

SHRIGHULANNABIAZAD; the Bill has to be passed and it has to go to the other House (Interruptions)

SHRI LOKANATH CHOUDHURY (Jagatsinghpur) Sir, I am standing for a long time. I have something to say.

MR CHAIRMAN: I have seen you. You can say afterwards. (Interruptions)

DR LAXMINARAYAN PANDEYA (Mandsaur) Mr. Chairman, Sir,

(Interruptions)

MR CHAIRMAN: You can discuss it afterwards, when there is a full-fledged debate. Dr Laxminarayan Pandeya to speak now.

17.24hrs

STATVORY RESOLUTION RE
DISAPPROVAL OF THE CESS AND
OTHER TAXES ON MINERALS (VALIDA-
TION) ORDINANCE

AND

CESS AND OTHER TAXES ON MINER-
ALS (VALIDATION) BILL *CONTD*

[Translation]

DR. LAXMINARAYAN PANDEYA (Mandsaur) Mr. Chairman, Sir, this Bill is brought to replace the Ordinance which was promulgated by the Union Government to validate the imposition and collection of cesses and certain other taxes on minerals under certain state laws. The Supreme Court by its judgement declared the collection of such taxes as illegal on the ground that the enactments under which the cess was levied were not according to the provisions of the

Constitution. In such a situation the State Government were in serious trouble as they were required to refund crores of rupees collected as taxes under the various enactments. The State Governments such as Madhya Pradesh, Orissa, Maharashtra, and Karnataka requested the Union Government to come to their rescue. Madhya Pradesh Government was facing a problem how to refund crores of rupees because by imposing such taxes, it decided to work in the interest of people of the state. The Central cess on minerals are given to the States in the form of by the Union Government. The amount of royalty is so meagre that the State Government is unable to develop those areas. Therefore, it is frequently demanded by the states such as Bihar, Madhya Pradesh, Orissa etc that the rate of royalty should be increased and due share should be given to the States. It is true that the Union Government increased the rate of royalty to some extent sometime ago, but that was not enough and the State Government were finding it difficult to develop their areas properly.

I would like to draw the attention of the Government towards that judgment of the Supreme Court in which it is stated

[English]

"Having thus concluded that the levy of cess under the Orissa, Bihar and Madhya Pradesh enactments is valid, it becomes necessary to consider the logical consequences of such a conclusion. *Prima facie*, it would seem that all cess levied under the impugned provisions should be directed to be refunded to the assessee, particularly in view of article 265 of the Constitution."

[Translation]

When the question of the refund came, Government of Madhya Pradesh expressed

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its in ability to refund the amount So those relevant Acts were declared valid from different dates in different states such as Bihar, Madhy Pradesh and Orssa, and thus the collected cess was also declared valid But the problem is as it was, the share of the States will remain the same The State Governments had tried to solve their problems enacting various laws But once again, they have become helpless I have some press clippings in which it is stated

the central Government should amend the old Act so that the State Governments may get the same right to room extet But the present situation is not good for the States In this respect, I would like to submit that Government should consider Secondly, you are bringing today a Bill replace the ordinance promulgated following the verdict pronounced by the Supreme Court and the different dates shown by it, but the problem is not going to be resolved by it The royalty being given by the Central Government to various States for different minerals is quite less Madhya Pradesh is very rich in iron ore, lime stone and other minerals Same is the case of Orssa and Bihar In the States mentioned in it following Acts and laws relating to mineral cess exist

[English]

Orssa wants that the mineral laws be amended

[Translation]

Orssa Government want that laws relating to minerals should be amended The Union Government should decentralise the power regarding levying cess on minerals and such conditions should be created so that the State Governments can also realise royalty and cess on mineerals under their junsdction Another press clipping says

17.30 hrs.

[MR DEPUTY SPEAKER *in the Chair*]

[English]

'The Andhra Pradesh (Mineral Rights) Tax Act,

[English]

"Changes in the Mines Act Officials from Bihar Government yesterday impressed upon the Central Governemnt the need to amend the Mines and Minerals Development Act "

The Andhra Pradesh (Andhra Area) Distnct Bards Act,

The Andhra Pradesh (Telengana Area) Act,

The Cess Act of (Bengal Act) of Bihar,

[Translation]

Similarly, Madhya Pradesh Government also said that because of the Superme Court judgement they would not be able to impose cess therefore, it is expected from the Union Government that it would amend its Acts On this occasion, I would like to submit that the Government should accept the request of the States, and amend the Central Acts so that they may be able to develop their respective minerals areas properly For this

The Karnataka Zilla Panshad Act

The Karantka (Mineral Rights Tax Act

The Madhya Pradesh Karadhan Adhinyam,

The Madhya Pradesh Upkar Adhinyam

The Maharashtra Zilla Parishads and Panchavat Samjithic Act

The Orissa Cess Act; and

The Tamil Nadu Panchayat Act."

