2024 INSC 784

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11117 OF 2024

(*@SPECIAL LEAVE PETITION (CIVIL) NO.22592 OF 2016*)[1]

THE PATNA MUNICIPAL CORPORATION & ORS. …APPELLANTS

[A1: Patna Municipal Corporation

A2: Municipal Commissioner-*cum*-Chief Executive Officer

A3: Deputy Commissioner

A4: Chief Engineer

A5: Surveyor

A6: Accounts Officer]

VERSUS

M/S TRIBRO AD BUREAU & ORS. …RESPONDENTS

[R1: M/s Tribro Ad Bureau

R2: State of Bihar

R3: Mayor]

WITH

[1] Emanating from LPA No.1391 of 2012 arising from CWJC No.5108 of 2012 [Patna High Court].

CIVIL APPEAL NO. 11118 OF 2024

(*SPECIAL LEAVE PETITION (CIVIL) NO. 24582 OF 2024*)

(*@DIARY NO.30152 OF 2017*)[2]

THE PATNA MUNICIPAL CORPORATION & ORS. …APPELLANTS

[A1: Patna Municipal Corporation

A2: Municipal Commissioner-*cum*-Chief Executive Officer

A3: Deputy Commissioner

A4: Chief Engineer

A5: Surveyor

A6: Accounts Officer]

VERSUS

M/S KRAFT & ORS. …RESPONDENTS

[R1: M/s Kraft

R2: State of Bihar

R3: Mayor]

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

[2] Emanating from LPA No.1436 of 2012 arising from CWJC No.5369 of 2012 [Patna High Court].

Heard learned counsel for the parties.

2. Delay condoned.

3. Leave granted in both petitions.

4. As the issue involved in both cases is same, these appeals are dealt with collectively. For the sake of convenience, facts in the Civil Appeal arising out of Special Leave Petition (Civil) No.22592 of 2016 are noticed.

5. Challenge is laid to the Final Judgment and Order passed by a Division Bench of the High Court of Judicature at Patna (hereinafter referred to as the “High Court”) in Letters Patent Appeal No.1391 of 2012 dated 26.04.2016 (hereinafter referred to as the “Impugned Judgment”) by which the Judgment and Order passed by the Single Bench dated 29.06.2012 in Civil Writ Jurisdiction Case No.5108 of 2012 (hereinafter referred to as the “Single Bench Judgment") has been set aside and it has been held that the appellant(s) herein could not raise any demand of tax/fee/royalty on advertisement(s) since it has been made without any legislative sanction and is, thus, violative of Article

265[3] of the Constitution of India, 1950 (hereinafter referred to as the "Constitution"). The Division Bench further directed that all amounts recovered by the appellants herein on this count i.e., by way of 'tax' on advertisement(s), be refunded to the concerned parties, as also that, as a consequence, there was no question of any imposition of penalty by the Appellant No.1/the Patna Municipal Corporation (hereinafter referred to as the "Corporation").

CONTEXT:

6. On 29.08.2005, a Meeting was called by the Appellant No.2/Municipal Commissioner-*cum*-Chief Executive Officer, attended by representatives of the advertising agencies (respective Respondents No.1), wherein it was resolved that if any agency puts up its advertisement(s), it will have to submit a list of advertisement(s), the place/location, size, etc. to the Authorised Officer of the Corporation, and that the Corporation would charge royalty at the rate of Re.1/- per square foot per year on such hoardings, which would be displayed on the land under the jurisdiction of the Corporation. The Appellants on 15.01.2007 came out with fresh rates of royalty/tax on advertisements

[3] '***265. Taxes not to be imposed save by authority of law.*** – *No tax shall be levied or collected except by authority of law.*'

whereby different rates of royalty for different kinds of hoardings and advertisements were prescribed, the same being Rs.10/- per square foot per year in the case of the respondent, which was made effective from 02.11.2007.

7. In the interregnum, the Patna Municipal Corporation Act, 1951 was repealed and replaced by the Bihar Municipal Act, 2007 (hereinafter referred to as the "Act"), which came into force with effect from 05.04.2007, *vide* Section 488(1) of the Act. Thus, the Corporation started operating under the (new) Act. By Office Order dated 02.11.2007, various rates of royalty/penalty under the provisions of the Act were prescribed and the order was made effective from 24.08.2007. The Municipal Commissioner of the Corporation recommended that all those advertisers who had not paid their dues in terms of the order dated 02.11.2007 would be liable to be charged twice the rate fixed and further that hoardings displayed without permission should be removed and such persons would be charged a penalty five times the amount due from them. On 15.12.2010, the Council of the Corporation passed Resolution No.18 to cancel the registration of the advertising agencies that had defaulted in making payment of the enhanced royalty/fee/tax. The same was done when it came to the notice of the Corporation that

several advertising agencies had illegally displayed hoardings, with some not even having permission to do so from the Corporation and not having paid dues. On 11.02.2012, in terms of various Resolutions/decisions of the Corporation under the Act, a demand was raised towards royalty/fee/tax on the Respondent No.1 to the tune of Rs.64,50,040/- (Rupees Sixty-Four Lakhs Fifty Thousand and Forty). This demand, as also the Office Order dated 02.11.2007 was assailed by filing a writ petition under Article 226 of the Constitution before the Patna High Court, wherein the learned Single Judge ultimately went on to quash '*the order of demand of penalty by the Patna Municipal Corporation in all the cases*' and directed '*that the Patna Municipal Corporation should accept the tax/royalty/rent payable by these petitioners in accordance with the 2007 rates fixed by the Patna Municipal Corporation.*' On 18.07.2012, the Corporation sent a Demand Notice to the Respondent No.1 to pay Rs.21,98,000/-(Rupees Twenty One Lakhs Ninety Eight Thousand) as royalty/fee/tax in light of the Single Bench Judgment, to which the Respondent No.1 replied on 28.01.2013 contending that the same was calculated wrongly and, thus, a corrected Demand Notice ought to be sent. As the Corporation did not

respond to this, the Respondent No.1 continued paying royalty/fee/tax as self-assessed by it i.e. at the rate of Re.1 per square foot.

