# D.K. Trivedi And Sons And Ors. Etc. Etc vs State Of Gujarat And Ors. Etc. Etc on 5 March, 1986

## Equivalent citations: 1986 AIR 1323, 1986 SCR (1) 479, AIR 1986 SUPREME COURT 1323, (1986) 2 CURCC 481, (1986) 2 GUJ LR 1250, (1986) 3 SUPREME 1, (1986) 1 SCJ 475, 1986 UJ(SC) 2 301, 1986 SCC (SUPP) 20

## Author: D.P. Madon

## Bench: D.P. Madon, V.D. Tulzapurkar

PETITIONER:
D.K. TRIVEDI AND SONS AND ORS. ETC. ETC.

Vs.

RESPONDENT:
STATE OF GUJARAT AND ORS. ETC. ETC.

DATE OF JUDGMENT05/03/1986

BENCH:
MADON, D.P.
BENCH:
MADON, D.P.
TULZAPURKAR, V.D.

CITATION:
1986 AIR 1323 1986 SCR (1) 479
1986 SCC Supl. 20 1986 SCALE (1)1133
CITATOR INFO :
F 1986 SC1620 (1)
R 1988 SC1621 (2)

ACT:
Mines and Minerals (Regulation and Development) Act, 1957 (Act. No.67 of 1957), Section 15(1), Constitutionality of - Whether the State Government has the power to make rules under section 15 to enable them to charge dead rent and royalty during the subsistence of such leases - Validity of Notifications/circular issued by the Gujarat Government under section 15 amending the Gujarat Minor Mineral Rules, 1966 and dated 29.11.74, 29.10.75, 4.6.76, 26.3.79, 12.2.81 and 18.6.81 - Validity of Rule 21B of the Gujarat Minor Mineral Rules, 1966.

HEADNOTE:

The Writ Petitioners and appellants, were persons to whom the State of Gujarat had granted quarry leases and mining leases in respect of minor minerals such as black trap, lime stones, murrum, bentonite, rubble, marble, sandstone, quartzite, etc. In exercise of the powers conferred by section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, the Government of Gujarat made the Gujarat Minor Mineral Rules, 1966. The said Rules came into force on April 1, 1966. All the leases in the matters before the Court were given in the form prescribed by the said Rules, Schedule I to the said Rules specified the rates at which royalty was payable and Schedule II specified the rates at which dead rent was payable. By the 1974 Notification the Government of Gujarat made the Gujarat Minor Mineral (Fourth Amendment) Rules, 1974 whereby Schedule I was substituted and Schedule II was amended with effect from December 1, 1974. Under the new Schedule I and the amended Schedule II the rates of royalty and dead rent in respect of certain minor minerals were enhanced. In view of several representations made to it, the Government of Gujarat decided not to implement the 1974 Notification and to refund the amount of royalty, if any, collected at the rates prescribed by the 1974 Notification. By the 1975 Notification the Government of Gujarat made the Gujarat

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Minor Mineral (Second Amendment) Rules, 1975, whereby Rule 21 of the said Rules and Schedule I were substituted with effect from November 1, 1975. By the said substituted Schedule I the rates of royalty in respect of several items were enhanced.

The Appellant in C.A. 706/81, Ambalal Manibhai Patel, being aggrieved by the said 1975 Notification, filed a Writ Petition in the Gujarat High Court (Sp.C.Ap. 66/78 ) challenging the enhancement in the rate of royalty to Rs.3 per metric tonne in respect of black trap and hard Murrum specified in Item 4 of the said substituted Schedule I. The Writ Petition having been dismissed, the appellant filed LPA No.61/78 which was heard along with several writ petitions raising the same questions. The main contention raised in those matters was that under the proviso to section 15(3) of the 1957 Act, the rate of royalty in respect of any minor mineral could not be enhanced by the State Government more than once during any period of four years and that the rate of royalty on black trap and hard murrum having been increased by the 1974 Notification, it could not be increased again in 1975. A subsidiary contention raised was that the State Government had no power to classify building stones into black trap and hard murrum because by doing so what the State Government had done in effect and substance was to declare black trap and hard murrum as minor minerals and that it was only the Central Government which possessed

the power to declare any mineral not covered by the definition of the expression "minor minerals" in clause (e) of section 3 of the 1957 Act to be a minor mineral. Both these contentions were rejected by a Division Bench of the Gujarat High Court by its judgment dated 16/17 September 1980 holding that the 1974 Notification had not become operative and, therefore, in issuing the 1975 Notification the State Government had not violated the proviso to section 15(3), and that building stones having been already included in the definition of "minor minerals", there was no bar to the State Government classifying them into different varieties for the purpose of recovering royalty. Civil Appeal 706/81 is by Special Leave of the Court against the said judgment.

During the pendency of the said Court proceedings, the Government of Gujarat made the Gujarat Minor Mineral (Second Amendment) Rules, 1976, substituting Schedule II to the said
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Rules, changing the rates of dead rent for specified Minor Minerals and reclassifying the said nomenclature as "for quarry leases for any minor mineral" and "for quarry Parwana for any minor mineral."

Pursuant to a policy decision dated March 26, 1979 announced on the floors of the Legislature by the Minister for Mines, the Gujarat Government by the 1979 Notification made the Gujarat Minor Minerals (Amendment) Rules, 1979 with effect from April 1, 1979. By this amendment a new Rule 21B was inserted in the said Rules, Rule 22 was amended, Chapter IV of the said Rules which dealt with grant of quarrying permits in respect of lands in which minerals belonged to the Government was deleted, Form was amended, Forms I, J and K were deleted, and Schedules I and II were substituted. By the substituted Schedule I, the rate of royalty on all minor mineral was specified as ten paise per metric tonne. By the substituted Schedule II the rate of dead rent per hectare or part thereof in respect of quarry leases was enhanced to Rs.1,200 in certain cases, Rs.1,500 in some other cases, Rs.2,000 in one case and Rs.3,000 in the remaining cases. So far as quarry parwanas were concerned, the rate was specified as one-tenth of the rate for quarry leases per parwana.

Ambalal Manilal Patel again filed a writ petition, Sp.C.Ap.138 of 1978, in the Gujarat High Court challenging the enhancement in the rate of dead rent made by the 1976 Notification. The Writ Petition was dismissed leading to the filing of a Letters Patent Appeal. The said Letters Patent Appeal and 25 other writ petition challenging the 1979 Notification were allowed by the Division Bench. The Division Bench held that the conditions in a lease in respect of minor minerals relating to the financial liability of a lessee derived their authority from sub-section (3) of section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, while conditions,

other than those relating to a lessee's financial liability, regulating the grant of a lease derived their authority from [Sub-section from] sub-section (1) of section 15, that the State Government had no power to enhance the rate of dead rent during the subsistence of a lease, and that Rule 21-B of the Gujarat Minor Mineral Rules, 1966 and 1979 Notification were ultra vires section 15 and sub-clause (g) of clause (1) of Article 19 of the Constitution. The Division

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Bench accordingly issued a writ of mandamus against the State Government directing it to desist from enforcing the said Rule 21-B and the 1979 Notification. The Division Bench also made the same declaration in respect of the 1976 Notification and issued the same mandamus in respect thereof. The said judgment of the Division Bench is reported as Smt. Sonbai Pethalji v. State of Gujrat & Anr., reported in XXI (2) (1980) 2 Gujarat L.R. 530. The State of Gujarat accepted the said judgment and did not come in appeal to this Court. Certain lessees of mining and quarry leases, however, approached this Court by way of Appeals and Writ Petitions challenging the correctness of the judgment in Smt. Sonbai's case.

In view of the said judgment, the Government of Gujarat issued a circular addressed to all Collectors, District Development Officers and the Director, Geology and Mining, Ahmedabad, being Circular No. M.C.R.2190 (166) CHH dated February 12, 1981, stating that in view of the aforesaid judgment of the Division Bench the position prior thereto would prevail and that Chapter IV of the said Rules which was deleted by the 1976 Notification would stand revived and would be applied. The Government thereafter made the Gujarat Minor Minerals (Amendment) Rules, 1981, by issuing the 1981 Notification which came into force on June 20, 1981. By the 1981 Notification Rule 21-B was deleted, Rule 22 was amended, Chapter IV and certain Forms were inserted, Schedule I to the said Rules was substituted and Schedule II thereto deleted. Several lessees of mining and quarry leases filed writ petitions in the Gujarat High Court challenging the validity of the 1981 Notification and the said Circular. These writ petitions were rejected on the ground that as connected proceedings were pending in the Supreme Court, it was open to the petitioners to move this Court if they so desired. Accordingly, the said petitioners as also others filed writ petitions in this Court challenging the validity of the 1981 Notification and the said Circular as also in some cases Appeals against the order rejecting the writ petitions.

Dismissing CA. Nos. 1525-26 of 1982, WP Nos.7103-7128 of 1981 and WP Nos. 4208-17 of 1983, allowing in part only CA.Nos. 706 and 1324/81, WP. Nos. 6419-22/82 and WP Nos. 4912-4924 and 5167-5182 of 1983 and allowing CA Nos. 1489 and 1675/81 WP Nos.1656, 2108, 4097 and 7697 of 1981, WP

Nos. 762, 874-942,
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946-968, 1616-17, 4455-73, 4479-84, 5589-5605, 5895-5969, 5971 to 6005, 6309, 6463-79 and 10114 to 10112 of 1982 and 3393 to 4003, 8813-8820 and 9539 to 9549 of 1983, the Court,
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HELD : 1.1 Sub-section (1) of section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 is constitutional and valid and the rule-making power conferred thereunder upon the State Government does not amount to excessive delegation of legislative power to the executive. [523 G]

1.2 To take into account legislative history and practice when considering the validity of a statutory provision or while interpreting a legislative entry is "well-established" principle of construction of statutes. [528 B-C]

State of Bombay v. Narothamdas Jethabai and Anr. [1951] S.C.R. 51; State of Madras v. Gaunnan Dunkerley & Co. (Madras) Ltd., [1959] S.C.R. 379 referred to.

1.3 The 1957 Act is made in exercise of the powers conferred by Entry 54 in the Union List which speaks both of regulation of mines and minerals development and Entry 23 in the State List is subject to Entry 54. The rule-making power conferred by section 15(1) was for regulating the grant of prospecting licences and mining leases and for purposes connected therewith prior to the Amendment Act of 1972 and thereafter is for regulating the grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals and for purposes connected therewith. The phraseology of section 15(1) is the same as that of section 13(1) which confers rule-making power upon the Central Government with this difference that by the Amendment Act of 1972 the expression "quarry leases, mining leases or other mineral concessions" has been substituted in section 15(1) for the words "prospecting licences and mining leases" while the expression "prospecting licences and mining leases" in section 13(1) remains unchanged. [524 B-C; 525 B-E]

The word "minerals" wherever used in the 1957 act would include minor minerals unless minor minerals are expressly excluded or the context otherwise requires. Although under section 14, section 13 is one of the sections which does not apply to minor minerals, the language of section 13(1) is in
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pari materia with the language of section 15(1). Each of these provisions confers the power to make rules for "regulating". Thus, the power to regulate by rules given by sections 13(1) and 15(1) is a power to control, govern and direct by rules the grant of prospecting licences and mining leases in respect of minerals other than minor minerals and for purposes connected therewith in the case of section 13(1) and the grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals and

for purposes connected therewith in the case of section 15(1) and to subject such grant to restrictions and to adapt them to the circumstances of the case and the surroundings with reference to which such power is exercised. me power to regulate conferred by sections 13(1)and 15(1) is not only with respect to the grant of licences and leases mentioned in those sub-sections but is also with respect to "purposes connected therewith", that is, purposes connected with such grant. Entry 54 in the Union List uses the word "regulation". m e makers of the Constitution were not only aware of the legislative history of the topic of mines and minerals but were also aware how the Dominion Legislature had interpreted Entry 36 in the Federal Legislative List in enacting the 1948 Act. When the 1957 Act came to be enacted, Parliament knew that different State Governments had, in pursuance of the provisions of Rule 4 of the Mineral Concession Rules, 1949, made rules for regulating the grant of leases in respect of minor minerals and other matters connected therewith and for this reason it expressly provided in sub-section (2) of section 15 of the 1957 Act that the rules in force immediately before the commencement of that Act would continue in force until superseded by rules made under sub-section (1) of section 15. Regulating the grant of mining leases in respect of minor minerals and other connected matters was, therefore, not something which was done for the first time by the 1957 Act but followed a well-recognised and accepted legislative practice. In fact, even so far as minerals other than minor minerals were concerned, what Parliament did, as pointed out earlier, was to transfer to the 1957 Act certain provisions which had until then been dealt with under the rule-making power of the Central Government in order to restrict the scope of subordinate legislation. [526 D,E,H; 527 A-H; 528 A-B]

2.1 There are sufficient guidelines provided in the 1957 Art for the exercise of the rule-making Power of the State

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Governments under section 15(1) of the 1957 Act. These guidelines are to be found in the object for which such power is conferred, namely, "for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith"; the meaning of the word "regulating; the scope of the phrase "for purposes connected therewith"; the illustrative matters set out in sub-section (2) of section 13; and the restrictions and other matters contained in sections 4 to 12 of the 1957 Act. [528 C-D; 530 G-H; 531 A-B]

2.2 It is well settled that where a statute confers particular powers without prejudice to the generality of a general power already conferred, the particular powers are only illustrative of the general power and do not in any way restrict the general power. [528 D-El

King Emperor v. Sibnath Banerjee and Ors., (1944-45) 72 I.A. 241; Om Prakash and Ors. v. Union of India and Ors., [1970] 3 S.C.C. 942, 944-5; Shiv Kirpal Singh v. V.V. Giri [1971] 2 S.C.R. 197, 224-5 referred to.

2.3 The fact that provision similar to sub-section (2) of section 13, does not find a place in section 15 does not make any difference. What sub-section (2) of section 13 does it to give illustrations of the matters in respect of which the Central Government can make rules for "regulating the grant of prospecting licences and mining leases in respect of minerals and for purposes connected therewith". The opening clause of sub-section(2) of section 13, namely, "In particular, and without prejudice to the generality of the foregoing power", makes it clear that the topics set out in that sub-section are already included in the general power conferred by sub-section (1) but are being listed to particularize them and to focus attention on them. The particular matters in respect of which the Central Government can make rules under sub-section (2) of section 13 are, therefore, also matters with respect to which under sub-section (1) of section 15 the State Government can make rules for "regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith." When section 14 directs that "The provisions of sections 4 to 13 (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in
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respect of minor minerals", what is intended is that the matters contained in those sections, so far as they concern minor minerals, will not be controlled by the Central Government but by the concerned State Government by exercising its rule-making power as a delegate of the Central Government. Sections 4 to 12 form a group of sections under the heading "General restrictions on undertaking prospecting and mining operations". The exclusion of the application of these sections to minor minerals means that these restrictions will not apply to minor minerals but that it is left to the State Governments to prescribe such restrictions as they think fit by rules made under section 15(1). [529 D-H; 530 A-B]

Sections 13, 14 and 1-5 have to be read together. In providing that section 13 will not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals what was done was to take away from the Central Government the power to make rules in respect of minor minerals and to confer that power by section 15(1) upon the State Governments. The ambit of the power under section 13 and under section 15 is, however, the same, the only difference being that in one case it is the Central Government which exercises the power in respect of minerals other than minor minerals while in the other case it is the State Governments which do so in respect of minor minerals.

Sub-section (2) of section 13 which is illustrative of the general power conferred by section 13(1) contains sufficient guidelines for the State Governments to follow in framing the rules under section 15(1), and in the same way, the State Governments have before them the restrictions and other matters provided for in sections 4 to 12 while framing their own rules under section 15(1). [530 C-G]

3.1 The power to make rules conferred by section 15(1) includes the power to make rules charging dead rent and royalty. [531 B-C]

3.2 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. Section 105 of the Transfer of Property Act, 1982, contains the definitions of the terms "lease", "lessor", "lessee", "premium" and "rent". Royalty connotes the payment made for the materials or minerals won from the land. [534 C-D]

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H.R.S. Murthy v. Collector of Chittour and Anr., [1964] 6 S.C.R. 666, 673 referred to.

3.3 In a mining lease the consideration usually moving from the lessee to the lessor is the rent for the area leased (often called "surface rent"), dead rent and royalty. Since a mining lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lea e 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, 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". [534 G-H; 535 A-B]

"Dead rent" is calculated on the basis of the area leased while royalty is calculated on the quantity of minerals extracted or removed. m us, 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 teat rent can be described as the minimum guaranteed amount of royalty payable to the lessor but calculated on the basis of the area leased ant not on the quantity of minerals extracted or removed. Stipulations providing for the lessee's liability to pay surface rent, dead rent and royalty to the lessor are the usual covenants to be found in a mining lease. [535 B-E]

The grant of a mining lease would thus provide for the consideration for such grant in the shape of surface rent, teat rent and royalty. The power to make rules for

regulating the grant of such leases would, therefore, include the power to fix the confederation parable br the lessee to the lessor in the shape of ordinary rent or surface rent, dead rent and royalty. If this were not so, it would lead to the absurd result that when the Government grants a mining lease, lt is granted gratis to a person who wants to extract minerals and profit from them. Rules for regulating the grant of mining
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leases cannot be confined merely to rules providing for the form in which applications for such leases are to be made, the factors to be taken into account in granting or refusing such applications and other cognate matters. Such rules must necessarily include provisions with respect to the consideration for the grant. [535 E-H]

The Legislature and the rule making authorities have also throughout understood the power to make rules in respect of mining leases and minerals as including the power to charge dead rent and royalty. Rule 41 of the Mineral Concession Rules, 1949, made by the Central Government in exercise of the powers conferred by section 5 of the 1948 Act prescribed the conditions which were to be included in every mining lease. The said Rule 41 provided for payment of royalty on minerals at the rate specified in the First Schedule to the said Rules in force on the date of the grant of the lease as also to pay royalty at such revised rates as may be notified from time to time. It also provided for payment of surface rent and further provided for payment of dead rent with a proviso that the lessee was liable to pay dead rent or royalty, whichever was higher in amount, but not both. Rules made by the State Governments in respect of minor minerals also provided for payment of these charges. Under clause (1) of section 13(2) of the 1957 Act, the rules to be made by the Central Government can provide "for the fixing and the collection of dead rent, fines, fees or other charges and the collection of royalties". Although clause (i) of section 13(2) speaks of fixing and collection in the case of dead rent and only collection in the case of royalties, the reason is not that the power to fix rhyolites was not thought to be a comprehended in the general rule-making power of the Central Government under section 13(1). The reason was that a separate provision in that behalf was made by section 9 with respect to mining leases granted both before the commencement of the 1957 Act as also after the commencement of the 1957 Act. Another reason for doing so was to specify the rates for royalties in respect of different minerals other than minor minerals in the Second Schedule to the 1957 Act in order to restrict the scope of subordinate legislation as pointed out in the Statement of Objects and Reasons to the Legislative Bill No. 83 of 1972. [536 B; E-G; 537 E-H; 538 A]

4.1 The sole repository of the power of the State Government to make rules and amendments thereto, including

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amendments enhancing the rates of royalty and dead rent, is sub-section (1) of section 15. [564 D-E]

