

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

...Petitioners

Versus

Union of India & Ors

...Respondents

WRITTEN SUBMISSIONS ON BEHALF OF THE PETITIONER

A. Background and context of the filing of the Goa Foundation's Writ Petition on mining

1. The present petition filed under Article 32 of the Constitution challenges the degeneration of the eco-sensitive region of the State of Goa, which includes its rich forests and wildlife, through illegal and unsustainable mining on a massive scale, leading to wanton destruction of ecology, loot and plunder of natural resources, windfall gains of few lease-holders, illegal exports and damage to public health, all of which happened under the blatant connivance of the State Government over the last decade. In fact, the massive plunder of natural wealth by mining companies – minimally estimated by the Justice M.B. Shah Commission at Rs.35,000 crores (Vol-III, Pg 495) – also contributed to subversion of democracy itself with large-scale collusion between the administration and those with money power.

1. Primarily, in Goa, the activity of mining is taking place in the ecologically sensitive areas of the Western Ghats – one of the world's 8 hottest biodiversity hotspots. Several parts of this mountain chain are already listed as World Heritage Sites by UNESCO. Large-scale mining has been allowed without due consideration of the impact zone on the State's water catchment areas, reservoirs, rivers, estuaries, beaches, fields – where in fact such impacts have by now already been scientifically established through official studies. Bulk of mining is taking place within close proximity of wildlife sanctuaries, in wildlife corridors, in reserved forests.

1. Mining in Goa is an old activity in the State. However, the phenomenon of unsustainable and illegal mining was stimulated in Goa around the year 2004, when

demand from China for iron ore soared. The phenomenon of Illegal mining in Goa was considered in detail by the Justice M.B. Shah Commission of Enquiry into Illegal Mining, Goa being one of the 7 states assigned to the Commission for investigation. The Commission spent several weeks over several months in Goa, made numerous visits, conducted public hearings, visited all active mining leases in the latter half of 2011 and submitted its report on the Goa mining industry to the Ministry of Mines in March 2012. This report was, however, published on the Ministry of Mines website only in September 2012, after it was placed on the table of Parliament. The report has indicted each and every mine operating in Goa, on one ground of illegality or another. The Commission's report also highlights total breakdown of governance in the State. The report is placed in Vol-1 to 3, Pg 43 – 648.

1. After the findings of the report became a major public issue, State of Goa on 10.9.2012 issued an order temporarily closing down all mines. The ground for the suspension was that "*serious illegalities and irregularities have been pointed out in the Report of the Commission concerning mining operations in the State of Goa.*" However, the order also stated that "*the suspension of mining operation shall not affect trade and transportation of ore already mined and existing in the lease hold area, in transit or stored or stocked on the jetties.*" (Vol-III, Pg 669-670)
2. The Central Government was quick to follow suit. On 14.9.2012, the MOEF issued an unprecedented order under section 5 of the Environment Protection Act, 1986, suspending 139 environmental clearances issued for mining activity in the State. The MOEF order referred to several cases in which communications had been addressed by it to the Goa Government in cases of mining violations, but the State Government had failed to act. It also concluded that the order of suspension of mining by the State Government indicated "*apprehension of large-scale illegalities and irregularities in mining operations in Goa.*" The situation therefore necessitated "*MOEF to scrutinize/ examine the details of each of the mining cases and take appropriate decision thereon following due procedure.*" At present, this status remains unchanged and both these orders, one of Goa Govt and other of the Centre, are still in force. (Vol-III, Pg 671-674)
1. The Goa Foundation approached this Hon'ble Court with the present writ petition on 25.9.2012, apprehensive that collusion between the authorities and mining companies may lead to resumption of mining before an independent review, and installation of a credible and effective system of controls. The petitioner has been pursuing illegal and environmentally unsustainable mining in the Bombay High Court for nearly two decades

and many of the illegalities documented by the Justice Shah Commission were raised by this petitioner earlier, in writ petitions filed in the High Court. (All those petitions have been withdrawn pursuant to the filing of this comprehensive writ petition.)

