REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

TRANSFERRED CASE (CIVIL) NO. 43 OF 2016

Federation of Indian Mineral Industries & ors. …Petitioners

versus

Union of India & Anr. …Respondents

WITH

W.P. (C) No. 989/2016, W.P. (C) No. 1003/2016, T.C. (C) No. 51/2016, W.P. (C) No. 1014/2016, W.P. (C) No.1028/2016, T.C. (C) Nos. 273-275/2017 (arising out of T.P. (C) Nos. 74-76/2017), W.P. (C) No. 67/2017, W.P. (C) No. 205/2017, W.P. (C) No. 201/2017, S.L.P. (C) No. 12099/2017, S.L.P. (C) Nos. 12184-12185/2017, S.L.P. (C) No.14693/2017, S.L.P. (C) No.16685/2017, W.P. (C) No. 886/2016, W.P. (C) No. 912/2016, W.P. (C) No. 27/2017, W.P. (C) No. 112/2017 and W.P.(C) No. 69/2017.

J U D G M E N T

Madan B. Lokur, J.

1. This batch of petitions (including transfer cases/petitions) relate to the establishment of the District Mineral Foundation under the Mines and Minerals (Development and Regulation) Act, 1957 and the contribution required to be made to the District Mineral Foundation by

the holder of a mining lease or a prospecting licence-cum-mining lease in addition to the payment of royalty.

Ordinance of 12th January, 2015

2. On 12th January, 2015 the President promulgated an Ordinance making several amendments to the Mines and Minerals (Development and Regulation) Act, 1957 (for short 'the MMDR Act'). We are concerned with only a few of these amendments which are detailed below:

> (i) Section 9 of the Ordinance inserted Section 9B in the MMDR Act. This section provides that the State Government shall establish a non-profit trust called the District Mineral Foundation (for short 'the DMF') in any district affected by mining operations. The DMF shall have the object of working for the interest and benefit of persons and areas affected by mining related operations.

What is of significance is that this provision requires the holder of a mining lease or a prospecting licence-cum-mining lease, in addition to payment of royalty, to pay to the DMF concerned an amount equivalent to a percentage of royalty not exceeding one-third thereof, as may be prescribed by the Central Government. Section 9B of the MMDR Act,

as inserted by the Ordinance, reads as follows:

> **"9B**. **District Mineral Foundation** - (1) In any district affected by mining related operations, the State Government shall, by notification, establish a trust, as a non-profit body, to be called the District Mineral Foundation.
>
> (2) The object of the District Mineral Foundation shall be to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government.
>
> (3) The composition and functions of the District Mineral Foundation shall be such as may be prescribed by the State Government.
>
> (4) The holder of a mining lease or a prospecting licence-cum-mining lease shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount which is equivalent to such percentage of the royalty paid in terms of the Second Schedule, not exceeding one-third of such royalty, as may be prescribed by the Central Government."

(ii) Section 14 of the Ordinance inserted sub-clause (qqa) in Section 13(2) of the MMDR Act relating to the power of the Central Government to make rules in respect of minerals. Clause (qqa) as inserted in the MMDR Act reads as follows:

> "(qqa) the amount of payment to be made to the District Mineral Foundation under sub-section (4) of section 9B;"

(iii) Section 15 of the Ordinance inserted sub-section (4) in Section 15 of the MMDR Act relating to the power of

the State Governments to make rules in respect of minor minerals. Sub-section (4) as inserted in Section 15 of the MMDR Act reads as follows:

> "**15. Amendment of section 15. –** In section 15 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:-
>
> > "(4) Without prejudice to sub-sections (1), (2) and sub-section (3), the State Government may, by notification, make rules for regulating the provisions of this Act for the following, namely:—
> >
> > (a) the manner in which the District Mineral Foundation shall work for the interest and benefit of persons and areas affected by mining under sub-section (2) of section 9B;
> >
> > (b) the composition and functions of the District Mineral Foundation under sub-section (3) of section 9B; and
> >
> > (c) the amount of payment to be made to the District Mineral Foundation by concession-holders of minor minerals under section 15A."

(iv) Section 18 of the Ordinance inserted Section 20A in the MMDR Act relating to the power of the Central Government to issue directions. It is not necessary to reproduce the provisions of Section 20A of the MMDR Act except to say that the section enables the Central Government to issue appropriate directions to the State Governments for the conservation of mineral resources, or

on any policy matter in the national interest, and for the scientific and sustainable development and exploitation of mineral resources.

