agriculturists of this country. The Revenue Agent advises and practises for the downtrodden people of our country who cannot afford to pay large sums to engage an advocate. This class of advocates, I mean the Revenue Agents, was entitled to practise up to the highest court, i.e., to the Revenue Board and even in some cases up to Darbar Peshi—that was equivalent to the Privy Council during those days. What happens when this class of practitioners is stopped from practising up to the Supreme Court? This class knows as much of the civil pro-

cedure as the civil side practising lawyers because according to the revenue law, it is the Civil Procedure Code that applies even to the revenue matters. Therefore, the Revenue Agent is of greatest assistance to the poor agriculturists. So he should also be allowed to go up to the highest judicial forum of this country as the Mukhtars have been given the right to do. Now what happens? When a poor agriculturist goes to consult a Revenue Agent, naturally he can, according to the present Act, advise him only to a very limited territorial jurisdiction. After that, the poor farmer has to depend on others. According to Article 19(g) of our Constitution, this discrimination which has been made between one class of citizens, i.e., the Mukhtars, and another class of citizens, i.e., Revenue Agents, is not proper. According to Article 13(ii) of our Constitution, the law which discriminates one class of citizens against another is void to the extent of contravention.

According to the Legal Practitioners Act, the definition of the legal practitioner is this: a legal practitioner means an advocate, a vakil or an attorney of any High Court, a pleader, Mukhtar or Revenue Agent. This is an Act which has been properly passed and it recognises the Revenue Agent as a legal practitioner. As I have already submitted, this is that class of legal practitioners who advise the poorer sections of our people. According to the present Advocates Act—of course, it has been amended later on in Section 24—the word 'Mukhtar' has been used, but Revenue Agent has been left out. My submission through this amendment is to seek recognition to this class of advocates to practise up to the highest court of the country; of course, only in revenue matters just as Mukhtars are allowed to practise up to the highest forum of this country only in criminal matters. Therefore, this discrimination should go away.

Secondly, the Revenue Agent is considered to be a specialist in his