1. This Hon'ble Court vide order dated 05.10.2012, while issuing notice on the instant petition, was pleased to stay mining and transportation of the leases identified by the Justice Shah Commission. This Hon'ble Court also directed the CEC to examine the averments in the writ petition and the Justice Shah Commission's findings, and submit a report. CEC filed its detailed report on 07.12.2012, in 6 volumes. The recommendations made in that report are pending consideration of this Hon'ble Court.

B. Issues raised in these proceedings

1. The following issues related to sustainable development and inter-generation equity are raised in this writ petition for the consideration of this Hon'ble Court:
 - (i) Mines are operating in violation of the laws to protect forest lands and the orders of this Hon'ble Court to protect forests, national parks and wildlife sanctuaries:
 - (a) Mines are operating without forest clearances in forest areas on the strength of applications made u/s Section 24-A of the Mineral Concession Rules (deemed extension). (CEC report filed in IA No.2348-49 in WP No.202/1995.)
 - (b) Mines are operating without the NOC of the National Board of Wildlife, as required by this Hon'ble Court's order dated 4.12.2006:

“The MoEF would also refer to the Standing Committee of the National Board of Wildlife, under Sections 5 (b) and 5 (c) (ii) of the Wildlife (Protection) act, the cases where environment clearance has already been granted where activities are within 10 km zone.”

- (a) Mines are operating within wildlife sanctuaries, contrary to this Hon'ble Court's orders.
- (b) Mines are operating within 1 km safety zone, in violation of this Hon'ble Court's order dated 4.8.2006 in WP No.202/1995.

“The grant of the Temporary Working Permit would not result in any mining activity within the safety zone around such areas referred to in (ii) above, (as

an interim measure, one kilometer safety zone shall be maintained subject to the orders that may be made in I.A.No.1000 regarding Jamua Ramgarh Sanctuary.”

- (i) Besides the extensive damage to the natural environment in the mining areas including forest lands, there has been gross damage to the natural environment outside the lease areas, affecting large areas of the state upto and including the beaches and estuaries. Hence, unless the mining is strictly regulated, unless ecological considerations take the forefront, it is not possible to have any sort of sustainable development of the State.
- (ii) The conditions for protection of the environment stipulated in the environment clearances (EC) issued to mining companies have been disregarded by the industry with impunity. Extraction of ore is in excess of production limits laid down in the EC. There is also no monitoring of the conditions of the EC. The Goa mining case highlights the fact that the regulatory body for the environment, i.e., the Ministry of Environment and Forests (MoEF), has utterly failed in its responsibilities to protect the environment. Its credibility as an environment watchdog for the country's environment is at an extreme low. A large number of leases (182 at last count) have been issued environment clearance (ECs) without any consideration of sustainability (mineral reserves), inter-generational equity, cumulative impact or carrying capacity of the region. Conditions imposed to protect environment have been rarely enforced and violations have been simply ignored. For this reason, the MoEF has not denied any of the facts presented in the Shah Commission report or the report of the CEC.
- (iii) Mining adversely impacts 3 assets of the citizens (including future generations): (a) the environment, (b) the water storage and filtration capabilities of laterite and (c) the iron ore resource. However, only forests are protected by the CAMPA mechanism. The larger environment is not. Therefore, this Hon'ble Court may be pleased to consider an alternative mechanism, a multi-agency body (SPV) that may look into the environmental issues raised in this petition and examine the clearances. Without its overseeing, no environment clearance should be granted for this region. Existing ECs, now suspended, should not be restored, unless cleared by the agency and under the terms laid down by this Hon'ble Court after considering all the issues.
- (iv) There is widespread depletion of the water table and exhaustion of water resources in many villages in and around mining areas. Bulk of the ECs have been granted knowing that mining activity would intersect the ground water table. As a result, ground water aquifers in several villages in the vicinity of the mining leases have already been

destroyed permanently and people are being supplied water daily by tankers financed either by the Government or the mining companies. In most villages in these areas, large numbers of tanks, lakes, natural water springs have been ruined.