Amendments to the MMDR Act

3. On 27th March, 2015 the Ordinance was replaced by the Mines and Minerals (Development and Regulation) Amendment Act, 2015 with effect from 12th January, 2015. However, Section 9B and Section 13(2) clause (qqa) were further amended and they now read as follows:

> "**9B. District Mineral Foundation.** – (1) In any district affected by mining related operations, the State Government shall, by notification, establish a trust, as a non-profit body, to be called the District Mineral Foundation.
>
> (2) The object of the District Mineral Foundation shall be to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government.
>
> (3) The composition and functions of the District Mineral Foundation shall be such as may be prescribed by the State Government.
>
> (4) The State Government while making rules under sub-sections (2) and (3) shall be guided by the provisions contained in article 244 read with Fifth and Sixth Schedules to the Constitution relating to administration of the Scheduled Areas and Tribal Areas and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
>
> (5) The holder of a mining lease or a prospecting licence-cum-mining lease granted on or after the date of commencement of the Mines and Minerals

(Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount which is equivalent to such percentage of the royalty paid in terms of the Second Schedule, not exceeding one-third of such royalty, as may be prescribed by the Central Government.

(6) The holder of a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount not exceeding the royalty paid in terms of the Second Schedule in such manner and subject to the categorisation of the mining leases and the amounts payable by the various categories of lease holders, as may be prescribed by the Central Government."

"(qqa) the amount of payment to be made to the District Mineral Foundation under sub-sections (5) and (6) of section 9B."

4. Very broadly, the MMDR Act required the State Government to establish a District Mineral Foundation and the Central Government was required to prescribe the rate of contribution to the DMF, provided the contribution did not exceed one-third of the royalty payable by the holder of a mining lease or a prospecting licence-cum-mining lease.

Notifications issued

5. On 16th September, 2015 the Central Government, in exercise of its power under Section 20A of the MMDR Act issued a direction to all

the State Governments that the notification establishing the DMF shall state that the DMF shall be deemed to have come into existence with effect from 12th January, 2015. The direction dated 16th September, 2015 reads as follows:

> "No. 16/7/2015 –M.VI (Part)
> Government of India
> Ministry of Mines
>
> New Delhi, Shastri Bhawan
> Dated the 16th September, 2015
>
> **ORDER**
>
> WHEREAS in terms of the provisions of sub-section (1) of section 9B of the Mines and Minerals (Development and Regulation) (MMDR) Act, 1957 (67 of 1957), the State Governments shall, by notification, establish a District Mineral Foundation in every district in the country affected by mining related operations.
>
> AND WHEREAS the said provision is deemed to have come into force on the 12th day of January, 2015.
>
> NOW THEREFORE, the Central Government in exercise of the powers conferred under section 20A of the MMDR Act, 1957, in the national interest hereby directs the concerned State Governments that the notification establishing the District Mineral Foundations shall state that such District Mineral Foundations shall be deemed to have come into existence with effect from the 12th day of January, 2015.
>
> (R Sridharan)
> Additional Secretary to the Government of India"

6. It is not necessary for us to examine the validity of the direction except to note that pursuant thereto, several State Governments did establish a DMF as per the table below:

Date of Notification and Establishment of DMF			
	State	**Date of Notification**	**Date of Establishment**
1	Andhra Pradesh	14.3.2016	14.3.2016
2	Chhattisgarh	22.12.2015	12.1.2015
3	Goa	15.1.2016	12.1.2015
4	Haryana	17.11.2016	12.1.2015
5	Jharkhand	22.3.2016	12.1.2015
6	Karnataka	11.1.2016	12.1.2015
7	Madhya Pradesh	15.5.2015	15.5.2015
8	Maharashtra	1.9.2016	16.9.2015
9	Odisha	18.8.2015	18.8.2015
10	Rajasthan	31.5.2016	12.1.2015
11	Tamil Nadu	19.5.2017	19.5.2017
12	Telangana	21.8.2015	21.8.2015
13	Uttar Pradesh	25.4.2017	12.1.2015
14	West Bengal	3.3.2016	3.3.2016

7. On 17th September, 2015 the Ministry of Mines issued a notification promulgating the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015.[1] In terms of the notification, the Contribution Rules were deemed to have come into force on 12th January, 2015. Paragraph 2 of the notification provides, *inter alia*, for payment to the DMF an amount of 10% of the royalty payable by the holder of a mining lease or prospecting licence-cum-mining lease granted on or after 12th January, 2015 and 30% of the royalty payable in respect of mining leases granted before 12th January, 2015.

[1] The administration of the MMDR Act is with the Ministry of Mines for minerals other than coal, lignite and sand for stowing

8. Since the administration of MMDR Act with the Ministry of Mines is limited to minerals other than coal, lignite and sand for stowing, it is assumed that the notification did not relate to these three minerals.