4.2 Sub-section (3) of section 15 does not confer upon the State Governments the power to make rules charging royalty or to enhance the rate of royalty so charged from time to time. [541 A-B]

4.3 A proper reading of subsection (3) of section 15 shows that it does not confer any power upon the State Governments to make rules with respect to royalty. Royalty is payable by the holder of a quarry lease or mining lease or other mineral concession granted under rules made under sub-section (1) of section 15. What sub-section (3) does is to make such holder liable to pay royalty in respect of minor minerals removed or consumed not only by him but also by his agent, managers, employee, contractor or sub-lessee. It thus casts a vicarious liability upon such holder to pay royalty in respect of the acts of persons other than himself. The very I fact that under subsection (3) the liability of such holder is to pay royalty "at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals" shows that the prescribing of the rate of royalty in respect of minor minerals is to be done under the rule-making power of the State Governments which is to be found in sub-section (1) of section 15. Yet another purpose of enacting sub-section (3) is to be found in the proviso to that sub-section which prohibits the State Government from enhancing the rate of royalty in respect of any minor mineral for more than once during any period of four years. [539 D-G]

Section 9A was inserted in the 1957 Act by the Amendment Act of 1972 but lt was not inserted with retrospective effect. It was, therefore, not there when section 15(1) was placed upon the statute book while enacting the 1957 Act. Section 9A was enacted with a two-fold purpose. It casts a liability upon the holder of a mining lease, whether granted before or after the commencement of the 1972 Act, that is, either before or after September 12, 1972, to pay to the State Government teat rent at the rates specified for the time being in the Third Schedule to the 1957 Act "notwithstanding anything contained in the instrument of lease or in any other law for the time being in force." The purpose of inserting section 9A in the

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1957 Act, as stated in the Statement of Objects ant Reasons to Legislative Bill No.83 of 1972, was to make a "provision of a statutory basis for calculation of dead rent". Section 9A also provides that the liability of the lessee would be to pay either royalty or dead rent whichever is greater, thus embodying in the Act what was contained in the proviso to clause (c) of Rule 27 of the Minor Mineral Concession Rules, 1960. Section 9A was inserted also with a view to

prohibit the Central Government from enhancing the rate of dead rent more than once during any period of four years. By the Amendment Act of 1972 section 9 was also a ended. While under the original sub-section (1) of section 9 the liability of the holder of a mining lease was only to pay royalty in respect of any mineral removed by him, after the amendment he is made liable to pay royalty in respect of any mineral "removed or consumed by him or by his agent, manager, employee, contractor of sub-lessee". By the Amendment Act of 1972 the power to the Central Government to amend by notification the Second Schedule which specifies the rate of royalty was also curtailed by inserting a proviso to section 9(3) in order to provide that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of four years. The amendments made by the Amendment Act of 1972 have, therefore, no relevance for ascertaining the scope of the rule-making power of the State Governments under section 15(1). [540 A-G]

Smt. Sonbai Pethalji v. State of Gujrat & Anr., XXI (2) 1980 (2) Guj. L.R. 530 reversed.

M.V. Subba Rao v. State of Andhra Pradesh and Anr., A.I.R. 1978 AP 453 overruled.

Laddu Mal and Ors. v. The State of Bihar & Ors., A.I.R. 1965 Patna 491; Banku Bihari Saha v. State Government of Madhya Pradesh and Ors., A.I.R. 1969 M.P. 210; Dr. Shanti Saroop Sharma and Anr. v. State of Punjab & Ors., A.I.R. 1969 Punj. & Har. 79; M/s. Amar Singh Modi Lal v. State of Haryana and Ors., A.I.R. 1972 Punj. & Har. 356; M/s. Brimco Bricks, Bharatpur v. State of Rajasthan And Anr., A.I.R. 1972 Raj. 145 distinguished.
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Sheo Varan Singh v. State of U.P., A.I.R. 1980 All. 92; Bal Mukund Arora etc. v. State of Rajasthan and Ors., A.I.R. 1981 Raj. 95 approved.

5.1 The power to make rules under section 15(1) includes the power to amend the rules so made, including the power to amend the rules so as to enhance the rates of royalty and dead rent. [541 D-E]

5.2 Rules under section 15(1), though made by the State Governments, are rules made under a Central Act and the provisions of the General Clauses Act, 1897, apply to such rules. Under section 21 of the General Clauses Act, where by any Central Act, a power to make rules is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary or rescind any rules so made. The power to amend the rules is therefore, comprehended within the power to make rules and as section 15(1) confers upon the State Governments the power to make rules providing for payment of dead rent and royalty, it also confers upon the State Governments the power to amend those rules so as to alter the rates of royalty and dead rent so prescribed,

either by enhancing or reducing such rates. The source of the power to enhance the rate of royalty is not contained in sub-section (3) of section 15. The purpose of inserting the said sub-section in section 15 with retrospective effect was an entirely different one. [541 C-F]

5.3 A State Government is entitled to amend the rules under section 15(1) enhancing the rates of royalty and dead rent even as regards leases subsisting at the date of such amendment. [542 A-B]

5.4 Sub-section (3) of section 15 does not confer any power to amend the rules made under section 15(1), for the power to amend the rules is comprehended within the power to make the rules conferred by sub-section (1) of section 15. The construction sought to be placed upon the word "grant" in section 15(1) is misplaced. While granting a lease it is open to the grantor to prescribe conditions which are to be observed during the period of the grant ant also to provide for the forefeiture of the lease on breach of any of those conditions. If the grant of a lease were not to prescribe such

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conditions, the lesses would with impunity commit breaches of the conditions of the lease. Ordinary leases of immovable property at times provide for periodic increases of rent and there is no reason why such increases should not be made in a mining or quarry lease or other mineral concession granted under a regulatory statute intended for the benefit of the public and even less reason why such a statute should not confer power to make rules providing for increases in the rate of dead rent during the subsistence of the lease. In any event, the power to make rules under section 15(1) is also for purposes connected with the grant of mining and quarry leases and other mineral concessions and the expression "and for purposes connected therewith" read with the word "grant" would include the power to enhance the rate of test rent during the subsistence of the lease. [542 B-F]

5.5 A quarry lease, mining lease or other mineral concession in respect of a minor mineral does not stand on the same footing as an ordinary contract. These leases and concessions are granted by the State Governments pursuant to rules made under the statutory power conferred upon them by a regulatory Act. Minerals are part of the material resources which constitute a nation's natural wealth and if the nation is to advance industrially and if its economy is to be benefitted by the proper development and exploitation of these resources, them cannot be permitted to be frittered away and exhausted within a few years by indiscriminate exploitation without any regard to public and national interest. It was for achieving the object set out above that both the 1948 Act and the 1957 Act were enacted. The long title of the 1957 Act is "An Act to provide for the regulation of mines and the development of minerals under the control of the Union." The 1948 Act contained a preamble

which stated "Whereas it is expedient in the public interest to provide for the regulation of mines and minerals and for the development of minerals to the extant hereinafter specified." The makers of the Constitution recognised the importance to the nation of the regulation of mines and mineral development and, therefore, enacted Entry 54 of the Union List and Entry 23 of the State List. In the exercise of the power conferred by Entry 54, Parliament has made a declaration in section 2 of the 1957 Act that "lt is expedient in the public interest that the Union should take under its control the regulation of mines and the
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development of minerals to the extent hereinafter provided." The presumption is that an authority clothed with a statutory power will exercise such power reasonably, and if in the public interest and for the efficacious regulation of mines and quarries of minor minerals and the proper development of such minerals, a State Government as the delegate of the Union Government thinks fit to amend the rules to as to enhance the rate of dead rent, it cannot be said that it is prevented from doing so by the principles of the ordinary law of contracts. It may be that in certain cases by enhancing the rate of dead rent the holders of leases in respect of certain types of minor minerals may be adversely affected but private interest cannot be permitted to override public interest. Conservation of minerals and their proper exploitation result in securing the maximum benefit to the community and lt is open to the State Governments to enhance the rate of dead rent so as to ensure the proper conservation and development of minor minerals even though it may effect a lessee's liability under a subsisting lease. [543 B-H; 544 A-C]

State of Tamil Nadu v. Hind Stone Etc., [1981] 2 S.C.R. 742 @ 751 relied on.

5.6 Where a statute confers discretionary powers upon the executive or an administrative authority, the validity or constitutionality of such power cannot be judged on the assumption that the executive or such authority will act in an arbitrary manner in the exercise of the discretion conferred upon lt. If the executive or the administrative authority acts in an arbitrary manner, its action would be bad in law and liable to be struck down by the courts but the possibility of abuse of power or arbitrary exercise of power cannot invalidate the statute conferring the power or the power which has been conferred by lt. [544 C-E]

6.1 A State Government is not required to give an opportunity of a hearing or of making a representation to the lessee who would be affected by any amendments of the rules before making such amendments. [544 G-H]

6.2 The enhancement in the rates of royalty and dead rent is made in the exercise of the statutory power to amend the rules framed under section 15(1). There is no such
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principle of law that before such a statutory power is exercised, persons who may be affected thereby should be heard. Whether any opportunity is to be given to persons affected to make representations to the Government would depend upon the form in which the rule making power is conferred. It is for the legislative body which confers the rule making power to decide in what from such power should be conferred. In some acts it is provided that the draft of the rules proposed to be made as also any proposed amendment thereto should be published in the Official Gazette so that members of the public may have an opportunity of making such representations or raising such objections as they think fit. Some other Acts provide for rules to be laid before parliament or the Legislature for its approval and to be effective only after such approval is given or to continue in force with such modifications as Parliament or the Legislature may make, and if the approval is not given to cease to have any effect. It was, therefore, for Parliament to decide whether rules and notifications made by the State Governments under section 15(1) should be laid before Parliament or the Legislature of the state or not. It, however, thought it fit to do so with respect to minerals other than minor minerals since these minerals are of vital importance to the country's industry and economy, but did not think lt fit to do so in the case of minor minerals because it did not consider them to be of equal importance. An amendment of the rules made under section 15(l), even though lt may have the effect of enhancing the rates of royalty or dead rent does not, therefore, become bad in law because no opportunity of being heard or making a representation is given to persons who would be prejudicially affected thereby. Section 15(l) does not contain any provision for giving any ouch opportunity and no such provision can be imported into that sub-section. [545 B-H]

7. A Quarry lease is a mining lease. Under clause (c) of section 3 "mining lease" inter alia means "a lease granted for the purpose of undertaking mining operations". Under clause (d) of section 3 the expression "mining operations" means "any operations undertaken for the purpose of winning any mineral". Quarrying minerals is, therefore, a mining operation in as much as it consists of an operation undertaken for the purpose of winning particular classes of minerals. Clause (vi) of Rule 2 of the Gujarat Rules defines "quarry lease" as

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meaning "a kind of mining lease in respect of a minor mineral granted under these rules." Quarry leases are, therefore, included in the term "mining leases". [546 C-F]

8.1 BY reason of the prohibition contained in the proviso to section 15(3), a State cannot enhance the rate of royalty in respect of any minor mineral more than once during any period of four years. A State Government is also

not entitled to enhance the rate of dead rent more than once during any period of four years. Such a construction would be in consonance with practice, both past and present. The proviso to section 9(3) prohibits the Central Government from enhancing the rate of royalty in respect of any mineral other than a minor mineral more than once during any period of four years. The proviso to section 9A(2)also prohibits the Central Government from enhancing the dead rent in respect of any area more than once during any period of four years. [548 A-C]

8.2 During any period of four years, however, the State Government can enhance both dead rent and royalty, but only once. [548 F]

Although in one sense dead rent may partake of the nature of royal q, there is a substantial difference between both. me bases for calculating royalty and dead rent are different and they are dealt with in different provisions of 1957 Act (namely, sections 9 and 9A) so far as minerals other than minor minerals are concerned and in the Rules made by the State Governments under section 15(1) so far as minor minerals are concerned. [548 E-F]

8.3 me period of four years for this purpose must be and can only be reckoned from the date of coming in to force of the rules and lt is open to a State Government to enhance the rate of royalty or dead rent at any time once during the period of four years from the coming into force of the rules and after each period of four years expires at any time during each succeeding period of four years. The Gujarat Rules came into force on April 1, 1966. Therefore, in the case of the Gujarat Rules the first period of four years would be 1.4.1966 to 31.3.1970, the second period would be 1.4.1970 to 31.3.1974, the third period would be 1.4.1974 to 31.3.1978, the fourth period would be 1.4.1978 to 31.3.1982, the fifth
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period would be 1.4.1982 to 31.3.1986 and so on thereafter. Thus, during any of these periods of four years both dead rent and royalty can be enhanced by the Government of Gujarat but only once during each such period. [549 A-D]

9. Building stones being minor minerals, the State Government has the power to classify then into different varieties and to charge a different rate of royalty in respect of each such variety. AS building stones have been defined as being minor minerals, the rule-making power with respect thereto vests in the State Governments under section 15(1). The 1957 Act does not enjoin State Governments to charge a uniform rate of royalty in respect of all varieties of building stones nor does it prohibit them from classifying building stones into different varieties and charging royal q thereon at separate rates. [557 A-C]

10.1 Notification No. GU-74/121(A)/MCR-2173(49)7268/CHH dated November 29, 1974, whereby the Government of Gujarat made the Gujarat Minor Mineral (Fourth Amendment) Rules,

1974, was validly issued and became operative with effect from December 1, 1974. The enhancement in the rates of royalty by the 1974 Notification was in the third period of four years reckoned from the date of coming into force of the Gujarat Rules, namely, from April 1, 1966. This third period was from April 1, 1974 to March 31, 1978. The rates of royalty having been enhanced once by the 1974 Notification, they could not be enhanced again during this period ant could only be enhanced during the subsequent period which commenced from April 1, 1978. [556 D-E]

10.2 Notification No. GU-75/117-MCR-2173(49)/6431/CHH dated October 29, 1975, whereby the Government of Gujarat made the Gujarat Minor Mineral (Second Amendment) Rules, 1975, to the extent that it enhanced the rates of royalty in respect of certain minor minerals was void as offending the prohibition contained in the proviso to section 15(3). [556 F-G]

10.3 The Explanation to Rule 21 provided that "For the purpose of this rule Schedule I means Schedule I as substituted by the Gujarat Minor Minerals (Third Amendment) Rules, 1966". Thus, the reference to Schedule I in Rule 21 was to Schedule I as substituted by the Notification dated
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November 25, 1966. That Schedule was, however, again substituted by the 1974 Notification. The effect of such substitution was to repeal the 1966 Schedule I and do substitute it by a new Schedule I. Under section 8(1) of the General Clauses Act, 1897, Where the said Act or any Central Act or Regulation made after the commencement of the said Act, repeals and re-enacts, with or without notification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed are, unless a different intention appears, to be construed as references to the provision so re-enacted. Though section 8(1)of the General Clauses Act does not in express terms refer to rules made under an Act, the same principle of construction would, apply in the case of rules made under an Act. Thus, after the coming into force of the 1974 Notification, the Explanation to Rule 21 must be read as "For the purpose of this rule Schedule I means Schedule I as substituted by the Gujarat Minor Mineral (Fourth Amendment) Rules, 1974" and references to Schedule I in Rule 21 must be construed as references to Schedule I as so substituted and not as references to Schedule I as substituted by the Gujarat Minor Minerals (Third Amendment) Rules, 1966. [554 H; 555 A-E]

Rule 21 was not substituted for the purpose of conferring upon the State Government the power to enhance the rates of royalty specified in Schedule I. It was substituted for a wholly different purpose, namely, to bring the said Rule in conformity with sub-section (3) Which was inserted with retrospective effect in section 15 by the Amendment Act of 1972. Its object was to make the holder of

a mining lease or any other mineral concession liable for payment of royalty not only in respect of minor minerals removed or consumed by him but also by his manager, employee, contractor or sub-lessee. Rule 21 did not have any relevance or bearing on the scope or exercise of that power. In fact, sub-clause (a) of clause (i) of Rule 22 and clause (3) of Part V of the Schedule to Form (namely, the From of Quarrying Lease) appended to the Gujarat Rules expressly provided a condition that the lessee is to pay to the Government royalty at the rates for the time being specified in and in force under Schedule I to the Gujarat Rules. Further, clause 12 of Part IX of the Schedule to From 'D' stipulates that the quarrying
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lease is to be 'subject to the Gujarat Minor Mineral Rules, 1966 as amended from time to time." [555 F-H; 556 A-D]

10.4 Notification No. GU-76/39/MCR-2175(68)4675-CHH dated April 6, 1976, whereby the Government of Gujarat made the Gujarat Minor Mineral (Second Amendment) Rules, 1976, was void as it enhanced the rates of dead rent for the second time during the same period of four years in as much as this amendment falls within the third period of four years commencing from 1.4.74 to 31.3.78 during which by the 1974 amendment the rates of dead rent had already been enhanced with effect from 1.12.74. [557 D-F]

10.5 Notification No. GU-79/118/MCR-2178(127)-167 dated March 26, 1979, Whereby the Government of Gujarat made the Gujarat Minor Minerals (Amendment) Rules, 1979, was valid and was not ultra vires either section 15 or Article 19(1)(g) of the Constitution. The enhancement in the rates of dead rent made by the 1979 Notification does not amount to any unreasonable restrictions on the right of the holders of the quarry leases to carry on their trade or business. The rates of dead rent specified cannot be looked at in isolation, but in con junction with the drastic reduction ate in the rates of royalty and so read there is nothing unreasonable in them. [557 F-G; 558 A]

Smt. Sonabai Pathalji v. State of Gujarat and Anr., XX (2) 1980 (2) Guj. L.R. 530 reversed.

The enhancement in the rates of dead rent made by the 1979 Notification was during the fourth period of four years which commenced on April 1, 1978 ant ended on March 31, 1982. The 1979 Notification, therefore did not violate the bar against enhancing the rates of dead rent more than once during any period of four years also. 559 B-C

10.6 The rates of royalty and dead rent specified by the Notification dated November 29, 1974, namely, the Gujarat Minor Mineral (Fourth Amendment) Rules, 1974, continued to be operative and in force until the coming into force of the Notification dated March 26, 1979, on April 1, 1979. [560 A-Bl
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10.7 The directions contained in the Circular No. MCR

2180(166) CHH dated February 12, 1981 issued by the Government of Gujarat were invalid and inoperative because the 1979 Notification as also Rule 22B were valid and operative and the State Government could not by a circular letter charge and collect royalty at rates different from the rate specified in the 1979 Notification. [561 G-H; 562 A-B]

10.8 Notification No.GU-81/75/MCR 2181/(168)-4536-CHH dated June 18, 1981, whereby the Government of Gujarat made the Gujarat Minor Mineral (Amendment) Rule, 1981, is valid and constitutional and does not offend Article 19(1) (g) of the Constitution. [562 E-F]

10.9 It is true that by the 1981 Notification the rates of royalty have been enhanced manifold. During the particular period of four years, namely, the fourth period commencing on April 1, 1978, and ending on March 31, 1982, the rates of royalty had not been enhanced but drastically reduced by the 1979 Notification while the rates of dead rent had been considerably enhanced by the 1979 Notification. The enhancement in the rates of royalty made by the 1981 Notification was, therefore, the first enhancement made during the fourth period of four years. If the rates of royalty so enhanced are looked at alone, it would appear that they are unreasonable, but taking into account the fact that dead rent is not payable after the cooing into force of the 1981 Notification, the position is completely altered and it cannot be said that enhancement in the rates of royalty is unreasonable. Though by the 1981 Notification the rates of royalty in respect of certain minor minerals have been enhanced, by no stretch of imagination can such enhancement be said to be excessive or unreasonable when compared with the rates of royalty specified in the 1974 Notification. [562 Y-G; 563 A-D]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petitions Nos: 1656, 2108, 4097, 7103, 7104-7128, 7697 of 1981, 762, 874-942, 946-968, 1616-17, 4455-4473, 4479-4484, 5589-5605, 5895-5969, 5971- 6005, 6309, 6419-6422, 6463-6479, 10104-10122 of 1982, 3993- 4003, 4208-4217, 4912-4924, 5167-5182, 8813-8820, 9539-9549 of 1983.