- (v) There are large scale encroachments on land outside sanctioned lease areas by the mining industry. The encroachments are in the nature of illegal extension of mining pit and / or dumping of reject material and overburden waste outside the sanctioned lease area. The boundaries of leases are not marked on the ground even after decades of the industry's operation. This has facilitated illegal mining on a large scale.
- (vi) There is loot and plunder of natural resources – similar to the plunder of such resources in other mineral-rich states like Karnataka, Orissa, Jharkhand and Chhattisgarh. This has led to a situation wherein the State has withdrawn its moral authority in large swathes of natural resource rich regions. This has been best captured by the judgment of this Hon'ble Court in Nandini Sunder's case (2011) 7 SCC 547. This Court held:

"...A development paradigm depending largely on the plunder and loot of the natural resources more often than not leads to failure of the State; and that on its way to such a fate, countless millions would have been condemned to lives of great misery and hopelessness."

"Policies of rapid exploitation of resources by the private sector, without credible commitments to equitable distribution of benefits and costs, and environmental sustainability, are necessarily violative of principles that are "fundamental to governance", and when such a violation occurs on a large scale, they necessarily also eviscerate the promise of equality before law, and equal protection of the laws, promised by Article 14, and the dignity of life assured by Article 21. Additionally, the collusion of the extractive industry, and in some places it is also called the mining mafia, and some agents of the State, necessarily leads to evisceration of the moral authority of the State, which further undermines both Article 14 and Article 21."

- (i) There is connivance and collaboration of the political class in the illegal mining, large-scale corruption, and defrauding of the State of its revenues while politicians and MLAs earn handsomely in private. The vulnerability of Goa's political class to the powerful mining lobby emanates from the large size of the profits from mining, which is twice the size of the state budget and revenues. This skew is precisely what makes the Goa government (irrespective of which political party holds the reins) and its 40 MLAs bow to the wishes of miners and sabotage democratic governance and why no cognizance

was taken of the destruction of environment and public health despite protests and agitations and court petitions.

- (ii) This paradigm is known as “resource curse” and is witnessed across the world where the regions that exploit their natural resources are paradoxically facing devastation of the environment, grinding poverty, emergence of local mafia and subversion of democracy. This scenario has been aptly recorded in the Centre for Science & Environment’s detailed report on mining in India called, “Rich Lands, Poor People.”
- (iii) Today an argument is being sought to be advanced in public forums by the Ministers, private companies and their advocates, that the orders of the Hon’ble Supreme Court in the Karnataka mining scandal, the Goa mining scandal, 2G case, coal scam, etc., are the reason for the decline in economic growth rate, private investments and depreciation of the rupee. The subtext of this argument is that plunder and loot of natural resources like coal and iron ore by a few crony capitalists with proximity to the establishment is good for the growth rate and therefore this Court should allow such a state of affairs to continue and forsake the common man. However, as has been found by experience, such a road to wealth in the hands of few companies, more often than not leads to misery and the creation of a mafia as it clearly did in Goa. Despite some 100 mines being operational in Goa, only three companies were now controlling, between themselves, 70% of the export of ore.
- (iv) Justice M.B. Shah has clearly brought out the environmental devastation, diminishing reserves, creation of a local mafia and complete collapse of the administration in the State of Goa. This even posed a threat to democracy itself as MLAs and even Ministers got into the act. Their association with illegal mining, clearly established by Justice Shah, ensured that no official would dare interfere with the plunder and looting, despite huge number of complaints. CEC, the expert committee of this Hon’ble Court, visited Goa and confirmed the findings. CEC report on Goa is no less harsh than Justice Shah in his report. Justice Shah concluded that if mining had continued as before, ore would be exhausted in 9 years. Let alone the demands of intergenerational equity, such rapacity would lead to deprivation of even the present generation!
- (v) Grant of largesse of natural resources by the Government is today leading to a situation of huge corruption, depletion of scarce resources (without regard to inter-

generational equity), environmental devastation, local discontent, conflict and displacement, without the State getting any revenue which could be used for social & economic development, and without any real benefits from these natural resources for the ordinary people. Apart from the above, this has also created a situation where the entire administration, regulators and state agencies are becoming compromised and those with money power (acquired through hugely subsidised access to natural resources) are dictating public policies in the country, as can be discerned from the Radia tapes.