8. The Respondent No.1 and others, similarly-situated, preferred intra-Court appeal(s) before the Division Bench of the High Court assailing the Single Bench Judgment. The Division Bench, by way of the Impugned Judgment, quashed the enhancement itself, and held that the Corporation had no power to charge royalty/fee/tax under the Act, since it was necessary to frame Regulations. The Impugned Judgment reasoned that in the absence of such Regulations, there was no authority in law to levy/impose/collect tax, as sought to be imposed by the Corporation. Apropos the Regulations framed on 04.07.2012, published in the Gazette on 13.08.2012, the Division Bench held that the said Regulations pertain only to licensing provisions and not taxing provisions. It added that when the Regulations were silent and do not speak of tax on advertisement, the same could not be levied by the Corporation. It further went on to hold that even the decision of the Corporation to auction-settle the right to collect advertisement tax from advertisers to private individuals is totally impermissible as the State/its instrumentalities cannot trade in taxation. The Division Bench was of

the view that to levy, assess and raise any demand of tax is a sovereign function, which cannot be auction-settled to private individuals.

SUBMISSIONS ON BEHALF OF THE APPELLANTS:

9. Learned counsel for the appellants submitted that on 29.08.2005, the Corporation had taken a decision with regard to imposition of royalty in the Meeting held with representatives of advertising agency/cies. It was agreed that advertisers would make payment of royalty to the Corporation at the rate of Re.1 per square foot per annum based on the area of the hoardings concerned. Thus, it was submitted that the issue is limited only to charging of royalty and there is no imposition of any kind of tax, as has been erroneously held by the Single Bench as also by the Division Bench. It was submitted that on 02.11.2007, the Corporation issued an Office Order whereby the rate of royalty was increased from Re.1 per square foot per annum to Rs.10 per square foot per annum. It was further submitted that on 18.07.2009, a Meeting was held between the Corporation (headed by the Appellant No.2) and representatives of advertisers, where there was no opposition to the proposal afore-noted. However, learned senior counsel contended that since the royalty was not being paid, in the year

2011, the Appellant No.2 recommended the imposition of penalty on the arrears due from the advertisers.

10. He further submitted that on 15.12.2010, in the General Meeting of the Corporation, it was decided that the registration of such defaulting advertising agency(ies) be cancelled, and this was followed-up by the Corporation raising demand for payment of arrears of royalty from the concerned advertisers, including Respondent No.1, in whose case it was to the tune of Rs.64,50,040/- (Rupees Sixty Four Lakhs Fifty Thousand and Forty). Learned counsel further submitted that only at this belated stage, the Respondent No.1 preferred CWJC No.5108 of 2012, wherein Office Order dated 02.11.2007 as well as the Demand Notice dated 11.02.2012 were assailed.

11. Learned counsel submitted that by a detailed and comprehensive judgment, the learned Single Judge upheld the levy of charge by the Corporation and only the demand of penalty was interfered with. It was submitted that the learned Single Judge even observed that the writ petitioners before it, including Respondent No.1, were liable to pay the amount due to the Corporation in easy instalments in intervals of four months to be fixed by the Appellant-Corporation. Thus, learned counsel

contended that in conformity with the Single Bench Judgment, the Corporation raised fresh demand on Respondent No.1 under letter dated 18.07.2012 for Rs.21,98,000/- (Rupees Twenty One Lakhs Ninety Eight Thousand). However, it was submitted that the Respondent No.1 deposited only a sum of Rs.50,000/- (Rupees Fifty Thousand) on 21.07.2012. At this juncture, learned counsel for Respondent No.1 submitted that Respondent No.1 on 28.01.2013 had disputed the demand of Rs.21,98,000/- (Rupees Twenty One Lakhs Ninety Eight Thousand) and self-assessed the dues to be Rs.1,57,050/- (Rupees One Lakh Fifty Seven Thousand and Fifty) and after adjusting the amount already paid, calculated the payment to be made in three instalments of Rs.28,767/- (Rupees Twenty Eight Thousand Seven Hundred Sixty Seven) each, which Respondent No.1 paid on 28.01.2013, 29.05.2013 and 28.09.2013 by Draft(s). Further, learned counsel for Respondent No.1 pointed out that on 30.03.2013, the Respondent No.1, on the same terms, self-assessed the royalties for the years 2012-2013, 2013-2014 and 2014-2015, as Rs.48,600/-, Rs.48,600/- and Rs.31,000/-, respectively and deposited the same on 30.03.2013, 31.03.2014 and 31.03.2015. It was also stated that, in the meantime, Respondent No.1 had approached the Division Bench

against the Single Bench Judgment by instituting LPA No.1391 of 2012, leading to the Impugned Judgment.

12. Learned counsel for the appellants submitted that the simple and basic issue was the payment of royalty, as agreed to and accepted by the parties. It was stated that payments were also made, which now have been given the colour of being demand/imposition of tax, which, learned counsel contended, is absolutely not the case. It was urged that the only issue, which at best could have been gone into by the High Court, was with regard to the quantum of enhancement from Re.1 per square foot to Rs.10 per square foot, but the imposition, on the head of “royalty”, could not have been termed as “imposition of tax”, as admittedly borne out from the record itself. It was further advanced that charge of royalty by the Corporation was also in terms of an agreement entered into between the parties, which was admitted by them in appellate proceedings before the Division Bench.

13. Learned counsel submitted that “royalty” and “tax” have different connotations in law and royalty, unlike tax, is not based on any statutory provision, but on agreement between the parties. Further, it was stated that the enhancement of the rate of royalty to Rs.10 per square foot

from Re.1 per square foot, notified under Office Order dated 02.11.2007 was challenged by the Respondent No.1 only in the year 2012. By its advertisement issued on 15.01.2007, the Corporation came out with fresh rates of royalty on advertisements which were accepted by the Respondent No.1 and were made effective from 02.11.2007 at the rate of Rs.10 per square foot.