9. The notification dated 17th September, 2015 reads as follows:

"**MINISTRY OF MINES**

NOTIFICATION

New Delhi, the 17th September, 2015

G.S.R. 715(E).—In exercise of the powers conferred by sub-sections (5) and (6) of Section 9B of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), the Central Government hereby makes the following rules specifying the amount to be paid by holder of a mining lease or a prospecting licence-cum-mining lease, in addition to the royalty, to the District Mineral Foundation of the district established by the concerned State Government by notification, in which the mining operations are carried on, namely:—

1. Short title and commencement.—(1) These rules may be called as the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015**.**

(2) These rules shall be deemed to have come into force on the 12th day of January, 2015.

2. Amount of contribution to be made to District Mineral Foundation.—Every holder of a mining lease or a prospecting licence-cum-mining lease shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount at the rate of —

(a) ten per cent of the royalty paid in terms of the Second Schedule to the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) (herein referred to as the said Act) in respect

of mining leases or, as the case may be, prospecting licence-cum-mining lease granted on or after 12th January, 2015; and

(b) thirty per cent of the royalty paid in term of the Second Schedule to the said Act in respect of mining leases granted before 12th January, 2015."

10. On 20th October, 2015 the Ministry of Coal issued a notification promulgating the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015.[2] The Contribution Rules are deemed to have come into force on the date of their publication in the Official Gazette. These rules pertain to payment to the DMF at the same rate and on the same terms as mentioned in the notification dated 17th September, 2015. The subject notification, having been issued by the Ministry of Coal, specifically mentioned that the rules were in respect of coal, lignite and sand for stowing.

11. What is of significance in the notification dated 20th October, 2015 is paragraph 3 thereof. This provides that the amount payable to the DMF shall be paid from the date of the notification issued under Section 9B(1) of the MMDR Act by the State Government establishing the DMF or the date of coming into force of the Contribution Rules, whichever is later. The notification dated 20th October, 2015 reads as follows:

[2] The administration of the MMDR Act is with the Ministry of Coal for coal, lignite and sand for stowing.

"MINISTRY OF COAL

NOTIFICATION

New Delhi, the 20th October, 2015

G.S.R. 792(E).—In exercise of the powers conferred by sub-sections (5) and (6) of Section 9B of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), the Central Government hereby makes the following rules in r/o of coal and lignite and sand for stowing specifying the amount to be paid by holder of a mining lease or a prospecting licence-cum-mining lease, in addition to the royalty, to the District Mineral Foundation of the district established by the concerned State Government by notification, in which the mining operation are carried on, namely:—

1. **Short title and commencement.—**(1) These rules may be called as the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015**.**

(2) These rules shall be deemed to have come into force on the date of their publication in the Official Gazette.

2. **Amount of contribution to be made to District Mineral Foundation.—**Every holder of a mining lease or a prospecting licence-cum-mining lease in respect of coal and lignite and sand for stowing shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operation are carried on, an amount at the rate of:—

(a) ten per cent of the royalty paid in term of the second schedule to the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) (herein referred to as the said Act) in respect of mining lease or, as the case may be, prospecting licence-cum-mining lease granted on or after 12thJanuary, 2015; and

(b) thirty per cent of the royalty paid in term of the Second Schedule to the said Act in respect of mining lease granted before 12th January, 2015.

3. Date from which contribution to be made.—The amount calculated at the rate prescribed in rule 2 shall be paid from the

date of notification issued under Section 9B(1) of the Act by the State Government establishing District Mineral Foundation or the date of coming into force of these rules, whichever is later."

12. The Ministry of Coal issued another notification on 31st August, 2016 substituting paragraph 3 of the notification dated 20th October, 2015. The substituted paragraph provided that payment under the notification dated 20th October, 2015 shall be made to the DMF with effect from 12th January, 2015. The notification dated 31st August, 2016 reads as follows:

"MINISTRY OF COAL

NOTIFICATION

New Delhi, the 31st August, 2016

G.S.R. 837(E).—In exercise of the powers conferred by sub-sections (5) and (6) of section 9B of the Mines and Minerals (Development and Regulation) Act, 1957, (67 of 1957), the Central Government hereby makes the following rules in respect of coal, lignite and sand for stowing, to amend the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015, namely:-

1. These rules may be called as the Mines and Minerals (Contribution to District Mineral Foundation) (Amendment) Rules, 2016.

