IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 435 OF 2012
PUBLIC INTEREST LITIGATION

In the matter of:

Goa Foundation …Petitioner

Versus

Union of India & Ors …Respondents

REJOINDER SUBMISSIONS ON BEHALF OF THE PETITIONER

1. Degradation of the ecosystem of the Western Ghats and the environment of Goa on account of large scale indiscriminate and illegal mining

Petition: The large scale mining activities which commenced around 2004-05, owing to the insatiable demand for ore from China, and the hugely profitable windfall returns from these exports, have had severe negative impact on the State's ecology and environment and on the health of the people living in the vicinity of the mines and along the routes through which ore is transported from the mines to the riverbank jetties. Mining has adversely affected the State's water catchment areas, wildlife sanctuaries, reservoirs, rivers, ground water aquifers, khazan lands, agriculture and air pollution levels, with direct impact on public health (as is seen through documented scientific investigations). In most villages close to the mines, large number of tanks, lakes and natural water springs are dry or are greatly depleted, never to return. Agriculture too has suffered, owing to mining silt runoff entering the fields and lack of water for irrigation. Fields which once yielded two crops a year have now fallen into disuse altogether. The livelihood of an entire section of the rural and town population has been devastated and some of the victims have now joined the mining labour force for want of any alternative means of earning a livelihood.

Mining operations which, by and large, occur in Goa in the ecologically fragile Western Ghats region, have caused wanton destruction of this world-renowned biodiversity "hot-spot," its natural vegetation and water sources. It is a fact that the Western Ghats Ecology Experts Panel in its report to the MoEF placed bulk of mining leases in the Western Ghats. Petitioner has also provided photo documentation of the mining activity and its environmental impact.

Respondents' views:

None of the respondents has specifically responded to the issue of degradation of the Western Ghats ecosystem by mining, although the mining companies have denied, in general, that there is environmental degradation to the extent claimed by the petitioner. The State Govt admits that there has been degradation of the environment but has argued that it has taken place during the term of the previous govt.

Rejoinder*:*

(i) Petitioner has relied on the WGEEP report (headed by Dr Madhav Gadgil) and the Report of the High Level Working Group on Western Ghats (HLWG) headed by Dr Kasturirangan to show the destruction of the Western Ghats and its biodiversity, water resources and wildlife from mining activities. Relevant excerpts from WGEEP Report are on record in Vol.6, p.99-115 and Vol. 8, pp.24-55 and extracts from the HLWG are in Vol 8, pp.56-74. Both the WGEEP and the HLWG reports – the latter appointed by the MoEF to consider how to implement the WGEEP report – have recommended prohibition of mining in the eco-sensitive areas of the Western Ghats. While 49 mining leases fall within the ESZ1 zone of the WGEEP report, 38 fall within the ESA delineated by the HLWG. Cumulatively, 51 MLs fall within the prohibited zone, of which 38 are common to both reports (Vol.8, p.15-23).

(ii) None of the respondents has denied that bulk of mining leases fall within the Western Ghats area. As per the Gadgil Panel study, practically all mining leases fall either in ESZ1 or ESZ2 or ESZ3 of the Western Ghats region. The National Green Tribunal has already restrained the MOEF from granting any EC for mining (or any other activity requiring EC) in all ESZ1 areas as per WGEEP Report, pursuant to an application made by the Goa Foundation, prior to filing of WP. No. 435/2012. Copy of the order is at Vol. 6. pp. 182-183. The order is still in force.

(iii) Petitioner has learnt from the newspapers that the MoEF has now decided to accept the recommendations of the HLWG report.

(iv) ESA/ESZ under Gadgil and Kasturirangan Reports is in the context of Western Ghats conservation, and is not the same as buffer zone which is connected largely with the conservation of the wildlife sanctuaries and National Parks. The ESA/ESZ is naturally much beyond the 1 km safety zone associated with the order dated 4.8.2006.

2. Damage to ground water aquifers and water sources by mining operations

Petition: Mining in Goa is responsible for drought like conditions in several villages as the activity has gone below and intersected the water table. CEC has in fact recommended that all mining activity below the ground water table should be prohibited except in very rare cases.

Respondents: *State of Goa has produced a report on ground water aquifers by Central Ground Water Board (CGWB) to show that that the water situation in Goa is "safe." Mining companies have argued that they have operated their mines in accordance with the ECs and have not caused undue damage to the water resources or the surrounding areas. They state that they have in fact augmented the water resources in the village by pumping out water from the mining pit for use in irrigation of fields.*

Rejoinder*:*

(i) Petitioner submits that a serious shortcoming of the report is that the observation wells (in the CGWB report) are located away from the mining areas and they are not mine specific. Therefore the report does not indicate the impact of mining on groundwater in mining areas. In fact, mines being in lateritic zone which invariably forms the same zone as that of aquifers, mining effectively dewaters the aquifers and leads to their drying up, which ultimately adversely affects the ecology and environment.

(ii) All mining areas show record of ground water depletion. The NEERI report, which was produced on orders from the Bombay High Court for Shirgao village, where all the village wells and all but one spring had run dry. has indicated major disruption of the groundwater aquifer, despite the EC's clean chit to the 3 mining leases operating in this village. The report is at Vol.6, pp.166-181. Likewise, there are other scientific studies.

(iii) Several villages which are geographically located in water-abundant areas, are now supplied drinking water through tankers maintained by mining companies whose mines are in the immediate vicinity of these villages.

3. Mining Operations in violation of Supreme Court's orders:

Petition: The mining operations have been allowed in Goa in violation of the direct orders of this Hon'ble Court to protect wildlife sanctuaries, national parks and forests. Specifically,

a) Some mines continued to operate within the Wildlife Sanctuaries (WLS) and in fact around 20 leases have even been issued ECs by MOEF;

b) Mining has also continued within 1 km of the WLS, despite a blanket injunction of this Court;

c) Mining leases within 10 km of the WLS are operating without the NOC of the NBWL, disobeying a direct order of this Court;

d) Mine leases with forests are operating without prior permission of the Central Government under the Forest Conservation Act (on the basis of deeming provision of Rules 24 (A) of the Mineral Concession Rules, 1960). 20 leases have been granted renewal without FCA orders.

Respondents:

1. *All respondents agree that no mining is permitted within the WLS.*

2. *As regards mining within 1 km of the WLS, they submit that this issue is yet to be decided by this Hon'ble Court and that the order dated 4.8.2006 was an interim order and should be seen only in relation to TWPs. In any case, MOEF and Goa govt are actively involved in resolution of this matter, draft notification is soon to be issued and this Hon'ble Court may not interfere.*

3. *As regards mining operations in 10 km without NBWL clearance, it is submitted, in the alternative, that:*

   a) the apex court's direction was to the MoEF to comply with;

   b) the direction pertained to only those ECs granted before 4-12-2006 and not thereafter;

   c) by the said order, this Hon'ble Court has not restrained mining operations which do not have NBWL clearance;

   d) many MLs have received WL clearance from the CWLW, Goa and this is adequate for the purpose.

   e) *the eco-sensitive zone with reference to boundaries of WLSs is yet to be notified by the MoEF as required by law;*

   f) *the Standing Committee or NBWL has no power to grant approvals for projects outside protected areas.*

4. *As regards mines with forest area on the lease it was urged that as long as mining is not on the forested portion of the lease, the law is not violated and*

the lessee will apply for forest clearance if he intends to use the forest area for mining and when the lease is renewed.

Rejoinder*:*

(i) There is no dispute that mining leases within WLS must be terminated. IA 2580 and 2669 in WP No.212/1995 deal with orders of the Collector and Revenue Officer (CRO) for exclusion of 55 mining leases from Netravalli Wildlife Sanctuary. CEC has in its report dated 30.3.2009 recommended cancellation of the CRO's orders in all 55 cases. This Court may pass appropriate orders, setting aside the orders of the CRO in all those cases listed in the CEC report. Court may also direct cancellation of all leases in Madei WLS as well as additionally, this is now proposed as a Tiger Reserve.

(ii) On 1 km: Safety zone considerations are wider than ecological considerations, and include, besides protection of ground water, absence of air pollution, also safety of animals which may wander outside the specific sanctuary limits and absence of biotic interference since animals are not aware of and therefore may not respect sanctuary boundaries. This Hon'ble Court has already accepted in principle the CEC's recommendations on 2 km safety zone for Goa sanctuaries. The move to sabotage the 2 km setback for Goa sanctuaries has originated with the mining lobby. The file notings of the Mines Secretary, Minister of Environment, annexed with these submissions, show the State's Environment Minister as supporting the 2 km CEC proposal, giving reasons, and rejecting the advice of the Mines Secretary (who incidentally, was also Secretary, Forests).

(iii) Specific to this issue is the new report dated 18.10.2013 by the Committee on six Protected Areas in Goa in relation to establishment of eco-sensitive zones. The committee has, as expected, made several concessions of a serious nature to undermine the proposal to declare even 1 km safety zone for the wildlife. Report of the Committee is annexed to this submission, since it has only now become available. The Committee's recommendations are difficult to understand. It first sets out the findings of the National Tiger Conservation Authority (NTCA) that at around 3-4 km, occurrence of wild animal signs decreased drastically and therefore a distance of 3.5 km taken as threshold distance for prioritising potential tiger areas outside protected areas of Goa, while considering it as the 'optimal value', which also lies close to the 'Mean Maximum distance Moved' (MMDM) and tiger home range radius estimated by scientific studies in the country." After acknowledging this, this Committee next reduces the 3.5 km threshold distance from the wildlife sanctuary boundary to the centre of the sanctuary. It thereafter

recommends a 1 km average zone, rejects the Goa govt's position on "1 km or natural boundary, whichever is less'. It restores 3.5 km for Cotigao Wildlife Sanctuary where there is no mining lease granted even by the Portuguese. It then promotes the same proposal made by the Goa govt that mining should continue along Bhagwan Mahaveer and Netravalli wildlife sanctuaries "with a closure plan" but does not stipulate a period. It does not say how this recommendation can be accepted when there is a standing prohibition of mining in 1 km. It also recommends the corridors between Bondla, Madei and Bhagwan Mahaveer be protected as it occurs along a natural ridge, even though this is completely outside the 1 km zone.