14. Learned counsel in support of the above has relied upon the decisions of this Court in ***Indsil Hydro Power and Manganese Limited v State of Kerala*****, (2021) 10 SCC 165**, the relevant being Paragraphs 50 to 56[4]; ***Century Spinning and Manufacturing***

[4] '***50.*** *In State of W.B. v. Kesoram Industries Ltd. [State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201] , another Constitution Bench of this Court explained certain observations in India Cement Ltd. v. State of T.N. [India Cement Ltd. v. State of T.N., (1990) 1 SCC 12] , and stated as under : (Kesoram Industries case [State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201] , SCC pp. 293-95 & 297, paras 59-61 & 71)*

"59. First we will refer to certain dictionaries oft-cited in courts of law:

Words and Phrases, Permanent Edn. (Vol. 37-A, p. 597):

'"Royalty" is the share of the produce reserved to owner for permitting another to exploit and use property. The word "royalty" means compensation paid to landlord by occupier of land for species of occupation allowed by contract between them. "Royalty" is a share of the product or profit (as of a mine, forest, etc.) reserved by the owner for permitting another to use his property.'

Stroud's Judicial Dictionary of Words and Phrases (6th Edn., 2000, Vol. 3, p. 2341):

'The word "royalties" signifies, in mining leases, that part of the reddendum which is variable, and depends upon the quantity of minerals gotten or the agreed payment to a patentee on every article made according to the patent. Rights or privileges for which remuneration is payable in the form of a royalty.'

Words and Phrases, Legally Defined (3rd Edn., 1990, Vol. 4, p. 112):

'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 specified period.'

Wharton's Law Lexicon (14th Edn., p. 893):

'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.'

***Company Ltd. v Ulhasnagar Municipal Council*, (1970) 1 SCC 582**, the relevant being Paragraph 11[5], and; ***Union of India v Indo-Afghan Agencies Ltd.*, (1968) 2 SCR 366**, the relevant being Paragraphs 10 and 24[6].

Mozley & Whiteley's Law Dictionary (11th Edn., 1993, p. 243):

'A pro rata payment to a grantor or lessor, on the working of the property leased, or otherwise on the profits of the grant or lease. The word is especially used in reference to mines, patents and copyrights.'

Prem's Judicial Dictionary (1992, Vol. 2, p. 1458):

'Royalties are payments which the Government may demand for the appropriation of minerals, timber or other property belonging to the Government. Two important features of royalty have to be noticed, they are, that the payment made for the privilege of removing the articles is in proportion to the quantity removed, and the basis of the payment is an agreement.'

Black's Law Dictionary (7th Edn., p. 1330):

'Royalty.—A share of the product or profit from real property, reserved by the grantor of a mineral lease, in exchange for the lessee's right to mine or drill on the land.

Mineral royalty.—A right to a share of income from mineral production.'

60. In D.K. Trivedi & Sons v. State of Gujarat [D.K. Trivedi & Sons v. State of Gujarat, 1986 Supp SCC 20] a Bench of two learned Judges of this Court dealt with "rent", "royalty" and "dead rent" and held as follows : (SCC pp. 53-54, paras 38-39)

'38. 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....

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39. 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, regardless of 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 as 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 H.R.S. Murthy v. Collector [H.R.S. Murthy v. Collector, AIR 1965 SC 177 : (1964) 6 SCR 666] too the Constitution Bench of this Court had defined "royalty" to mean 'the payment made for the materials or minerals won from the land'.

SUBMISSIONS BY THE RESPONDENT(S) NO.1:

15. *Per contra*, learned counsel for Respondent No.1 submitted that the Impugned Judgment has dealt with all relevant aspects and is legally and factually correct, needing no interference.

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61. The judicial opinion as prevailing amongst the High Courts may be noticed. A Full Bench of the High Court of Orissa held in Laxmi Narayan Agarwalla v. State of Orissa [Laxmi Narayan Agarwalla v. State of Orissa, 1983 SCC OnLine Ori 16 : AIR 1983 Ori 210 : (1983) 55 CLT 362] , SCC OnLine Ori para 12 : AIR at p. 224, para 12 '[R]oyalty is the payment made for the minerals extracted. It is not tax.' In Surajdin v. State of M.P. [Surajdin v. State of M.P., 1959 SCC OnLine MP 19 : AIR 1960 MP 129 : 1960 MPLJ 39] a Division Bench of the High Court of Madhya Pradesh referred to Wharton's Law Lexicon and Mozley & Whiteley's Law Dictionary and said (at AIR p. 130, para 7) 'royalties are payments which the Government may demand for the appropriation of minerals, timber or other property belonging to the Government'. The High Court opined that there are two important features of royalty : (i) the payment is in proportion to the quantity removed; and (ii) the basis of the payment is an agreement.

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71. We have clearly pointed out the said error, as we are fully convinced in that regard and feel ourselves obliged constitutionally, legally and morally to do so, lest the said error should cause any further harm to the trend of jurisprudential thought centring around the meaning of "royalty". We hold that royalty is not tax. Royalty is paid to the owner of land who may be a private person and may not necessarily be a State. A private person owning the land is entitled to charge royalty but not tax. The lessor receives royalty as his income and for the lessee the royalty paid is an expenditure incurred. Royalty cannot be tax. We declare that even in India Cement Ltd. [India Cement Ltd. v. State of T.N., (1990) 1 SCC 12] it was not the finding of the Court that royalty is a tax. A statement caused by an apparent typographical or inadvertent error in a judgment of the Court should not be misunderstood as declaration of such law by the Court. We also record our express dissent with that part of the judgment in Mahalaxmi Fabric Mills Ltd. [State of M.P. v. Mahalaxmi Fabric Mills Ltd., 1995 Supp (1) SCC 642] which says (vide para 12 of SCC report) that there was no "typographical error" in India Cement [India Cement Ltd. v. State of T.N., (1990) 1 SCC 12] and that the said conclusion that royalty is a tax logically flew from the earlier paragraphs of the judgment."

51. *In State of H.P. v. Gujarat Ambuja Cement Ltd. [State of H.P. v. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499] , a Bench of three Judges of this Court observed : (SCC pp. 530-31, paras 44-46)*

"44. "Royalty" is not a term used in legal parlance for the price of the goods sold. It is 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 as held in Titaghur Paper Mills Co. Ltd. case [State of Orissa v. Titaghur Paper Mills Co. Ltd., 1985 Supp SCC 280 : 1985 SCC (Tax) 538] .