In the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015, for rule 3, the following rule shall be substituted, namely:-

"**3. Date from which contribution to be made. –** The amount calculated at the rate specified in rule 2 shall be paid with effect from the 12th January, 2015."

Questions raised by the petitioners

13. On the basis of these notifications, the questions raised by learned counsel for the petitioners are: Firstly, whether the DMFs could be established with effect from 12th January, 2015? Secondly, whether contributions to the DMFs were required to be made by the petitioners at the rate mentioned in both sets of Contribution Rules with effect from 12th January, 2015? The validity of the notifications was challenged or was under challenge to this extent depending on their interpretation and their impact and effect.

(i) The first question

14. In terms of sub-section (1) of Section 9B the State Government is required to establish a trust as a non-profit body and that trust would be called the District Mineral Foundation. For establishing the trust the State Government is required to issue a notification. It is entirely for the State Government to decide the date from which to set up the trust. The Central Government has no role to play in this, although a direction was issued by the Central Government to the State Governments to establish a trust with effect from 12th January, 2015. But be that as it may, the State Governments did issue a notification establishing the DMF –

some with effect from 12th January, 2015 and some with effect from the date of the notification establishing the DMF.

15. The submission of learned counsel for the petitioners is that the DMF could not have been established from a retrospective date prior to the date of the notification.

16. To answer this issue, it is necessary to first of all decide whether the DMF has in fact been established retrospectively. The learned Additional Solicitor General submitted that the DMFs were not established with retrospective effect. His contention was that under Section 9B of the MMDR Act the DMF could be established with effect from 12th January, 2015 or any date thereafter. Some States chose to issue a notification establishing the DMF from an anterior date (12th January, 2015) while some others did not, notwithstanding the direction of the Central Government. According to the learned Additional Solicitor General establishing the DMF from a date anterior to the date of the notification did not mean that the DMF was established with retrospective effect. He relied on a decision of the Constitution Bench of this Court in ***A. Thangal Kunju Musaliar v. M. Venkitachalam Potti***[3] in support of his contention.

[3] (1955) 2 SCR 1196

17. ***Musaliar*** advances the case of the learned Additional Solicitor General. The Constitution Bench acknowledged that the general law is that a statute comes into force on the day it received the assent of the competent authority. However that date could be postponed if so provided in the statute. In ***Musaliar*** the statute provided that it was to come into force on a date notified in the Government Gazette. Since the statute was passed by the Legislature on 7th March, 1949 it would have ordinarily come into force on that date but by virtue of Section 1(3) of the statute, a notification was issued on 26th July, 1949 bringing the statute into force on 22nd July, 1949 a date obviously later than 7th March, 1949. The Constitution Bench held that the notification did not prejudicially affect any vested rights and (by implication) its retrospective operation could not be looked upon with disfavour. Moreover, the operation of the statute was not from a date prior to its passing and so it could not be said to have retrospective operation. Fixing a date anterior to the date of the notification bringing the statute into force did not attract the principle of disfavouring retrospective operation. The Constitution Bench however did not consider the further submission of the learned Attorney General that the notification was good to bring the statute into operation from the date of issue of the

notification. The law laid down by the Constitution Bench is quite explicit when it was held:

> "The reason for which the Court disfavours retroactive operation of laws is that it may prejudicially affect vested rights. No such reason is involved in this case. Section 1(3) authorises the Government to bring the Act into force on such date as it may, by notification, appoint. In exercise of the power conferred by this section the Government surely had the power to issue the notification bringing the Act into force on any date subsequent to the passing of the Act. There can therefore, be no objection to the notification fixing the commencement of the Act on the 22nd July, 1949 which was a date subsequent to the passing of the Act. So the Act has not been given retrospective operation, that is to say, it has not been made to commence from a date prior to the date of its passing. **It is true that the date of commencement as fixed by the notification is anterior to the date of the notification but that circumstance does not attract the principle disfavouring the retroactive operation of a statute. Here there is no question of affecting vested rights.** The operation of the notification itself is not retrospective. It only brings the Act into operation on and from an earlier date. In any case it was in terms authorised to issue the notification bringing the Act into force on any date subsequent to the passing of the Act and that is all that the Government did. In this view of the matter, **the further argument advanced by the learned Attorney-General and which found favour with the Court below, namely, that the notification was at any rate good to bring the Act into operation as on and from the date of its issue need not be considered.**" (Emphasis supplied by us)

18. The notifications establishing the DMF in the States mentioned in the table above were issued pursuant to the provisions of Section 9B of the MMDR Act. The intention of Parliament appears to have been for the State Governments to establish the DMF with effect from 12th January, 2015 since its object is to work for the interest and benefit of

persons and areas affected by mining related operations. The object being the welfare of those adversely affected by mining operations, the DMFs ought to have been established on 12th January, 2015. However, not surprisingly, every State Government took it easy (including to a lesser extent the State Governments of Madhya Pradesh, Odisha and Telangana) compelling the Central Government to issue a direction under Section 20A of the MMDR Act on 16th September, 2015 requiring the State Governments to issue a notification that the DMF shall be deemed to have come into existence with effect from the 12th January, 2015.