(iii) The Committee has not relied upon other indicators for its recommendations: mortality of wildlife due to exposure to heavy vehicles; the issue of air pollution from mining activities, including truck transport, and widespread deposition of mining dust on natural vegetation. The Goa State Pollution Control Board has resolved to adopt a zoning atlas which does not permit red category industries within 8 km of protected areas. (Mining is red category industry.) The Committee has not included in its consideration considerable movement of trucks and noise generated by trucks, especially when empty trucks move across speedbreakers. Such sounds travel across 3 km at night. It has not considered impact of mining below the ground water, and the fact that the wildlife sanctuary terrain is higher than the terrain in which the leases are located. Thus water will migrate to the pits, which is explicit violation of provisions of the WL Act. It has not considered the fact that it is the activity that needs to be prohibited rather than all human activity, since normal village life could continue in such areas as provided for in the draft notifications on such buffer zones. The Committee has not considered the fact that these six sanctuaries form part of a large, contiguous protected area including sanctuaries across Karnataka. The combined area of all these sanctuaries would cross 1000 sq.km. Hence the relaxations done, which the MOEF has accepted "in principle" and which the Respondents were at great pains to demand this Court should accept, are solely to suit the mining barons.

(iii) It is incorrect to say that blasting does not take place in Goa mines. Several mines have been found blasting during the past five years, and complaints are pending before statutory authorities for damage to houses from the use of explosives. The written submission of AG A.N.S. Nadkarni does not rule out the use of explosive.

(iv) On 10 km: The Chief Wildlife Warden (CWLW) cannot substitute for NOC from the NBWL, as the CWLW does not have any authority outside the WLS.

Only the NBWL has such power u/s 5 (b) & (c) of the Wildlife Protection Act, as required by the order dated 4.12.2006. Important considerations for NBWL include wildlife corridors which in many cases fall outside specific sanctuaries. As per section 5, Standing Committee and NBWL are empowered to examine the impact of projects on sanctuaries and grant approval.

(v) On mining leases with forest, operating without Forest Clearance: This is the subject matter of IA No.2348-49 and CEC report filed therein. Several mines in Goa are operating under “deemed extension” now for more than 25 years. Since “deemed extension” clause has been invoked, mining has been carried out without statutorily required approvals like FCA, 1980 and also without lease deeds as required under Rule 31 of MCR, 1960. Court may pass appropriate directions on the report and recommendations of CEC as the matter is tagged with the present petition.

5. Failure of MoEF to protect environment, forests and wildlife

Petition: The MoEF has utterly failed in its responsibilities to protect the environment while granting ECs to the mine in Goa. Specifically:

a) The ECs have been issued *en masse* and without consideration of the cumulative impact on – or the carrying capacity of – the area;

b) The ECs have been granted without verifying the data provided by the mining companies in the EIA reports. As a result, several of the ECs contain false / wrong information on crucial environment aspects.

c) There has been no monitoring whatsoever by the MoEF to ensure that there is compliance with the terms and conditions of the EC. Several leases have indulged in production in excess of environmental limits.

d) Even when violations have been brought to the notice of the MoEF, there has been no corresponding action taken against the mine operators to stop the illegalities and to penalize the offenders.

e) As a consequence of the above failings, the very law enacted to protect the environment has actually, through neglect and misuse, legitimised this destruction of this environment through the grant of such unsound and unscientific ECs. Justice Shah Commission has said someone should be held responsible and should have to pay the price for all this.

Respondents: *Counsel for the MoEF has fairly conceded that there were failings on the part of the agency, which is why the ECs continue to remain suspended. The MoEF also informed the Court that a specially constituted Expert Appraisal Committee was re-examining the ECs afresh.*

Rejoinder:

(i) Petitioner's submissions on deficient EIAs are now further confirmed by the release this month of a report on EIAs/ECs/EMPs of Goa mining leases prepared by Dr Madhav Gadgil for the Goa Govt. which indicates that most, if not all ECs granted for Goa mining leases are deficient and contain incorrect data. This is has also been the stand of the Goa govt.

The distance of the mine from the WLS submitted by the lessees to MoEF for the purpose of EC is incorrect in the case of bulk of the leases. The State govt has now given the exact distances to the MOEF which has filed them in this Court. However, for these reasons, the ECs themselves need to be withdrawn for submission of wrong information.

(ii) The Central Government is yet to comply with the direction of this Hon'ble Court in the *Lafarge case* to appoint an independent environment regulator: relevant extract from the judgement is below:

"Guidelines to be followed in future cases

"As stated in our order hereinabove, the words "environment" and "sustainable development" have various facets. At times in respect of a few of these facets data is not available. Care for environment is an ongoing process. Time has come for this Court to declare and we hereby declare that the National Forest Policy, 1988 which lays down far-reaching principles must necessarily govern the grant of permissions under Section 2 of the Forest (Conservation) Act, 1980 as the same provides the road map to ecological protection and improvement under the Environment (Protection) Act, 1986. The principles/ guidelines mentioned in the National Forest Policy, 1988 should be read as part of the provisions of the Environment (Protection) Act, 1986 read together with the Forest (Conservation) Act, 1980. This direction is required to be given because there is no machinery even today established for implementation of the said National Forest Policy, 1988 read with the Forest (Conservation) Act, 1980. Section 3 of

the Environment (Protection) Act, 1986 confers a power coupled with duty and, thus, it is incumbent on the Central Government, as hereinafter indicated, to appoint an Appropriate Authority, preferably in the form of Regulator, at the State and at the Centre level for ensuring implementation of the National Forest Policy, 1988. The difference between a regulator and a court must be kept in mind. The court / tribunal is basically an authority which reacts to a given situation brought to its notice whereas a regulator is a pro-active body with the power conferred upon it to frame statutory Rules and Regulations. The Regulatory mechanism warrants open discussion, public participation, circulation of the Draft Paper inviting suggestions. The basic objectives of the National Forest Policy, 1988 include positive and pro-active steps to be taken. These include maintenance of environmental stability through preservation, restoration of ecological balance that has been adversely disturbed by serious depletion of forest, conservation of natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, checking soil erosion and denudation in the catchment areas, checking the extension of sand-dunes, increasing the forest/ tree cover in the country and encouraging efficient utilization of forest produce and maximizing substitution of wood. **Thus, we are of the view that under Section 3(3) of the Environment (Protection) Act, 1986, the Central Government should appoint a National Regulator for appraising projects, enforcing environmental conditions for approvals and to impose penalties on polluters.** There is one more reason for having a regulatory mechanism in place. Identification of an area as forest area is solely based on the Declaration to be filed by the User Agency (project proponent). The project proponent under the existing dispensation is required to undertake EIA by an expert body/ institution. In many cases, the court is not made aware of the terms of reference. In several cases, the court is not made aware of the study area undertaken by the expert body. Consequently, the MoEF/ State Government acts on the report (Rapid EIA) undertaken by the Institutions who though accredited submit answers according to the Terms of Reference propounded by the project proponent. We do not wish to cast any doubt on the credibility of these Institutions. However, at times the court is faced with conflicting reports. Similarly, the government is also faced with a fait accompli kind situation which

in the ultimate analysis leads to grant of ex facto clearance. To obviate these difficulties, we are of the view that a regulatory mechanism should be put in place and till the time such mechanism is put in place, the MoEF should prepare a Panel of Accredited Institutions from which alone the project proponent should obtain the Rapid EIA and that too on the Terms of Reference to be formulated by the MoEF." **Lafarge Umiam Mining Pvt. Ltd. Vs. Union of India (UOI) and Ors.** (2011) 7 SCC 338.

6. Validity of leases and their operation has been challenged by the Justice Shah Commission report on several grounds

Petition: The mining activity has been carried out in violation of the mining laws – specifically the provisions of the MMRD Act, 1957. Almost all the leases have expired in 2007, and yet in violation of legal provisions, have continued their mining operations. The Justice Shah Commission and the CEC both report large number of the violations of law, leading to environmental damage.

Respondents: *The mining companies have vehemently denied the findings of the Justice Shah Commission report including the figure of Rs. 35,000 crore loss to the State exchequer. They have stated:*

(i) that they were not heard by the Commission and that the data based on which the report is compiled is incorrect in many areas and that it would have stood corrected if they had been heard;

(ii) that they have not violated the provisions of the MMRD Act and the Rules as reported in the Commission's report; in response to the petitioner's averment that all leases have expired on 21.11.2007, Respondents have stated they have the benefit of deemed extension, as all have filed renewal applications within time prior to expiry of the lease on 21.11.2007.

(iii) that there is no excess mining on the scale reported by the Commission, as the ore extracted from the lease is within the limits prescribed and the ore taken from the OB dumps cannot be added to production limits, as it was extracted earlier;

(iv) The State govt concurs with the view that the excess mining is not on the scale represented and that ore from dumps ought not to be calculated within the norms of the EC for production of ore.

(v) State of Goa has produced a table which according to it shows that excess pit mining is to the extent of approximately 10 ha and not 500 ha as claimed by the Shah Commission Report.

Rejoinder*:*

(i) The Justice Shah Commission's Report (JSCR) speaks for itself. It is meticulous and comprehensive. It also mentions that conflicting data was received from different Govt. Depts and that boundaries of MLs were not marked on the ground. In some cases, wooden pillars were being used.

(ii) It is not only the Justice Shah Commission Report which has reported illegal mining in Goa. There is independent concurrence also from the CEC on several of the illegalities raised in the JSCR and concurrence also on the remedial actions to be taken. (On many of these issues, the PAC report – then chaired by the present CM – also shares the same opinion.) The points of agreement are laid out in a table prepared by the petitioner for this Hon'ble Court (which is annexed to this rejoinder submission).