[Translation]

But these have become ineffective following the judgement of the Supreme Court. All the States are being affected by this judgement. Therefore, Government should provide reliefs and facilities to them so that their problems are resolved. Though I do not want to go into the details of the Supreme Court judgement, yet I would like to quote certain portions from it.

[English]

We now turn to the provisions of Madhya Pradesh Act 15 of 1982. We are concerned only with Part IV which levies a cess not on land in general which could be referred to Entry 18 or Entry 49; but only to land held in connection with mineral rights which in the State, are principally in regard to coal and limestone. The proceeds are to be utilised only towards general development or mineral bearing areas.

[Translation]

The State Governments have also submitted that they want to develop mineral bearing areas. The State Governments have become almost incapacitated. Though Government has regulated them to an extent, it is not very clear what avenues are open to them. It is utmost necessary to make certain amendments in the existing central Act to enable the State Governments to develop their areas.

Present rates of royalty for different minerals being given to Bihar, Madhya Pradesh, Uttar Pradesh etc. are so less that the interests of the State Governments can-

not be protected by them. The State Governments have repeatedly represented their case. In spite of the repeated requests made by the Madhya Pradesh Government for increase in the royalty rates from one to four, Central Government has not increased it to even half of the requested demand, though Bihar Government has been successful in its efforts to some extent after lot of struggle. But that is not adequate. It is clear that Central Government has not done justice to Madhya Pradesh or Bihar. I would urge the Central Government, specially in respect of Madhya Pradesh because through it is very rich in minerals, the entire money is flowing to Central Government. I would like to repeat my request once again that Central Government should take a justifiable stand so that the State are able to develop their areas.

It is true that the step taken by the Central Government was quite excellent as it would have been practically impossible to refund the money to the ultimate consumer. But the interests of the State should continue to be protected in future also and they should get their due for developing their mineral rich areas.

[English]

SHRI SOMNATH CHATTERJEE: Mr Deputy Speaker, Sir, so far as this Bill is concerned, of course, this Bill has to be supported because it seeks to protect the interests of certain State Governments which face a very serious situation in the wake of certain Supreme Court decisions which struck down as *ultra-vires* several legislations of different States namely, Andhra Pradesh, Bihar, Karnataka, Madhya Pradesh, Orissa, Maharashtra and Tamil Nadu.

Sir, it has been held by the Supreme Court that the State legislatures have no power to pass legislations imposing cess which is equated with tax. The main basis of the decision, so far as I have been able to

understand, is that cess is a tax and that in view of a particular central legislation, namely the Mines and Minerals (Development and Regulation) Act, the State legislatures have no power to impose any tax in the name of mineral development or for the purpose of mineral development.

The main reason for this decision is entry 54 of List of the Seventh Schedule which the hon. Minister himself has mentioned. It provides:

"Regulation and development of inter-State rivers and river valleys 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."

If we look at the corresponding entry, which is entry 23 also mentioned by the hon. Minister - in List II of Seventh Schedule, that is the State List, it says:

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

It has been held that the cess, which has been imposed by the several legislations which have been declared *ultra vires*, really imposes a tax on the royalty. If we go through the judgment of former Chief Justice, late lamented Subyasachi Mukherjee, we will see that he has proceeded mainly on the basis that the amount of cess is also an impost on royalty and royalty is a part of the amount on which *ex facie* those Acts impose a tax by way of cess. The Supreme Court has referred to the Mines and Minerals (Regulation and Development) Act which under section 9 authorise the Central Government to do certain things regarding mineral development. But there is no charging section in the whole Act which authorises the Central Government to impose any tax by way of cess or

otherwise. But there is a provision which says that the Central Government can lay down procedure for the recovery of tax. There is some incongruity there which really prompted the different State Governments to enact legislations. It is undisputed that States do require funds for the purpose of carrying out their activities, special developmental activities. Very limited power of taxation is available to the States. Sales tax, spirits and excises, minimal rights which regard to the cesses and fees and royalty on coal and other mineral resources were taken recourse to by all the States for the simple reason that this is a sector where the incidence of cess could be borne.