19. In any event, even assuming that since the DMFs were established from a date anterior to the date of the notification and therefore they were established with retrospective effect, their establishment did not adversely affect anybody's vested rights (as will be seen later). This is crucial. Therefore there can be no real objection to the operation of the notifications from 12th January, 2015 in view of the decision in ***Musaliar***. The DMFs were not established from a date prior to 12th January, 2015 and to that extent cannot be said to have been established with retrospective effect.

20. Assuming the DMFs were established with retrospective effect –

is that permissible in law? This question really does not arise in the view that we have taken following ***Musaliar*** but since it was vehemently argued by learned counsel by citing several decisions, we briefly give our views.

21. The power to give retrospective effect to subordinate legislation whether in the form of rules or regulations or notifications has been the subject matter of discussion in several decisions rendered by this Court and it is not necessary to deal with all of them – indeed it may not even be possible to do so. It would suffice if the principles laid down by some of these decisions cited before us and relevant to our discussion are culled out. These are obviously relatable to the present set of cases and are not intended to lay down the law for all cases of retrospective operation of statutes or subordinate legislation. The relevant principles are:

(i) The Central Government or the State Government (or any other authority) cannot make a subordinate legislation having retrospective effect unless the parent statute, expressly or by necessary implication, authorizes it to do so. (***Hukum Chand v. Union of India***[4] and ***Mahabir Vegetable Oils (P) Ltd. v. State of***

[4] (1972) 2 SCC 601

Haryana[5]).

(ii) Delegated legislation is ordinarily prospective in nature and a right or a liability created for the first time cannot be given retrospective effect. (***Panchi Devi v. State of Rajasthan***[6]).

(iii) As regards a subordinate legislation concerning a fiscal statute, it would not be proper to hold that in the absence of an express provision a delegated authority can impose a tax or a fee. There is no scope or any room for intendment in respect of a compulsory exaction from a citizen. (***Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla***[7] and ***State of Rajashtan v. Basant Agrotech (India) Limited.***[8]).

22. A much more erudite, general and broad-based discussion on the subject is to be found in the Constitution Bench decision in ***Commissioner of Income Tax (Central) – I v. Vatika Township Private Limited***[9] and we are obviously bound by the conclusions arrived at therein. It is not at all necessary for us to repeat the discussion and the conclusions arrived at by the Constitution Bench in

[5] (2006) 3 SCC 620
[6] (2009) 2 SCC 589
[7] (1992) 3 SCC 285
[8] (2013) 15 SCC 1
[9] (2015) 1 SCC 1

the view that we have taken except to say that our conclusions do not depart from the conclusions arrived at by the Constitution Bench.

23. On the facts before us, it is clear that Section 15 of the MMDR Act empowers the State Government to 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. This section does not specifically or by necessary implication empower the State Government to frame any rule with retrospective effect. Also, the MMDR Act does not confer any specific power on the State Government to fictionally create the DMF deeming it to be in existence from a date earlier than the date of the notification establishing the DMF. Therefore, it must follow that under the provisions of the MMDR Act that we are concerned with, no State Government has the power to frame a rule with retrospective effect or to create a deeming fiction, either specifically or by necessary intendment.

24. Similarly, Section 13 of the MMDR Act does not confer any specific power on the Central Government to frame any rule with retrospective effect. Section 9B(5) and (6) read with clause (qqa) inserted in Section 13(2) of the MMDR Act enable the Central Government to make rules to provide for the amount of payment to be

made to the DMF established by the State Government under Section 9B(1) of the MMDR Act. None of these provisions confer any power on the Central Government to require the holder of a mining lease or a prospecting licence-cum-mining lease to contribute to the DMF with retrospective effect. Therefore, even the scope and extent of the rule making power of the Central Government is limited.