- (vi) The possibility of exhaustion of ore reserves, which raises the most significant threat to intergenerational equity, is very real and likely to happen in the near future unless strict regulation of extraction is put in place. There is no ceiling or cap on the quantum of ore permitted to be extracted which is based on the carrying capacity of the land, facilities for transportation and preservation of the resource for future generations as well. According to the Justice Shah Commission report, the total balance reserves of iron ore in Goa on the leases granted ECs are about 577 million tonnes. The Commission has determined that at present rate of extraction (50 to 55 MTA), ore would be exhausted in 9 years. (Vol-3, Pg 529, para 1) This would be a complete violation of the principle of inter-generational equity recognized as part of Article 21. Ore ought not to be allowed to be extracted at a rate at which it will not last at least 100 years. Very few of the ECs granted for mining in Goa even mention the ore reserves found on the lease.
- (vii) In this connection, the situation of resource-depletion in the country needs to be noted as well: The domestic need of the steel industry in India is not more than 115-130 million tonnes of iron ore per year. However, the production of ore in the country was over 200 million tonnes, with the rest of it being exported. The Planning Commission has already warned that the iron ore reserves in the country may not be sufficient to meet the domestic steel industry's demand beyond 25 years. *Mining of ore for purpose of export therefore ought to be prohibited altogether.* This is also now the unambiguous recommendation of the Standing Committee on Coal and Steel (2012-2013) Fifteenth Lok Sabha, in its report on "Review of Export of Iron Ore Policy" submitted to Parliament on 29.08.2013. Petitioner craves to rely upon the said report, which has only recently been placed on the table of Parliament. Between 50-60% of the ore exported from India is from Goa, which is for the industrial development of China, and is therefore entirely unnecessary.
- (viii) It is unthinkable that India should destroy its own environment and deplete its natural

wealth to fill the coffers of few private companies and foreign economies. This is a recipe for disaster and ecological ruin. This Hon'ble Court should fix the permissible extraction for the State of Goa at a maximum of 5 million tonnes per year, only for use by domestic industry and not for export (as it is a non-renewable resource).

- (ix) Because of the possibilities of huge windfall revenues, there is rampant operation of mines by companies on leases not belonging to them. This is explicitly in violation of Section 37 of the Mineral Concession Rules, 1960.

Sub-rule (1) of Rule 37 of the Mineral Concession Rules, 1960:

“37. Transfer of lease –(1) – The lessee shall not without the previous consent in writing of the State government [and in the case of mining lease in respect of any mineral specified in [Part A and Part B of] the First Schedule to the Act, without the previous approval of the Central Government]-

- (a) *Assign, sublet, mortgage, or any other manner, transfer the mining lease, or any right, title or interest therein, or*
- (b) *Enter into or make any [bona fide] arrangement, contract or understanding whereby the lessee will or may be directly or indirectly financed to a substantial extent by, or under which the lessee's operations or undertakings will or may be substantially controlled by, any person or body of persons other than the lessee.”*

The Central Empowered Committee has termed this situation extremely serious. A few powerful actors now control the entire production and export, with two agencies in fact producing already more than 60% of exports, despite all the provisions of the MMDR Act and MCR Rules.

1. This Hon'ble Court has held that non-realization of the true value of a natural resource amounts to cheating the people who are the true owners of the resources. In Meerut Development case (2009) 6 SCC 171, this Court reiterated this principle of trusteeship: *“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'. This could also be called, “Proper stewardship of the assets of the State.”*
1. As far as the mining companies are concerned, they have absolutely no vested right.

Firstly, the State has only given them a lease and not any ownership. Secondly, if we apply the principles laid down in the 2G judgment (2012) 3 SCC 1 or the decision in Presidential Reference (2012) 10 SCC 1, all the leases are themselves illegal as they have been given arbitrarily to profit-maximisers for commercial exploitation of a valuable natural resource without ensuring revenue for the State exchequer and without any transparent & competitive allocation process. The validity of 95% of mining leases in Goa expired on 21.11.2007.