(iii) As regards the violations of various provisions of the MMRD Act and the MCR Rules highlighted in the Justice Shah Commission report, this Court may not find it necessary to go into each violation since the leases in Goa have reached the end of the first renewal under section 8(2) of the MMDR Act. Petitioner has not refuted the arguments advanced on the various provisions of law raised in the JSCR nor countered the IAs filed by the mining companies, as this Hon'ble Court is not examining individual cases in the present proceeding. Petitioner will make its submissions at any appropriate enquiry / forum decided by this Hon'ble Court to examine the illegalities of individual mining leases.

(iv) In response to the claim of deemed extension of mining leases, petitioner is setting out the legal provisions as follows:

I: <u>Validity of leases in Goa ended in 1997</u>

1987 Abolition Act: All concessions are converted into leases with a lease period validity of 6 months. All deemed leases listed under the Act to apply for renewal before expiry of the deemed lease, i.e., within 6 months. This is first renewal of the lease under Section 8 (2) the MMDR Act.

In 1987, Section 8 (2) of MMDR Act permits a lease to be renewed for only ten years.

Accordingly, all J form applications filed by mining lease owners for first renewal are for ten years only. Therefore, whether the lease is renewed or not under the first renewal, the period of the lease under first renewal is only ten years, expiring on 21.11.1997.

All leases therefore come to an end in 1997. If there is deemed extension allowed from 1987, this will end in 1997. After that, there is no deemed extension permissible. **This is the first illegality committed in the operation of the leases**.

II. Validity of leases ended in 2007:

In January 1994, MMDR Act is amended and section 8 (2) allows a lease to be renewed for 20 years. This was not with retrospective effect.

Ministry of Mines issues a clarificatory circular to state governments and mining associations stating that as the lease period is now permissible for 20 years, for mining leases approved before January 1994, the first ten year period would be considered as the "first instalment of the first renewal" and the second ten years would be considered as the "second instalment of the first renewal, provided the lease was approved as a valid lease prior to the January 1994 amendment. (The circular is issued with respect to mining leases in Rajasthan.) The validity of the circular was not challenged. The Goa govt however extended the benefit of this legal fiction to all leases, even those which were not approved before January 1994 or which were operating on deemed extension. A number of mining leases not entitled (even as per the circular) were allowed to operate their mines beyond 1997. **This is the second major illegality.**

But assuming for the sake of argument that all mining leases in Goa were entitled to a 20 year lease and also had the benefit of "deemed extension" from 1987 till 2007, all of them would expire by 21.11.2007.

III. Second renewal can only be granted in compliance with S. 8 (3) of the MMRD Act.

Any mining lease-holder applying for second renewal in either in 1996 or in 2006 would have had to apply under 8 (3), which requires special reasons to be assigned *before* grant of second renewal. This procedure was not complied with. It cannot now be done, since the leases have already expired on 21.11.2007. However, the mines have continued to operate under "deemed extension" till 10.9.2012 when their operations were suspended by the Goa govt. **This operation on the basis of "deemed extension" is the third illegality.**

Extracted below is the Tata judgement dealing specifically with Section 8 (3)

"33. Applying the provision to the facts of the present case, it becomes clear that Sub-section (1) would be applicable to the first application for lease. Since TISCO already had a lease in existence when the Act came into force, the first clause stood exhausted. When TISCO applied for the renewal of its lease for the first time in 1973, Sub-section (2), as it stood prior to its amendment in 1986, envisaged the grant of a first renewal for a single period of 20 years, which is why TISCO was granted a renewal till 1993. When, in 1991, TISCO applied for the second renewal, the period of time envisaged by Sub-section (2) - which has always been of a total of twenty years - had lapsed, and, clearly, that application would have had to be treated as one to which Sub-section (3) applied. TISCO's second renewal was granted by the Central Government's order dated June 3, 1993 which was limited by its subsequent order dated October 5, 1993. These orders conveying the acceptance of TISCO's lease have been analysed in the impugned judgment. The High Court was of the opinion that they were unsustainable since they did not meet with the requirement of Section 8(3), which required reasons to be stated for reaching the decision that it would be in the interest of mineral development to renew TISCO's lease. The High Court noted that the Central Government had not taken into account the National Mineral Policy and the report of the Rao Committee in reaching its final decision. While interpreting the language of Section 8(3), it took note of the speech delivered by the concerned Minister in Parliament who had, in defence of a motion to drop Clause 8(3), stated as under:

...we should and must envisage conditions, though very rare, in which because of diverse circumstances some renewals may have to be made beyond those specified in Clause 8.

34. From this, the High Court inferred that the subsequent renewal of lease as envisaged and contemplated under Section 8(3) refers to 'very rare' circumstances which may require renewals to be made. The Court, therefore, held that the conditions which make for the rare cases and diverse circumstances have to be clearly and pointedly articulated, for which the recording of proper and detailed reasons was necessary.

35. It has been argued before us that the High Court had erred in referring to the speech of the Minister as it was made in a context other than that which is permitted to be accepted as a tool of statutory interpretation. We are of the view, however, that the issue can be decided without locking horns with the controversy over the situations in which utterances in the legislature are relevant for statutory interpretation. To us, the language of Section 8(3) is quite clear in its import. Ordinarily, a lease is not. to be granted beyond the time and the number of periods mentioned in Clauses (1) and (2). If, however, the Central Government is of the view that to allow a lessee's lease to be renewed further would be in the interest of mineral development, then, it is empowered to do so, provided there exist on record sound reasons for such an action and those reasons are recorded. Since such a measure has been incorporated in the legislative scheme as a safeguard against arbitrariness, the letter and spirit of the law must be adhered to in a strict manner. Tata Iron & steel v. UOI ---- AIR 1996 SC 2462; (1996) 9 SCC 709.

(v) Presently, all leases in Goa have expired on 21.11.2007, and (except for 8 leases) have not been renewed. 7 of the 8 leases are yet to sign their lease deeds. These 8 renewals, granted between 2009-2010, need to be set aside on several grounds. Firstly, they are in violation of section 8 (3) of MMDR. No special reasons are assigned for their renewal. Secondly, one lease is in the 1 km zone while 7 are in the 10 km zone and do not have NOC from the NBWL. Thirdly, in view of the Supreme Court's judgements on natural resources, leases can only be granted in a transparent manner and through competitive bidding so that maximum revenue accrues to the exchequer instead of ending in private coffers. This has not been done in so far as these 8 leases are concerned. The 8 renewals are not only in violation of the principle of intergenerational equity, but also do not stand the test of the SC judgement in the 2G scam and Presidential Reference.

7. Encroachments: Type I (overburden/waste dumps) and Type II (extension of mining pit outside lease boundaries)

Petition: There are large scale encroachments on land outside the sanctioned lease areas – between 50-400% of lease area – in the form of illegal extension of

mining pit and/or dumping of overburden waste/rejects. The Commission has estimated the loss to the exchequer from excess mining outside lease areas during the period 2006-2010 at Rs.35,000 crores. No permissions from statutory authorities have been obtained from the authorities for dumping reject waste or overburden (OB) outside the lease area. Some of the OB dumps are in forest land. The boundaries of leases are not marked by the Dept of Mines on the ground, even after decades of the industry's operation, thus facilitating these illegalities.

Respondents: *(i) Respondents have claimed that encroachments categorized in the JSCR as Type II encroachments, are erroneous in view of the DGPS survey conducted by Goa govt in 2013. GPS survey conducted by Justice Shah Commission is alleged to have error margin of 3-4 meters which would translate into extensive but erroneous encroachments. A table has been submitted to the Court to show that the DGPS survey has shown extra-lease area mining (extension of mining pit) to the extent of only 10 ha and not 500 ha.*

(ii) Though Type I encroachments, highlighted by JSCR to the extent of 2200 ha., are not disputed by any of the mining companies or the State govt., however they have submitted that these are not to be considered as illegal encroachments, as such dumping is permitted under the Environment Clearance, the Mining Plan approved by the IBM and also by the MCR Rules (64C). At any rate, the mining companies emphasize that the authorities were well aware that overburden dumps were being created outside lease areas.

(iii) The leases in Goa are small compared to Karnataka and therefore there is no alternative but to dump outside the lease area.

(iv) The dumps in Karnataka were on forest lands and therefore a cause for concern, but dumps in Goa are on private properties.

Rejoinder*:*

(i) It is important to emphasize that the DGPS survey of lease boundaries carried out in the last few months has not been conducted either by Goa Govt or Department of Mines & Geology but by the mining companies (affected parties) themselves which is unacceptable. It is important to recall that Goa govt is indicted by Justice Shah Commission for being in collusion with miners. Petitioner has been informed that in some cases portions of the mining pits have already been filled prior to the survey, and in some cases, boundary pillars have been shifted to minimise violations. (In

Karnataka, such boundary demarcations were carried out by an independent Joint Survey team under the supervision of this Hon'ble Court.)

(ii) It may be noted that the Justice Shah Commission conducted the surveys in the presence of the lessees or their agents who identified the lease boundaries to the Commission. The JSCR has observed that most of the leases did not have fixed boundary pillars and in many cases wooden pillars had hastily been put up just a week before the site visits of the Commission's officials. The Commission was assisted in making its calculations on encroachments by teams of officials of the Mines and Forest Depts who are experts in this kind of survey. The encroachments that were observed from the GPS readings of latitude and longitude, were crossed checked with the documents produced by the mining companies, identified through Google images and also verified on the ground. In other words, the Justice Shah Commission was very thorough in its work. (Vol.3, pp. 485 – 489.)

