

# NOTE BY THE AMICUS CURIAE

- 1) The primary issue in this case relates to the enforcement of the Environment Protection Act 1986 and the Forest Conservation Act 1980.
- 2) . The principles of environment protection, which are now a part of our Constitutional law [as a facet of Art. 21] viz. sustainable development and the precautionary principle, have to be superimposed upon the mining statutory regime.
- 3) For this purpose, it becomes necessary to ensure that the statutory provisions and orders of this Hon'ble Court are rigourously enforced and there is a strong and independent monitoring system in place to ensure that the prescribed conditions do not remain only on paper.
- 4) The note of the MoEF on the Expert Committee Report (VishwanathAnand Committee) brings out the ground situation – 41 environmental clearances granted in violation of this Court's order. These include 19 leases with National Parks / Wildlife Sanctuaries. 20 leases renewed without approval under the Forest (Conservation) Act, 1980, for 29 leases environmental clearances granted on the basis of false information. 123 environmental clearances, out of 137 cases to be kept in abeyance (pending clearances by NBWL), excess production in 42 cases. Unauthorized dump

mining in 24 cases, mining beyond permissible areas in 37 cases.

5) Section 4 of the MMRD Act and all the environment laws apply to mining leases in Goa.

✓  
6) In view of section 29 of the Wildlife (Protection) Act, 1972 read with section 18-A (1) and 35 (8) of the said Act, mining operations are not permissible in the areas notified under section 18, 26A or 35 of the said Act. Pursuant to this Hon'ble Court orders dated 14.2.2000 and subsequent order (such as order dated 16.12.2000 and 4.8.2006) mining operations within the areas notified under section 18, 26A or 35 of the said Act are prohibited. All environmental clearances granted for the mining leases ✓  
✓ located wholly / partly within such areas are null and void ✓  
✓ and need to be set aside.

7) This Hon'ble Court by its order dated 4.8.2006 directed that pending a decision regarding eco sensitive zone in IA No. 1000 and other connected matters, as an interim measure 1 km around National Park / Wildlife Sanctuaries i.e areas notified under section 18, 26A or 35 of the said Act shall be maintained as the safety zone and wherein no mining is permissible. Mining operations are prohibited in the areas

falling within the distance of 1 km from the areas notified under section 18, 26A or 35 of the said Act. Therefore environmental clearances granted for the mining lease located wholly / partly in such areas are null void and it

**may be directed / clarified that in such areas mining on forest as well as non forest land is prohibited and that all statutory approvals including environmental clearances stand revoked.** The decision taken by the MoEF to permit mining in such areas for next 5/10 years is contrary to this Hon'ble Court's orders.

- 8) This Hon'ble Court by order dated 4.12.2006 in Goa Foundation case has directed that the environmental clearances already granted for the projects located within a distance of 10 km of the National Parks / Wildlife Sanctuaries shall be placed before the Standing Committee for National Board of Wildlife. While no specific direction either regarding validity of such environmental clearances or for placing the subsequently granted environmental clearances before the Standing Committee for National Board of Wildlife has been issued, the MoEF has taken a stand that all environmental clearances, where pre 4.12.2006 or post 4.12.2006 are required to be placed before the Standing Committee (refer MoEF affidavit dated 26.10.2012 in IA No. 1000 at Annexure-R-25, Volume-3,

page 256 of the CEC Report). This Hon'ble Court may consider issuing appropriate clarification / direction that in all cases – pre 2006 and post 2006, this protective rule of 10km buffer zone would apply.

- 9) As per the guidelines issued by the MoEF (refer para 2.3, page 28 of the FC Act Guidelines), the projects requiring clearance from the forest as well environmental angles are deemed to be cleared only after both the clearances are granted. In view of the above, the environmental clearances become valid only after the approvals under the Forest (Conservation) Act, 1980 are also granted (if the mining lease has forest as well as non forest land). **This would also imply that if a mining lease contains forest land as well as non forest land, no mining operation can be under taken in the non-forest land on the basis of the environmental clearances till approval under the Forest (Conservation) Act, 1980 for the forest land involved is granted (as till than the environmental clearance does not become operative.** In addition, the execution of the mining lease / renewal of mining lease is till than not permissible). This Hon'ble Court may consider directing that environmental clearances in such cases will become effective only after grant of approval under the Forest (Conservation) Act, 1980.

10) Section 3(d) of the MMDR Act defines mining operation as any operation undertaken for the purpose of mining any mineral. Section 4 of the said Act provides that mining operations can be undertaken only under the mining leases granted under the said Act. In view of the above, the mining of mineral from the over burden dumps lying outside the areas under the sanctioned mining lease is not permissible. Rule 64 C only permits sale of tailings or rejects. If the rejects are such as to create a new overground mine, then they are obviously not rejects but ore stands removed and stacked as rejects. If it involves *mining*, then the statutory discipline must apply.