I will just indicate that eight States in 1989-90 recovered Rs. 1,043.93 crore by way of cess, out of which Bihar topped the list for obvious reasons with Rs. 648.59 crore because of mineral resources there, followed by West Bengal - Rs. 279.49 crore. Madhya Pradesh was Rs. 22.32 crore, Andhra Pradesh Rs. 46 crore, etc. Sir, until now, the Supreme Court has not yet declared the West Bengal law *ultra vires* and up till today, only West Bengal is able to recover cess because of the distinction that we are making and referring from the other Acts. And I have the opportunity to represent the State of West Bengal in the Supreme Court. The next matter is coming on the 6th April before the Supreme Court. It is of very vital concern for the State. There is no doubt it... (Interruptions) ...Sir, this is the position. All other Acts have been declared *ultra vires*. Only Assam and West Bengal remain and West Bengal is due to be taken up on the 6th of April before the Supreme Court. What I wish to impress upon the hon. Minister is that the Government of India has taken up that attitude and always said that whatever cess is to be realised or has realised will be utilised by the State concerned. Now, I gave the figure as Rs. 1043.93 crores. If cess is abolished, as it has happened in other States due to the Supreme Court judgement, we

have to rely only on royalty I will give you a few figures to show the great loss to be suffered by the States, while some States will greatly benefit. But there are some States which have been realising cess and which now occupy a very substantial percentage of their tax base or income base. In 1989-90, Bihar has realised Rs 27.93 crores as royalty, Rs 648.59 crores as cess and the total was Rs 676.52 crores. But on the basis of new rate of royalty that has now been fixed after these imports have been declared *ultra vires* it will come down to Rs 541 crores from Rs 676 crores. So is a loss of straight away Rs 135 crores for a State. If West Bengal has to proceed on this basis, then it will come down to Rs 176.89 from Rs 290 crores. So, it is a loss of nearly Rs 120 crores when we want more resources and when the Centre is also saying that there should be greater and greater resource mobilisation by the State, if the right to recover cess is lost finally due to the SC judgement, then very great difficulty will have to be faced by the State Governments. Now a law has been declared *ultra vires* on a very technical ground. I say technical because of a declaration made by the Parliament of India that mines and minerals have been brought under the control of the Union and declared by Parliament, by law to be expedient in the public interest. This is under Item 54. I had raised this earlier also in the House. I said general development of mines and minerals all over India may be kept in their hands and they may pass necessary laws in that respect. So far as the right to levy cesses or certain taxes is concerned which should come under the State List under Entry 23, the State Government would have the power except for the declaration made by the Parliament that it is expedient in public interest, to be under the control of the State Government. Therefore, this is not something which our founding fathers did not contemplate. Supposing no law has been made by the

Centre or no declaration has been made by the Centre, undoubtedly the State Governments would have had the authority to levy cess. These days, we are hearing lengthy speeches from the Finance Minister as to how he is trying to help the State Governments, how the Central Government is making sacrifices and how the Finance Minister has given Rs 1500 crore to the State *ad nauseam*. Well, the more they give, the better it is. We welcome any additional resources.

Sir, this is a very vital portion of the States resources, specially in those States where there are collieries and mines out of which these resources can be made. Therefore, this is my appeal to the Central Government. If you really want a better Centre-State relationship, if you want the States to develop on the basis of their own programmes and policies, you should accept my suggestion. Backward States such as Orissa, Bihar, West Bengal and Madhya Pradesh have a serious problem of resource mobilisation. So many things are still to be made, so many projects are yet to be undertaken to develop these States. But these programmes cannot be taken up due to lack of resources. Now, there is a source by way of cess. But certain constitutional hurdles, not of any fundamental character come in the way. I say that these are not of any fundamental character because this is not a tax over which there is a complete embargo like 268, or where it is a case of imports and exports, etc. In such cases, we can understand that there is a constitutional bar. So far as this is concerned, you can make an appropriate legislation under Entry 54, List 1. So, please remove your control in respect of taxation measure. This is my first appeal.