(iii) It is incorrect to say that IBM or MoEF have approved dumping of overburden outside lease area. IBM has explicitly denied that it grants any permission for dumping outside the lease. IBM response to RTI request on the subject is at Vol.5, p.42-44, of the CEC Report. Both ECs and Mining Plans state that their approvals are strictly for the lease area only and that the lessees were required to take approvals from the appropriate authorities for dumping overburden outside the lease which all respondents have not done till date. Every order approving a mining plan explicitly states: "The external dumping beyond lease area is subject to permission obtained from every concerned/affected Authority/Society. Due safety and environmental safeguards should be undertaken as prescribed by the Competent Authorities in this regard." Every EC granted is explicitly in terms of the lease and does not apply for the area outside the lease. The EC in fact refers explicitly to the lease.

(iv) PAC Report itself declares that if extraction from dumps is added to extraction from the ground, environment clearance limits would be violated.

(v) The position that dumps outside lease areas are permitted is advocated solely by the mining respondents (lease-holders) and not by the Goa govt.

Dumping of rejects with reference to the extraction of ore from the leased area is a part and parcel of mining operation and not incidental to mining

operation. The lessee is not entitled to dump such rejects outside the purview of the area leased by the Government.

By virtue of section 4 of the Act, 1957, mining operation is required to be carried out in a lease granted under the Act subject to terms and conditions as specified in the lease deed. Rule 27 of the Mineral Concession Rules, 1960, lays down conditions governing mining leases and are required to be incorporated in the lease deed. The lessee would also be required to comply with the provisions of Mineral Conservation Development Rules, 1988, framed under section 18. Rule 33 of the Rules, 1988, deals with storage of overburden or waste rock rejects, etc., generated during the mining operation via-a-vis storing in separate dumps, usually as such storage reject dumps generated during mining operation are required to be stored in the leased area and the lessee has no authority to dump any such rejects generated during the operation outside the purview of the area granted thereof.

However, in case where such storage or rejects cannot be stored in a leased area due to certain contingency like lack of space or minerals deposits in the area to be stored thereof, it is required to be removed subsequently, as a result, entailing depositing of such rejects outside the purview of leased area, then in such eventuality, the lessee would be required to seek permission from the Collector to occupy such other land as may be necessary for the purpose of subsidiary thereto, in terms of section 36 (2) of the Goa Land Revenue Code, 1968, and the Collector would be the competent authority, considering the facts, circumstances and merits of each case, where such right is to be conferred on the lessee for the purpose of occupying some other land subject to payment of compensation to be determined thereof, by the Collector. Evidently, if allowing such dumping in nearby area or land in terms of section 36 of the Code, 1968, causes environmental problems, creating difficulty for regulating land use pattern, etc., it is the Collector who has to take action and reject the permission if sought by the lessee in the matter.

Therefore, if any lessee encroaches in the area other than the one leased in terms of grant thereof, it is well within competence of the concerned authority to take appropriate action in terms of the Act and the Rules framed thereof, and the condition as laid down in the lease deed. Liberty for use of land for stacking and heaping and depositing of rejects generated during mining operation conferred in terms of Part II, para 7 of

Form K, is restricted with reference to the leased area, and the question of dumping such rejects outside the leased area indiscriminately would entail penalty or action under the Act, 1957 read with the Mineral Concession Rules, 1960. (*The above legal position is taken from a considered opinion of the Goa law department dated 17.2.2000 on precisely this issue*.)

(v) It is another matter that since large number of leases were operating under "deemed extension", most mining operations were conducted in the absence of a lease deed statutorily required under Rule 31 of the MCR, 1960.

(vi) It is incorrect to say that no damage has been done to forest areas by illegal dumps. There is enough data to prove that illegal dumps are to be found in several forest areas and this information has been placed several times in the Goa Assembly. The State Govt has in fact admitted this as it has declared it is confiscating all dumps within forest lands.

(vii) Respondents' claim that Karnataka leases are large and Goa leases small is incorrect. The evidence, in fact, is just the reverse. Petitioner can produce a table which shows this clearly.

8. Capping the annual production of ore and the principle of Intergenerational Equity (IE)

Petition: The iron ore reserves are finite and non-renewable, and the possibility of *exhaustion* of such reserves is very real. The Justice Shah Commission has estimated the total balance iron ore reserves in Goa at about 577 million tonnes. At present rate of extraction (66 MTA is collectively permitted in Goa through 139 ECs for 182 MLs), the ore would be exhausted in 9 years. Therefore, if mining is to be allowed in the future – not just in Goa, but in the rest of the country as well – it is imperative that it needs to be conducted in a manner that ensures that the principles of Sustainable Development, which includes the principle of Intergenerational Equity are strictly adhered to. For this purpose, a cap / ceiling must be fixed on the quantum of ore that may be produced annually, based on:

(i) the quantum of ore reserves known to be available *at the present time*;

(ii) the carrying capacity of the region's environment;

(iii) the infrastructure presently existing for transport of ore; and,

(iv) the principle of Intergenerational Equity.

Petitioner has urged a maximum extraction rate of 5 MTA only, to enable the ore reserves to last for at least three generations, i.e., 100 years -- a minimum, to give some meaning to the principle of Intergenerational equity.

Respondents: *The mining companies and the Government dispute that the total ore reserves in Goa are as stated in the JSCR. They give examples of increase in coal reserves from what was estimated in the 1950s and the reserves now available. Similarly, new sources of ore are constantly being uncovered as one digs deeper. Hence, the ore reserves may actually be much higher that what is presently known and therefore there is no need for either concern or a cap.*

- Agreeing that there is need for a cap on production, the State of Goa has recommended cap of 45 MTA (20 MTA fresh extraction, 25 MTA from dumps)

- The MoEF has informed the Court that it has commissioned a study by the Indian School of Mines, Dhanbad on the Environmental Impact Assessment Study of Mining in the Goa Region, whose report may help arrive at the cap figure.

- The CEC has recommended that studies similar to those which were done in Karnataka, involving ICFRE and others be carried out in Goa and based on the findings of the macro-EIA studies, the maximum permissible annual production be carried out.

Rejoinder*:*

(i) There are no provisions laid down in the MMDR Act or the MCR Rules or the MCDR Rules which keep in mind the principle of SD and Intergenerational Equity while permitting the extraction of mineral ores. In fact, conservation of minerals is understood not as conserving minerals for future generations, but in terms of removal of all ore within the particular lease area so that no mineral is left unretrieved. Approvals and ECs were granted on the basis of EIAs that also ignored this principle. There is the abdication of the State in looking after these depleting natural resources in public interest. It appears that new formulation of law is needed to ensure complete harmony between Directive Principles, IE and the demands of Art.21 and Art.14.

(ii) Petitioner submits that to determine the extent of restrictions that need to be imposed on extraction and use of natural resources, the Court needs to rely upon expert opinion, including findings of resource economists, so that it can realistically arrive at a meaningful cap on production keeping IE in mind. A

macro EIA study which includes IE demand is therefore a must to arrive at an appropriate cap figure. Neither the Indian School of Mines study nor the NEERI study appear to be clearly tasked with the issue of capping and intergenerational equity requirements. Petitioner's staff has attended a workshop conducted by the ISM on its study on 28.10.2013 in Goa and it is found the study deals largely with pollution aspects of the mining industry. It can be seen from the NEERI terms of reference annexed to the Goa govt's written submission that the NEERI study is also similar. This Hon'ble Court may therefore have to appoint ICFRE or any other competent body.

(ii) The principle of IE basically means that the development needs of coming generations must be assured. In the context of mining it means that the iron ore cannot be mined by the present generation till it is exhausted. A 20 year period – which is the period of a lease under the MMDR Act – is insufficient for this purpose. IE, to be meaningful, must encompass at least 100 years, or a minimum of three generations. The JSCR has assessed the ore reserves at 577 MT (ore removed deducted from the total known reserves). Petitioner has also attempted a calculation of the ore reserves *on the basis of information obtaining in the ECs* and has arrived at a figure of 601 MT.

(iii) All iron leases leases have expired as of 20-Nov-2007. The Govt has claimed in the Assembly that there are 1.3 billion tons of iron ore reserves in Goa. Even if we assume only half is outside ESAs and buffer zones, at a price of $100/mt and $/Rs exchange rate of 61, this would be valued at Rs. 396,500 crores. A leisurely extraction over 300 years would provide Rs. 1,322 crores each year. If the State Government reserves these areas for itself and conducts mining operations itself, the ore extracted can then be auctioned off. We may observe that the Goa Government has applied for and received a coal block for mining in Chattisgarh.

(v) The cap on production, however, is needed not just from the resource depletion point of view, but from the impact of mining activity on the environment and public health (“carrying capacity”). From the extensive evidence of environmental damage found to have occurred to Goa’s natural environment and in the absence of infrastructure, a cap would also be necessary to protect environment and public health, also Art.21 issues.

(vi) (*Petitioner is submitting a separate, comprehensive note and survey on intergenerational equity*.)

9. Ban on the Export of Iron ore

Petition: A natural corollary of the admitted reality of finite resources is a ban on the export of iron ore, which is part of the implementation of the principle of Intergenerational Equity and Article 21. Large scale exports are another form of indiscriminate production, since they are not related to country's need. Petitioner has relied on the Report of the Standing Committee on Coal and Steel (2012-13) which has recommended a ban on the export of ore in the interests of the domestic steel industry. The Justice Shah Commission also recommends ban on the export of iron ore.

Respondents:

Neither the mining companies nor the State Govt agree that export of ore from Goa may be banned, or that production of ore should be permitted only if it is for the domestic market. They have submitted that Goan ore is of very low Fe content and is not suitable for the domestic steel industry, hence export must be permitted. Secondly it also earns foreign exchange. The Ministry of Mines also does not appear to favour a ban on export of Goan ore.

Rejoinder*:*

(i) A natural corollary of the reality of finite resources is a ban on the export of iron ore which therefore becomes part of the implementation of the principle of intergenerational equity and Article 21.

(ii) It is not correct that all the ore exported from Goa is of very low quality Fe content. Large quantity of the ore being exported from Goa has between 50-60% Fe content. There is data available from Mormugao Port Trust to support this.