45. In its primary and natural sense "royalty" in the legal world, is known as the equivalent or translation of "jura regalia" or "jura regia". Royal rights and prerogatives of a sovereign are covered thereunder. In its secondary sense, the word "royalty" would signify, as in mining leases, that part of the reddendum, variable though, payable in cash or kind, for rights and privileges obtained. (See Inderjeet Singh Sial v. Karam Chand Thapar [Inderjeet Singh Sial v. Karam Chand Thapar, (1995) 6 SCC 166] .)

16. It was submitted that the Division Bench rightly held that tax could not be levied by the Corporation, as such power cannot be exercised by the Corporation on its own, as it is in the domain of the Legislature to confer such power, which has not been done. It was further submitted

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46. "Royalty" is not a tax. Simply because the royalty is levied by reference to the quantity of the minerals produced and the impugned cess too is quantified by taking into consideration the same quantity of the mineral produced, the latter does not become royalty. The former is the rent of the land on which the mine is situated or the price of the privilege of winning the minerals from the land parted with by the Government in favour of the mining lessee. The cess is a levy on mineral rights with impact on the land and quantified by reference to the quantum of mineral produced. The distinction, though fine, yet exists and is perceptible. (See State of W.B. v. Kesoram Industries Ltd. [State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201])"

***52.** On the essential characteristics of a tax, the following observations of Banumathi, J. in the concurring opinion in Jindal Stainless Ltd. v. State of Haryana [Jindal Stainless Ltd. v. State of Haryana, (2017) 12 SCC 1] cull out the essence : (SCC p. 297, para 334)*

"334. The essential characteristics of a tax are that : (i) it is imposed under a statutory power without the taxpayer's consent and the payment is enforced by law; (ii) it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax; and (iii) it is part of the common burden. In Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt[Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005 : AIR 1954 SC 282] , the Constitution Bench has laid down the characteristics of a tax which has since been consistently followed and it is as under : (AIR p. 295, para 43)

'43. ... "A tax" ... "is a compulsory exaction of money by a public authority for public purposes enforceable by law and is not payment "for services rendered"."

This definition brings out, in all opinion, the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the taxpayer's consent and the payment is enforced by law....

The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual there is, as it is said, no element of "quid pro quo" between the taxpayer and the public authority,... Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the taxpayer depends generally upon his capacity to pay.' "

***53.** It is true that as a result of order passed by this Court in Mineral Area Development Authority v. Steel Authority of India [Mineral Area Development Authority v. Steel Authority of India, (2011) 4 SCC 450] , certain questions concerning "royalty" as determined under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 now stand referred to a Bench of nine Judges, which reference is still pending consideration. However, none of those issues arise in the present matter.*

that absence of such power coupled with the fact, that no procedure was adopted before such imposition, would be fatal, as the same cannot be arbitrarily enforced, in the absence of either a provision in law or without any procedure adopted, much less that sanctioned by Regulations,

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54. *On the use of the expression "royalty" in a contract, we may note the following observations in Inderjeet Singh Sial v. Karam Chand Thapar [Inderjeet Singh Sial v. Karam Chand Thapar, (1995) 6 SCC 166] : (SCC p. 173, paras 12-13)*

> *"12. ... The word "royalty" thus, in the deed was used in a loose sense so as to convey liability to make periodic payments to the assignor for the period during which the lease would subsist; payments dependent on the coal gotten and extracted in quantities or on dispatch. We have therefore to construe document Ext. D-5 on its own terms and not barely on the label or description given to the stipulated payments. Conceivably this arrangement could well have been given a shape by using another word. The word "royalty" was perhaps more handy for the authors to be employed for an arrangement like this, so as to ensure periodic payments. In no event could the parties be put to blame for using the word "royalty" as if arrogating to themselves the royal or sovereign right of the State and then make redundant the rights and obligations created by the deed.*
>
> *13. The commodity goes by its value; not by the wrapper in which it is packed. A man is known for his worth; not for the clothes he wears. Royal robes worn by a beggar would not make him a king. The document is weighed by its content, not the title. One needs to go to the value, not the glitter. All the same, we do not wish to minimise the importance of the right words to be used in documents. What we mean to express is that if the thought is clear, its translation in words, spoken or written, may, more often than not, tend to be faulty. More so in a language which is not the mother tongue. Those faulted words cannot bounce back to alter the thought. Thus in sum and substance when the contracting parties and the draftsman are assumed to have known that the word "royalty" is meant to be employed to secure for the State something out of what the State conveys, their employment of that word for private ensuring was not intended to confer on the assignor the status of the sovereign or the State, and on that basis have the document voided."*

55. *We may also note the following observations from the decision of a Bench of three Judges of this Court in Union of India v. Motion Picture Assn. [Union of India v. Motion Picture Assn., (1999) 6 SCC 150] , where the payment of fee was under the terms of a contract between the parties : (SCC pp. 169-71, paras 31-32)*

> *"31. The exhibitors also contend that the charge of one per cent on the net recoveries is a compulsory exaction in the form of a tax. Neither the Act nor the provisions of the licence stipulate payment of any such tax. Hence imposition of this amount is in violation of Article 265 of the Constitution. It is true that neither the relevant Act nor the notification nor the rules nor the terms and conditions of the licence stipulate the payment of any rental. This amount is required to be paid under an agreement which the exhibitors individually enter into with the Films Division for the supply of these films. It is a payment under the terms of a contract between the two parties. It cannot, therefore, be viewed as a tax at all. The exhibitors contend that because they are required to enter into these agreements, any payment under the agreement is a compulsory exaction and is, therefore, tax. We do not agree. Under the terms of the agreement, the Films Division has to supply certain prints to the theatre owners at stated intervals. The Films Division is required to maintain a distribution network for this purpose. It is required to pack these films and is required to*

finally made/approved by the State Government as per the provisions of the Act.