WITH Civil Appeals Nos: 706, 1489, 1675, 1934 of 1981, 1525- 1526 of 1982.

MADON, J. This group of Writ Petitions under Article 32 of the Constitution and Appeals by certificate granted by the High Court of Gujarat and by Special Leave granted this Court raises questions relating to the constitutionality of section 15(1) of the Mines and Minerals (Regulation and Development) Act, 1957 (Act No. 67 of 1957), the power of the State Governments to make rules under the said section 15 to enable them to charge dead rent and royalty in respect of leases of minor

minerals granted by them and to enhance the rates of dead rent and royalty during the subsistence of such leases, the validity of Rule 21-B of the Gujarat Minor Mineral Rules, 1966, and of certain notifications issued by the Government of Gujarat under the said section 15 amending the said Rules so as to enhance the rates of royalty and dead rent in respect of leases of minor minerals. These Notifications are :

> (1). GU-74/121(A)/MCR-2173(49)7268/CHH dated November 29, 1974 (hereinafter referred to as "the 1974 Notification"), (2) GU-75/117-MCR-2173(49)/6431/CHH dated October 29, 1975 (hereinafter referred to as "the 1975 Notification"), (3) GU-76/39/MCR-2175(68) 4675-CHH dated April 6, 1976 (hereinafter referred to as "the 1976 Notification").
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> (4) GU-79/118/MCR-2178(127)-167-CHH dated March 26, 1979 (hereinafter referred to as "the Notification"), and (5). GU-81/75/MCR 2181/(168)-4536-CHH dated June 18, 1981 (hereinafter referred to as "the 1981 Notification").

The question of the validity of a circular, namely Circular No. M.C.R. 2180 (166) CHH dated February 12, 1981, issued by the Deputy Secretary, Industries, Mines and Electricity Department, Government of Gujarat, also falls for consideration in these Writ Petitions and Appeals.

It is unnecessary in order to decide these Writ Petitions and Appeals to relate the facts of each individual matter. It will suffice if we state broadly how these Writ Petitions and Appeals have come to be filed. The parties before us, other than the State of Gujarat and governmental authorities, are persons to whom the State of Gujarat has granted quarry leases and mining leases in respect of minor minerals such as black trap, limestone, murrum, bentonite, rubble, marble, sandstone, quartzite, etc. In exercise of the powers conferred by section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, the Government of Gujarat made the Gujarat Minor Mineral Rules, 1966. The said Rules came into force on April 1, 1966. All the leases in the matters before us were given in the form prescribed by the said Rules. Schedule I to the said Rules specified the rates at which royalty was payable and Schedule II specified the rates at which dead rent was payable. By the 1974 Notification the Government of Gujarat made the Gujarat Minor Mineral (Fourth Amendment) Rules, 1974, whereby Schedule I was substituted and Schedule II was amended with effect from December 1, 1974. Under the new Schedule I and the amended Schedule II the rates of royalty and dead rent in respect of certain minor minerals were enhanced. In view of several representations made to it, the Government of Gujarat decided not to implement the 1974 Notification and to refund the amount of royalty, if any, collected at the rates prescribed by the 1974 Notification. By the 1975 Notification the Government of Gujarat made the Gujarat Minor Mineral (Second Amendment) Rules, 1975, whereby Rule 21 of the said Rules and Schedule I were substituted with effect from November 1, 1975. By the said substituted Schedule I the rates of royalty in respect of several items were enhanced.

We may pause here to mention that the Appellant in Civil Appeal No. 706 of 1981, Ambalal Manibhai Patel, filed a writ petition in the Gujarat High Court, being Special Civil Application No. 66 of 1978, challenging the enhancement in the rate of royalty to Rs. 3 per metric tonne in respect of

black trap and hard murrum specified in Item No. 4 of the said substituted Schedule I. The said writ petition was rejected by a learned Single Judge of that High Court. The Letters Patent Appeal against the order of the learned Single Judge, being Letters Patent Appeal No. 61 of 1978, was heard along with several writ petitions raising the same questions. The main contention raised in those matters was that under the proviso to section 15(3) of the 1957 Act, the rate of royalty in respect of any minor mineral could not be enhanced by the State Government more than once during any period of four years and that the rate of royalty on black trap and hard murrum having been increased by the 1974 Notification, it could not be increased again in 1975. A subsidiary contention raised was that the State Government had no power to classify building stones into black trap and hard murrum because by doing so what the State Government had done in effect and substance was to declare black trap and hard murrum as minor minerals and that it was only the Central Government which possessed the power to declare any mineral not covered by the definition of the expression "minor minerals" in clause (c) of section 3 of the 1957 Act to be a minor mineral. Both these contentions were rejected by a Division Bench of the Gujarat High Court consisting of Thakkar and Mankad, JJ., by its judgment dated September 16- 17, 1980. The Division Bench held that the 1974 Notification had not become operative and, therefore, in lssuing the 1975 Notification the State Government had not violated the proviso to section 15(3), and that building stones having been already included in the definition of "minor minerals", there was no bar to the State Government classifying them into different varieties for the purpose of recovering royalty. Appeals have been filed in this Court challenging the correctness of the above judgment. The State of Gujarat has, however, not filed any appeal against this judgment.

By the 1976 Notification the Government of Gujarat made the Gujarat Minor Mineral (Second Amendment) Rules, 1976, substituting Schedule II to the said Rules. Schedule II prior to the said substitution was as follows :

" SCHEDULE II Rates of Dead Rent [See Rule 22 (i)(b)]

1. For specified Minor minerals.

For every 100 sq. meters or part thereof, upto 5 hectares Rs. 0.35P.

For each additional 1 hectare or part there of, exceeding 5 hectares Rs. 50.00

2. For other minor minerals For every 100 sq. meters or part thereof upto 5 hectares Rs. 0.20P.

For each additional hectare or part thereof exceeding 5 hectares. Rs. 35.00 By the 1976 notification Items 1 and 2 in Schedule II were substituted to read as follows :

> "(1) for quarry leases for any minor mineral for every hectare or part thereof: Rs.500 (Five hundred) (2) for quarry parwana for any minor mineral for every parwana: Rs. 100 (One hundred)."

On March 26, 1979, the Minster for Mines made a statement in the Legislative Assembly announcing the decision to implement from April 1, 1979, the new policy of dead rent framed by the Government. According to the said statement, the policy was aimed at breaking the hold of big lease-holders of minor minerals who, by finding loopholes in the said Rules, had acquired leases for the same mineral in different districts and had established a monopoly in the market and had made a fortune by exploiting labourers and evading payment of royalty. According to the said statement, such lease-holders quarried just enough minerals and created artificial shortages in order to control the market and maintain high levels of profits, and some lease-holders had acquired control of areas far in excess of the capacity of their crushers and did not allow entry to other industrialists. He further stated that under the said Rules lessees of minor minerals had to pay royalty on the basis of monthly returns but as true monthly returns were not submitted, evasion to the extent of five to ten per cent was taking place in the payment of royalty. Pursuant to this policy decision the 1979 Notification was issued by the Government of Gujarat. By the 1979 Notification the Government of Gujarat made the Gujarat Minor Minerals (Amendment) Rules, 1979, with effect from April 1, 1979. By this amendment a new Rule 21-B was inserted in the said Rules, Rule 22 was amended, Chapter IV of the said Rules which dealt with grant of quarrying permits in respect of lands in which minerals belonged to the Government was deleted, Form was amended, Forms I, J and K were deleted, and Schedule I and II were substituted. By the substituted Schedule I, the rate of royalty on all minor minerals was specified as ten paise per metric tonne. By the substituted Schedule II the rate of dead rent per hectare or part thereof in respect of quarry leases was enhanced to Rs.1,200 in certain cases, Rs. 1,500 in some other cases, Rs. 2,000 in one case and Rs. 3,000 in the remaining cases. So far as quarry parwanas were concerned, the rate was specified as one-tenth of the rate for quarry leases per parwana.

A writ petition was filed by the said Ambalal Manilal Patel in the Gujarat High Court, being Special Civil Application No. 138 of 1978, challenging the enhancement in the rate of dead rent made by the 1976 Notification. This writ petition was dismissed by a learned Single Judge of that High Court on February 16, 1978. The Letters Patent Appeal filed against the judgment and order of the learned Single Judge was heard by a Division Bench of that High Court along with twenty-five writ petitions which challenged the 1979 Notification. The said Letters Patent Appeal and writ petitions were allowed by a Division Bench consisting of Sheth and Nanavati, JJ. The Division Bench held that the conditions in a lease in respect of minor minerals relating to the financial liability of a lessee derived their authority from sub-section (3) of section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, while conditions, other than those relating to a lessee's financial liability, regulating the grant of a lease derived their authority, from sub-section (1) of section 15, that the State Government had no power to enhance the rate of dead rent during the subsistence of a lease, and that Rule 21-B of the Gujarat Minor Mineral Rules, 1966, and the 1979 Notification were ultra vires section 15 and sub-clause (g) of clause (1) of Article 19 of the Constitution. The Division Bench accordingly issued a writ of mandamus against the State Government directing it to desist from enforcing the said Rule 21-B and the 1979 Notification. The Division Bench also made the same declaration in respect of the 1976 Notification and issued the same mandamus in respect thereof. The said judgment of the Division Bench is reported as Smt. Sonbai Pethalji v. State of Gujarat & Anr. BI (2) 1980 (2) Guj. L.R. 530.

The Government of Gujarat accepted the said judgment and did not come in appeal to this Court. Certain lessees of mining and quarry leases, however, have approached this Court by way of Appeals and Writ Petitions challenging the correctness of the judgment in SOL. Sonabai's Case. In view of the said judgment, the Government of Gujarat issued a circular addressed to all Collectors, District Development Officers and the Director, Geology and Mining, Ahmedabad, being Circular No. M.C.R. 2180 (166) CHH dated February 12, 1981, stating that in view of the aforesaid judgment of the Division Bench the position prior thereto would prevail and that Chapter IV of the said Rules which was deleted by the 1976 Notification would stand revived and would be applied. The Government thereafter made the Gujarat Minor Mineral (Amendment) Rules, 1981, by issuing the 1981 Notification which came into force on June 20, 1981. By the 1981 Notification Rule 21-B was deleted, Rule 22 was amended, Chapter IV and certain Forms were inserted, Schedule I to the said Rules was substituted and Schedule II thereto deleted. Several lessees of mining and quarry leases filed writ petitions in the Gujarat High Court challenging the validity of the 1981 Notification and the said Circular. These writ petitions were rejected on the ground that as connected proceedings were pending in this Court, it was open to the petitioners to move this Court if they so desired. Accordingly, the said petitioners as also others have filed Writ Petitions in this Court challenging the validity of the 1981 Notification and the said Circular as also in some cases Appeals against the order rejecting the writ petitions.

The parties before us - whether Petitioners, Appellants, or Respondents - fall in different groups according to how their interests are affected by one or the other of the impugned Notifications. They have, therefore, advanced different sets of submissions at the hearing of these Writ Petitions and Appeals. The reason for this is obvious. For extracting or excavating certain classes of minor minerals a larger surface area is required than for extracting or excavating other classes of minor minerals. Thus for clay and earth a larger surface area is required than for bentonite because in the case of bentonite mining is required to be deeper. The result is that lessees of larger surface areas are affected more when the rate of dead rent is enhanced while the lessees of smaller surface areas are affected more when the rate of royalty is enhanced.

In order to understand the controversy between the parties and the rival submissions advanced at the Bar, it is necessary to trace briefly the legislative history of the enactments providing for the regulation of mines and the control and development of minerals in India and then to refer to the relevant statutory provisions in that behalf extracting such of them as are necessary. There was no statute dealing with these matters prior to the enactment of the Mines and Minerals (Regulation and Development) Act, 1948 (Act No. LIII of 1948) but they were governed by executive rules. Rules for the grant of mineral concessions in British India were for the first time made by the Department of Revenue and Agriculture (Geology and Minerals) by a resolution dated December 13, 1894. These rules were revised in 1899. Neither the 1894 Rules nor the 1899 Rules made any mention of minor minerals. In 1913 revised rules were made by Resolution No. 7552-7581-121 dated September 15, 1913. These rules were intended to provide guidance to officials of the Government in granting prospecting licences and mining leases. Unlike the previous rules, these rules for the first time, made a reference to minor minerals, the extraction of which was to be regulated by such separate rules as the Local Governments might prescribe in accordance with local circumstances and requirements. No exhaustive definition of minor minerals was given, but they included slate,

building stone, limestone and clay.

Under the Government of India Act, 1935, the legislative field of regulation of mines and development of minerals was divided between the Central Legislature and the Provincial Legislatures. Entry 36 in List I of the Seventh Schedule to that Act (namely, the Federal Legislative List) provided as follows "36. Regulation of mines and oilfields and mineral development to which such regulation and develop ment under Federal control is declared by Federal law to be expedient in the public interest." Entry 23 in List II in the Seventh Schedule to that Act (namely. the provincial Legislative List) provided as follows:

> "23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control."

The word "Federal" in the above entries was substituted by the word "Dominion" by the India (Provisional Constitution) Order, 1947.

No legislation was, however, enacted in pursuance of the above power until after Independence, but in 1939 the Government of India made the Mining Concessions (Central) Rules, 1939, or regulating grants of prospecting licences and mining leases in Chief Commissioner's Provinces and British Baluchistan. Rule 6 of the 1939 Rules provided that these Rules were not to apply to minor minerals such as slate, building stone, limestone and clay, the extraction of which was to be regulated by such separate rules as the Chief Commissioner might prescribe. Thus, the provisions relating to minor minerals in the 1939 Rules were similar to those in the 1913 Rules and the list of minor minerals was also identical under these two sets of rules. Some of the Provincial Governments, such as the Governments of Assam, Bihar, Bombay and the United Provinces, also framed their own rules for grant of mineral concessions.

The need for Central regulation of mines and oilfields and mineral development began to be increasingly felt and became highlighted during the Second World War with the result that certain key minerals had to be controlled under the Defence of India Act, 1939. It was recognized that a planned and uniform policy of mineral development was essential to economic and industrial progress. After Independence the Government of India set out in its Industrial Policy Resolution of April 6, 1948, the policy which it proposed to pursue in the industrial field. The Industrial Policy Resolution included minerals amongst the industries whose location had to be governed by economic factors of all-India import or which required considerable investment or a high degree of technical skill and consequently had to be the subject of Central regulation and control. Accordingly, in pursuance of the power conferred by Entry 36 in the Federal Legislative List the Legislature of the Dominion of India enacted on September 8, 1948, the Mines and Minerals (Regulation and Development) Act, 1948 (hereinafter referred to as "the 1948 Act"). The object of the 1948 Act was to regulate mines and oilfields and mineral development on the lines contemplated in the Industrial Policy Resolution of April 6, 1948 (see the Statement of Objects and Reasons to the Legislative Bill which when enacted became the Mines and Minerals (Regulation and Development) Act, 1948, published in the Gazette of India, 1948, Part V, page 60l. The 1948 Act was brought into force on

October 25, 1949, by Notification No. M.II. 155(24)-I dated October 8, 1949, published in the Gazette of India, Extraordinary, 1949, at page 2075.

Clause (c) of section 3 of the 1948 Act defined "miner als" as including "natural gas and petroleum". Section 5(1) conferred power upon the Central Government to make rules to regulate the grant of mining leases or for prohibiting the grant of such leases in respect of any mineral or in any area. Under clause (d) of section 5(2), in particular, and without prejudice to the generality of the power conferred by section 5(1), such rules could provide for "the fixing of the maximum and minimum rent payable by a lessee, whether the mine is worked or not." Section 6(1) conferred power upon the Central Government to make rules for the conservation and development of minerals. Under clause (i) of section 6(2), in particular, and without prejudice to the generality of The power conferred by section 6(1), such rules could provide for "the levy and collection of royalties, fees or taxes in respect of minerals mined quarried, excavated or collected". Section 7 conferred upon the Central Government the power to make rules for the purpose of modifying or altering the terms and conditions of any mining lease granted prior to the commencement of the 1948 Act so as to bring such lease in conformity with the rules made under section 5 and 6. Under section lO, all rules made under the 1948 Act were to be laid, as soon as may be after they were made, before the Central Legislature and after the commencement of the Constitution of India, before the House of the People.

In exercise of the power conferred by section 5 of the 1948 Act the Central Government made the Mineral Concession Rules, 1949, for regulating the grant of prospecting licences and mining leases for minerals other than petroleum and natural gas. The said Rules came into force on October 25, 1949, namely, the date on which the 1948 Act was brought into force. Rule 4 of the said Rules expressly provided that the said Rules "shall not apply to minor minerals, the extraction of which shall be regulated by such rules as the Provincial Government may prescribe." After the commencement of the Constitution, by Notification No. M.II-155(92) dated October 29, 1951, the word "Provincial" was substituted by the word "State". clause (ii) of Rule 3 defined the expression "minor mineral". The said definition in its finally amended form was as follows :

> "(ii) 'minor mineral' means building stone, boulder, shingle, gravel, Chalcedony pebbles used for ball mill purposes only, limeshell kankar and limestone used for lime burning, murrum, brick-

earth, Fuller's earth, Bentonite, ordinary clay, ordinary sand used for non-industrial purposes, road metal, reh-matti, slate and shale when used for building material.

Although the said Rules did not apply to minor minerals, in view of certain arguments advanced at the Bar it would be useful to look at the material provisions of Rule 41 of the said Rules as finally amended. Rule 41 prescribed the conditions which every mining lease was to include. The provisions of the said Rule 41 material for our purpose were as follows:

> "41. Conditions -

(1) Every mining lease shall include the following conditions;-

(i) The lessee shall pay royalty on minerals despatched from the leased areas at the rate specified in the First Schedule to these rules as in force on the date of the grant of the lease;

Provided that the lessee pay royalty at such revised rate as may be notified from time to time; Provided further that the rate of royalty shall not be revised more than once in two years, nor it shall be in excess of twenty percent of the sale value of the mineral at the pit's mouth.