(iii) Even if the supposedly low Fe content ore cannot presently be utilised by the domestic industry, it will need the ore as technology improves. The Report of the Standing Committee on Coal and Steel (2012-13) has noted that iron ore is a critical raw material for steel industry, which is poised for huge capacity expansion and hence policy measures are needed to conserve this resource for long term requirement of domestic steel industry. The Committee has expressed concern that iron ore upto 64 Fe content is allowed to be exported and that export of iron ore from Goa, irrespective of Fe content, is freely allowed for export. The Committee recommends that the Govt should take immediate necessary policy measures not only to ban the export of iron ore reserves of higher grade, but also those upto 64 Fe content. (Part II of the

report: Observations and Recommendations – para 10) as even low quality areas are now utilisable by domestic industry.

10. Auction of Mining leases

Petition: The non-realisation of the true value of the natural resource amounts to cheating the people, who are the true owners of the resources, which the State holds as trustee. The mining leases have been given arbitrarily to profit maximizers for commercial exploitation, without ensuring commensurate revenue for the State exchequer and without any transparent and competitive allocation process. The State must secure maximum returns on the use of its assets and hence, further grant and renewal of mining leases, if at all, must be by auction. The MMDR Act does not prohibit auction of mining leases, but leaves the method of selection and allocation to the State Governments.

Respondents: *The Respondents have submitted that the MMRD Act does not permit auction of leases. The method of allotment of leases is spelt out in S. 11 of the MMRD Act. Further, there was a specific reference made to this section by this Hon'ble Court in the judgement on the 2G scam which recommended auction as the best method for earning maximum value for the State's natural resources.*

Rejoinder*:*

(i) Sub-soil assets, ecology and forests and natural water sequestration capacity and filtration are part of the natural wealth / assets of the people of Goa. Iron ore mining results in the consumption of the iron ore and the consequent destruction of the water aquifers and severe damage to the ecology, forests and wildlife of Goa. This is clearly a reduction in the overall wealth of Goa. Hence, as the SC has itself opined, if a natural resource is to be mined, then the highest possible value needs to be generated by the State Government.

(ii) The MMDR Act does not prohibit auction of mining leases, but leaves the method of selection and allocation to the State Governments. *Relevant section of the MMDR Act is given below*:

Preferential right of certain persons

11 (1) Where a reconnaissance permit or prospecting licence has been granted in respect of any land, the permit holder or the licensee shall have a preferential right for obtaining a prospecting licence or mining lease, as the case may be, in respect of that land over any other person:

Provided that the State Government is satisfied that the permit holder or the licensee, as the case may be,-

(a) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish mineral resources in such land;

(b) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;

(c) has not become ineligible under the provisions of this Act; and

(d) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period, as may be extended by the said Government.

2) Subject to the provisions of sub-section (1), where the State Government has not notified in the Official Gazette the area for grant of reconnaissance permit or prospecting licence or mining lease, as the case may be, and two or more persons have applied for a reconnaissance permit, prospecting licence or a mining lease in respect of any land in such area, the applicant whose application was received earlier, shall have the preferential right to be considered for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, over the applicant whose application was received later:

Provided that where an area is available for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, and the State Government has invited applications by notification in the Official Gazette for grant of such permit, licence or lease, all the applications received during the period specified in such notification and the applications which had been received prior to the publication of such notification in respect of the lands within such area and had not been disposed of, shall be deemed to have been received on the same day for the purposes of assigning priority under this sub-section:

Provided further that where any such applications are received on the same day, the State Government, after taking into consideration the matter specified in sub-section (3), may grant the reconnaissance permit, prospecting licence or mining lease, as the case may be, to such one of the applications as it may deem fit.

(3) The matters referred to in sub-section (2) are the following:-

(a) any special knowledge of, or experience in, reconnaissance operations, prospecting operations or mining operations, as the case may be, possessed by the applicant;

(b) the financial resources of the applicant;

(c) the nature and quality of the technical staff employed or to be employed by the applicant;

(d) the investment which the applicant proposes to make in the mines and in the industry based on the minerals;

(e) such other matters as may be prescribed.

(4) Subject to the provisions of sub-section (1), where the State Government notifies in the Official Gazette an area for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be , all the applications received during the period as specified in such notification, which shall not be less than thirty days, shall be considered simultaneously as if all such applications have been received on the same day and the State Government, after taking into consideration the matters specified in sub-section (3), may grant the reconnaissance permit, prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(5) Notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), the State Government may, for any special reasons to be recorded, grant a reconnaissance permit, prospecting licence or mining lease, as the case may be, to an applicant whose application was received later in preference to an application whose application was received earlier:

Provided that in respect of minerals specified in the First Schedule, prior approval of the Central Government shall be obtained before passing any order under this sub- section.]

(iii) The MMDR Bill 2011, pending in Parliament, restricts the choice of the State Government, and makes it mandatory to follow the procedure of competitive bidding where final selection is made on the basis of financial bids (auction).

(iv) There are a large number of judgements of this Hon'ble Court that deal with this issue in great detail. This Hon’ble Court has repeatedly held that natural resources are owned by the people and that the Government only acts as a trustee. As a trustee, it is the duty of the Government to recover the full value of the resource for the people. In the Meerut Development Authority case [(2009) 6 SCC 171], this Hon’ble Court held: “*It is well said that the struggle to get for the State the full value of its resources is particularly pronounced in the sale of State owned natural assets to the private sector. Whenever the Government or the*

authorities get less than the full value of the asset, the country is being cheated; there is a simple transfer of wealth from the citizens as a whole to whoever gets the assets `at a discount'."

In the 2G case (CPIL & Ors vs UoI & Ors, (2012) 3 SCC 1), this Hon'ble Court has held that "*Natural resources belong to the people but the State legally owns them on behalf of its people… The State is empowered to distribute natural resources. However, as they constitute public property/national asset, while distributing natural resources, the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest. Like any other State action, constitutionalism must be reflected at every stage of the distribution of natural resources.*" Further this Hon'ble Court in the said case held: "*As natural resources are public goods, the doctrine of equality, which emerges from the concepts of justice and fairness, must guide the State in determining the actual mechanism for distribution of natural resources. In this regard, the doctrine of equality has two aspects: first, it regulates the rights and obligations of the State vis-a-vis its people and demands that the people be granted equitable access to natural resources and/or its products and that they are adequately compensated for the transfer of the resource to the private domain; and second, it regulates the rights and obligations of the State vis-`-vis private parties seeking to acquire/use the resource and demands that the procedure adopted for distribution is just, non-arbitrary and transparent and that it does not discriminate between similarly placed private parties.*"

In the Presidential Reference on the issue of Alientation of Natural Resources (2012) 10 SCC 1, this Hon'ble Court has held that when "*precious and scarce natural resources are alienated for commercial pursuits of profit maximizing private entrepreneurs, adoption of means other than those that are competitive and maximize revenue may be arbitrary and face the wrath of Article 14 of the Constitution.*"

Justice J S Khehar in his concurring opinion in the said Presidential Reference (1 of 2012) has further elaborated the above principle by giving the example of allocation of coal blocks. The said concurring opinion states:

"*Hypothetically, assume a competitive bidding process for tariff, amongst private players interested in a power generation project. The private party which agrees to supply electricity at the lowest tariff would succeed in such an auction. The important question is, if the private party who succeeds in the award of the project, is granted a mining lease in respect of an area containing coal, free of*

cost, would such a grant satisfy the test of being fair, reasonable, equitable and impartial. The answer to the instant query would depend on the facts of each individual case. Therefore, the answer could be in the affirmative, as well as, in the negative. …If the bidding process to determine the lowest tariff has been held, and the said bidding process has taken place without the knowledge, that a coal mining lease would be allotted to the successful bidder, yet the successful bidder is awarded a coal mining lease. Would such a grant be valid? In the aforesaid fact situation, the answer to the question posed, may well be in the negative. This is so because, the competitive bidding for tariff was not based on the knowledge of gains, that would come to the vying contenders, on account of grant of a coal mining lease. Such a grant of a coal mining lease would therefore have no nexus to the "competitive bid for tariff". Grant of a mining lease for coal in this situation would therefore be a windfall, without any nexus to the object sought to be achieved. In the bidding process, the parties concerned had no occasion to bring down the electricity tariff, on the basis of gains likely to accrue to them, from the coal mining lease. In this case, a material resource would be deemed to have been granted without a reciprocal consideration i.e., free of cost. Such an allotment may not be fair and may certainly be described as arbitrary, and violative of the Article 14 of the Constitution of India. Such an allotment having no nexus to the objective of subserving the common good, would fall foul even of the directive principle contained in Article 39(b) of the Constitution of India. Therefore, a forthright and legitimate policy, on account of defective implementation, may become unacceptable in law."

The opinion in its conclusion states: "*I would therefore conclude by stating that no part of the natural resource can be dissipated as a matter of largesse, charity, donation or endowment, for private exploitation. Each bit of natural resource expended must bring back a reciprocal consideration. The consideration may be in the nature of earning revenue or may be to "best subserve the common good". It may well be the amalgam of the two. There cannot be a dissipation of material resources free of cost or at a consideration lower than their actual worth. One set of citizens cannot prosper at the cost of another set of citizens, for that would not be fair or reasonable.*"

In Union of India vs. O Chakradhar (2002) 3 SCC 146, this Hon'ble Court, while relying on CBI investigation report, held:

"If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the person who have been unlawfully benefited or wrongfully deprived of their selection, in such cases it will neither be possible

nor necessary to issue individual show cause notices to each selected. The only way out would be to cancel the whole selection."