25. In view of the position in law as explained above and the factual position before us, the notifications issued by the State Governments must be understood to mean (assuming the DMF could not be established with effect from 12th January, 2015 by a notification issued on a later date) that the DMF was established on the date of publication of each notification. This is reflective of the further submission of the learned Attorney General in ***Musaliar*** that was not considered by the Constitution Bench. In our opinion this submission can be extrapolated to the facts of the cases before us and if we do so, we find it well taken. To the extent possible, the validity of a rule, regulation or notification should be upheld. It is not obligatory to declare any notification *ultra vires* the rule making power of the State Government if its validity can be saved without doing violence to the law. In these cases, we are of opinion that it is not obligatory to declare the notifications *ultra vires*

the rule making power of the State Governments to the extent of their establishing the DMF from a retrospective date, since we can save their validity by reading them as operational from the date of their publication. In any event, no prayer was made before us for striking down the establishment of the DMF as such.

26. Therefore our answer to the first question is that the DMFs were not established retrospectively even though the notifications established them from a date anterior to the date of the notifications - but not before the date of the Ordinance. Assuming the DMFs were established with retrospective effect from 12th January, 2015 it is of no consequence since the retrospective establishment does not prejudicially affect the interests of anybody (as will be seen later). In this view of the matter, the notifications do not violate the law laid down in ***Musaliar*** and ***Vatika Township***. Even otherwise, their validity can be saved by reading them as operational from the date of publication.

(ii) The second question

27. Learned counsel for the petitioners submitted that assuming the issue of retrospective operation of the notifications and the establishment of the DMFs is decided against them, even then the petitioners cannot be compelled to make the contribution for a period

prior to the date of the relevant notifications, that is, 17th September, 2015 and 20th October, 2015 (as the case may be). For this purpose, reliance was placed on ***M/s Govind Saran Ganga Saran v. Commissioner of Sales Tax***[10] and ***Vatika Township***.

28. In ***Govind Saran*** this Court was concerned with the taxation of goods under Sections 14 and 15 of the Central Sales Tax Act, 1956 (the CST Act) and the assessment made under the Bengal Finance (Sales Tax) Act, 1941 as applied to the Union Territory of Delhi. Section 15 of the CST Act reads:

> "15. Every sales tax law of a State shall, insofar as it imposes or authorizes the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:
>
> (a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed three percent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage."

This Court noted that Section 15 of the CST Act prescribed the maximum rate of tax that could be imposed and that such tax shall not be levied at more than one point. Expanding on these requirements, this Court observed in paragraph 6 of the Report as follows:

> "The components which enter into the concept of a tax are well known. The **first** is the character of the imposition known by its

[10] 1985 (Supp) SCC 205

> nature which prescribes the taxable event attracting the levy, the **second** is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the **third** is the rate at which the tax is imposed, and the **fourth** is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. **Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity**." (Emphasis supplied by us)

29. After the above observations, this Court primarily dealt with the absence of specifying the single point at which the tax might be levied and held that the prerequisite of Section 15 of the CST Act that the tax shall not be levied at more than one stage had not been satisfied. Therefore, it quashed the assessment complained of and allowed the appeal of the assessee.

30. In ***Vatika Township*** the Constitution Bench was concerned with the impact of the proviso appended to Section 113 of the Income Tax Act, 1961 inserted by the Finance Act.[11] The rate of surcharge was not specified in the proviso nor the date for the levy. The consequence of this was that some assessing officers were not levying any surcharge and those who were levying surcharge adopted different dates for the

[11] 113. **Tax in the case of block assessment of search cases**.-The total undisclosed income of the block period, determined under Section 158BC, shall be chargeable to tax at the rate of sixty per cent:

Provided that the tax chargeable under this section shall be increased by a surcharge, if any, levied by any Central Act and applicable in the assessment year relevant to the previous year in which the search is initiated under section 132 or the requisition is made under section 132A.

levy. In this context it was held that the rate at which a tax or for that matter a surcharge is to be levied is an essential component of the tax regime. The decision in ***Govind Saran*** was referred to by the Constitution Bench, particularly the passage extracted above. It was further held: "It is clear from the above that the rate at which the tax is to be imposed is an essential component of tax and where the rate is not stipulated or it cannot be applied with precision, it would be difficult to tax a person."

31. We may also note a similar view expressed in *Principles of Statutory Interpretation* by Justice G.P. Singh[12] that: "There are three components of a taxing statute, *viz.* subject of the tax, person liable to pay the tax and the rate at which the tax is levied. If there be any real ambiguity in respect of any of these components which is not removable by reasonable construction, there would be no tax in law till the defect is removed by the legislature."