(i-A) Where the lessee is a Government or a Quasi-Government organisation, the rate o-f royalty shall be fixed by the Central Government by negotiation between the lessor and the lessee.

x x x x

(iii) The lessee shall also pay, for every year, except the first year of the lease, such yearly dead rent within the limits specified in the Third Schedule to these Rules, as may be fixed by the State Government in the lease; and if the lease permits the working of more than one mineral in the same area, the State Government may charge separate dead rent in respect of each mineral:

Provided that the lessee shall be liable to pay the dead-rent or royalty in respect of each mineral, whichever be higher in amount, but not both.

(iv) The lessee shall also pay, for the surface area used by him for the purposes of the mine, surface rent at such rate, not exceeding the land revenue and cesses assessable on the land, as may be specified by the State Government in the lease.

x x x x Thus, even after the enactment of the 1948 Act and the framing of the Mineral Concession Rules, 1949, minor minerals continued to be governed by rules made by the State Governments.

Until the coming into force of the State Reorganisation Act, 1956, on November 1, 1956, the territories of the State of Bombay included the territories now forming part of the State of Gujarat except Saurashtra which was a Part State and Kutch which was a Part State. Under section 8 of the States Reorganisatlon Act, the territories of the then existing States of Saurashtra and Kutch became part of the territories of the State of Bombay.

It will be useful to refer to the rules in force in the State of Bombay as at the date of the reorganization of states.

By order No. IND/Q/58/2500 dated November 18, 1949, the Government of Saurashtra made regulations governing the operation of various kinds of quarries in Saurashtra. Schedule I to the said Order contained rules in that behalf. Rule (7) provided as follows:

"(7) A surface rent and dead rent or minimum Royalty at the rate specified in schedules V and VI shall be recovered on all quarry materials permitted or licensed to be quarried and removed under Rule (2)."

The Saurashtra Rules applied to white clay, stones and other minerals specified in Schedule V to the said Order.

By Notification No. MNL-1154-M dated December 28, 1954, the Government of Bombay in exercise of the power conferred by Rule 4 of the Mineral Concession Rules, 1949, made the Bombay Minor Mineral Extraction Rules, 1955, which came into force on June 1, 1955. Clause (iv) of Rule 2 defined "Quarrying lease". The said definition was as follows :

"(iv) 'quarrying lease' means a lease to mine, quarry, bore, dig and search for, win, work and carry away any minor mineral specified therein".

Rule 18 prescribed the conditions which every quarrying lease was to include. The relevant provisions of the said Rule 18 were as follows :

"18. Conditions. -

(1) Every quarrying lease shall include the following conditions :-

(i) The lessee shall pay royalty on minor minerals despatched from the leased area at the rates specified in Schedule I to these Rules :

Provided that such rates shall be liable to be revised once in every 5 years.

(ii) The lessee shall also pay for every year of the lease such yearly dead rent within the limits specified in Schedule II to these Rules as may be fixed by the Collector in the lease; and if the lease permits the working of more than one mineral in the same area, the Collector may fix separate dead rent in respect of each mineral :

Provided that the lessee shall be liable to pay the dead rent or royalty in respect of each minor mineral, whichever be higher in amount, but not both.

(iii) The lessee shall also pay, for the surface area used by him for the purposes of the quarry, surface rent at such rate, not exceeding the land revenue and cesses assessable on the land, as may be fixed by the Collector and specified in the lease.

x x x x."

Under the Government of India Act, 1935, "petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport" formed a separate legislative topic being Entry 32

in the Federal Legislative List, while oilfields and mineral oils fell under Entry 36 in the said List along with mines and mineral development. Under the Constitution of India, however, the old Entry 36 was divided into two and the regulation and development of oilfields and mineral oil resources became a separate legislative topic along with petroleum and petroleum products, and other liquids and substances declared by Parliament by law to be dangerously inflammable. The relevant legislative Entries in the Constitution of India are Entries 53 and 54 in List I in the Seventh Schedule to the Constitution of India, namely, the Union List. These two Entries read as follows :

"53. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.

54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

Entry 23 in List II in the Seventh Schedule to the Constitution, namely, the State List, corresponds to Entry 23 in the Provincial Legislative List in the Government of India Act, 1935, and is as follows :

"23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union."

In 1957 Parliament decided that the regulation and development of mines and minerals should feature by themselves in a separate Act. Accordingly Parliament enacted on December 28, 1957, the Mines and Minerals (Regulation and Development) Act, 1957 (Act No. 67 of 1957), hereinafter referred to as "the 1957 Act". Section 32 of the 1957 Act amended the 1948 Act in the manner set out in Schedule III to the 1957 Act so as to remove from the 1948 Act all references to mines and minerals and to confine it to oilfields and mineral oil resources. The short title of the 1948 Act was also amended to read "The Oilfields (Regulation and Development) Act, 1948", and its long title was amended to read "An Act to provide for the regulation of oilfields and for the development of mineral oil resources". The 1957 Act was brought into force on June 1, 1958, by Notification No. G.S.R. 432 dated May 29, 1958, published in the Gazette of India, Extraordinary, 1958, Part II, sec. 3(i), at page

225. A number of provisions which till then had been dealt with under the rule-making powers of the Central Government were transferred to the 1957 Act in order to restrict the scope of subsidiary legislation. Thus, instead of leaving lt to the rules made by the Central Government to define the term "minor mineral", the definition of that term was embodied in the 1957 Act. Amongst the other provisions which fell within the scope of the rule-making powers of the Central Government and were made part of the 1957 Act were the Provisions for the maximum period for which a prospecting licence or a mining lease was to be granted and the power to prescribe the rates of royalty for

various minerals (see the Statement of Objects and Reasons to the Legislative Bill No. 49 of 1957, which when enacted became the 1957 Act, published in the Gazette of India, Extraordinary, dated July 29, 1957, Part II, sec.2, at page 392). The 1957 Act was amended with retrospective effect by the Mines and Minerals (Regulation and Developments Amendment Act, 1958 (Act No. 15 of 1958). This Amendment Act dealt with mining leases in respect of coal granted before October 29, 1949, and does not concern us. The 1957 Act was again amended by the Mines and Minerals (Regulation and Development) Amendment Act, 1972 (Act No. 56 of 1972), which came into force on September 12, 1972. The Amendment Act of 1972 was enacted mainly to carry out the recommendations made by the Mineral Advisory Board. Amongst the principal changes affected in the 1957 Act by the Amendment Act of 1972 were the imposition of a ceiling on the individual holdings of prospecting licences and mining leases; the imposition of a specific obligation on holders of mining leases in respect of payment of royalty for minerals removed by their agents, sub-lessees or employees; providing a statutory basis for calculation of dead rent; and the application of Minor Mineral Rules to quarry leases (see the Statement of Objects and Reasons to the Legislative Bill No. 83 of 1972, which when enacted became the Amendment Act of 1972, published in the Gazette of India, Extraordinary, dated August 21, 1972, Part II, sec. 2, at page 828).

We will not turn to the relevant provisions of the 1957 Act. Section 2 of the 1957 Act contains a declaration that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent provided in the 1957 Act. Certain definitions given in section 3 are important and may be reproduced. These definitions are those contained in clauses (a) and (c) to (e) of the said section 3. These clauses provide as follows :

> "3. Definitions. -
>
> In this Act, unless the context otherwise requires,
>
> (a) 'minerals' includes all minerals except mineral oils;
>
> x x x x
>
> (c) 'mining lease' means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose;
>
> (d) 'mining operations' means any operations undertaken for the purpose of winning any mineral;
>
> (c) 'minor minerals' means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral".

It is pertinent to note that the term "minor minerals" came to be defined in a statute for the first time by clause (e) of section 3 of the 1957 Act. In addition to the minor minerals mentioned in the

said clause (e), boulder; shingle; chalcedony pebbles used for ball mill purposes only; limeshell, kankar and limestone used in kilns for manufacture of lime used as building material; murrum; brick-earth; Fuller's earth; bentonite; road metal; reh- matti; slate and shale when used for building material; marble; stone used for making household utensils; quartzite and sandstone when used for purposes of building or for making road metal and household utensils; and slatpetre, have been declared to be minor minerals by various notifications issued by the Central Government. Under section 4A which was inserted by the Amendment Act of 1972, where in the interest of regulation of mines and mineral development it is thought expedient to grant a mining lease in favour of a Government company or corporation owned or controlled by the Government and for that purpose to terminate prematurely a mining lease in respect of a mineral other than a minor mineral, it is for the Central Government, after consultation with the State Government, to form the opinion with respect to such expediency, while it is for the State Government, after consultation with the Central Government, to form the opinion with respect to such expediency in the case of a mining lease in respect of any minor mineral. Section 5 prescribes the restrictions on the grant of prospecting licences and mining leases. Section 6 prescribes the maximum area for which a prospecting licence or mining lease can be granted. Section 7 prescribes the period for which a prospecting licence can be granted or renewed and section 8 prescribes the period for which a mining lease can be granted or renewed. Section 9 is important and requires to be reproduced in extenso. It reads as follows :

> "9. Royalties in respect of mining leases.-
>
> (1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral. (2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral. (2A) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workman does not exceed one- third of a tonne per month.
>
> (3) The Central Government may, by notification in the Official Gazette, amend the Second Schedule e so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may specified in the notification :
>
> Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of four years.

The words "mineral removed or consumed by him or his agent, manager, employee, contractor or sub-lessee" were substituted in sub-sections (1) and (2) by the Amendment Act of 1972 for the words "mineral removed by him". Sub-section (2A) was inserted in section 9 by the same Amendment Act.

The proviso to sub-section (3) was substituted by the Amendment Act of 1972 for the original proviso which read as follows :

"Provided that the Central Government shall not-

(a) fix the rate of royalty in respect of any mineral so as to exceed twenty per cent of the sale price of the mineral at the pit's head, or

(b) enhance the rate of royalty in respect of any mineral more than once during any period of four Years .

Section 9-A was inserted in the 1957 Act by the Amendment Act of 1972. It reads as follows :

9A. Dead rent to be paid by the lessee. -

(1) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall, notwithstanding anything contained in the instrument of lease or in any other law for the time being in force, pay to the State Government, every year, dead rent at such rate as may be specified, for the time being, in the Third Schedule, for all the areas included in the instrument of lease :

Provided that where the holder of such mining lease becomes liable, under section 9, to pay royalty for any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area, he shall be liable to pay either such royalty or the dead rent in respect of that area, whichever is greater. (2) The Central Government may, by notification in the Official Gazette, amend the Third Schedule so as to enhance or reduce the rate at which the dead rent shall be payable in respect of any area covered by a mining lease and such enhancement or reduction shall take effect from such date as may be specified in the notification :

Provided that the Central Government shall not enhance the rate of the dead rent in respect of any such area more than once during any period of four Years.

Sections 10 to 12 prescribe the procedure for obtaining prospecting licences and mining leases in respect of land in which the minerals vest in the Government. Under section 10, such applications are to be made to the concerned State Government and the State Government is to grant or refuse to grant such licence or lease having

regard to the provisions of the 1957 Act and any rules made thereunder. Under the Mineral Concession Rules, 1949, the procedure was very similar with differences which are not material for our purpose. Sections 13 to 16 form a group of sections under the heading "Rules for regulating the grant of prospecting licences and mining leases". Section 13 confers rule-making power upon the Central Government. The relevant provisions of that section are as follows :

"13. Power of Central Government to make rules in respect of minerals. -

(1) The Central Government may, by notification in the Official Gazette, make rules for regulation the grant of prospecting licences and mining leases in respect of minerals and for purposes connected therewith.

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

x x x x

(i) the fixing and collection of dead rent} fines, fees or other charges and the collection of royalties in respect of -

(i) prospecting licences,

(ii) mining leases,

(iii) minerals mined, quarried, excavated or collected;

x x x x

(r) any other matter which is to be, or may be, prescribed under this Act."

Sections 14 and 15 provide as follows :

"14. Sections 4 to 13 not to apply to minor minerals. -

The provisions of sections 4 to 13 (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals.

15. Power of State Government to make rules in respect of minor minerals. -

(1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith. (2) Until rules are made under sub-section (1), any rules made by a State Government regulating the

grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals which are in force immediately before the commencement of this Act shall continue in force. (3) The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sublessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals :

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

In section 14 and in sub-sections (1) and (2) of section 15 the words "quarry leases, mining leases or other mineral concessions" were substituted by the Amendment Act of 1972 for the words "prospecting licences and mining leases". Sub- section (3) was inserted in section 15 with retrospective effect by the same Amendment Act. Section 19 provides as follows :

"19. Prospecting licences and mining leases to be void if in contravention of Act. -

Any prospecting licence or mining lease granted, renewed or acquired in contravention of the provisions of this Act or any rules or orders made thereunder shall be void and of no effect. Explanation. - Where a person has acquired more than one prospecting licence or mining lease in any State and the aggregate area covered by such licences or leases, as the case may be, exceeds the maximum area permissible under section 6, only that prospecting licence or mining lease the acquisition of which has resulted in such maximum area being exceeded shall be deemed to be void."

Under section 20 the provisions of the 1957 Act and the rules made thereunder apply to the renewal of any prospecting licence or mining lease whether granted before or after the commencement of the 1957 Act. Under section 28(1), rules and notifications made by the Central Government are to be laid before Parliament and to be subject to any modification which may be made by Parliament, and if not approved, are thereafter to be of no effect. Under section 29 all rules made or purporting to have been made under the 1948 Act in so far as they related to matters for which provision was made in the 1957 Act and were not inconsistent therewith are to be deemed to have been made under the 1957 Act and to continue in force until superseded by any rules made under the 1957 Act.

In exercise of the power conferred by section 13 of the 1957 Act, the Central Government, by Notification No. G.S.R. 1398 dated November 11, 1960, published in the Gazette of India dated November 26, 1960, Part II, sec. 3(i), at page 1832, made the Mineral Concession Rules, 1960. Rule 27 of the said Rules sets out the conditions to which every mining lease is to be subject. The relevant provisions of Rule 27 are as follows :

"27. Conditions. - (1) Every mining lease shall be subject to the following conditions and such conditions shall be incorporated in every mining lease -

x x x x

(c) the lessee shall pay, for every year, except the first year of the lease such yearly dead rent within the limits specified in Schedule IV as may be fixed from time to time by the State Government and if the lease permits the working of more than one mineral in the sale area, the State Government shall not charge separate dead rent in respect of each mineral :

Provided that the lessee shall be liable to pay the dead rent of royalty in respect of each mineral whichever be higher in amount but not both;

(d) the lessee shall also, pay for the surface area used by him for the purpose of mining operations, surface rent and water rate at such rate not exceeding the land revenue, water and cesses assessable on the land, as may be specified by the State Government in the lease;

x x x x (5) If the lessee makes any default in payment of royalty as required by section 9 or commits a breach of any of the conditions other than those referred to in sub-rule (4), the State Government shall give notice to the lessee requiring him to pay the royalty or remedy the breach, as the case may be, within sixty days from the date of the notice and if the royalty is not paid or the breach is not remedied within such period, the State Government may, without prejudice to any proceeding that may be taken against him, determine the lease and forfeit the whole or part of the security deposit.

In exercise of the power conferred by section 15(1) of the 1957 Act various State Governments have made rules in respect of minor minerals. Although these rules vary from State to State, there are certain broad features present in all of them. The majority of States provide for two types of mineral concessions, namely a lease on tenure basis and a permit to extract a specified quantity of a minor mineral. In all the States the rules provide for the grant of a lease for a particular term of years varying from one year to twenty years. These leases are variously described in different State rules as "mining lease", "quarrying lease"

and "quarry lease" and are similar in nature to the mining leases granted under the Mineral Concession Rules, 1960. In most of the State rules there is a provision for the grant of a permit to excavate a specified quantity of a minor mineral from a specified area within a prescribed time. These permits are referred to in different State rules as "permit", "quarrying permit", "mining permit" and "short- term permit". In some of the State rules there is also a provision for the grant of a prospecting licence. All State rules which provide for payment of royalty and dead rent contain a provision that either dead rent or royalty, whichever is higher in amount, but not both, would be

payable. In addition, most State rules also contain a provision for the payment of surface rent. In certain State rules, for instance, those of the Andhra Pradesh and Tamil Nadu, royalty is called "seigniorage fee" (See the "Digest of Minor Mineral Laws of India" issued in 1974 by the Controller, Indian Bureau of Mines, Nagpur, pp. 5-8).

With effect on or from May 1, 1960, by the Bombay Reorganisation Act, 1960, certain territories comprised in the State of Bombay were formed into a separate State, namely, the State of Gujarat, and the territories which remained with the State of Bombay were renamed as the "State of Maharashtra". The State of Gujarat, however, did not, in the exercise of the power conferred by section 15(1) of the 1957 Act, make any rules for minor minerals until 1966 and until such rules were made, the rules in force immediately before the commencement of the 1957 Act continued to apply in the State of Gujarat by virtue of the provisions of section 15(2). By Notification No. GU 125-MCR 2164/5089/CHH dated March 18, 1966, the Government of Gujarat made the Gujarat Minor Mineral Rules, 1966, for regulating the grant of mining leases in respect of minor minerals and for purposes connected therewith. These Rules will be hereinafter referred to as "the Gujarat Rules". me Gujarat Rules came into force on April 1, 1966. Rule 41 of the Gujarat Rules repealed the Bombay Minor Mineral Extraction Rules, 1955, and all other rules in force in any part of the State of Gujarat immediately before the coming into force of the Gujarat Rules. We will point out the relevant provisions of the Gujarat Rules when we come to discuss the question of the validity of Rule 21-B of the Gujarat Rules and the impugned Notifications and the impugned Circular dated February 12, 1981.

The first contention which was raised before us was that section 15(1) of the 1957 Act 18 unconstitutional as suffering from the vice of excessive delegation of legislative power to the executive. It was submitted that the rule-making power conferred upon the State Governments by section 15(1) was an uncanalized power as no guidelines were prescribed for its exercise and thus it enabled the State Governments to act arbitrarily and as they liked with respect to leases of minor minerals. We find that this contention is based upon a fallacy inasmuch as it is founded upon reading the provisions of section 15(1) in isolation and without reference to the other provisions of the 1957 Act and its legislative history.

The 1957 Act is made in exercise of the powers conferred by Entry 54 in the Union List. The said Entry 54 and Entry 23 in the State List fell to be interpreted by a Constitution Bench of this Court in Baijnath Kedia v. State of Bihar & Ors. [1970] 2 S.C.R. 100. In that case this Court held that Entry 54 in the Union List speaks both of regulation of mines and mineral development and Entry 23 in the State List is subject to Entry 54. Under Entry 54 it is open to Parliament to declare that it is expedient in the public interest that the control in these matters should vest in the Central Government. To what extent such a declaration can go is for Parliament to determine and this must be commensurate with public interest but once such declaration is

made and the extent of such regulation and development laid down the subject of the legislation to the extent so laid down becomes an exclusive subject for legislation by Parliament. Any legislation by the State after such declaration which touches upon the field disclosed in the declaration would necessarily be unconstitutional because that field is extracted from the legislative competence of the State Legislature. In that case the Court further pointed out that the expression "under the control of the Union" occurring in Entry 54 in the Union List and Entry 23 in the State List did not mean "control of the Union Government" because the Union consists of three limbs, namely, Parliament, the Union Government and the Union Judiciary, and the control of the Union which is to be exercised under the said two Entries is the one to be exercised by Parliament, namely, the legislative organ of the Union, which is, therefore, the control by the Union. The Court further held that the Union had taken all the power in respect, of minor minerals to itself and had authorized the State Governments to make rules for the regulation of leases and thus by the declaration made in section 2 and the enactment of section 15 the whole of the field relating to minor minerals came within the jurisdiction of Parliament and there was no scope left to the State Legislatures to make any enactment with respect thereto. The court also held that by giving the power to the State Governments to make rules, the control of the Union was not negatived but, on the contrary, it established that the Union was exercising the control. One of the contentions raised in that case was that section 15 was unconstitutional as the delegation of legislative power made by it to the rule-making authority was excessive. This contention was, however, not decided by the Court as the appeals in that case were allowed on other points.