It is a settled law that while entering into contract or while distributing largesse, the state cannot adopt a policy of 'pick & choose' or discriminate between similarly placed applicants. In R D Shetty case (1979) 3 SCC 489, this Hon'ble Court held: "*In our constitutional structure, no functionary of the State or public authority has an absolute or unfettered discretion. The very idea of unfettered discretion is totally incompatible with the doctrine of equality enshrined in the Constitution and is an antithesis to the concept of rule of law.*" Further this Court held: "*It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.*"

In the Petrol Pump allotment case (1996) 6 SCC 530, this Hon'ble Court while declaring the discretionary allotments as wholly arbitrary, nepotistic and motivated by extraneous considerations, held: "*While Article 14 permits a reasonable classification having a rational nexus to the objective sought to be achieved, it does not permit the power to pick and choose arbitrarily out of several persons falling in the same category. A transparent and objective criteria/procedure has to be evolved so that the choice among the members belonging to the same class or category is based on reason, fair play and non-arbitrariness… Lack of transparency in the system promotes nepotism and arbitrariness. It is absolutely essential that the entire system should be transparent right from the stage of calling for the applications up to the stage of passing the orders of allotment.*"

In Kasturi Lal vs State of J & K (1980) 4 SCC 1, this Hon'ble Court held: "*The Government is not free to act as it likes in granting largesse such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its*

position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in and unprincipled manner; it has to be exercised for the public good. Every activity of the Government has a public element in it and it must therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largesse, it would be Liable to be tested for its validity on the touch-stone of reasonableness and public interest and if it fails to satisfy either best, it would be unconstitutional and invalid."

This Hon'ble Court in Nagar Nigam Meerut case (2006) 13 SCC 382 analysed the law on Government contracts and held:

> "*This Court time and again has emphasized the need to maintain transparency in grant of public contracts. Ordinarily, maintenance of transparency as also compliance of Article 14 of the Constitution would inter alia be ensured by holding public auction upon issuance of advertisement in the well known newspapers…It is well settled that ordinarily the State or its instrumentalities should not give contracts by private negotiation but by open public auction/tender after wide publicity.*"

11) Connivance and collaboration of the political class in illegal mining and collapse of the administration

Petition: It is necessary to have an independent authority to oversee and regulate mining activities in Goa at least for the present, and until such time as effective mechanism is in place and the State government displays capacity to deal with mining trade with confidence. Past record has shown the State govt to be totally ineffective and extremely vulnerable to pressures from the powerful mining lobby. There is in fact continuing connivance and collaboration of the political class in the illegal mining, large scale corruption, and defrauding of the State of its revenues, while the politicians and MLAs (irrespective of their political affiliations) earned handsomely in private. The vulnerability of Goa's political class to mining-generated largesse has sabotaged democratic governance and has resulted in the complete collapse of the administration, such that no officials dared to interfere with the plunder and looting, despite protests and agitations from the suffering population, simply because the activity had the support of the highest persons in the State.

The State Govt admits that there is truth in this allegation but insists that it was prevalent only during the previous regime.

The State of Goa in its latest submission has submitted that it is capable and ready to provide adequate controls over mining to ensure that the earlier scenario is not repeated. It has submitted a table of "actions taken" as proof of its intent to effectively control mining in Goa.

Rejoinder*:*

(i) During these entire proceedings, State of Goa has been unable to show that it still retains any concern for persons other than mining lease holders which include powerful companies. In fact, its entire defence on affidavit has been a defence of the mining industry, of persons and companies who were responsible for illegal mining and illegal exports on a large-scale i.e., in fact, the beneficiaries of the kind of mining that occurred in Goa in the last 6 years. Such a stance is unacceptable. In fact, it is unconstitutional. The State must act as guardian of all the people and not a minority. The State is a guardian of the environment and trustee of the State's ecological assets and endowments. However we have merely seen Advocates-General of the State and other law officers giving legal opinions primarily to defend the actions of mining lease holders, though such high-ranking officers are constitutionally required to represent the interests of all stakeholders in judicial fora.

(ii) It is instructive to notice the futility of all Goa Govt's actions to take any action against miners who brought the State to the ban on mining. Justice R.M.S. Khandeparkar Committee was disbanded after 10 months, without reason. Complaint was filed with Lokayuktha, but Lokayuktha has resigned after 7 months. FIR has been filed against some persons including Ministers after more than a year in office. Complaint has been filed with the Crime Branch only this year, but no person has been named. No action is contemplated against mining companies or their directors.

(iii) Some 400 traders involved in illegal trade have been allowed to go scot-free. The Goa Govt has submitted that it has taken action to deregister traders and the present number of traders is substantially reduced to 47 from around 400. It is worthwhile pointing out that while traders were deregistered for their role in illegal mining trade, the absence of any investigation or prosecution has absolutely no deterrent impact and they have all gone scot free. The Shah Commission in fact has not held the traders responsible for any illegalities – in fact, the word "trader" does not appear anywhere in the JSCR.

By diverting attention to traders for illegal mining, the State Government has shown clearly that it is unable to act against the mining companies without whose actions traders could never have flourished.

(iv) The Department of Mines and Geology, Government of Goa, is grossly understaffed to carry out routine work leave alone regulating mining and preventing illegalities. There are in fact on date no senior-grade technical personnel presently in employ. Posts which required technical know-how of mining have been abolished, senior vacant posts have not been filled. The department is under the charge of civil service cadre with no expertise in mining. In a reply to un-starred question in the State Assembly on 11/10/2013, the minister of mines said that the total staff strength of Mines and Geology department was 78 Nos. Many of these are peons, clerks, assistants and typists. This is certainly not enough to regulate 100 odd working iron ore mines, another 300 odd major mineral leases and 200 odd minor mineral leases related to laterite stones and river sand. If even 20 new persons are recruited, there is no space to accommodate them in the present premises, let alone 300. Since bulk will be raw recruits, a minimum of one year's training will have to be undergone if they have to learn to deal with mining companies and lease-holders who have mined without regulation and fear of authorities for some 50 years. Several staff are under investigation.

(v) This is evident from Goa Chief Minister, Manohar Parrikar's comment while speaking at a conference hosted by the Goa chapter of the Institute of Company Secretaries of India as recently as 1st September, 2013, where he said that there is no trustworthy employee in the entire mines department, who can be entrusted the task of unravelling the findings of Shah Commission. Details: http://timesofindia.indiatimes.com/city/goa/I-need-CAs-to-unravel-mining-scam-Manohar-Parrikar/articleshow/22219870.cms

(vi) As the regulatory system to oversee legal mining in the State of Goa is still non-existent, no mining ought to commence without satisfactory regulatory system installed as per the approval of the CEC or any other agency appointed by this Court. This would also include system for transport with appropriate passes including forest transit passes which at the present moment is non-existent, and check posts.

(vii) It needs to be emphasized that despite what is sought to be made in the written submission of the AG, the new govt. assumed charge on 9 March

2012. However, large-scale extraction under deemed extension continued that year till July 31, 2012 in order to enable the companies to raise adequate stocks in case the report of the Justice Shah Commission was being acted upon and the mines closed.

12) View of Panchayats

Respondents have represented right to livelihood as a major issue in this petition, on behalf of 33 panchayats located in the mining areas of the state.

Rejoinder:

(i) The representation is made on behalf of panchayats and not on behalf of gram sabhas. To the best of the knowledge of the petitioner, there have been no gram sabhas held on the issue of mining, its ban or its re-start. It is well known that most of the panchayats from the mining areas are close to the mining respondents, in so far as most panch members own mining trucks or have been provided with mining contracts. In those cases where panchayats have tried to get gram sabhas on the issue of mining in favour of mining, gram sabhas have overruled the panchayats. For example, several public hearings held under the EIA process have gone resoundingly against start of mines. This is largely because while there may be a few persons in a village who are beneficiaries of mining, bulk of the village population invariably suffers from environmental destitution and loss of farming livelihoods.

(ii) In the case of Niyamgiri hills mining of Vedanta, the State of Orissa had also claimed that all village settlements were in favour of the mining project there. This claim was ostensibly based on panchayat resolutions. However, after this Hon'ble Court ordered that the process of consultation with tribal gram sabhas would be done afresh in the presence of officers designated by this Hon'ble Court, all gram sabhas consulted – without exception and without a single member dissenting – voted against the mining of Niyamgiri hills.

(iii) In the recent past, several panchayats in mining areas have issued costly advertisements in the national newspapers urging restart of mining without disclosing where the expenditure for these advertisements has been procured.

(iv) Even if one assumes without admitting that these representations are genuine, mining is taking place in 4 talukas out of 12 talukas of Goa. Bulk of the population of Goa (80%) as per the Regional Plan lives in the coastal

districts of Goa where no mining is taking place and does not depend on mining for its livelihood. This is further confirmed from discussion of the figures on persons employed in the mining industry.

13. Economic Submissions of AG (Goa)

(ι) The economic and employment data provided by the Govt in its recent submission needs to be placed in context and corrected. The AG makes the claim that the income generation shortfall due to the mining ban on the Goan economy is to the extent of Rs.32,000 crores for 2013-14. This would be an astounding 91.1% of the state's GDSP of Rs.35,134.58 in 2011-12! By common sense, this is fairly ridiculous claim (see table below):

	GSDP at Current Prices			GSDP at Constant Prices		
Year	**Total**	**Mining & Quarrying**	**%**	**Total**	**Mining & Quarrying**	**%**
2000-01	6,757.14	243.25	3.60%	6,093.05	213.84	3.51%
2001-02	7,097.26	280.00	3.95%	6,366.99	258.52	4.06%
2002-03	8,099.61	330.20	4.08%	6,818.49	296.46	4.35%
2003-04	9,301.35	439.78	4.73%	7,329.38	328.04	4.48%
2004-05	12,713.31	561.98	4.42%	12,713.31	561.98	4.42%
2005-06	14,326.61	669.73	4.67%	13,671.62	595.02	4.35%
2006-07	16,522.84	1,546.62	9.36%	15,041.72	933.51	6.21%
2007-08	19,564.96	2,532.55	12.94%	15,875.38	947.52	5.97%
2008-09	25,413.83	4,278.57	16.84%	17,466.18	1,115.87	6.39%
2009-10	29,125.54	5,003.45	17.18%	19,248.28	1,390.93	7.23%
2010-11	33,174.83	6,705.83	20.21%	21,201.88	1,296.50	6.12%
2011-12	**35,134.58**	6,200.33	17.65%	23,096.82	1,213.17	5.25%
Source and Notes	GSDP at Current Prices. Base year 1999-2000 for years 2000-01 upto 2003-04			Base year 1999-2000 for years 2000-01 upto 2003-04. Base year 2004-05 for 2004-05 onwards		
	Source : Economic Survey 2009-10 and 2012-13					

(ιι) The Goan economy has certainly felt some visible impact of the mining stoppage. However, much of the impact, like the statement above, is overstated and it can be well argued (see below) that in the long run, the people of Goa are better off.