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allow the exhibitors to retain these films in their possession for a certain period. The films are to be returned to the Films Division thereafter. The charge is termed in the agreement as rental for the films. It covers charges for preparing the prints of the films for distribution, and for packing them for delivery. These are clearly services rendered by the Films Division for which it is paid one per cent of the net collection as a rental. As stated earlier, the total cost of preparing prints, packing them and distributing them is much higher than the total recovery made by the Films Division by way of rental from all the exhibitors. There is a clear nexus between the services rendered and the payment to be made. The payment, therefore, is in the nature of a fee rather than a tax though there may not be an exact quid pro quo. Nevertheless the element of quid pro quo is very much present.

32. The exhibitors relied upon a number of cases which distinguish a tax from a fee. We will only refer to some of them. In District Council, Jowai Autonomous District v. Dwet Singh Rymbai [District Council, Jowai Autonomous District v. Dwet Singh Rymbai, (1986) 4 SCC 38 : 1986 SCC (Tax) 768] this Court held that a compulsory exaction for public purposes would amount to a tax while a payment for services rendered would amount to a fee. On the facts in that case, the Court said that there was no element of quid pro quo which will justify the imposition of royalty as a fee. In Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005 : AIR 1954 SC 282] this Court as far back as in 1954, laid down the distinction between a tax and a fee. This Court has described a tax as a compulsory exaction for public purposes which does not require the taxpayer's consent; while fee is a charge for specific service to some, and it must have some relation to the expenses incurred for the service. In Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla [Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla, (1992) 3 SCC 285] this Court has said that an express authorisation for the levy of a fee is necessary. In the present case, however, the rental is charged by the Films Division by virtue of an agreement between the Films Division and the individual exhibitor. This is in consideration of the Films Division supplying films to the exhibitor, packing the film and arranging for its delivery. This is clearly an agreed fee charged for rendering services. It cannot be viewed as a compulsory exaction or as a tax. There is a statutory obligation which is cast on the exhibitors to exhibit certain films. To carry out this statutory obligation, if the exhibitors enter into an agreement with the Films Division and agree to pay a certain amount of rental for procuring the films from the Films Division to comply with the statutory obligation, the levy must, since it is correlated with the Films Division discharging certain obligations under the contract, be viewed, at the highest, as a fee and not as a tax. It is an agreed payment, and is not unreasonable. The High Court [Motion Picture Assn. v. Union of India, 1995 SCC OnLine Del 600 : (1995) 60 DLT 180] has rightly negatived the contention of the respondent exhibitors."

***56.** Thus, the expression "royalty" has consistently been construed to be compensation paid for rights and privileges enjoyed by the grantee and normally has its genesis in the agreement entered into between the grantor and the grantee. As against tax which is imposed under a statutory power without reference to any special benefit to be conferred on the payer of the tax, the royalty would be in terms of the agreement between the parties and normally has direct*

17. It was emphasised that under Section 146[7] of the Act, there has to be a licence for exhibition of advertisement, and it shall be in terms of the Regulations framed therein.

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relationship with the benefit or privilege conferred upon the grantee.'

[5] '***11.*** *Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced ex contracts by a person who acts upon the promise: when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation may if the contract be not in that form be enforced against it in appropriate cases in equity. In Union of India v. Indo-Afghan Agencies Ltd. [(1968) 2 SCR 366] this Court held that the Government is not exempt from the equity arising out of the acts done by citizens to their prejudice, relying upon the representations as to its future conduct made by the Government. This Court held that the following observations made by Denning, J., in Robertson v. Minister of Pensions [(1949) 1 KB 227] applied in India:*

> *"The Crown cannot escape by saying that estoppels do not bind the Crown for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action."*

We are in this case not concerned to deal with the question whether Denning, L.J., was right in extending the rule to a different class of cases as in Falmouth Boat Construction Co. Ltd. v. Howell [(1950) 1 All ER 538] where he observed at p. 542:

> *"Whenever Government officers in their dealings with a subject take on themselves to assume authority in a matter with which the subject is concerned, he is entitled to rely on their having the authority which they assume. He does not know, and cannot be expected to know, the limits of their authority, and he ought not to suffer if they exceed it."*

It may be sufficient to observe that in appeal from that judgment (Howell v. Falmouth Boat Construction Co. Ltd.) Lord Simonds observed after referring to the observations of Denning, L.J.:

> *"The illegality of an act is the same whether the action has been misled by an assumption of authority on the part of a Government officer however high or low in the hierachy.*
>
> ** * **
>
> *The question is whether the character of an act done in force of a statutory prohibition is affected by the fact that it had been induced by a misleading assumption of authority. In my opinion the answer is clearly: No."'*

[6] '***10.*** *This observation is, "clearly very wide and it is difficult to determine its proper scope" : Anson's English Law of Contract, 22nd Edn., p. 174. It may also be noticed that before Rowlatt, J., the applicants claimed enforcement of a contract against the Crown, and the learned Judge came to the conclusion that there was no contract and no damages could be awarded. In Robertson v. Minister of Pensions [(1949) 1 KB 227] Denning, J. observed at p. 231:*

> *"The Crown cannot escape by saying that estoppels do not bind the Crown for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action. That doctrine was propounded by Rowlatt, J., in Rederiaktiebolaget*

18. Learned counsel submitted that the Regulations for licensing for the purpose of advertisement were issued only on 13.08.2012 whereas the Demand Notice was dated 11.02.2012, i.e. much prior to the Regulations for licence being framed. Thus, it was his contention that there was no power to charge any fee prior to 13.08.2012, in view of the

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Amphitrite v. King but it was unnecessary for the decision because the statement there was not a promise which was intended to be binding but only an expression of intention. Rowlatt, J., seems to have been influenced by the cases on the right of the Crown to dismiss its servants at pleasure, but those cases must now all be read in the light of the judgment of Lord Atkin in Reilly v. King [(1954) AC 176, 179] . ... In my opinion the defence of executive necessity is of limited scope. It only avails the Crown where there is an implied term to that effect or that is the true meaning of the contract."

Denning, J., was dealing with a case of a serving army officer, who wrote to the War Office regarding a disability and received a reply that his disability had been accepted as attributable to "military service". Relying on that assurance he forbore to obtain an independent medical opinion. The Minister of Pensions later decided that the appellant's disability could not be attributed to war service. It was held that as between subjects such an assurance would be enforceable because it was intended to be binding intended to be acted upon, and was in fact acted upon; and the assurance was also binding on the Crown because no term could be implied that the Crown was at liberty to revoke it.