The rule-making power conferred by section 15 (1) was for regulating the grant of prospecting licences and mining leases and for purposes connected therewith prior to the Amendment Act of 1972 and thereafter is for regulating the grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals and for purposes connected therewith. The phraseology of section 15(1) is the same as that of section 13(1) which confers rule-making power upon the Central Government with this difference that by the Amendment Act of 1972 the expression "quarry leases, mining leases or other mineral concessions" has been substituted in section 15(1) for the words "prospecting licences and mining leases" while the expression "prospecting licences and mining leases" in section 13(1) remains unchanged.

The term "minerals" is defined by clause (a) of section 3 as including "all minerals except mineral oils". This definition would thus include minerals which are minor minerals as also minerals other than minor minerals. The term "minor minerals" is, however, separately defined by clause (e) because the power to make rules in respect thereof is vested by section 15(1) in the State Governments while the power to make rules with respect to minerals other than minor minerals is vested in the Central Government. The word "minerals" in different sections of the 1957 Act is used with the meaning assigned to it by clause (a) of section 3, that is, as denoting "all minerals except mineral oils", unless the context requires otherwise, and where the Act wishes

to make a distinction between minor minerals and minerals other than minor minerals, it does so expressly. For instance, sub-section (1) of section 4A speaks of "premature termination of a mining lease in respect of any mineral, other than a minor mineral" and sub-section (2) of section 4A speaks of "premature termination of a mining lease in respect of any minor mineral". To take another illustration, under section 19 any prospecting licence or mining lease granted, renewed or acquired in contravention of the provisions of the 1957 Act or any rules or orders made thereunder is to be void and of no effect. This section would apply to a prospecting licence or a mining lease both in respect of minor minerals and minerals other than minor minerals. Were it not so, the result would be startling for while a prospecting licence or a mining lease in respect of minerals other than minor minerals would be void and of no effect if it is in contravention of the provisions of the 1957 Act or any rules or orders made thereunder, in the case of a prospecting licence or a mining lease in respect of minor minerals such licence or lease would not be void even if it is in contravention of the provisions of the 1957 Act or any rules or orders made thereunder. The Explanation to section 19 is an illustration of a case where the context excludes a prospecting licence or a mining lease in respect of minor minerals and this is by reason of the reference contained in that Explanation to section 6 because by the express terms of section 14, section 6 does not apply to minor minerals. mus, the word "minerals" wherever used in the 1957 Act would include minor minerals unless minor minerals are expressly excluded or the context otherwise requires.

Bearing this in mind, we now turn to examine the nature of the rule-making power conferred upon the State Governments by section 15(1). Although under section 14, section 13 is one of the sections which does not apply to minor minerals, the language of section 13(1) is in pari materia with the language of section 15(1). Each of these provisions confers the power to make rules for "regulating".

The Shorter Oxford English Dictionary, Third Edition, defines the word "regulate" as meaning "to control, govern, or direct by rule or regulations; to subject to guidance or restrictions; to adapt to circumstances or surroundings". Thus, the power to regulate by rules given by sections 13(1) and 15(1) is a power to control, govern and direct by rules and grant of prospecting licences and mining leases in respect of minerals other than minor minerals and for purposes connected therewith in the case of section 13(1) and the grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals and for purposes connected there with in the case of section 15(1) and to subject such grant to restrictions and to adapt them to the circumstances of the case and the surroundings with reference to such power is exercised. It is pertinent to bear in mind that the power to regulate conferred by sections 13(1) and 15(1) is not only with respect to the grant of licences and leases mentioned in those sub-sections but is also with respect to "purposes connected therewith", that is, purposes connected with such grant.

Entry 54 in the Union List uses the word "regulation".

"Regulation" is defined in the Shorter Oxford English Dictionary, Third Edition as meaning "the act of regulating, or the state of being regulated". Entry 54 reproduces the language of Entry 36 in the Federal Legislative List in the Government of India Act, 1935, with the omission of the words "and oilfields". When the Constitution came to be enacted, the framers of the Constitution knew that since early days mines and minerals were being regulated by rules made by Local governments. they also knew that under the corresponding Entry 36 in the Federal Legislative List, the 1948 Act had been enacted and was on the statute book and that the 1948 Act conferred wide rule-making power upon the Central Government to regulate the grant of mining leases and for the conservation and development of minerals. It also knew that in the exercise of such rule-making power the Central Government had made the Mineral Concession Rules, 1949, and that by Rule 4 of the said Rules the extraction of minor minerals was left to be regulated by rules to be made by the Provincial Governments. Thus, the makers of the Constitution were not only aware of the legislative history of the topic of mines and minerals but were also aware how the Dominion Legislature had interpreted Entry 36 in the Federal Legislative Listing enacting the 1948 Act. When the 1957 Act came to be enacted, Parliament knew that different State Governments had, in pursuance of the provisions of Rule 4 of the Mineral Concession Rules, 1949, made rules for regulating the grant of leases in respect of minor minerals and other matters connected therewith and for this reason it expressly provided in sub-section (2) of section 15 of the 1957 Act that the rules in force immediately before the commencement of that Act would continue in force until superseded by rules made under sub-section (1) of section

15. Regulating the grant of mining leases in respect of minor minerals and other connected matters was, therefore, not something which was done for the first time by the 1957 Act but followed a well-recognized and accept legislative practice. In fact, even so far as minerals other than minor minerals were concerned, what Parliament did, as pointed out earlier, was to transfer to the 1957 Act certain provisions which had until then been dealt with under the rule-making power of the Central Government in order to restrict the scope of subordinate legislation. To take into account legislative history and practice when considering the validity of a statutory provision or while interpreting a legislative entry is a well-established principle of construction of statutes : see, for instance, State of Bombay v. Narothamdas Jethabhai and Anr. [1951] S.C.R. 51 and State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd. [1959] S.C.R. 379.

There is no substance in the contention that no guidelines are provided in the 1957 Act for the exercise of the rule-making power of the State Governments under section 15(1). As mentioned earlier, section 15(1) is in pari materia with section 13(1). Section 13, however, contains sub-section (2) which sets out the particular matters with respect to which the Central Government may make rules "In particular, and without prejudice to the generality of the foregoing power", that is, the rule-making power conferred by sub-section (1). It is well settled that where a statute confers particular

powers without prejudice to the generality of a general power already conferred, the particular powers are only illustrative of the general power and do not in any way restrict the general power. Section 2 of the Defence of India Act, 1939, as amended by section 2 of the Defence of India (Amendment) Act, 1940, conferred upon the Central Government the power to make such rules as appeared to it "to be necessary or expedient for securing the defence of British Indias the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community". Sub-section (2) of section 2 conferred upon the Central Government the power to provide by rules or to empower any authority to make orders providing for various matters set out in the said sub- section. This power was expressed by the opening words of the said sub-section (2) to be "without prejudice to the generality of the powers conferred by sub-section (1)". In King Emperor v. Sibnath Banerji Ors., [1944-1945] 72 I.A. 241, the Judicial Committee of the Privy Council held (at pages 258-9) :

"In the opinion of their Lordships, the function of subs-s. 2 is merely an illustrative one; the rule-making power is conferred by sub-s. 1, and the rules which are referred to in the opening sentence of sub-s. 2 are the rules which are authorized by, and made under, sub-s. 1; the provisions of sub-s. 2 are not restrictive of sub- s. 1, as, indeed, is expressly stated by the words 'without prejudice to the generality of the powers conferred by sub-s. 1 ' ."

The above proposition of law has been approved and accepted by this Court in Om Prakash and Ors. v. Union of India and Ors., [1970] 3 S.C.C. 942,944-5 and Shiv Kirpal Singh v. Shri V.V.Giri [1971] 2 S.C.R. 224-5.

A provision similar to sub-section (2) of section 13, however, does not find place in section 15. In our opinion, this makes no difference. What sub-section (2) of section 13 does is to give illustrations of the matters in respect of which the Central Government can make rules for "regulating the grant of prospecting licences and mining leases in respect of minerals and for purposes connected therewith". The opening clause of sub-section (2) of section 13, namely, "In particular, and without prejudice to the generality of the foregoing power", makes it clear that the topics set out in that sub-section are already included in the general power conferred by sub-section (1) but are being listed to particularize them and to focus attention on them. m e particular matters in respect of which the Central Government can make rules under sub-section (2) of section 13 are, therefore, also matters with respect to which under sub-section(l) of section 15 the State Governments can make rules for "regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith". When section 14 directs that "The provisions of sections 4 to 13 (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals", what is intended is that the matters contained in those sections, so far as they concern minor minerals, will not be controlled by the Central Government but by the concerned State Government by exercising its rule-making power as a delegate of the Central Government. Sections 4 to 12 form a group of sections under the heading "General restrictions on undertaking prospecting and mining operations". The exclusion of the

application of these sections to minor minerals means that these restrictions will not apply to minor minerals but that it is left to the State Governments to prescribe such restrictions as they think fit by rules made under section 15(1). The reason for treating minor minerals differently from minerals other than minor minerals is obvious. As seen from the definition of minor minerals given in clause (e) of section 3, they are minerals which are mostly used in local areas and for local purposes while minerals other than minor minerals are those which are necessary for industrial development on a national scale and for the economy of the country. That is why matters relating to minor minerals have been left by Parliament to the State Governments while reserving matters relating to minerals other than minor minerals to the Central Government. Sections 13, 14 and 15 fall in the group of sections which is headed "Rules for regulating the grant of prospecting licences and mining leases". These three sections have to be read together. In providing that section 13 will not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals what was done was to take away from the Central Government the power to make rules in respect of minor minerals and to confer that power by section 15(1) upon the State Governments. The ambit of the power under section 13 and under section 15 is, however, the same, the only difference being that in one case it is the Central Government which exercises the power in respect of minerals other than minor minerals while in the other case it is the State Governments which do so in respect of minor minerals. Sub-section (2) of section 13 which is illustrative of the general power conferred by section 13(1) contains sufficient guidelines for the State Governments to follow in framing the rules under section 15(1), and in the same way, the State Governments have before them the restrictions and other matters provided for in sections 4 to 12 while framing their own rules under section 15(1).

The guidelines for the exercise of the rule-making power under section 15(1) are, thus, to be found in the object for which such power is conferred (namely, "for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith)", the meaning of the word "regulating", the scope of the phrase "for purposes connected therewith,"

> illustrative matters set out in sub-section (2) of section 13, and in the restrictions and other matters contained in sections 4 to 12.
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> The next question to be considered is whether the rule making power of the State Governments under section 15(1) includes a power to charge dead rent and royalty. Before embarking upon a consideration of this question, it will be useful to know the meaning of the expression "dead rent" and "royalty" and their connotation. Wharton's "Law Lexicon", Fourteenth Edition, at page 359, defines "dead rent" as:
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> "Dead Rent A rent payable on a mining lease in addition to a royalty, so called because it is payable whether the mine is being worked or not."

The definition of "dead rent" given in. Black's "Law Dictionary", Fifth Edition, at page 359, is as follows:

"Dead Rent. in English law, a rent payable on a mining Lease in addition to a royalty, so called because it is payable although the mine may not be worked.

Jowitt's "Dictionary of English Law", Second Edition, at page 555, defines "dead rent" as "Dead Rent, a term sometimes used in mining leases in contradistinction to a royalty, to denote a fixed rent to be paid whether the mine is productive or not. See RENT."

The same Dictionary states under the heading "Rent", at page 1544 .

"When a mine, quarry, brick-works, or similar property is leased, the lessor usually reserves not only a fixed yearly rent but also a royalty or galeage rent, consisting of royalties (q.v.) varying with the quantity of minerals, bricks, etc., produced during each year. In this case the fixed rent is called a dead rent."

"Royalty" is defined in Jowitt's "Dictionary of English Law", Second Edition, at page 1595, inter alia, as :

"Royalty, a payment reserved by the grantor of a patent, lease of a mine or similar right, and payable proportionately to the use made of the right by the grantee. It is usually a payment of money, but may be a payment in kind, that is, of part of the produce of the exercise of the right. See Rent.

"Royalty" is defined in Wharton's "Law Lexicon" Fourteenth Edition, at page 839, as :

"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.

The definition of "royalty" given in Black's "Law Dictionary", Fifth Edition, at page 1195, is as follows : "Royalty. Compensation for the use of property, usually copyrighted material or natural resources, expressed as a percentage of receipts from using the property or as an account per unit produced. A payment which is made to an author or composer by an assignee, licensee or copyright holder in respect of each copy of his work which is sold, or to an inventor in respect of each article sold under the patent. Royalty is share of product or profit reserved by owner for permitting another to use the property. In its broadest aspect, it is share of profit reserved by owner for permitting another the use of property....

In mining and oil operations, a share of the product or profit paid to the owner of the property.....

In H.R.S. Murthy v. Collector of Chittor and Anr.., [1964] 6 S.C.R. 666, 673 this Court said that "royalty" normally connotes the payment made for the materials or minerals

won from the land.

In Halsbury's "Laws of England", Fourth Edition in the volume which deals with "Mines, Minerals and Quarries", namely, volume 31, it is stated in paragraph 224 as follows: "224. Rents and royalties. An agreement for a lease usually contains stipulations as to the dead rents and other rents and royalties to be reserved by, and the covenants and provisions to be inserted in, the lease..... "

The topics of dead rent and royalties are dealt with in Halsbury's "Laws of England" in the same volume under the sub-heading "Consideration", the main heading being "Property demised; Consideration". Paragraph 235 deals with "dead rent" and paragraph 236 with "royalties". m e relevant passages are as follows :

"235. Dead rent. It is usual in mining leases to reserve both a fixed annual rent (otherwise known as a 'dead rent', 'minimum rent' or 'certain rent') and royalties varying with the amount of minerals worked. The object of the fixed rent is to ensure that the lessee will work the mine; but it is sometimes ineffective for that purpose. Another function of the fixed rent is to ensure a definite minimum income to the lessor in respect of the demise.

If a fixed rent is reserved, it is payable until the expiration of the term even though the mine is not worked, or is exhausted during the currency of the term, or is not worth working, or is difficult or unprofitable to work owing to faults or accidents, or even if the demised seam proves to be non-existent.

"236. Royalties. 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 specific period."

In paragraph 238 of the same volume of Halsbury's "Laws of England" it is stated :

"238. Covenant to pay rent and royalties. Nearly every mining lease contains a covenant by the lessee for payment of the specified rent and royalties.

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. Section 105 of the Transfer of Property Act, 1982, contains the definitions of the terms "lease", "lessor", "lessee", "premium" and "rent"

and is as n follows :

"105, Lease defined. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or

> any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.
>
> Lessor, lessee, premium and rent defined. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."

In a mining lease the consideration usually moving from the lessee to the lessor is the rent for 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, 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 at 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 fact, clause (ix) of Rule 3 of the Rajasthan Minor Mineral Concession Rules, 1977, defines "dead rent" as meaning "the minimum guaranteed amount of royalty per year payable as per rules or agreement under a mining lease". Stipulations providing for the lessee's liability to pay surface rent, dead rent and royalty to the lessor are the usual covenants to be found in a mining lease.
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> The grant of a mining lease would thus provide for the consideration for such grant in the shape of surface rent, dead rent and royalty. The power to make rules for regulating the grant of such leases would, therefore, include the power to fix the consideration payable by the lessee to the lessor in the shape of ordinary rent or Surface rent, dead rent and royalty. If this were not so, it would lead to the absurd result that when the Government grants a mining lease, it is granted gratis to a person who wants to extract minerals and profit from them. Rules for regulating the grant of mining leases cannot be confined merely to rules providing for the form in which applications for such leases are to be made, the factors to be taken into account in granting or refusing such applications and other cognate matters. Such rules must necessarily include provisions with respect to the consideration for the grant. Under section 15(1), therefore, the State Governments have the power to make rules providing for payment of surface rent, dead rent and royalty by the lessee to the Government.

The Legislature and the rule-making authorities have also throughout understood the power to make rules in respect of mining leases and minerals as including the power to charge dead rent and royalty. Section 5(1) of the 1948 Act conferred powers upon the Central Government to make rules "for regulating the grant of mining leases". Section 6(1) of that Act conferred upon the Central Government the power to make rules "for the conservation and development of minerals". Both section 5 and 6 contained a sub-section (2) which set out the different matters in respect of which the Central Government could make rules and both these sub- sections opened with the clause "In particular, and without prejudice to the generality of the foregoing power". As seen earlier, the particular matters so set out were illustrative of the general power conferred by the earlier sub-sections. Under clause (d) of section 5(2), the rules to be made by the Central Government could provide for "the fixing of the maximum and minimum rent payable by a lessee, whether the mine is worked or not." This clause thus provided for a dead rent. Under clause (i) of section 6(2), the rules to be made by the Central Government could provide for "the levy and collection of royalties, fees or taxes in respect of minerals mined, quarried, excavated or collected". Rule 41 of the Mineral concession Rules, 1949, made by the Central Government in exercise of the powers conferred by section 5 of the 1948 Act prescribed the conditions which were to be included in every mining lessee. The said Rule 41 provided for payment of royalty on minerals at the rate specified in the First Schedule to the said Rules in force on the date of the grant of the lease as also to pay royalty at such revised rates as may be notified from time to time. It also provided for payment of surface rent and further provided for payment of dead rent with a proviso that the lessee was liable to pay dead rent or royalty, whichever was higher in amount, but not both. Rules made by the State Governments in respect of minor minerals also provided for payment of these charges. As seen earlier, Rule (7) of the Saurashtra Rules provided for payment of surface rent and dead rent. Similarly, Rule 18 of the Bombay Minor Mineral Extraction Rules, 1955, provided for the lessee of a quarry lease to pay royalty at the rates specified in Schedule I to the said Rules, such rates being liable to be revised once in every five years, as also surface rent and yearly dead rent and also provided that the lessee shall be liable to pay the dead rent or royalty in respect of each minor mineral, whichever be higher in amount, but not both. Section 7 of the 1948 Act conferred upon the Central Government the power to make rules for the purpose of modifying or altering the terms and conditions of any mining lease granted prior to the commencement of the 1948 Act so as to bring it into conformity with the rules made under sections 5 and 6. In pursuance of this power, the Central Government made the Mining Lease (Modification of Terms) Rules, 1956, by Notification No.S.R.O. 2062 dated September 4, 1956, published in the Gazette of India, dated September 15, 1956, Part II, section 3, at pages 1548-54. Rule 2 of the said Rules defined certain terms.As originally made Rule 2 contained clause (g) which provided that "'Royalty' includes 'Dead Rent'". Sub-rules (7), (8) and (9) of Rule 6 of the said Rules provided for modification in such leases of the rate of royalty which by reason of the definition given in clause (g) of Rule 2 included the rate of dead rent. After the coming into force of the 1957 Act on June 1, 1958, clause (g) of Rule 2 and sub-rules

(7), (8) and (9) of Rule 6 were omitted from the said Rules in view of the provisions with respect to such leases contained in the 1957 Act.