11) As against 1553.724 lakh MT of iron ore produced between 2006-2007 to 2010-2011, 1949.36 lakh MT iron ore of Goan origin has been exported (refer para 85-88, page 73-75 of the CEC Report or Relevant annexures are - R-19, Volume-3 and Annexure-R-3, Volume-1). In all probability the excess quantity of iron ore exported is illegal mined iron ore. This (excess exports) have been justified by the state / lessees stating that the difference between the two is due to production of mineral from the over burden dumps. This Hon'ble Court may consider directing the State of Goa to ascertain the lease wise details of the iron ore legally produced as per the monthly / annual returns

originally filed by them qua the details of the iron ore exported / used domestically to ascertain the illegal iron ore exported / used domestically. The Chief Secretary, Government of Goa may be made responsible for this (refer recommendations X, page 105 of the CEC Report).

12) In order to ensure that mining is done in an environmentally sustainable manner with due regard to sustainable development principles, this Hon'ble Court may consider prescribing a ceiling / cap on the total annual production of iron ore from all the lessees in Goa. For this purpose a macro-EIA study may be directed to be undertaken with specific Terms of Reference. The amount required for this study may be directed to be provided by the Ad-hoc CAMPA / CEC. The agency may be finalized after considering the suggestions given by the Petitioners, MoEF and the State of Goa.

13) Adverse observations have been made in the Shah Commission Report regarding large scale encroachments. To verify the extent of encroachment, lease wise survey and demarcation is necessary. The State of Goa has stated that such a survey has already been done. The CEC may be directed to verify the procedure followed in this regard

by the State of Goa and file its report for consideration of this Hon'ble Court.

- 14) In order to ensure that mining leases operate in an environmentally sustainable manner, lease wise R&R Plans may be directed to be prepared and which should inter-alia provide for (I) maximum permissible annual production based on (a) mineral reserves (b) area available for over burden dump and (c) infrastructure and (II) specific mitigative measures to be undertaken for containing the adverse impact of the mining. The guidelines prescribed for Karnataka in this regard may be followed with appropriate changes.
- 15) The leases (about 42 leases) in respect of which the applications for the renewal of the mining leases were not filed within the stipulated time and the delays in filing of the applications are stated to have been condoned by the State of Goa without any power / authority may be directed to be reviewed and cancelled if such condonation of delays is found to be not permissible / without any power (refer XV of recommendations of the CEC at page 108).
- 16) During the hearing a statement has been filed by the State of Goa stating that about 11.57 lakh MT of iron ore is

already excavated and lying at the mining head also outside mining lease (at jetty) etc. Prima-facie the said statement has been prepared on the basis of the monthly returns given by the respective lessees. In case this Hon'ble Court considers permitting transportation / sale of the same the following procedure may be considered:

- a) a Committee (on the pattern of Monitoring Committee constituted for Karnataka) may be constituted by this Hon'ble Court and made responsible for (i) verification of the already mined mineral available at the mining head, jetties etc (ii) sale of mineral through e-auction (iii) receipt of sale proceeds along with applicable royalty, taxes and other charges (iv) release of sold mineral with appropriate checks and balances (v) keeping the sale proceeds excluding the applicable taxes, royalty etc (to be deposited by the Monitoring Committee with the concerned authorities) in the designated account(s) in nationalize bank and (vi) any other issues related with verification of mineral, e-auction, release of mineral, receipt of money and related matter;
- b) the sale proceeds / export proceeds retained by the Monitoring Committee may be released only after a final decision regarding legality of the iron ore is taken and



after deducting the value of the illegally removed mineral from the over burdened dumps etc., and after obtaining permission by this Hon'ble Court; and

- c) the Monitoring Committee may comprise (a) a senior officer of the Mines Department, nominated by the Chief Secretary, Goa not below the rank of Joint Secretary to Government of India (ii) Dr. U.V. Singh, Member, Monitoring Committee for Karnataka, and (iii) Addl. PCCF, Regional Office, MoEF, Bangalore.

17) With reference to the Rules notified by the State Government it may be clarified that (a) the environmental clearances necessarily have to be granted in accordance with the EIA notification dated 14.9.2006 (for grant of the environmental clearances for the working of over burden dumps, the State Level Environment Impact Assessment Authority may not always be empowered) and (b) the lease holder will necessarily mean the person having a valid mining leases.

18) A strong and independent monitoring mechanism is absolutely necessary to ensure that the conditions on which statutory approvals are granted / directions of this Hon'ble Court do not remain on paper only.

- 19) As a rule no mining below ground water level should be permissible. Such permission should be considered, as an exception, only after it is conclusively established that such mining will have absolutely no adverse impact.
- 20) The over burden dumps should normally be located within the mining lease area itself. In exceptional cases it may be permitted outside the lease area and after obtaining all statutory approvals. In such cases the environmental clearances as well as the approved Mining Plan should specifically provide (and approve) for the details of the over burden dumps outside the lease area. In any case the removal of mineral from such over burden dumps will not be permissible till a mining lease for such area is also granted and requisite statutory approvals are obtained.
- 21) The mining operations may be allowed to be resumed only after (a) follow up action on VishwanathAnand Committee is completed (b) macro-EIA study is completed and decision thereon taken (c) lessee wise R&R Plans are prepared (d) all statutory approvals are granted and (e) the details of legal production qua exports / local uses are verified.