Secondly, I wish to make a submission with regard to royalty. Under the law, royalty can be revised only after every three years. The last revision has taken place last year. Therefore, until 1994, nothing can be done.

I am happy that the Centre has come with this enactment. Even this ordinance is justified because otherwise very serious situation would have been faced by the State Governments. I agree that this is one of the very rare occasions when the ordinance making powers of the Centre are properly utilised. When you do really good things, we support you. But for this ordinance, Bihar would have to pay from 4 April 1991, Orissa from 22 December 1989 and Madhya Pradesh would have to refund from March 28, 1987 and so on. The State Governments would have become bankrupt. The consideration that has prompted you to bring this ordinance is that the State Governments should not have a severe financial constraint or difficulty. I appeal to you that you should apply this very consideration in all cases. We want a united India. We want an India where every part is developed. We want an India without regional imbalances. No individual should be given a chance to think that because of his or her geographical location or because of other considerations, a person is not able to proceed along the path of development in the manner or with the speed that one can with a little cooperation from the Central Government. So, the feeling of alienation should not be there. Therefore, I appeal to the Central Government that this is an occasion when they should rise to the expectations of the people for a United India with even development of all regions and all sections of people, where all can get the fruits of development. Therefore, please do not take any action which will inhibit the State Governments in mobilising resources and recovering taxes. Nobody has complained that these taxes are onerous taxes because this is spread over a wide spectrum. They can bear it. The only technical question is of legislative competence. What the judiciary has been compelled to do? You have removed one difficulty temporarily but other difficulties should also be solved so that this recurring problem is not there. The State Governments are able to recover their dues.

Representations have been made by the State Governments. Shri Laloo Prasad Yadav has threatened to go on fast. The entire House expressed its concern over this. And, that is why I believe this Bill has come before the House. The West Bengal Chief Minister has also made a request. Every State Government, irrespective of the colour of political party which is now ruling in that State, even the States ruled by Congress party, is facing this difficulty. Therefore, I request the hon. Minister to think about it. I am sure he will not throttle the State Government; I am sure he does not want to. I hope Tirupati will not change that situation. Kindly see to it that the Chief Minister of Madhya Pradesh becomes a party to it. We want to have a dialogue as to how best we can resolve this question. Merely increase in the royalty rate every three years will not solve the problem. Therefore, I request that proper attention is paid to this with an open mind and with sympathetic approach.

SHRI LOKANATH CHOUDHURY
(Jagatsinghpur): Mr. Speaker, Sir, There is no quarrel about this Bill which has come before this House. I think it is a step taken by the Central Government to help the States from the difficulty which they were facing after the Supreme Court had struck down the State Cess. But, Sir, as Shri Somnath Chatterjee said, this will not help to solve the problem. This problem can only be solved if the State Governments are given the facility to mobilise the resources from their own States. Take for example, Orissa. Orissa is a State which is rich in mineral wealth. Orissa has the greatest amount of coal that is there in the whole of the South Asia. Orissa State is rich in other minerals also. Since the year 1962, in which the Cess Act was passed, the State of Orissa was mobilising its resources from the cess. This helped the State to take up some projects in spite of the non-cooperation shown by the Central Government.

[Sh. Lokanath Chouthury]

Now, if the cess is abolished for technical reasons, the States will suffer a lot.

I request the Central Government to help the State by bringing in a comprehensive legislation; if necessary Constitutional amendment may be brought to remove the difficulty which is standing in the way of realising cess by the State Governments. It is a vital question for the States.

I would say that there is no objection so far as this Bill is concerned. We will pass it but at the same time I would say that our requests should be taken seriously by the Government and to that effect the Minister should make a Statement. I have one or two suggestions to make.

The royalty cess that the States will get now is less.

If the royalty is imposed not on the basis of the quantity but on the value of the minerals, then the State's share may increase.

Therefore, my suggestion is that the royalty on the minerals should be assessed not on the basis of quantity but on the basis of its price.