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***24.** Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisement of the circumstances in which the obligation has arisen. We agree with the High Court that the impugned order passed by the Textile Commissioner and confirmed by the Central Government imposing cut in the import entitlement by the respondents should be set aside and quashed and that the Textile Commissioner and the Joint Chief Controller of Imports and Exports be directed to issue to the respondents import certificates for the total amount equal to 100% of the f.o.b. value of the goods exported by them, unless there is some decision which fails within clause 10 of the Scheme in question.'*

[7] *'146. Licence for use of site for purpose of advertisement.-(1) Except under, and in conformity with, such terms and conditions of a licence as the Municipality may, by the regulations, provide, no person being the owner, lessee, sub-lessee, occupier or advertising agent shall use, or allow to be used, any site in any land, building or wall, or erect, or allow to be erected, on any site any hoarding, frame, post, kiosk, structure, vehicle, neon-sign or sky-sign for the purpose of display of any advertisement.*
(2) For the purpose of advertisement, every person-
(a) using any site before the commencement of this Act, within ninety days from the date of such commencement, or
(b) intending to use any site, or
(c) whose licence for use of any site is about to expire.
shall apply for a licence or renewal of licence, as the case may be, to the Chief Municipal Officer in such Form as may be specified by the Municipality.
(3) The Chief Municipal Officer shall, after making such inspection as may be necessary and within thirty days of the receipt of the application, grant or renew a licence, as the case may be,

Regulations framed under Section 146 of the Act, which, *inter alia*, also provided for licence for purposes of advertisement. Moreover, it was submitted that Section 147 of the Act provides for tax on advertisement, which also is to be determined as per the Regulations.

19. However, it was contended that in the present case, there is no Regulation for levy of taxes in terms of Section 147 read with Section 423 of the Act. In absence thereof, the Corporation could not have acted in the manner it did.

20. Learned counsel submitted that there being no statutory backing of law to issue the Office Order dated 02.11.2007, the demand raised under such order is a nullity as there is neither any agreement nor statutory force to raise such demand and moreover, the said Office Order does not speak about any licence fee as licence also could not have been granted without framing the Regulations. It was further

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on payment of such fee as may be determined by regulations, or refuse or cancel a licence, as the case may be.
(4) The Chief Municipal Officer may, if, in his opinion, the proposed site for any advertisement is unsuitable from the considerations of public safety, traffic hazards or aesthetic design, refuse to grant a licence, or to renew any existing licence, within thirty days of the receipt of the application.
(5) Every licence shall be for a period of one year except in the case of sites used for any temporary congregation of whatever nature including fairs, festivals, circus, yatra, exhibitions, sports events, or cultural or social programmes.
(6) The Chief Municipal Officer shall cause to be maintained a register wherein the licences issued under this Section shall be separately recorded in respect of advertisement sites-
(a) on telephone, telegraph, tram, electric or other posts or poles erected on or along public or private streets or public places,
(b) in lands or buildings, and
(c) in cinema-halls, theatres or other places of public resort.'

submitted that no recovery of any demand can be made by an executive order unless it has legislative backing.

21. Learned counsel submitted that the charging Rs.10 per square foot irrespective of whether such hoardings are on private or public place is also arbitrary and unsustainable. In support of his contentions, learned counsel relied upon the decisions of this Court in ***Commissioner of Income Tax, Mumbai v Anjum M H Ghaswala*****, (2002) 1 SCC 633;** ***Punit Rai v Dinesh Chaudhary*****, (2003) 8 SCC 204;** ***Union of India v Naveen Jindal*****, (2004) 2 SCC 510,** and; ***State of Kerala v Chandramohanan*****, (2004) 3 SCC 429**.

ANALYSIS, REASONING AND CONCLUSION:

22. Having given our anxious thought to the issue at hand, the Court finds that the judgment impugned warrants interference. Though the Division Bench has elaborated on the law relating to imposition of tax/levy, we find that the issue was not examined in the manner required. The core question confronting us, as it was before the Division Bench, is whether the demand is by way of a tax/levy or simply in the nature of royalty for permission for advertising through hoardings within the limits of the Corporation. The Court, at this juncture, would clarify that there

can be no issue with the proposition of law as stands settled by the various earlier decisions of this Court with regard to the power and modality of charging of tax/levy, which obviously has to be done in terms of the power conferred under/by authority by law.

23. In the present case, however, it cannot be lost sight of, as also elucidated in ***Indsil Hydro Power and Manganese Limited*** (*supra*), especially in Paragraph 56 thereof, after considering a host of precedents, that the imposition of royalty cannot be equated with imposition of tax/levy. Even otherwise, the law is no longer *res integra* that conduct of the parties and acquiescence would preclude a party from turning around and assailing a decision acquiesced to, except where there is an inherent lack of jurisdiction, or the exercise of authority is perverse or *malafide*, in law or in fact. In the instant factual setting, the advertising companies/respective Respondents No.1 had agreed in the year 2005 to pay a royalty of Re.1 per square foot to the Corporation for putting up hoardings/advertisements. We may note that only 2 advertising companies, *in praesenti*, moved the High Court by way of letters patent appeals, whereas, we are informed, a majority of the advertising companies complied with making payment(s) @ Rs.10 per square foot subsequent to the decision of the Corporation dated

02.11.2007. It is also worthwhile to note that the initial rate *viz*. Re.1 per square foot of royalty in the year 2005 was fixed after a Meeting with all the stakeholders on 29.08.2005. The advertising companies concerned had agreed to pay Re.1 per square foot royalty per year on such hoarding. The same was merely revised on 02.11.2007 i.e., after a period of over 2 years.