So far as the 1957 Act is concerned, under clause (i) of section 13(2) the rules to be made by the Central Government can provide "for the fixing and the collection of dead rent, fines, fees or other charges and the collection of royalties". Although clause (i) of section 13(2) speaks of fixing and collection in the case of dead rent and only collection in the case of royalties, the reason is not that the power to fix royalties was not thought to be comprehended in the general rule-making power of the Central Government under section 13(1). The reason was that a separate provision in that behalf was made by section 9 with respect to mining leases granted both before the commencement of the 1957 Act as also after the commencement of the 1957 Act. Another reason for doing so was to specify the rates for royalties in respect of different minerals other than minor minerals in the Second Schedule to the 1957 Act in order to restrict the scope of subordinate legislation as pointed out in the Statement of Objects and Reasons to the Legislative Bill No. 83 of 1972. As seen earlier, Rule 27 of the Mineral Concession Rules, 1960, provides that every mining lease is to contain a provision requiring the lessee to pay surface rent and dead rent and a further provision that the lessee shall be liable to pay dead rent or royalty in respect of each mineral, whichever be higher in amount, but not both. It is pertinent to note that these provisions were included in the said Rules when they were first made and thus existed in the said Rules much prior to the insertion of section 9A in the 1957 Act by the Amendment Act of 1972, casting a liability upon the lessee to pay dead rent.

The Gujarat High Court in Smt. Sonbal's Case held that the intention of Parliament in enacting section 15(1) was not to clothe the State Governments with power to impose any financial liability upon the lessee but only to give them the power to prescribe conditions for regulating the grant of leases other than conditions relating to financial liability and that the power to prescribe conditions relating to financial liability of a lessee were to be found only in sub-section (3) of section 15. In order to ascertain this intention attributed by it to Parliament, the Gujarat High Court relied upon the provisions of section 9A and sub- section (33 of section 15. The same view was taken by the Andhra Pradesh High Court in M.V. Subba Rao v. State of Andhra Pradesh and another, A.I.R. 1978 A.P. 453.

We find that the reliance placed by the Gujarat High Court in Smt. Sonbai's Case, which is one of the two judgments of that High Court challenged before us, and the Andhra Pradesh High Court in M.V. Subba Rao's Case on sub- section (3) of section 15 and section 9A in order to ascertain the intention of Parliament is misplaced. Though sub-section (3) was inserted in section 15 with retrospective effect by the Amendment Act of 1972, until it was so inserted it was not before the courts when they came to construe the scope of the rule-making power of the State Governments under section 15(1) and even without sub-section (3) being before the courts, various

High Courts have held that the State Governments' power to charge royalty is to be found in the rule-making power conferred by section 15(1).

The Patna High Court in Laddu Mal and Ors. v. The State of Bihar and Ors., A.I.R. 1965 Patna 491, the Madhya Pradesh High Court in Banku Bihari Saha v. State Government of Madhya Pradesh and Ors., A.I.R. 1969 M.P. 210, the Punjab and Haryana High Court in Dr. Shanti Saroop Sharma and Anr. v. State of Punjab and Ors., A.I.R. 1969 Pun. & Har. 79 and M/s. Amar Singh Modi Lal v. State of Haryana and Ors., A.I.R. 1972 Punj. & Har. 356 and the Rajasthan High Court in M/s. Brimco Bricks, Bharatpur v. State of Rajasthan and Anr., A.I.R. 1972 Ra;. 145 have all taken this view. These were all cases prior to the Amendment Act of 1972 when sub-section (3) of section 15 was not then on the statute book. After the enactment of the Amendment Act of 1972, the Allahabad High Court in Sheo Varan Singh v. State of U.P., A.I.R. 1980 All 92 has held that the power of the State Governments to Charge royalty and dead rent is to be found only in section 15(1). The Rajasthan High Court in Bal Mukund Arora etc. v. State of Rajasthan and Ors., A.I.R. 1981 Raj. 95 has also taken the same view disagreeing with the view taken by the Andhra Pradesh High Court in M.V. Subba Rao's Case.

A proper reading of sub-section (3) of section 15 shows that it does not confer any power upon the State Governments to make rules with respect to royalty. Royalty is payable by the holder of a quarry lease or mining lease or other mineral concession granted under rules made under sub-section (1) of section 15. What sub-section (3) does is to make such holder liable to pay royalty in respect of minor minerals removed or consumed not only by him but also by his agent, manager, employee, contractor or sub-lessee. It thus casts a vicarious liability upon such holder to pay royalty in respect of the acts of persons other than himself. The very fact that under sub-section (3) the liability of such holder is to pay royalty "at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals" shows that the prescribing of the rate of royalty in respect of minor minerals is to be done under the rule-making power of the State Governments which is to be found in sub-section (1) of section 15. Yet another purpose of enacting sub-section (3) is to be found in the proviso to that sub-section which prohibits the State Government from enhancing the rate of royalty in respect of any minor mineral for more than once during any period of four years. If the reliance placed by the Gujarat and the Andhra Pradesh High Courts on sub-section (3) of section 15 in order to ascertain the intention of Parliament was misplaced, their reliance upon section 9A was even more misplaced. Section 9A was inserted in the 1957 Act by the Amendment Act of 1972 but it was not inserted with retrospective effect. It was, therefore, not there when section 15(1) was placed upon the statute book while enacting the 1957 Act. Section 9A was enacted with a two- fold purpose. It cast a liability upon the holder of a mining lease whether granted before or after the commencement of the 1972 Act, that is, either before or after September 12, 1972, to pay to the State Government dead rent at the rates specified for the time being in the Third Schedule to the 1957 Act "notwithstanding anything contained in the instrument of lease or in any other law for the time being in force." The purpose of inserting section 9A in the 1957 Act, as stated in the Statement of Objects and Reasons to Legislative Bill No. 83 of 1972, was to make a "provision of a statutory basis for calculation of dead rent". Section 9A also provides that the liability of the lessee would be to pay either royalty or dead rent whichever is greater, thus embodying in the Act what was contained in the proviso to clause (c) of Rule 27 of the

Minor Mineral Concession Rules, 1960. Section 9A was inserted also with a view to prohibit the Central Government from enhancing the rate of dead rent more than once during any period of four years. It is pertinent to note that by the Amendment Act of 1972 section 9 was also amended. While under the original sub-section (1) of section 9 the liability of the holder of a mining leave was only to pay royalty in respect of any mineral removed by him, after the amendment he is made liable to pay royalty in respect of any mineral "removed or consumed by him or by his agent, manager, employee, contractor of sub-lessee". By the Amendment Act of 1972 the power of the Central Government to amend by notification the Second Schedule which specifies the rate of royalty was also curtailed by inserting a proviso to section 9(3) in order to provide that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of four years. The amendments made by the Amendment Act of 1972 have, therefore, no relevance for ascertaining the scope of the rule-making power of the State Governments under section 15(1).

We therefore, hold that the view taken by the Gujarat High Court in Smt. Sonbai's Case and by the Andhra Pradesh High Court in M.V. Subba Rao's Case was wrong and requires to be overruled.

The next contention was that though under section 15(1) the State Governments may have the power to make rules providing for payment of royalty and dead rent, sub-section (3) showed that such power did not extend to amending the rules so as to enhance the rate of dead rent. The submission in this behalf was that the power to enhance the rate of royalty by amending the rules was expressly provided for in sub-section (3) by the use of the words "at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals" but there was no such provision in section 15 with respect to dead rent. We are unable to accept this submission. Rules under section 15(1), though made by the State Governments, are rules made under a Central Act and the provisions of the General Clauses Act, 1897, apply to such rules. Under section 21 of the General Clauses Act, where by any Central Act, a power to make rules is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary or rescind any rules so made. The power to amend the rules is, therefore, comprehended within the power to make rules and as section 15(1) confers upon the State Governments the power to make rules providing for payment of dead rent and royalty, it also confers upon the State Governments the power to amend those rules so as to alter the rates of royalty and dead rent so prescribed, either by enhancing or reducing such rates. The source of the power to enhance the rate of royalty is not contained in sub-section (3) of section 15 as submitted at the Bar. As pointed out earlier, the purpose of inserting the said sub-section in section 15 with retrospective effect was an entirely different one.

It was then contended that the very language of sub- section (1) of section 15 shows that it does not confer any power upon the State Governments to enhance the rate of royalty or dead rent because the rules which are to be made under that sub-section are for regulating the grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals and, therefore, the rules under that sub-section can be made only with respect to the time when such leases or concessions are granted and not with respect to any point of time subsequent thereto and there being no provision similar to sub-section (3) of section 15 with respect to dead rent, any rule providing for increase in the rate of dead rent during the subsistence of a lease would be ultra vires section 15.

This submission is devoid of substance. As pointed out earlier, sub-section (3) of section 15 does not confer any power to amend the rules made under section 15(1), for the power to amend the rules is comprehended within the power to make the rules conferred by sub-section (1) of section 15. The construction sought to be placed upon the word "grant" in section 15(1) also cannot be accepted. While granting a lease it is open to the grantor to prescribe conditions which are to be observed during the period of the grant and also to provide for the forefeiture of the lease on breach of any of those conditions. If the grant of a lease were not to prescribe such conditions, the lessee could with impunity commit breaches of the conditions of the lease. Ordinary leases of immovable property at times provide for periodic increases of rent and there is no reason why such increases should not be made in a mining or quarry lease or other mineral concession granted under a regulatory statute intended for the benefit of the public and even less reason why such a statute should not confer power to make rules providing for increases in the rate of dead rent during the subsistence of the lease. In any event, the power to make rules under section 15(1) is also for purposes connected with the grant of mining and quarry leases and other mineral concessions and the expression "and for purposes connected therewith" read with the word "grant" would include the power to enhance the rate of dead rent during the subsistence of the lease.

In support of the above contention it was also submitted that in the absence of a provision like the one contained in section 15(3) the power to enhance the rate of dead rent cannot be so exercised as to affect subsisting leases and that unless this construction were placed upon sub-section (1), the power conferred by that sub-section would be bad in law as being an arbitrary power. It was submitted that a mining lease is the result of a contract entered into between two parties and dead rent is part of the consideration for the grant of the lease, and just as in the case of a contract of sale of goods, it cannot be left to the sweet will of the seller to charge what price he liked, in the same way in the case of leases and concessions granted under section 15(1), it cannot be left to the State Governments to amend the rules so as to charge whatever dead rent they like and whenever they like during the subsistence of the lease. We find no substance in either of these submissions. A quarry lease, mining lease or other mineral concession in respect of a minor mineral does not stand on the same footing as an ordinary contract. These leases and concessions are granted by the State Governments pursuant to rules made under the statutory power conferred upon them by a regulatory Act. Minerals are part of the material resources which constitute a nation's natural wealth and if the nation is to advance industrially and if its economy is to be benefitted by the proper development and exploitation of these resources, they cannot be permitted to be frittered away and exhausted within a few years by indiscriminate exploitation without any regard to public and national interest. The same view was expressed by the Court in State of Tamil Nadu v. Hind Stone Etc., [1981] 2.S.C.R. 742, 751. It was for achieving the object set out above that both the 1948 Act and the 1957 Act were enacted. The long title of the 1957 Act is "An Act to provide for the regulation of mines and the development of minerals under the control of the Union." The 1948 Act contained a preamble which stated "WHEREAS it is expedient in the public interest to provide for the regulation of mines and minerals and for the development of minerals to the extent hereinafter specified". The makers of the Constitution recognized the importance to the nation of the regulation of mines and mineral development and, therefore, enacted Entry 54 of the Union List and Entry 23 of the State List. In the exercise of the power conferred by Entry 54, Parliament has made a declaration in section 2 of the 1957 Act that "it is expedient in the public interest that the Union

should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided". The presumption is that an authority clothed with a statutory power will exercise such power reasonably, and if in the public interest and for the efficacious regulation of mines and quarries of minor minerals and the proper development of such minerals, a State Government as the delegate of the Union Government thinks fit to amend the rules so as to enhance the rate of dead rent, it cannot be said that it is prevented from doing so by the principles of the ordinary law of contracts. It may be that in certain cases by enhancing the rate of dead rent the holders of leases in respect of certain types of minor minerals may be adversely affected but private interest cannot be permitted to override public interest. Conservation of minerals and their proper exploitation result in securing the maximum benefit to the community and it is open to the State Governments to enhance the rate of dead rent so as to ensure the proper conservation and development of minor minerals even though it may affect a lessee's liability under a subsisting lease.

Where a statute confers discretionary powers upon the executive or an administrative authority, the validity or constitutionality of such power cannot be judged on the assumption that the executive or such authority will act in an arbitrary manner in the exercise of the discretion conferred upon it. If the executive or the administrative authority acts in an arbitrary manner, its action would be bad in law and liable to be struck down by the courts but the possibility of abuse of power or arbitrary exercise of power cannot invalidate the statute conferring the power or the power which has been conferred by it.

The next submission was that the rates of royalty and dead rent cannot be enhanced unilaterally without giving an opportunity of being heard to the lessees who would be adversely affected thereby. This submission found favour with the Gujarat High Court in Smt. sonbai's Case. It was sought to be supported by a reference to section 9(3), 9A(2) and 28. Under section 9(3) the Central Government can, by notification published in the Official Gazette, amend the second Schedule to the 1957 Act so as to enhance or reduce the rate at which royalty is payable and similarly under section 9A(2) the Central Government can, by notification published in the Official Gazette, amend the Third Schedule to the 1957 Act so as to enhance or reduce the rate at which dead rent is payable. Under section 28, every rule and notification made by the Central Government is to be laid before Parliament and if not approved, it is to be of no effect. There is no such provision with respect to a rule or notification amending a rule made by a State Government. It was, therefore, submitted that in the absence of any provision for legislative approval with respect to the rules made by the State Governments or a notification amending such rules, it is all the more necessary that an opportunity should be given to the concerned lessees to raise their objections to any proposed enhancement. The argument that the lessees who would be affected by an enhancement in the rate of royalty or dead rent should be heard before making such enhancement is based upon a total misunderstanding of the rule-making process and the power to make rules. The enhancement in the rates of royalty and dead rent is made in the exercise of the power to amend the rules framed under section 15(1). It is thus made in the exercise of statutory power. There is no such principle of law that before such a statutory power is exercised, persons who may be affected thereby should be heard. Whether any opportunity is to be given to persons affected to make representations to the Government would depend upon the form in which the rule-making power is conferred. It is for the legislative body which confers the rule-making power to decide in what form such power should be conferred. In

some Acts it is provided that the draft of the rules proposed to be made as also any proposed amendment thereto should be published in the Official Gazette so that members of the public may have an opportunity of making such representations or raising such objections as they think fit. Some other Acts provide for rules to be laid before Parliament or the Legislature for its approval and to be effective only after such approval is given or to continue in force with such modifications as Parliament or the Legislature may make, and if the approval is not given to cease to have any effect. It was, therefore, for Parliament to decide whether rules and notifications made by the State Governments under section 15(1) should be laid before Parliament or the Legislature of the State or not. It, however, thought it fit to do so with respect to minerals other than minor minerals since these minerals are of vital importance to the country's industry and economy, but did not think it fit to do so in the case of minor minerals because it did not consider them to be of equal importance. An amendment of the rules made under section 15(1), even though it may have the effect of enhancing the rates of royalty or dead rent does not, therefore, become bad in law because no opportunity of being heard or making a representation is given to persons who would be prejudicially affected thereby. Section 15(1) does not contain any provision for giving any such opportunity and no such provision can be imported into that sub-section.

Another submission which was made was that sub-section (3) of section 15 speaks of a "mining lease or any other mineral concession" while sub-section (1) of section 15 speaks of "quarry leases, mining leases or other mineral concessions" and, therefore, the power to fix from time to time the rate of royalty under sub-section (3) can only apply to mining leases and other minor mineral concessions and not to quarry leases. This submission was based upon the contention that the power to charge royalty or enhance or reduce its rates from time to time is to be found in sub- section (3) and not in sub-section (1). As this contention itself is erroneous as pointed out above, the submission based upon it must also fall. Under clause (c) of section 3, "mining lease" inter alia means "a lease granted for the purpose of undertaking mining operations". Under clause (d) of section 3, the expression "mining operations" means "any operations undertaken for the purpose of winning any mineral". "Quarry" is define in the Shorter Oxford English Dictionary, Third Edition, as "an excavation from which stone for building, etc. is obtained for cutting, blasting, or the like" and "to quarry" is defined in the same Dictionary as meaning "to obtain (stone, etc.) by the processes employed in a quarry". The Concise Oxford Dictionary, Sixth Edition, defines "to quarry" as "Extract (stone) from quarry". Quarrying minerals is, therefore, a mining operation inasmuch as it consists of an operation undertaken for the purpose of winning particular classes of minerals. Clause (vi) of Rule 2 of the Gujarat Rules defines "quarry lease" as meaning "a kind of mining lease in respect of a minor mineral granted under these rules." Quarry leases are, therefore, included in the term "mining leases".

Yet another contention raised was that the intention of Parliament as shown by the proviso to section 15(3) was that the lessees of mining and quarry leases and other mineral concessions should have a sense of security that their financial liability will not be enhanced in rapid succession so as to cast an unbearable burden upon them and make it unprofitable for them to work the quarry or the mine. It was further submitted that though under the proviso to section 15(3), the rate of royalty in respect of a minor mineral cannot be enhanced more than once during any period of four years, there was no such restriction with respect to enhancing the rate of dead rent and the State

Governments cannot nullify the prohibition contained in the proviso to section 15(3) by repeatedly and frequently enhancing the rate of dead rent and that the absence of such a restrictive provision with respect to dead rent shows that it was not the intention of Parliament to confer power upon the State Government to enhance the rate of dead rent so as to affect subsisting leases. Although at the first blush there seems to be a considerable force in this submission, on a closer scrutiny the true position would appear to be otherwise.

As pointed out earlier, since dead rent is the minimum guaranteed amount of royalty and partakes of the nature of royalty, what, therefore, applies to royalty must necessarily apply or should be made applicable to dead rent also. The proviso to section 9(3) prohibits the Central Government from enhancing the rate of royalty in respect of any mineral other than a minor mineral more than once during any period of four years. The proviso to section 9A(2) also prohibits the Central Government from enhancing the dead rent in respect of any area more than once during any period of four years. Halsbury's Laws of England, Fourth Edition, Volume 31, paragraph 236, points out that "usually the royalties are made to merge in the fixed rent by means of a provision that the lessee, without any additional payment, may work, in each period for which a payment of fixed rent is made, so much of the minerals as would, at the royalties reserved, produce a sum equal to the fixed rent." The same purpose is achieved by the proviso to section 9A(1) and in the Mineral Concession Rules, 1960, by the proviso to clause

(c) of Rule 27 under which the lessee is liable to pay the dead rent or royalty in respect of each mineral, whichever be higher in amount, but not both. In all State rules which provide for payment of both dead rent and royalty, there is a provision that only dead rent or royalty, whichever is higher in amount, is to be paid, but not both. Rules made under the 1948 Act, as for example, Rule 41 of the Mineral Concession Rules, 1949, and Rule 18 of the Bombay Mineral Extraction Rules, 1955, also contained a similar provision. Thus, the practice followed throughout in exercising the power to make rules regulating the grant of mining leases has been to provide that either dead rent or royalty, whichever is higher in amount, should be paid by the lessee, but not both.