My second suggestion is about the minerals. The Government should take a serious attitude towards minerals. It is because minerals are limited. It should be properly utilised. There are some States which are not looking into these aspects. Take the example of Orissa. 74 per cent of the total deposits of chrome in India is in Orissa. In India, we have 94 per cent of chrome. Chrome is a very valuable mineral. Its international price is very high also. Recently, our Orissa Government headed by Shri Biju Patnaik has done one thing. There was a Fero Charge Chrome Factory in Orissa. It became sick. When, it became sick, the Chief

Minister decided to sell it to the Tatas. How was the decision taken? That nobody knows. How the value was fixed? This also nobody knows. So, it was a deal between the Chief Minister of Orissa the Tatas. Along with it, the Chief Minister has given a big area of chrome mines as a conditionality to the Tatas. The annual production requires at least one lakh tonnes of chrome ore. The area given to them was much more than that was required by them. That means, the facility that has been given to the Tatas is unexpected. In this area, Orissa mineral is used. So, the Orissa Government should come to the Centre to see that this chrome ore which was to be given to the Tatas as a condition is not given.

I am making this appeal because this deal gives rise to suspicion. The way the industry was sold and the way the chrome mine was leased to the Tatas and so on, gives rise to suspicion. So, it is a questionable thing.

SHRI A. CHARLES: In spite of that, you support that Government.

SHRI LOKANATH CHOUDHURY: Mr. Charles, you don't read the newspapers. You are lagging behind. You first update yourself.

So, my point is this. I appeal to the Government to bring a comprehensive Bill for helping the States so that the States may get the resources from the mines. I would also urge upon the Government to see that the minerals of the States are not misused by the State Government. So, this should also be taken care of. This is what I have to say.

THE MINISTER OF STATE IN THE
MINISTRY OF PARLIAMENTARY AFFAIRS
AND THE MINISTER OF STATE IN THE
MINISTRY OF LAW, JUSTICE AND
COMPANY AFFAIRS (SHRI RANGARAJAN
KUMARAMANGALAM): May I request the
House to start the Private Members Busi-

ness. It is going to be 6 'o'clock. It was decided last time that the House will take up Private Members Business today at 6 'o'clock. So, I request the House to close the discussion and finish the voting because this is an Ordinance I think, all the hon. Members know the deadline also.

SHRI SUDHIR GIRI: Let us continue tomorrow.

SHRI RANGARAJAN KUMARAMANGALAM: I have no objection for continuing this discussion tomorrow except that you eat into the time on the discussions of the Demands of the Ministries.

SHRI SUDHIR GIRI: We will have sufficient time.

SHRI RANGARAJAN KUMARAMANGALAM: All right. Let us have the Private Members Business.

SHRI SUDHIR GIRI: Let us continue with our discussion tomorrow. Now, let us take up Private Members Business.

SHRI SOBHANADREESWARA RAO VADDE (Vijayawada): Last time a decision was taken that at 6 'o'clock, the Private Members Business will be taken up.

SHRI RANGARAJAN KUMARAMANGALAM: That is what I am saying.

18.00 hrs

CONSTITUTION (AMENDMENT)
BILL
(insertion of new Part XIA)
by Shri Chitta Basu

[English]

MR. DEPUTY-SPEAKER: Now, Let us take up Private Members Business. Further

consideration of the following motion moved by Shri Chitta Basu on the 13th March, 1992, namely-

"That the Bill further to amend the Constitution of India, be taken into consideration."

Shri Sriballav Panigrahi, You have already taken fifteen minutes.

—SHRI SRIBALLAV PANIGRAHI (Deogarh): On Friday last I was referring to the intention underlying the setting up of the Planning Commission and NDC by the founding fathers. Only a few days after the adoption of the Constitution, the Planning Commission had its birth by a resolution of the Cabinet.

So, obviously, the Parliament, the Constituent Assembly, in their collective wisdom, never thought it proper to give a constitutional status to this Body, prestigious body, Institution, Planning Commission.

Similarly, also the National Development Council was first constituted in 1952 and later on in 1967 it was reconstituted on the basis of the Administrative Reforms Commission's Report. As you know, very distinguished social workers, distinguished economists, distinguished leaders of India, adored the Planning Commission as Deputy Chairmen—Shri Ashok Mehta, late Shri Gadgil, Mr. C Subramaniam, the present Governor of Maharashtra; very distinguished personalities were working in the Planning Commission as Deputy Chairmen.

As I said, not that eye-brows were not raised, disputes were not raised at the time of formation or constitution of the Planning Commission. Pandit Nehru, the first Prime Minister, a stalwart, as we all know, himself was a great democrat, a social thinker, planner also. He believed in planning. The other day, I was telling how the era of planning ushered in India.

Even the Finance Minister like John Mathai could not tolerate the idea of having