24. We have no hesitation to hold that such revision of rate was within the power of the Corporation. However, at this very stage, we are also equally unhesitant to hold that the Resolution to charge enhanced royalty in exercise of purported power under Section 431[8] of the Act was misplaced as royalty is not tax. It has been authoritatively clarified by this Court that royalty and tax are not one and same. As such, the Corporation's power to charge royalty cannot be interfered with on the ground that the same is not available, either in the Act or in the Regulations concerned, as there is no question of the said 'royalty' being a tax. Section 431 of the Act, therefore, would not come into the picture where royalty, that too by way of and under an agreement/understanding is concerned. As stated previously, royalty and tax cannot be equated –

[8] *'431. Fine for not paying tax under Chapter XVII.- If any person erects, exhibits, fixes or retains any advertisement referred to in chapter XVII, without paying any tax under that chapter, he shall be punished with fine which – shall not be less than an amount equal to two times of such tax depending upon the gravity of the breach may extend up to an amount equal to five times the amount payable as such tax.'*

the nomenclatures cannot be used interchangeably in law, both carrying starkly different imports and connotations. For reasons above, we are unable to maintain as tenable the argument that the demand made by the Corporation was a compulsory exaction. Equally, we are unable to state that the demand was/bore the hallmarks of a tax. The long and short of it is that '*Whatever be the nomenclature, the charges … in the present cases were for the privilege enjoyed …. … the basis for such charges was directly in terms of, and under the arrangement entered into between the parties, though, not referable to any statutory instrument. … For such benefit or privilege conferred upon them, the agreements arrived at between the parties contemplated payment of charges for such conferral of advantage. Such charges, in our view, were perfectly justified.*'[9]

25. The decisions pressed into service by Respondent No.1, we are afraid, are of no aid to its case. As far as the 5-Judge Bench decision in ***Ghaswala*** (*supra*) is concerned, the question that arose for consideration therein was '*whether the Settlement Commission … constituted under Section 245-B of the Income Tax Act, 1961 … has the jurisdiction to reduce or waive the interest chargeable under Sections*

[9] Paragraph 57 of ***Indsil Hydro Power and Manganese Limited*** (*supra*).

234-A, 234-B and 234-C of the Act, while passing orders of settlement under Section 245-D(4) of the Act.' The Court, *inter alia*, reasoned that '*The Commission while exercising its quasi-judicial power of arriving at a settlement under Section 245-D cannot have the administrative power of issuing directions to other income tax authorities. It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself.*', and held that '*the Commission in exercise of its power under Sections 245-D(4) and (6) does not have the power to reduce or waive interest statutorily payable under Sections 234-A, 234-B and 234-C except to the extent of granting relief under the circulars issued by the Board under Section 119 of the Act.*' Herein, the question is whether the demand was tax or royalty, and we have arrived at the conclusion that it is royalty, traceable to the arrangement/agreement between the parties, which makes ***Ghaswala*** (*supra*) inapplicable in the extant facts.

26. ***Punit Rai*** (*supra*), decided by three learned Judges, emanated from an Election Petition filed before the High Court. In his concurring opinion, learned S. B. Sinha, J., held *'If a customary law is to be given a go-by for any purpose whatsoever and particularly for the purpose of*

enlarging the scope of a notification issued by the President of India under clause (1) of Article 341 of the Constitution, the same must be done in terms of a statute and not otherwise.' and '*The High Court, therefore, erred insofar as it failed to consider that for the purpose of determination of caste, the respondent could not have relied upon the circular letter dated 3-3-1978 in absence of any law. …*' Eventually, this Court took exception to the approach of the High Court therein and overturned its decision. The concurring opinion clearly lays down what could not have been done therein in the absence of a law. Again, for the same reason why ***Ghaswala*** (*supra*) is not relevant to the instant controversy, noted above, ***Punit Rai*** (*supra*) would not help Respondent No.1.

27. ***Naveen Jindal*** (*supra*) [rendered by the same *coram* as ***Punit Rai*** (*supra*)] held that the Flag Code was not a statute. It was also held that executive instructions, which the Flag Code was, were not '*law*' within the meaning of Article 13 of the Constitution. This proposition is unassailable but does not carry Respondent No.1's case further in view of our findings and analysis.

28. Similarly, in ***Chandramohanan*** (*supra*), the Court [three-Judge Bench] placed reliance on ***Punit Rai*** (*supra*) and ***Naveen Jindal*** (*supra*) to conclude that Government Circulars issued by the State of Kerala were not '*law*' within the ambit of Article 13 of the Constitution. This issue does not arise in the instant factual backdrop.

29. The other aspect, which we would like to cover, is the proportionality/reasonableness in the enhancement of the rate from Re.1 per square foot to Rs.10 per square foot. Whilst at first blush, the jump may seem high, being ten times, ultimately, it is subjective. Nothing has been canvassed before us to indicate that such rate was exorbitant or disproportionate, requiring judicial interdiction. There is no dispute that in the Meeting held on 29.08.2005, the advertising companies did not object to payment of royalty, as sought by the Corporation. Hence, a challenge could, later be mounted on limited grounds to the quantum/rate of royalty, and not on the decision to charge royalty itself. Even otherwise, as we do not find that the 'royalty' was a tax/levy, the action of the Corporation cannot be struck down merely on the ground of having quoted Section 431 of the Act (wrongly), for, quoting the wrong provision of law, when the power to do an act otherwise exists, would not

invalidate or render illegal the act in question. A Bench of three learned Judges in ***N Mani v Sangeetha Theatre*****, (2004) 12 SCC 278** held:

> '***9.*** *It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.*'
>
> (emphasis supplied)

30. The decision in ***N Mani*** (*supra*) was relied upon by two learned Judges in ***Ram Sunder Ram v Union of India*****, 2007 (9) SCALE 197**, wherein this Court reiterated that quoting the wrong provision of law, when the authority concerned is otherwise empowered to carry out an act, could not vitiate the act on such ground alone. Likewise, and on taking note of ***N Mani*** (*supra*) and ***Ram Sunder Ram*** (*supra*), 2 learned Judges in ***P K Palanisamy v N Arumugham*****, (2009) 9 SCC 173** opined as under:

> '***27. …*** *Only because a wrong provision was mentioned by the appellant, the same, in our opinion, by itself would not be a ground to hold that the application was not maintainable or that the order passed thereon would be a nullity. It is a well-settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor.*'
>
> (emphasis supplied)

31. The above principle found acceptance also, *inter alia*, in ***Mohd. Shahabuddin v State of Bihar*, (2010) 4 SCC 653** and ***State of Haryana v Raj Kumar*, (2021) 9 SCC 292**.