A construction placed upon section 15(1) which leaves the State Governments free to enhance the rate of dead rent as and when they like while the proviso to section 15(3) prohibits them from enhancing the rate of royalty more than once during a period of four years would amount to nullifying the object for which the proviso to section 15(3) was enacted. The same restrictions as contained in the proviso to section 15(3) must, therefore, apply to dead rent. Such a construction would be in consonance with practice, both past and present. Thus construed there cannot be anything objectionable in the power of the State Governments to enhance dead rent. We accordingly hold that the State Governments cannot enhance the rate of dead rent more than once during a period of four years.

As an extension of the above submission, it was urged that royalty and dead rent were one and the same and, therefore, either royalty or dead rent alone could be enhanced once during any period of four years but not both. According to this argument, if during any period of four years royalty is enhanced, dead rent cannot be enhanced during that period but can only be enhanced in the next period of four years. Although in one sense dead rent may partake of the nature of royalty, there is a

substantial difference between both. The bases for calculating royalty and dead rent are different and they are dealt with in different provisions of the 1957 Act (namely, sections 9 and 9A) so far as minerals other than minor minerals are concerned and in the rules made by the State Governments under section 15(1) so far as minor minerals are concerned. It is, therefore, not possible to accept the above argument. According to us, during any one period of four years, dead rent and royalty both can be enhanced but only once.

As the Gujarat Rules have been amended from time to time by the impugned Notifications so as to enhance or reduce the rate of royalty or dead rent or both, it is necessary at this stage before turning to the Gujarat Rules to consider what the expression "during any period of four years" occurring in the proviso to section 15(3) means. It is pertinent to note that the words used in the proviso are "shall not enhance the rate of royalty. .. for more then once during any period of four years." This is a wholly different thing from saying that where the rate of royalty has been enhanced once it shall not be enhanced again for a period of four years or, in other words, until a period of four years from the date of such enhancement has expired. The period of four years for this purpose must be and can only be reckoned from the date of coming into force of the rules and it is open to a State Government to enhance the rate of royalty or dead rent at any time once during the period of four years from the coming into force of the rules and after each period of four years expires at any time during each succeeding period of four years. The Gujarat Rules came into force on April 1, 1966. Therefore, in the case of the Gujarat Rules the first period of four years would be 1.4.1966 to 31.3.1970, the second period would be 1.4.1970 to 31.3.1974, the third period would be 1.4.1974 to 31.3.1978, the fourth period would be 1.4.1978 to 31.3.1982, the fifth period would be 1.4.1982 to 31.3.1986 and so on thereafter. Thus, during any of these periods of four years both dead rent and royalty can be enhanced by the Government of Gujarat but only once during each such period.

In the light of what we have held above we will now examine the Gujarat Rules and the validity of the impugned amendments thereto. The Gujarat Rules were made by the Government of Gujarat by Notification No. GU 125-MCR 2164/5089 CHH dated March 18, 1966. They extended to the whole of the State of Gujarat and came into force on April 1, 1966. Clause (vi) defines the term "Quarry lease" as meaning "a kind of mining lease in respect of a minor mineral granted under these rules". Clause (viii) defines the term "Schedule" as meaning "a Schedule appended to the rules". Chapter II of the Gujarat Rules deals with grant of quarry leases in respect of lands in which the minerals vest in Government. Schedule I to the Gujarat Rules specifies the rates of royalty on different minor minerals and Schedule II the rates of dead rent. By Notification dated August 25, 1969, a new chapter, namely, Chapter III-A, was inserted in the Gujarat Rules providing for grant of parwana in respect of lands in which minerals belong to Government. Clause (vi- A) which was inserted in Rule 2 by the same Notification defines "Quarrying parwana" as meaning "a quarrying parwana granted under these rules to extract and remove any minor mineral from land not exceeding a specified area."

Rule 21 deals with rates of royalty. As originally made it provided as follows :

> "21. Rates of royalty. -

> Royalty shall be leviable on minor minerals quarried from the leased area specified in column 1 of Schedule I at the rates respectively specified against them in column 2 of the said Schedule."

By Notification dated September 22, 1966, the said rule was renumbered as sub-rule (1) and a new sub-rule was inserted in Rule 21 as sub-rule (2). Sub-rule (2) provided as follows :

> "(2) The Government may, by notification in the Official Gazette, amend Schedule I so as to enhance or reduce the rate at which royalty shall be payable in respect of any minor mineral :
>
> Provided that the rate in respect of any minor mineral shall not be enhanced before the expiry of a period of three years from the commencement of these rules or, before the expiry of a period of three years from the date with effect from which the rate in respect of that minor mineral may have been last altered."

By Notification dated November 25, 1966, the Government of Gujarat made the Gujarat Minor Mineral (Third Amendment) Rules, 1966. By this Notification an Explanation was inserted to Rule 21 which was as follows :

> "Explanation. - For the purpose of this rule Schedule I means Schedule I as substituted by the Gujarat Minor Minerals (Third Amendment) Rules, 1966."

By the same Notification Schedule I was substituted. Under the substituted Schedule I the rates of royalty in respect of some minor minerals remained the same but in respect of other minor minerals they were reduced. Accordingly, Rule 21-A was inserted in the Gujarat Rules providing for remission of any excess amount of royalty collected at the rates specified in the original Schedule I and further providing that where the royalty had not been paid, collected or recovered, it was to be paid, collected or recovered at the rates specified in the substituted Schedule I. Rule 22 contains the general conditions to be included in every quarry lease. The relevant provisions of Rule 22 are as follows :

> "22. General Conditions of lease. -
>
> Every quarry lease shall be subject to the following conditions and such conditions shall be included in every quarry lease :-
>
> (i)(a) The lessee shall, during the subsistence of the lease, pay to Government royalty on minor minerals quarried from the leased area at the rates for the time being specified in Schedule I at such times and in such manner as the Government may prescribe.
>
> (b) The lessee shall also pay to Government for every year of the lease the yearly dead rent specified in Schedule II and if the lease permits the working of more than one

minor mineral in the same area, the Director may fix separate dead rent in respect of each mineral :

Provided that the lessee shall be liable to pay the dead rent or royalty in respect of each mineral whichever is higher, but not both.

(ii) the lessee shall also pay to Government for the surface area leased to him surface rent at the rate prescribed by Government".

By Notification dated July 6, 1974, the word "Director" (that is, the Director of Geology & Mining, Gujarat State) was substituted by the words "competent officer". Under Rule 11(5), a deed of lease is to be executed in Form D or in a form as near thereto as the circumstances of each case may require. Form D appended to the Gujarat Rules inter alia provides for payment by a lessee to the State Government of "the several rents and royalties mentioned in Part V" of the Schedule to the said Form. Part V of the said Schedule provides as follows :

PART V Rents and Royalties Reserved by this lease

1. To pay dead rent or royalty whichever is greater.-

The lessee/lessees shall not be liable to pay in respect of any yearly period, both the dead rent reserved by Clause 2 of this Part and also the sum of the royalties reserved by Clause 3 of this Part, but shall pay only whichever of the said sums is greater.

2. Rate and mode of payment of dead rent. -

Subject to the provision of Clause 1 of this Part, as from the day of .....19..... during the subsistence of this lease the lessee/lessees shall pay to the State Government annual dead rent at the following rates per hectare of the lands described in Part I of this Schedule. (Here insert the amount payable under Rule 22(iii) of the said Rules).

3. Rate and mode of payment of royalty. -

Subject to the provisions of Clause 1 of this Part, the lessee/lessees shall, during the subsistence of this lease, pay to Government at such times and in such manner as the Government may prescribe royalty in respect of any minor minerals removed by him/them from the leased area at the rates for the time being in force under Schedule I to the Gujarat Mineral Rules, 1966.

4. Payment of surface rent. -

The lessee shall pay rent to the State Government for all parts of the surface area leased to him for the purpose of quarrying surface rent at the rate prescribed by Government.

Here insert the total amount payable at the beginning of the year (i.e. on the date of execution of lease deed in every year)."

Clause (3) of Part VI of the said Schedule confers upon the State Government the power to enter upon the leased premises and distrain all or any of the mineral or beneficiated processed/dressed products or movable property there and to sell the same or so much as is necessary to recover the rent or royalties due and all costs and expenses in case the royalty or rent or both reserved and made payable by the lessee is not paid within sixty days after the date fixed in the lease for the payment thereof. Under clause (3) of Part IX of the said Schedule, if a lessee or his transferee or assignee commits any breach of any of the conditions specified inter alia in clauses (i), (ii), (iii) and (iv) of Rule 22 of the Gujarat Rules, the competent officer is to give notice in writing to the lessee or his transferee or assignee, as the case may be, asking him to remedy the breach within sixty days from the date of the notice and if the breach is not remedied within such period, to determine the lease. By Notification dated August 25, 1969, clause (12) was inserted in Part IX of the Schedule to Form D. This clause provides as follows :

> "12. This quarrying lease shall be subject to the Gujarat Minor Mineral Rules, 1966 as amended from time to time."

By the 1974 Notification the Government of Gujarat made the Gujarat Minor Mineral (Fourth Amendment) Rules, 1974, which came into force with effect from December 1, 1974. By the 1974 Notification, Schedule I to the Gujarat Rules prescribing the rates of royalty was substituted and Schedule II which prescribing the rates of dead rent was amended. By the substituted Schedule I the rates of royalty on several minor minerals were enhanced while in respect of a few they remained the same. By the amendment of Schedule II the rates of dead rent were enhanced.

By the 1975 Notification, the Government of Gujarat made the Gujarat Minor Mineral (Second Amendment) Rules, 1975, which came into force on November 1, 1975. By the 1975 Notification the rates of royalty specified in Schedule I were again altered so as to enhance the rates in respect of some minor minerals. The 1975 Notification also substituted Rule 21. The substituted Rule 21 is as follows :

> "21. Rate of Royalty. -
>
> The holder of a mining lease or any other mineral concession granted under these rules shall pay royalty in respect of minor minerals, specified in column 1 of Schedule I, removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rates respectively specified against them in column 2 of the said schedule."

As mentioned earlier, the Gujarat High Court in Letters Patent Appeal No. 61 of 1978 - Ambalal Manibhai Patel v. The State of Gujarat and Anr. and other connected writ petitions held that the 1974 Notification had not become operative and, therefore, the 1975 Notification did not violate the provisions of the proviso to Rule 15(3) and was valid. This judgment is the subject-matter of appeal

before us in Civil Appeals Nos. 706 and 1934 of 1981.

In order to reach the conclusion that the 1974 Notification was inoperative, the Gujarat High Court held that for altering the rates of royalty specified in Schedule I, two steps were required, namely, (1) the amendment of the Explanation to Rule 21, and (2) the amendment of Schedule I, and that by amending only Schedule I by substituting it but leaving the Explanation to Rule 21 intact, the intended amendment did not come into effect and that it was only when Rule 21 was amended and a new Schedule I substituted by the 1975 Notification that a proper amendment in the rates of royalty was effected and, therefore, what was operative was the 1975 Notification. We are unable to accept either the above conclusions reached by the Gujarat High Court or the reasoning upon which these conclusions were based. The Explanation to Rule 21 provided that "For the purpose of this rule Schedule I means Schedule I as substituted by the Gujarat Minor Minerals (Third Amendment) Rules, 1966." Thus, the reference to Schedule I in Rule 21 was to Schedule I as substituted by the Notification dated November 25, 1966. That Schedule was, however, again substituted by the 1974 Notification. The effect of such substitution was to repeal the 1966 Schedule I and to substitute it by a new Schedule I. Under section 8(1) of the General Clauses Act, 1897, where the said Act or any Central Act or Regulation made after the commencement of the said Act, repeals and re- enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed are, unless a different intention appears, to be constured as references to the provision so re-enacted. Though section 8(1) of the General Clauses Act does not in express terms refer to rules made under an Act, the same principle of construction would, in our opinion, apply in the case of rules made under an Act. Thus, after the coming into force of the 1974 Notification, the Explanation to Rule 21 must be read as "For the purpose of this rule Schedule I means Schedule I as substituted by the Gujarat Minor Mineral (Fourth Amendment) Rules, 1974" and references to Schedule I in Rule 21 must be construed as references to Schedule I as so substituted and not as references to Schedule I as substituted by the Gujarat Minor Minerals (Third Amendment) Rules, 1966.

The emphasis placed by the Gujarat High Court upon the substitution of Rule 21 by the 1975 Notification in order to arrive at the conclusion that the 1974 Notification was invalid and inoperative and the 1975 Notification was valid was entirely misconceived. Rule 21 was not substituted for the purpose of conferring upon the State Government the power to enhance the rates of royalty specified in Schedule I. It was substituted for a wholly different purpose, namely, to bring the said Rule in conformity with sub- section (3) which was inserted with retrospective effect in section 15 by the Amendment Act of 1972. Its object was to make the holder of a mining lease or any other mineral concession liable for payment of royalty not only in respect of minor minerals removed or consumed by him but also by his manager, employee, contractor or sub-lessee. The sole repository of the power of the State Governments to amend the rules, including rules specifying the rates of royalty, is sub-section (1) of section

15. Rule 21 did not have any relevance or bearing on the scope or exercise of that power. In fact, sub-clause (a) of clause (i) of Rule 22 and clause (3) of Part V of the Schedule to Form D (namely, the Form of Quarrying Lease) appended to the Gujarat Rules expressly provided a condition that the lessee is to pay to the Government royalty at the rates for the time being specified in and in force

under Schedule I to the Gujarat Rules. Strangely enough, the High Court relied upon clause (3) of Part V of the Schedule to Form D to the Gujarat Rules while repelling the challenge to the 1975 Notification on the ground that the State Government had no power to alter the rates of royalty during the subsistence of a lease but altogether omitted to notice the said clause while dealing with the question whether the 1974 Notification had become operative or not. The High Court also omitted to notice clause 12 of Part IX of the Schedule to Form D under which a quarrying lease is to be "subject to the Gujarat Minor Mineral Rules, 1966, as amended from time to time".

We, therefore, hold that the 1974 Notification was valid in law and the amendments made thereby became operative with effect from December 1, 1974. Under the proviso to section 15(3), the State Government had no power to enhance the rate of royalty in respect of any minor mineral more than once during any period of four years. The enhancement in the rates of royalty by the 1974 Notification was in the third period of four years reckoned from the date of coming into force of the Gujarat Rules, namely, from April 1, 1966. This third period was from April 1, 1974, to March 31, 1978. The rates of royalty having been enhanced once by the 1974 Notification, they could not be enhanced again during this period and could only be enhanced during the subsequent period which commenced from April 1, 1978. The 1975 Notification, however, once again enhanced during the same period the rates of royalty in respect of several minor minerals and to the extent that the 1975 Notification enhanced the rates of royalty in respect of those minor minerals, it was invalid as violating the proviso to section 15(3). The judgment under appeal of the Gujarat High Court to the extent that it holds to the contrary is, therefore, erroneous and requires to be reversed and set aside.

Yet another contention which was raised before us was that under the definition of "minor minerals" given in clause

(e) of section 3 of the 1957 Act, "building stones" are minor minerals and, therefore, under section 15(1) the State Government can levy royalty only on building stones as such and cannot classify them into different varieties for the purpose of recovering royalty upon them at varying rates. This argument was also advanced before the Gujarat High Court and was rejected by it. We fail to understand the point which is sought to be made. As building stones have been defined as being minor minerals, the rule-making power with respect thereto vests in the State Governments under section 15(1). The 1957 Act does not enjoin State Governments to charge a uniform rate of royalty in respect of all varieties of building stones nor does it prohibit them from classifying building stones into different varieties and charging royalty thereon at separate rates. This part of the judgment under appeal of the Gujarat High Court must, therefore, be upheld.

By the 1976 Notification the Government of Gujarat made the Gujarat Minor Mineral (Second Amendment) Rules, 1976, which came into force with effect from April 6, 1976. The 1976 Notification substituted Schedule II to the Gujarat Rules so as to enhance the rates of dead rent. We have already held that the rates of dead rent cannot be enhanced by the State Government more than once during any period of four years. During this particular period of four years, namely, the third period commencing on April 1, 1974, and ending on March 31, 1978, the rates of dead rent had already been enhanced with effect from December 1, 1974, by the 1974 Notification. The second enhancement made during the same period by the 1976 Notification was not permissible in law and

the 1976 Notification must, therefore, be held to be invalid.

By the 1979 Notification the Government of Gujarat made the Gujarat Minor Minerals (Amendment) Rules, 1979, which came into force with effect from April 1, 1979. The 1979 Notification inserted a new rule in the Gujarat Rules, namely, Rule 21-B. The said Rule 21-B is as follows :

> "21-B. Rate of dead rent. -
>
> The holder of a mining lease of any other mineral concession granted under these rules shall pay yearly dead rent in respect of minor minerals specified in column I, for the areas mentioned in column 2, at the rates respectively specified against them in column 3 of Schedule II".

It further substituted in sub-clause (b) of clause (i) of Rule 22 the words "as may be specified from time to time"

> for the word "specified". It further substituted in clause (2) of Part V of the Schedule to Form D appended to the Gujarat Rules the words "at the rate as may be specified from time to time" for the words "at the rate mentioned". It also substituted Schedule I to the Gujarat Rules so as to reduce the rate of royalty on all minor minerals to ten paisa per metric tonne. It also substituted Schedule II so as to enhance the rates of dead rent. In Smt. Sonbai's Case the Gujarat High Court held the 1979 Notification to be void as being ultra vires section 15 of the 1957 Act and Article 19(1)(g) of the Constitution. We have already discussed the correctness of that judgment and have held that under the rule-making power conferred upon them by section 15(1), the State Government can make rules charging dead rent as also can amend the rules to enhance the rates of dead rent so as to effect even subsisting leases and have pointed out that the judgment of the Gujarat High Court in Smt. Sonbai's case is not correct. The reasons given by the Gujarat High Court for coming to the conclusion that the 1979 Notification violated Article 19(1)(g) were very much the same as prompted it to hold that the State Government could not enhance the rates of dead rent during the subsistence of a lease. Those reasons are erroneous. We do not find that the enhancement in the rates of dead rent made by the 1979 Notification amount to any unreasonable restrictions on the right of the holders of quarry leases to carry on their trade or business. The rates of dead rent specified in the 1979 Notification cannot be looked at in isolation but must be read in conjunction with the drastic reduction made in the rates of royalty and so read there is nothing unreasonable in them. We, therefore, hold that the 1979 Notification was valid in law and constitutional. The Gujarat High Court in Smt. Sonbai's case also held that the 1976 Notification was ultra vires section 15 and Article 19(1)(g) of the Constitution for the same reasons as in the case of the 1979 Notification. These reasons are not correct and cannot be sustained. We have, however, held that the 1976 Notification is invalid on an entirely different ground, namely, because it enhanced the rates of dead rent for the second

time during the same period of four years.