(ιιι) **The impact of the stoppage on mining dependent people**: The claim that “thousands of people” became unemployed in Goa due to mining closure is vague and made without basis or statistics. Figures provided for employment due to mining are indiscriminately flouted, from 50,000 to 3,50,000. Govt of Goa recently scaled down its figures of persons affected

to 50,000 directly affected and 1,50,000 indirectly affected (in a representation to the Planning Commission which is posted at the PC's website.)

(ഖ) NCAER, in a study commissioned by Goa mining industry, estimates mining employment of 30,000, and total indirect employment dependent on mining (trucks and barges) at 45,000. However, the 2005 Economic Census in Goa showed only 6,573 mining employees. Further, in 2009-10, Sesa Goa only had 3,891 employees, while it accounted for over 1/3rd of the Goan iron ore industry – as well as operations in Karnataka, and other activities like pig iron, ships, etc. Adjusting for all these, the estimated direct employment in mining works out to 5,416.

(ഗ) The Labour Bureau's annual Employment-Unemployment Survey conducted in 2011 (prior to the mining ban) reported that Goa has the highest unemployment rate (17.9%) among the states of India. This works out to around 104,106 persons unemployed.

(ഘ) If the claim of the Goa govt is true, we would expect a massive upsurge in unemployment. This is not borne out in the official statistics. In a reply in the legislative assembly in Mar-2013, the Labour and Employment Minister put the total unemployed at 1,13,277 as on January 31, 2013, or a marginal increase of 7,171 persons since 2011. Similarly, MNREGA data accessed as of 26-Oct-2013 shows that only 1,626 households have demanded employment in Goa under MNREGA for 2013-14.

(ങ) In a reply to un-starred question 3385 in Lok Sabha on 30th August 2013 Minister of Mines stated that the total Manpower in Mining Sector (excluding fuel, power and minor minerals) in Goa was 8000 in 2011-12, 7000 in 2012-13(P) and 3000 in 2013-14(P). Thus the total employment in mining is less than 1% of Goa population of 15 lakh.

(ച) Goa government has notified on 7th March, 2013 schemes for the aid of such dependents. Around 6600 affected truckers had registered for the scheme of which around 6000 truckers were found eligible by Goa government. Similarly in a written reply to LAQ 2A in the state assembly on 11/10/2003, the minister of mines said that 2076 applications were received from the mining employees of which 285 were found eligible. This is a small section of Goa's population and does not substantiate mining as an important industry of employment generation and livelihood.

(ιξ) The liability of workers and the trucks was supposed to devolve on to their respective employers and not the government. In the past the government of Goa never accepted the burden when retrenchments occurred in business sectors other than mining. Nor did the government of Karnataka offer any scheme for the mining dependents, who became un-employed after closure in Bellary, Tumkur and Chitradurga. It is pertinent to mention here that an average person in Goa (per capita income: Rs 1,48,000 in 2009-10) has much better sustaining power than average person in Karnataka (per capita income: Rs 52,000 in 2009-10).

(ξ) **Impact on Govt finances**: It is instructive to examine the trend in mining receipts over a longer time period, and not just the past 3 years, as is being shown by the govt.

Year	Total Revenue Receipts	Mines Dept Revenue Receipts	%
2000-01	1,483.23	15.96	1.08%
2001-02	1,872.53	13.13	0.70%
2002-03	1,833.01	15.78	0.86%
2003-04	1,623.12	19.39	1.19%
2004-05	1,820.02	26.41	1.45%
2005-06	2,168.87	27.15	1.25%
2006-07	2,609.76	34.30	1.31%
2007-08	2,943.90	36.40	1.24%
2008-09	3,528.27	36.35	1.03%
2009-10	4,100.27	292.25	7.13%
2010-11	5,441.94	983.73	18.08%
2011-12	4,788.83	950.82	19.86%
2012-13 (RE)	5,393.41	339.23	6.29%
Source and Notes	CAG Reports, Budget 2013-14	PAC Report upto 2010-11. Budget 2013-14 for 2011-12. AG submission for 2012-13	

(vii) Thus it is obvious that for a very long period of time, mining had a marginal impact on the revenues of the state. We must point out that the steep jump in 2009-10 was on account of the revision in the royalty on iron ore. This was implemented by the Central Government at the urging of the Orissa and Karnataka Governments. To the best of our knowledge, the Goa Government, fully under the influence of the miners, did not make a similar representation.

(x) **Private excess profits from mining**: The natural resources are the property of the people of Goa. Under the Public Trusteeship principle, it should be the endeavour of the Government to maximize its earnings from

its iron ore. One test would be whether mining companies are earning a reasonable rate of return on their investments, say 20% on a post tax basis. (Thermal plants work @14% ROI.)

Sesa Goa is by far the largest mining company in Goa. Using its financial accounts, we have extrapolated the financials of the entire Goan iron ore mining industry, based on the GMOEA iron ore export statistics. Over an 8 year period, the excess profits of the Goan iron ore industry was Rs. 27,563 crores. Over the last 4 years, i.e., from April 1, 2008, the total revenues are estimated at Rs. 62,256, and the excess profit at Rs. 21,257 crores. Over this period, *the excess profit alone is greater than the revenue receipts of the Government.*

	Units	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	Total
Goan iron ore exports (GMOEA)	Mn Tons	23.31	25.54	30.89	33.43	38.08	45.69	46.85	38.25	**282.04**
Goan ore revenues	Rs. Cr	2,463	4,002	5,105	8,878	10,861	11,184	22,242	17,969	**82,704**
Goan PAT	Rs. Cr	710	1,381	1,623	3,676	4,029	4,690	9,473	5,120	**30,701**
Goan assets	Rs. Cr	770	1,152	1,523	1,977	1,602	1,554	5,288	1,825	
20% Return on Net Assets	Rs. Cr	154	230	305	395	320	311	1,058	365	**3,138**
Excess return	Rs. Cr	556	1,151	1,318	3,281	3,708	4,379	8,415	4,755	**27,563**
Govt. Revenue Receipts	Rs. Cr	2,169	2,610	2,944	3,528	4,100	5,442	4,789	5,393	**30,975**
Total truck + barge expense	Rs. Cr	179	235	299	325	554	743	821	694	**3,852**
Total employee expense	Rs. Cr	49	52	64	68	100	169	207	268	**978**
Total mining dependent expense	Rs. Cr	229	287	363	394	654	912	1,028	963	**4,829**

It is pertinent to note that despite such enormous profits, it is the Government that is looking after the mining dependent people, not the mining companies.

(xi) Adjusted Net Savings of Goa's population from mining

What are adjusted net savings of a population with a mining industry as in Goa? Imagine a rich aristocrat who has inherited large tracts of land from his parents. The land is so large that it beyond any dreams. The rich aristocrat has a magnificent life, a super-extravagant lifestyle. Sure enough, in a couple of decades, our aristocrat is no longer rich. What happened? He had so much income, surely he can't go bankrupt?

It turns out that whenever our aristocrat needed money, he sold some land, usually very very cheap, usually to some "friends" of his. He has so much land that he doesn't pay attention to the price he gets for his land from his

"friends" – it's just money that he needs for the diwali party tomorrow. What looked like income was really the aristocrat selling off his inheritance, reducing his wealth. Further, because the land was never valued, the aristocrat simply sold if off for whatever he got. It wasn't worth the headache of finding out the price, getting competitive bids. He never thought that a day may come when it is all over.

One objective of the Government must be the increased economic well-being of the people, which the focal point of development programmes. Traditionally, this has been measured in terms of the annual income of the people, as measured by GSDP or per capita income. Typically, economic performance is measured in terms of the growth in GSDP or per capita income.

An alternative method of measuring economic progress is the level of savings of the people, which reflects an increase in the overall wealth of the people. In theory, Income – Expenditure = Savings = Increase in Wealth. Obviously, increases in the wealth of the people would indicate positive development.

While there are no direct measures of Goa's savings, we can use the all-India savings rate to estimate the savings level in Goa:

	Units	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	Total	Source
GSDP at Current Prices	Rs. Cr	12,713	14,327	16,523	19,565	25,414	29,126	33,175	35,135	**185,977**	Goa Eco Survey
India Gross Savings Rate	%	31%	32%	33%	34%	30%	31%	33%	29%		World Bank
Goa savings from GSDP	Rs. Cr	3,941	4,585	5,453	6,652	7,624	9,029	10,948	10,189	**58,420**	Calculated

The GSDP numbers are indicating that Goa has increased its wealth by Rs. 58,420 crores over the 8 year period from 2004-05 till 2011-12.

The natural resources of Goa are part of the wealth of the people of Goa. As it relates to iron ore mining in Goa, there are three assets that are being utilized and depleted (a) the iron ore mineral resource, (b) water filtration and storage functions of the iron ore and overburden, and (c) the overall environment which is being damaged at various levels. All three are part of the inheritance from nature, and the value of their depletion should be subtracted when looking at the income of Goa (GSDP) or at the overall increase in wealth of Goa.