32. In view of the decision of the Constitution Bench of this Court that the specification of the rate of tax (or any compulsory levy for that matter) is an essential component of the tax regime, it is difficult to agree with the learned Additional Solicitor General that specifying the

[12] 14th edition revised by Justice A.K. Patnaik, former Judge, Supreme Court of India, page 876

maximum amount of compensation to be paid to the DMF in terms of Section 9B of the MMDR Act, being an amount not exceeding one-third of the royalty, satisfies the requirements of law. What is required by the law is certainty and not vagueness – not exceeding one-third could mean one-fourth or one-fifth or some other fraction. It is this uncertainty that is objectionable.

33. Therefore, our answer to the second question is that the petitioners are not liable to make any contribution to the DMF from 12th January, 2015.

Crucial date for making the contribution to the DMF

34. What then is the crucial date for making the contribution? There are two categories of holders of a mining lease or a prospecting licence-cum-mining lease. We will consider the effect of the notifications on each such category.

Lease holders for minerals other than coal, lignite and sand for stowing

35. On 17th September, 2015 the Ministry of Mines in the Central Government issued a notification regarding the contribution to the DMF in respect of minerals other than coal, lignite and sand for stowing. The rate at which the contribution was required to be made by the holder of

a mining lease or a prospecting licence-cum-mining lease is specified in the notification. Although the notification provides that the contribution is payable from 12th January, 2015 in view of our conclusion that the contribution to the DMF cannot be with retrospective effect, it would be payable only from the date of the notification, that is, 17th September, 2015 even though the DMF was established or deemed to be established with effect from 12th January, 2015.

36. The further question raised by learned counsel for the petitioners in this regard was: How can the contribution be made to an entity like the DMF that was established only on a date subsequent to 17th September, 2015 (except for the States of Madhya Pradesh, Odisha and Telangana)? Can the contribution be paid to a non-existent trust?

37. We are afraid this line of questioning does not appeal to us. The object of the DMF is "to work for the interest and benefit of persons, and areas affected by mining related operations". The purpose of Section 9B of the MMDR Act and the object of the DMF are in furtherance of the cause of social justice for those affected by the mining related operations – including tribals who may be dislocated or displaced from their habitat. To deny them a benefit that is rightfully theirs only because the State Government has been lax in establishing

the DMF would be doing injustice to them.

38. Additionally, Section 9B of the MMDR Act creates a liability and only the quantum of the liability remained to be determined. That determination came on the issuance of the notification of 17th September, 2015. The fact that it would take time (even more than a year as in the case of Tamil Nadu and Uttar Pradesh) for the benefit to reach the affected persons cannot detract from the liability of the petitioners to contribute nor does it absolve them of their liability to pay the contribution. The only criticism could be of the tardiness and lack of concern by State Governments in setting up the DMF in spite of the direction of the Central Government.

39. In ***A. Prabhakara Reddy v. State of Madhya Pradesh***[13] one of the questions raised was that since the Madhya Pradesh Building and Other Construction Workers Welfare Board came to be constituted only on 9th April, 2003 the recovery of cess under the Building and Other Construction Workers Welfare Cess Act, 1996 with effect from 1st April, 2003 did not arise. On this basis, the requirement to pay cess was challenged.

40. This Court rejected the contention and held that after the Cess

[13] (2016) 1 SCC 600

Act and the rules framed thereunder came into effect and the Workers Welfare Board was constituted and the rate of cess was notified, the State was under an obligation to collect the cess in respect of on-going projects. The fact that passing on the benefit to the workers might take some time had no impact on the liability to pay the cess. It was further held that: "Any other interpretation would defeat the rights of the workers whose protection is the principal aim or primary concern and objective of the BOCW Act as well as the Cess Act."

41. We hold, therefore, that the effective date of payment of contribution to the DMF in the case of those petitioners who are (or were) holders of a mining lease or a prospecting licence-cum-mining lease for minerals other than coal, lignite and sand for stowing would be 17th September, 2015.

Lease holders for coal, lignite and sand for stowing

42. The position with regard to contribution to the DMF by the holders of a mining lease or a prospecting licence-cum-mining lease for coal, lignite and sand for stowing is quite different from the situation of the other holders of a mining lease or a prospecting licence-cum-mining lease. The reason for this is to be found in the text of paragraph 3 of the notification of 20th October, 2015 which is very explicit. It provides that

the contribution, though payable, shall be paid only from the date of the notification (20th October, 2015) or from the date of establishment of the DMF in the concerned State, **whichever is later**. Therefore, only Madhya Pradesh, Odisha and Telangana would be entitled to the contribution from holders of a mining lease or a prospecting licence-cum-mining lease from 20th October, 2015 since their DMF was established much earlier. As far as all other States are concerned, the holders of a mining lease or a prospecting licence-cum-mining lease could claim to postpone payment to the DMF till it was established, as per the notification issued by the State Government.