32. Respondent No.1 placed strong emphasis on the Patna Municipal Corporation (Grant of Permission for Display of Advertisements & Similar Devices) Regulations, 2012 dated 04.07.2012 and published in the Official Gazette on 13.08.2012. We find that this relates only to grant of permission for display of advertisements and similar devices in any place within the jurisdiction of the Corporation. However, it cannot be said that these Regulations would have conferred the right to demand royalty by the Corporation, which we find was traceable to the agreement/arrangement between the parties.

33. Once again, at the cost of repetition, as there has been no serious attempt to challenge the enhancement in quantum from Re.1 per square foot to Rs.10 per square foot, we refrain from delving into that aspect, which as of now has also become very old as it pertains to the year 2007. At this juncture, the Court would refer to the Written Submissions filed on behalf of Respondent No.1, where at Paragraph No.19, following is the stand:

> "*Without prejudice, to the preceding paragraphs and submissions, it is submitted that till no regulations are framed by the State Government, the respondent no.1 agrees to pay royalty to the Municipal Corporation at the enhanced rate of Rs.10 per sq. ft. per annum, prospectively. However, the same may be adjustable with the future demands ought to be raised by the Municipal Corporation after the Regulations under the Bihar Municipal Act, 2007, comes into effect.*"

34. To the above, we only observe that payment of enhanced rate of Rs.10 per square foot was not made retrospective by the Corporation, as it was made effective from November, 2007, i.e., 10 months after the resolution which was passed in January, 2007, and thus, we do not find any occasion to interfere in such demand from the date it was made effective by the Corporation as there is no element of retrospectivity involved.

35. Yet, we hasten to add that future enhancement, if any, in the rate of royalty cannot be made to operate and/or have effect retrospectively. The same would have effect and operate only prospectively.

36. Accordingly, in view of the discussions hereinabove, the Court finds that the decision of the Corporation, to charge Rs.10 per square foot with regard to hoarding(s)/advertisement(s) as communicated at the relevant point of time to the concerned parties needs no interference.

However, the imposition of penalty for non-payment needs to be interfered with as no such power exists. It is held thus, but with the clarificatory caveat that the Corporation would not be precluded from charging interest over delayed payment(s). Obviously, interest on delayed payment(s) would not be a 'penalty' but rather, in the realm of 'compensation' for late/delayed payment of amounts which were payable on/from an earlier date. This Court expressed a similar view in ***Alok Shanker Pandey v Union of India*, (2007) 3 SCC 545**, as under:

> '***9.*** *It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence, equity demands that A should not only pay back the principal amount but also the interest thereon to B.*'
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> (emphasis supplied)

37. In order to balance equities, the Court would indicate that the enhanced rate of Rs.10 per square foot would be payable by the respective Respondents No.1/advertising companies and other similarly-situated persons in terms of the Resolution of the Corporation from the date the same was made public/communicated to the concerned parties,

whichever is later, with simple interest at the rate of 6% per annum. The Corporation is directed to furnish computation of amounts due to the parties concerned within 4 weeks. Payments be made within 16 weeks thereafter by the parties concerned, failing which they shall carry interest @ 10% per annum and be recoverable as arrears under the Bihar and Orissa Public Demands Recovery Act, 1914. Needless to state, amount(s), if any, paid over and above Re.1 per square foot, for the period in question, shall be adjusted towards the final liability to be determined by the Corporation *vis-a-vis* the respective Respondents No.1 herein and all other similarly-situated persons.

38. Parties shall bear their own costs.

39. Both appeals stand disposed of in terms aforesaid.

POST-SCRIPT:

40. After we reserved judgment, a 9-Judge Bench of this Court in ***Mineral Area Development Authority v Steel Authority of India*, 2024 SCC OnLine SC 1796**, by a majority of 8:1, has held as under, fully supporting our view hereinabove:

'***126.*** *There are major conceptual differences between royalty and a tax: (i) the proprietor charges royalty as a consideration for parting with the right to win minerals, while a tax is an imposition of a sovereign; (ii) royalty is paid in consideration of doing a particular action, that is, extracting minerals from the soil, while tax is generally levied with respect to a taxable event determined by law*[10]*; and (iii) royalty generally flows from the lease deed as compared to tax which is imposed by authority of law.*

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128. *This Court has held that royalty is not a tax, in several decisions. In State of H P v. Gujarat Ambuja Cement Ltd*[11]*, a three judge Bench of this Court held royalty not to be a tax. The subsequent decision in Indsil Hydro Power & Manganese Ltd. v. State of Kerala*[12] *brought out the distinction between tax and royalty in the following terms:*

> *"56. Thus, the expression "royalty" has consistently been construed to be compensation paid for rights and privileges enjoyed by the grantee and normally has its genesis in the agreement entered into between the grantor and the grantee. As against tax which is imposed under a statutory power without reference to any special benefit to the conferred on the payer of the tax, the royalty would be in terms of the agreement between the parties and normally has direct relationship with the benefit or privilege conferred upon the grantee."*

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130. *In view of the above discussion, we hold that both royalty and dead rent do not fulfil the characteristics of tax or impost. Accordingly, we conclude that the observation in India Cement (supra)*[13] *to the effect that royalty is a tax is incorrect.*

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342. *… we answer the questions formulated in the reference in terms of the following conclusions:*

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[10] ***Goodyear India Ltd. v State of Haryana,*** **(1990) 2 SCC 71**.
[11] **(2005) 6 SCC 499**.
[12] ***Indsil Hydro Power and Manganese Limited*** (*supra*).
[13] **(1990) 1 SCC 12**.

a. Royalty is not a tax. Royalty is a contractual consideration paid by the mining lessee to the lessor for enjoyment of mineral rights. The liability to pay royalty arises out of the contractual conditions of the mining lease. The payments made to the Government cannot be deemed to be a tax merely because the statute provides for their recovery as arrears;'

(emphasis supplied)

…….....J.
[VIKRAM NATH]

…….....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
OCTOBER 16, 2024