How do you value iron ore in the ground? Let's think about gold for a minute. Today, we can sell 24 carat gold for Rs. 33,000 per 10 grams. Now, it would be foolish to suggest that gold ore in the ground is also worth Rs. 33,000 per equivalent 10 grams. It costs money to transform gold ore into gold. If the Government owns gold ore, it can use competitive bidding to hire a contractor to extract the ore and refine it into gold. Assume that this costs Rs. 2,000 per 10 grams. The value of the gold in the ground is therefore Rs. 31,000 per 10 grams. This value of the ore is essentially the international market price of the gold minus the fair cost of extracting and process the ore to make the gold. In economic terms, this is called the "Economic Rent" of "Depletion Cost".

Note that this value is dependent on the cost of extracting & refining the gold. In some locations, the cost may be Rs. 2,000 per 10 grams. In other places, you may need to mine deep and the costs may be higher, say Rs. 5,000 per 10 grams. This gold ore is obviously worth less at Rs. 28,000 per 10 grams.

The World Bank has calculated a figure of Adjusted Net Savings at the Country level. The adjustments calculated to Net Savings are for expenditure on education (positive savings), as well as depletion in various minerals, forests and pollution impacts (negative savings). These calculations are done for each mineral separately. They are also done for each year for the period 2000-2008. These are done for each country individually taking into account their cost of extraction & processing each of the minerals.

We have used the data from the World Bank study to value only the iron ore depletion in Goa. The numbers that follow do not consider the depletion in water filtration and storage or the damage to the environment. This is just the value of the land that the aristocrat is selling off literally dirt cheap, not the value of the springs, lakes and forest and wild life on the land.

	Units	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	Total	Source
Goan iron ore exports	Mn Tons	23.31	25.54	30.89	33.43	38.08	45.69	46.85	38.25	**282.04**	GMOEA
Iron Ore Rent	$/MT	25	52	64	71	127	127	127	127		World Bank
Exchange rate INR/$	Rs/$	45.32	44.10	45.31	41.35	43.51	48.41	45.73	46.00		World Bank
Value of Mineral Depleted	Rs. Cr	2,630	5,857	8,950	9,785	20,977	28,005	27,126	22,280	**125,610**	Multiply above
Mineral Depletion / GSDP	%	21%	41%	54%	50%	83%	96%	82%	63%	**68%**	Calculated

Goa Savings	Rs. Cr	3,941	4,585	5,453	6,652	7,624	9,029	10,948	10,189	**58,420**	From above
Dissaving (Mineral depletion)	Rs. Cr	2,630	5,857	8,950	9,785	20,977	28,005	27,126	22,280	**125,610**	From above
Reduction in Goa's wealth	Rs. Cr	-1,31	1,2	3,4	3,1	13,35	18,97	16,17	12,09	**67,19**	Calculated

		1	72	97	33	3	6	8	1	**0**	
Dissaving % to GSDP	%	-10%	9%	21%	16%	53%	65%	49%	34%	**36%**	Calculated

From the above table it is clear that over an 8 year period, from 2004-05 till 2011-12, there has been a net reduction in the wealth of Goa to the extent of Rs. 67,190 crores. Over the last 4 years (2008-09 and after when leases had expired), the amount is Rs. 60,598 crores. There appears to be no awareness of these factors at the official level, as demonstrated from a plain reading of the submissions.

The responsibility for the economic well-being of the persons directly affected by mining is with the mining industry. This industry raked in windfall gains which were double the size of the Goa annual budget. Return on Investment was to the extent of 750%. The biggest company in the field, Sesa Goa, showed a ROI of 500% (the figure is calculated from data provided in its annual reports published on the website). However, none of the companies came forward to support the mining workers or truck owners, despite the fact that none of their earnings would have been possible without them. On the contrary, the State of Goa set aside Rs.135 crores from the public exchequer for providing doles to these affected persons for reasons best known to it.

In fact, State of Goa has shown itself wholly incapable of insisting that mining companies come forward to meet the survival costs of persons affected by the companies' illegal mining activities in the last six years at any rate. Since the profits of the industry were more than double the revenues of the Goa govt., the miners rule with all the implications for rule of law and sovereignty of the State. Nowhere in the world does such a democracy exist, with private parties as overlords. There is little chance that the Directive Principles of State Policy have any place in the economy of the State of Goa.

PRAYERS:

a) This Court may be pleased to determine all mining leases in the state of Goa involved in extraction of iron and manganese ore on grounds of operating outside the law, numerous illegalities, violations of Supreme Court's orders, questionably granted ECs, violations of environment, forest and mining laws and regulations. It is clear from the proceedings till date

that the entire mining scenario as it has unfolded before this Hon'ble Court is an unmitigated mess and cannot be salvaged piecemeal except by cancellation of all leases involved and starting on a clean slate.

b) This Court may also be pleased to issue a declaration that all leases in Goa have expired from 21.11.2007 after period of first renewal ended. No "deemed extension" status is therefore available to the mining lease holders after that date. This will enable the Govt of Goa to commence a fresh mining chapter in the State leaving the past behind.

c) This Hon'ble Court may be pleased to direct the MOEF/State of Goa to cancel all ECs/mining leases that fall within the ecologically sensitive areas of Western Ghats as identified as a no-mining zone by the two committees appointed by MoEF itself: 1) the WGEEP (Gadgil Committee) report and 2) High Level Expert Group (Kasturirangan Committee) Report. In Aravalli case and Doon valley case (1989 Supp (1) SCC 504), it was on the need to preserve ecologically rich areas and forests, that a complete stoppage of mining was ordered by this Hon'ble Court. For future, these areas be declared as a no-mining zone, and no fresh lease be granted in these areas. Explicit provision exists under Section 4(A) of the MMDR Act for cancellation of leases on environmental grounds. In the Bellary mining case, this Court has held it can determine leases under Article 32.

d) This Court may direct the authorities to cancel all mining leases that are located within the Madei and Netravalli WLS. This Court may be pleased to direct closure and cancellation of all mining leases within 2 km safety zone of the boundaries of WLS with immediate effect. Similarly, this Court may be pleased to direct that no mining lease will commence operations without the NOC of the Standing Committee of the NBWL. All these simple and direct orders of this Hon'ble Court have been flouted by respondents.

e) This Hon'ble Court may lay down that the principle of intergenerational equity demands that iron ore reserves must last at least a 100 years. This Court may be pleased to direct that no mining will resume in the State of Goa till an expert body carries out a macro-EIA study and is able to arrive at a reasonable cap on extraction/production of iron ore keeping in view the above principle of intergenerational equity.

f) Since exports of fast depleting iron ore reserves are inevitably linked and have a negative correlation with the demand for intergenerational equity, this Court may be pleased to impose a prohibition on export of mineral ore

from the State of Goa to foreign countries. Justice Shah Commission has also recommended a ban on export of iron ore. The ban on iron ore exports that is operating in the State of Karnataka under the orders of this Hon'ble Court, ought to be extended to the State of Goa.

g) No leases may be granted without transparent procedure and competitive bidding for maximum revenue to the public exchequer as per the decisions of this Hon'ble Court in its judgement in the 2G scam and Presidential Reference. Justice Shah Commission has also recommended that all leases be given by auction, which would ensure transparency, competition, objectivity and would ensure maximum revenue for the state.

h) This Court may direct CBI/SIT to investigate all offences connected with the findings of the Shah Commission Report and the CEC Report and take further action as per the findings and after proper investigation. CBI investigations in the State of Karnataka, which were ordered by this Hon'ble Court, have unearthed massive scams, wherein several chargesheets have been filed, several ministers, politicians, officials and mining barons have been arrested. Similar extensive investigation is required in the State of Goa, where the Goa government has admitted that rampant corruption has prevailed in the mining sector for the last several years, however, commensurate actions are yet to be taken. Specific CEC recommendations made in its Interim Report dealing with specific issues be accepted by this Hon'ble Court. There is no Lok Ayuktha as the present incumbent has already resigned. All illegal wealth accumulated by mining actors must be disgorged and persons prosecuted.

i) This Hon'ble Court may direct that evaluation of environmental damages caused by mining activity both within and outside lease areas with adequate rehabilitation plan should be scientifically done with the association of such agencies as the Centre for Environmental Management of Degraded Systems (Delhi University), which has considerable specific experience in restoration of degraded mining areas. Similarly, assessment of damage to ground water aquifers, catchment areas and water reservoirs from mining extraction activity be probed by the Central Ground Water Board in view of CEC recommendations. The Berlin II Guidelines propose association of experts who can deal with environmental problems generated by mining operations and not leave this to lease-holders themselves.

j) State of Goa may be directed to confiscate the ore (not dumps) lying at jetties, stockyards and leases which has been illegally extracted during period of deemed extension. The Govt says the figure of these stocks is nearly 12 million tonnes. Press releases by mining companies immediately after the ban stated these stocks to be in the region of 50-53 million tonnes. CEC may be directed to ensure e-auction of these stocks and put the proceeds in the Goa Govt exechequer.

k) Keeping in view the persistent failure of the MoEF in protecting environment, its collusion with the mining industry, conflicts of interest, the reckless manner in which clearances have been given, the non-implementation of conditions of the clearance, and its lack of independence from the other wings of the government that promote mining activity, this Court may be pleased to direct the constitution of an independent authority for EIA/EC independent of government and the mining companies. Such a body would include experts in ecology, environment and sustainable development and CEC. The process of environment impact assessment would be carried out by agencies appointed and selected by this expert body, and expenses would be paid by the project proponent, instead of the current system where the project proponent exercises significant control over the EIA process and report. This relief further elaborates on the directions of this Hon'ble Court in the Lafarge judgement.

l) In short, this Hon’ble may direct that all the present mining leases in the State of Goa be terminated, fresh leases be given by a transparent process of competitive bidding (auction) in non-ecologically sensitive areas which would then apply for environmental clearances from an independent regulatory body and operate their mines subject to the principles of inter-generational equity.

Dated: 29.10.2013

Prashant Bhushan
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