43. It is true that many notifications establishing the DMF provided the date of establishment as 12th January, 2015 but as mentioned earlier the rule making power of the Central Government and the State Government under the MMDR Act does not permit retrospective operation of subordinate legislation. It cannot also be said that the Contribution Rules have retrospective operation by necessary implication. Even this occasion does not arise. Furthermore, as held above, the rate at which the contribution was to be paid came to be notified only on 20th October, 2015. Therefore in view of the law discussed above, it cannot be said that the contribution should be paid

by the holders of a mining lease or a prospecting licence-cum-mining lease with effect from 12th January, 2015.

44. The learned Additional Solicitor General sought to rely on the subsequent notification dated 31st August, 2016 which substituted paragraph 3 in the notification of 20th October, 2015 with the requirement that the contribution "shall be paid with effect from the 12th January, 2015." For the same reasons already given by us, such a retroactive substitution is *ultra vires* the rule making power of the Central Government. The notification dated 31st August, 2016 is clearly beyond the rule making power of the Central Government and must be struck down and we do so. All that this means is that the notification of 20th October, 2015 remains untouched and must be read and understood on its plain language. The result is that in respect of coal, lignite and sand for stowing the holder of a mining lease or a prospecting licence-cum-mining lease shall pay the contribution to the DMF from 20th October, 2015 or the date of establishing the DMF, whichever is later.

45. Finally, it was submitted by one of the learned counsel that Section 9B of the MMDR Act was a conditional legislation and that it could become operative only on the fulfilment of certain conditions. We cannot agree. Section 9B of the MMDR Act delegates power to the

State Governments to establish the DMF without any pre-condition. Similarly, it delegates power to the Central Government to prescribe the rate at which the contribution should be made to the DMF. This again is without any pre-condition. In view of this, we are unable to describe Section 9B of the MMDR Act as a conditional legislation.

Conclusion

46. Having considered the issues raised by the petitioners and by the learned Additional Solicitor General in different perspectives, we hold: (i) Merely because the DMFs have been established or are deemed to have been established from a date prior to the issuance of the relevant notifications does not make their operation retrospective. (ii) In any event, the establishment of the DMFs (assuming the establishment is retrospective) from 12th January, 2015 does not prejudicially affect any holder of a mining lease or a prospecting licence-cum-mining lease. (iii) In view of the failure of the Central Government to prescribe the rate on 12th January, 2015 at which contributions are required to be made to the DMF, the contributions to the DMF cannot be insisted upon with effect from 12th January, 2015. Fixing the maximum rate of contribution to the DMF is insufficient compliance with the law laid down by the Constitution Bench in ***Vatika***. (iv) Contributions to the DMF are

required to be made by the holder of a mining lease or a prospecting licence-cum-mining lease in the case of minerals other than coal, lignite and sand for stowing with effect from 17th September, 2015 when the rates were prescribed by the Central Government. (v) Contributions to the DMF are required to be made by the holder of a mining lease or a prospecting licence-cum-mining lease in the case of coal, lignite and sand for stowing with effect from 20th October, 2015 when the rates were prescribed by the Central Government or with effect from the date on which the DMF was established by the State Government by a notification, whichever is later. (vi) The notification dated 31st August, 2016 issued by the Central Government is invalid and is struck down being *ultra vires* the rule making power of the Central Government under the MMDR Act.

47. We fervently hope the State Governments recognize their responsibilities and utilize the contributions to the District Mineral Funds quickly and for the object for which they have been established, particularly since the amounts involved are huge.

48. We grant time till 31st December, 2017 to those holders of a mining lease or a prospecting licence-cum-mining lease who have not made the full contribution to the District Mineral Funds to pay the

contribution, failing which they will be liable to make the contribution with interest at 15% per annum from the due date. We also make it clear that in the event any holder of a mining lease or a prospecting licence-cum-mining lease has mistakenly made contributions to the District Mineral Fund from a date prior to the date that we have determined, such a holder of a mining lease or a prospecting licence-cum-mining lease shall not be entitled to any refund but may adjust the contribution against future contributions, without the benefit of any interest.

49. With the above conclusions, Transfer Petition Nos.74-76/2017 are allowed, Transferred Cases (arising out of Transfer Petition (C) Nos.74-76/2017), Transferred Cases (C) Nos.43 and 51 of 2016 and the batch of petitions are disposed of. All other pending applications are also disposed of.

.....……J
(Madan B. Lokur)

...……J
(Sanjay Kishan Kaul)

…….....J
(Deepak Gupta)

New Delhi;
October 13, 2017