The previous enhancement in the rates of dead rent was made by the 1974 Notification during the third period of four years, the enhancement in the rates of dead rent made by the 1976 Notification during the same period being invalid. The enhancement in the rates of dead rent made by the 1979 Notification was during the fourth period of four years which commenced on April 1, 1978 and ended on March 31, 1982. The 1979 Notification, therefore, did not violate the bar against enhancing the rates of dead rent more than once during any period of four years.

As a consequence of the judgment of the Gujarat High Court in Smt. Sonbai's case the Government of Gujarat issued the impugned Circular dated February 12, 1981. In the said Circular it was stated that as the 1979 Notification had been declared ultra vires by the High Court, the Government was advised that royalty could be charged from April 1, 1979, at the rates which were in force on the eve of the publication of the 1979 Notification. By the said Circular instructions were issued to all Collectors, District Development Officers and the Director, Geology and Mining, Ahmedabad, to collect royalty on minor minerals quarried from April 1, 1979, on this basis and in making such recovery to adjust the amounts paid by the holder of the lease by way of dead rent. Accordingly, royalty was demanded and collected from the lessees on the basis of the rates specified in the 1975 Notification, the validity of which had been upheld by the Gujarat High Court.

The validity of the said Circular and the directions given thereunder have been challenged on the ground that the Gujarat High Court had merely held that the State Government had no power to charge dead rent or to enhance its rates under section 15 of the 1957 Act and, therefore, it was not justified in striking down the entire 1979 Notification including that part of it which related to royalty but should have struck down only that part which dealt with dead rent. The said Circular was also challenged on the ground that Schedule I as substituted by the 1975 Notification having been substituted by a new Schedule I by the 1979 Notification, such substitutions amounted to a repeal of Schedule I as notified by the 1975 Notification and a re-enactment of Schedule I by the 1979 Notification. As we have held that the 1979 Notification is valid and constitutional, these questions have become academic and do not require to be decided, but the second challenge to the validity of the said Circular falls to be decided by us with respect to other Notifications. As seen above, the 1974 Notification substituted Schedule I and amended Schedule II. The 1975 Notification which again substituted Schedule I has been held by us to be invalid to the extent that it enhanced the rates of royalty in respect of some of the minor minerals. The 1976 Notification which enhanced the rates of dead rent specified in Schedule II has also been held by us to be invalid. The question is whether by reason of these Notifications being invalid, the rates of royalty and dead rent specified in the 1974 Notification revived. A number of authorities were cited before us in support of the contention that when an Act or a statutory provision is struck down by the Court, the Act or the statutory provision which had been repealed by such Act or the statutory provision does not revive. It is unnecessary to refer to all the decisions of this Court on this subject for all the previous decisions have been reviewed by this Court in State of Maharashtra etc. v. The Central Provinces Provinces Manganese Ore Co. Ltd., [1971] 1 S.C.R. 1002. In that case the Central Provinces and Berar Sales Tax (Amendment) Act, 1949, subsitituted Explanation II in clause (g) of section 2 of the Central Provinces and Berar Sales Tax Act, 1947. As such substitution did not receive the assent of the

Governor-General under section 107 of the Government of India Act, 1935, it was void. The assessees contended that as the original Explanation II was validly repealed by the Amending Act of 1949 and as no valid substitution of the repealed provision had taken place, only the repeal survived with the result that neither the old Explanation II nor the substituted Explanation II was in operation. This contention was rejected by this Court. This Court held (at pages 1009- 1010) :

> "We do not think that the word `substitution' necessarily or always cannotes two severable steps, that is to say, one of repeal and another of a fresh enactment even if it implies two steps. Indeed, the natural meaning of the word 'substitution' is to indicate that the process cannot be split up into two pieces like this. If the process described as 'substitution' fails, it is totally ineffective so as to leave intact what was sought to be displaced. That seems to us to be the ordinary and natural meaning of the words 'shall be substituted'. This part could not become effective without the assent of the Governor General. The State Governor's assent was insufficient. It could not be inferred that, what was intended was that, in case the substitution failed or proved ineffective, some repeal, not mentioned at all, was brought about and remained effective so as to create what may be described as a vacuum in the statutory law on the subject matter. Primarily, the question is one of gathering the intent from the use of words in the enacting provision seen in the light of the procedure gone through. Here, no intention to repeal, without a substitution, is deducible. In other words, there could be no repeal if substitution failed. The two were a part and parcel of a single indivisible process and not bits of a disjointed operation."

The position before us is the same. It was not the intention of the Government of Gujarat that even if the new schedule of royalty substituted by the 1975 Notification was void and inoperative, Schedule I as substituted by the 1974 Notification would none the less stand repealed. It was equally not the intention of the Government of Gujarat that even if the rates of dead rent substituted in Schedule II by the 1976 Notification were void and inoperative, the rates of dead rent as substituted by the 1974 Notification would none the less stand repealed. If the contention in this behalf were correct, it would lead to the startling result that on and from the date of the coming into force of the 1975 Notification no royalty was payable in respect of minor minerals and that on and from the date of the coming into force of the 1976 Notification no dead rent was payable in respect of any leased area. The rates in Schedule I and Schedule II were intended to be substituted by new rates. The intention was not to repeal them in any event. If the substitutions effected by the 1975 and 1976 Notifications were invalid, such substitutions were equally invalid to repeal the 1974 Notification. The result is that the 1974 Notification continued to be operative both as regards the rates of royalty and the rates of dead rent until they were validly substituted with effect from April 1, 1979 by the 1979 Notification.

Though the Government of Gujarat cannot be blamed for issuing the said Circular, for it had to deal with the problem posed by the judgment of the Gujarat High Court in Smt.Sonbai's case, the said Circular was none the less not valid in law because the 1979 Notification as also Rule 22-B were valid and operative and the State Government could not by a circular letter charge and collect royalty at rates different from the rate specified in the 1979 Notification. The directions contained in

the said Circular were, therefore, invalid.

As a further consequence of the judgment of the Gujarat High Court in Smt. Sonbai's case the Government of Gujarat made the Gujarat Minor Mineral (Amendment) Rules, 1981, by issuing the 1981 Notification. The Gujarat Minor Mineral (Amendment) Rules, 1981, came into force on June 20, 1981. As a result of the amendments made by the 1981 Notification, Schedule I was substituted and Schedule II deleted. Thus, with effect from June 20, 1981, only royalty became payable and not dead rent.

It was contended that the rates of royalty specified in the 1981 Notification were so excessive and arbitrary as to be totally unreasonable and, therefore, the 1981 Notification violated Article 19(1)(g) of the Constitution because it placed unreasonable restrictions on the Fundamental Right of the holders of quarry leases to carry on their trade and business. We find no substance in this contention. It is true that by the 1981 Notification the rates of royalty have been enhanced manifold. During the particular period of your years, namely, the fourth period commencing on April, 1, 1978, and ending on March 31, 1982, the rates of royalty had not been enhanced but drastically reduced by the 1979 Notification while the rates of dead rent had been considerably enhanced by the 1979 Notification. The enhancement in the rates of royalty made by the 1981 Notification was, therefore, the first enhancement made during the fourth period of four years. If the rates of royalty so enhanced are looked at alone, it would appear that they are unreasonable, but when we take into account the fact that dead rent is not payable after the coming into force of the 1981 Notification, the position is completely altered and it cannot be said that enhancement in the rates of royalty is unreasonable. The fallacy in the above contention lies in comparing the rates of royalty specified in the 1981 Notification with the uniform rate of ten paise per metric tonne specified in the 1979 Notification. If we compare the rates of royalty specified in the 1981 Notification with those specified in the 1974 Notification and we bear in mind that under the 1974 Notification dead rent was also payable under the 1974 Notification, we find that in some cases the rates of royalty are reduced, for example, the rate of royalty in respect of dressed and carved marble and slabs of marble was Rs.55 per metric tonne in the 1974 Notification while under the 1981 Notification blocks and slabs of marble above 15 cms. in size is only Rs.35 per metric tonne. Though by the 1981 Notification the rates of royalty in respect of certain minor minerals have been enhanced by no stretch of imagination can such enhancement be said to be excessive or unreasonable when compared with the rates of royalty specified in the 1974 Notification. This contention must, therefore, be rejected.

To summarize our conclusions :

(1) Sub-section (1) of section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, is constitutional and valid and the rule-making power conferred thereunder upon the State Governments does not amount to excessive delegation of legislative power to the executive.

(2) There are sufficient guidelines provided in the 1957 Act for the exercise of the rule-making power of the State Governments under section 15(1) of the 1957 Act. These guidelines are to be found in the object for which such power is conferred,

namely, "for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith; the meaning of the word 'regulating'; the scope of the phrase "for purposes connected therewith"; the illustrative matters set out in sub-section (2) of section 13; and the restrictions and other matters contained in sections 4 to 12 of the 1957 Act.

(3) The power to make rules conferred by section 15(1) includes the power to make rules charging dead rent and royalty.

(4) The power to make rules under section 15(1) includes the power to amend the rules so made, including the power to amend the rules so as to enhance the rates of royalty and dead rent.

(5) A State Government is entitled to amend the rules under section 15(1) enhancing the rates of royalty and dead rent even as regards leases subsisting at the date of such amendment.

(6) Sub-section (3) of section 15 does not confer upon the State Governments the power to make rules charging royalty or to enhance the rate of royalty so charged from time to time.

(7) The sole repository of the power of the State Governments to make rules and amendments thereto, including amendments enhancing the rates of royalty and dead rent, is sub-section (1) of section 15.

(8) A State Government is not required to give an opportunity of a hearing or of making a representation to the lessees who would be affected by any amendments of the rules before making such amendments.

(9) A quarry lease is a mining lease.

(10) By reason of the prohibition contained in the proviso to section 15(3) a State Government cannot enhance the rate of royalty in respect of any minor mineral more than once during any period of four years.

(11) A State Government is also not entitled to enhance the rate of dead rent more than once during any period of four years.

(12) During any period of four years the State Government can enhance both dead rent and royalty, but only once.

(13) The period of four years for the purpose of enhancing the rates of dead rent and royalty is to be reckoned from the date of coming into force of the rules made by the particular State Government.

(14) Building stones being minor minerals, the State Government has the power to classify them into different varieties and to charge a different rate of royalty in respect of each such variety.

(15) Notification No. GU-74/121(A)/MCR-2173(49)7268/CHH dated November 29, 1974, whereby the Government of Gujarat made the Gujarat Minor Mineral (Fourth Amendment) Rules, 1974, was validly issued and became operative with effect from December 1, 1974.

(16) Notification No. GU-75/117-MCR-2173(49)/6431/CHH dated October 29, 1975, whereby the Government of Gujarat made the Gujarat Minor Mineral (Second Amendment) Rules, 1975, to the extent that it enhanced the rates of royalty in respect of certain minor minerals was void as offending the prohibition contained in the proviso to section 15(3).

(17) The Judgment of the Gujarat High Court in Letters Patent Appeal No.61 of 1978 - Ambalal Manibhai Patel v. The State of Gujarat and Anr., and connected writ petitions is wrong to the extent that it holds that the Notification dated November 29, 1974, was invalid and inoperative and that the Notification dated October 29, 1975, was valid and operative and that part of the said judgment is hereby reversed.

(18) Notification No. GU-76/39/MCR-2175(68)4675-CHH dated April 6, 1976, whereby the Government of Gujarat made the Gujarat Minor Mineral (Second Amendment) Rules, 1976 was void as it enhanced the rates of dead rent for the second time during the same period of four years.

(19) Notification No.GU/79/118/MCR-2178(127)-167 dated March 26, 1979, whereby the Government of Gujarat made the Gujarat Minor Minerals (Amendment) Rules, 1979, was valid and was not ultra vires either section 15 or Article 19(1)(g) of the Constitution.

(20) The case of Smt. Sonbai Pathalji v. State of Gujarat & Anr., was wrongly decided by the Gujarat High Court and the judgment in that case is hereby reversed.

(21) The case of M.V. Subba Rao v. State of Andhra Pradesh & Anr., was wrongly decided by the Andhra Pradesh High Court and that decision is hereby overruled.

(22) The rates of royalty and dead rent specified by the Notification dated November 29, 1974, namely, the Gujarat Minor Mineral (Fourth Amendment) Rules, 1974, continued to be operative and in force until the coming into force of the Notification dated March 26, 1979, on April 1, 1979.

(23) The directions contained in the Circular No. M.C.R. 2180(166) CHH dated February 12, 1981, issued by the Government of Gujarat were invalid and inoperative.

(24) Notification No. GU-81/75/MCR-2181/(168)-4536-CHH dated June 18, 1981, whereby the Government of Gujarat made the Gujarat Minor Mineral (Amendment) Rule, 1981, is valid and constitutional and does not offend Article 19(1)(g) of the Constitution.

In the light of the above conclusions reached by us, we will now deal with each individual matter.

Civil Appeals Nos. 706 and 1934 of 1981 are directed against the judgment of the Division Bench of the Gujarat High Court delivered on September 16-17, 1980, in Letters Patent Appeal No. 61 of 1978 - Ambalal Manibhai Patel v. The State of Gujarat & Anr. and connected writ petitions. These appeals are accordingly partly allowed and the judgment appealed against is reversed to the extent that it holds that the enhancement in the rates of royalty made by the Notification dated November 29, 1974, was invalid and inoperative and the enhancement in the rates of royalty made by the Notification dated October 29, 1975, was valid and operative. The said judgment is confirmed in so far as it holds that the State Government has the power to classify building stones into different varieties and levy a different rate of royalty in respect of each such variety. It is also confirmed in so far as it holds that the State Government has the power to enhance the rates of royalty. The orders dismissing the writ petitions under Article 226 of the Constitution of India filed by the Appellants in these Appeals in the Gujarat High Court are set aside and the said writ petitions are allowed in part and it is declared that the enhancement in the rates of royalty made by the Notification dated November 29, 1974, was valid and became operative with effect from December 1, 1974, and that the enhancement in the rates of royalty made by the Notification dated October 29, 1975, was invalid. We also restrain the State of Gujarat and its officers from recovering any amount by way of royalty and at the enhanced rates specified in the Notification dated October 29, 1975, or from retaining any such amount, if recovered, in excess of the amount which would by payable in accordance with the Notification dated November 29, 1974, and we further direct the State of Gujarat to refund to the Appellants in these Appeals any such excess amount subject to the directions given hereinafter with respect to payment and refund.

Civil Appeals Nos. 1489 and 1675 of 1981 are directed against the orders passed by the learned Single Judge of the Gujarat High Court dismissing in view of the judgment of the Division Bench of the Gujarat High Court in Smt. Sonbai Pathalji v. State of Gujarat & Anr., the writ petitions filed by the Appellants in these Appeals challenging the validity of the directions contained in the Circular No. M.C.R.2180(166) CHH dated February 12, 1981, and for an order restraining the State of Gujarat and its officers from acting upon the said Circular and the Notification dated October 29, 1975, and directing the State of Gujarat to implement the Notification dated March 26, 1979. We accordingly allow both these appeals, reverse the judgment of the Gujarat High Court in Smt. Sonbai Pathalji v. State of Gujarat & Anr., set aside the orders of the learned Single Judge appealed against, restrain the State of Gujarat and its officers from acting upon the directions contained in the said Circular dated February 12, 1981, and direct the State of Gujarat to collect royalty and dead rent in accordance with the Notification dated March 26, 1979, for the period commencing on April 1, 1979 and ending on June 19, 1981.

Writ Petitions Nos. 1656, 2108, 4097 and 7697 of 1981, 762, 874 to 942, 946 to 968, 1616 and 1617, 4455 to 4473, to 4484, 5589 to 5605, 5895 to 5969, 5971 to 6005, 6309, 6463 to 6479 and 10104 to 10122 of 1982 and 3993 to 4003, 8813 to 8820 and 9539 to 9549 of 1983 seek the same reliefs as the Appellants in Civil Appeals Nos. 1489 and 1675 of 1981 had done in their writ petitions filed in the Gujarat High Court under Article 226 of the Constitution. We accordingly allow the above Writ Petitions and restrain the State of Gujarat and its officers from acting upon the directions contained in the Circular No. M.C.R. 2180(166)CHH dated February 12, 1981, and direct the State of Gujarat to collect royalty and dead rent in accordance with the Notification dated March 26, 1979, for the period commencing on April 1, 1979, and ending on June 19, 1981.

Writ Petition Nos. 7103 and 7104 to 7128 of 1981 and 4208 to 4217 of 1983 challenge the constitutionality of section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, and the validity of Notification No. GU-81/75/MCR 2181/(168)-4536-CHH dated June 18, 1981, whereby the Government of Gujarat made the Gujarat Minor Mineral (Amendment) Rules, 1981. All these writ petitions are accordingly dismissed.

Writ Petitions Nos. 6419 to 6422 of 1982 and 4912 to 4924 and 5167 to 5182 of 1983 challenge the validity of the directions contained in the Circular dated February 12, 1981 as also the Notification dated June 18, 1981. These Writ Petitions are allowed so far as the Circular dated February 12, 1981 is concerned, and accordingly we restrain the State of Gujarat and its officers from acting upon the directions contained in the said Circular and direct the State of Gujarat to collect royalty and dead rent in accordance with the Notification dated March 26, 1979 for the period commencing on April 1, 1979 and ending on June 19, 1981. The Writ Petitions are dismissed so far as the challenge to the Notification dated June 18, 1981 is concerned.

Civil Appeal Nos. 1525 and 1526 of 1982 are directed against the order of the Gujarat High Court dismissing the writ petitions filed by the Appellants challenging the constitutionality of section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, and the validity of Notification No.GU-81/75/MCR2181/(168)-4536-CHH dated June 18, 1981, and directing the Appellants to approach the Supreme court as similar matters were pending there. In our opinion, the course adopted by the High Court was not correct. If the High Court thought that the point raised by the Appellants was the same as was pending in this Court, it ought to have stayed the hearing of the writ petitions until this Court disposed of the other matters. As we have, however, held section 15 and the amendments made by the said Notification dated June 18, 1981, to be valid and constitutional, both these appeals are, therefore, dismissed.

All interim orders passed in all the above matters are hereby vacated. If as a result of this Judgment and the interim orders passed by this Court, any amount becomes payable by any lessee of any mining lease of quarry lease to the State of Gujarat, the same will be paid by him to the State of Gujarat after giving such lessee credit for the amount already paid in respect of the same period as also any excess amount paid in respect of any other period. Such payment will be made by such lessee within six months from today. Correspondingly, if any amount becomes refundable by the State of Gujarat to any lessee of any mining lease or quarry lease, the State of Gujarat will refund the same to such lessee after adjusting against the amount refundable the amount actually recoverable

in law and recovered by the State of Gujarat from such lessee. Such payment will be made by the State of Gujarat within six months from today.

The parties will bear and pay their own costs of these Writ Petitions and Appeals.

S.R.