1. The Justice Shah Commission had urged that the State must secure maximum returns on the use of its assets by the mining industry. (Vol-1, Pg 78-79) Since the mine leases in Goa have not been auctioned, the Government has not secured even minimum returns on the use of the State's assets, some of which are non-renewable. Therefore, if mining is to continue at all in the future, (a) the existing leases should be determined (as they do not maximize value to the State) and the State must either reserve all areas to its own operations (under Section [4A] of the MMDR) and auction off the ore that has already been won, or re-auction the leases after determination, maximizing their value; (b) a ceiling / cap should be fixed on the amount of ore that may be extracted each year, depending upon the ability of the State to create alternative assets (of greater value than the ore/water/ecosystem) in order to increase the overall wealth of the people. In other words, the principle of intergenerational equity must be meaningfully implemented, which is facet of Article 21 of the Constitution.

1. The mining industry in Goa has made the State, its environment, its resources and its democratic institutions into a personal fiefdom. This Hon'ble Court needs to adopt a more stringent approach to the problems caused by mining in Goa as documented by the Shah Commission and the CEC. This Hon'ble Court may be pleased to compel the Govt through its orders till the situation improves. For example:

Despite the petition being before this Hon'ble Court for a year, no data has been provided by the Goa Govt to subvert or challenge the data produced by the Justice Shah Commission or by the CEC. The State government is unable to produce its own data on crucial issues. The mining suspension order dated 10.09.2012 talks of "verification and clearance committees" before mining can commence. However, no reports have been produced.

Nothing has been produced to show that any investigations have been carried out, or

to disclose the results of even any department-level enquiry. The Justice Khandeparkar Committee has been unceremoniously scrapped after ten months of non-cooperation by the same Government.

☒ No actions have been taken against any of the companies that had indulged in illegal mining and illegal exports. Only in August 2013 has a complaint been lodged by Goa Government before its Crime Branch and an FIR lodged.

☒ There has been absolutely no recovery of any monies owed by the mining companies to the Govt for excess mining, or illegal mining and exports, even as per the Chief Minister's own calculations as Chairman of the PAC, despite the tall promises made by the Govt soon after it took over the reins of power in March 2012. Only in August 2013 has a complaint been filed by the Government before the new Lok Ayuktha.

☒ However, the State Government has been doing its utmost to regularize and restart mining in Goa in favour of certain companies. It has collected stamp duties worth Rs. 300 crores on several leases with the ostensible purpose of legitimizing their operations. It has been declaring its intention of withdrawing its mining suspension order, even while in the same breath it has complained to the Lok Ayuktha and the Crime Branch that their investigations should examine all those that have been indicted by the Justice Shah Commission of Enquiry and the PAC Report. Despite more than one year in power, the government has been unable to produce a list of "legal" mines which it can claim are free from all illegalities.

1. It is thus abundantly clear from the response of the Goa Govt to the mining scam, the measures that it has taken so far and the affidavits filed in response to this petition, that the Goa Govt is unable to make any long-term decisions for the good of the State that may involve inconveniencing the powerful miners and the Court will therefore need to compel the govt through its orders till the situation improves. Hence, this Hon'ble Court should not hand over control and regulation of mining at the present moment to the Goa Govt. until the State Government displays adequate potential and proof of its ability to handle the ore resource in public interest and the Court is convinced of its seriousness of purpose.

A. Findings of the Justice Shah Commission of Inquiry Report on Illegal Mining in

Goa State

13. The notification setting up the Justice Shah Commission of Inquiry into Illegal Mining, listed the following illegalities that needed to be probed, namely :- (Vol 1, Pg 53)

- (a) mining without a licence;
- (b) mining outside the lease area;
- (c) undertaking mining in a lease area without taking approval of the concerned State Government for transfer of concession;
- (d) raising of minerals without lawful authority;
- (e) raising of minerals without paying royalty in accordance with the quantities and grade;
- (f) mining in contravention of a mining plan;
- (g) transportation of raised mineral without lawful authority;
- (h) mining and transportation of raised mineral in contravention of applicable Central and State Acts and rules thereunder;
- (i) conducting of multiple trade transactions to obfuscate the origin and source of minerals in order to facilitate their disposal;
- (j) tampering with land records and obliteration of inter-State boundaries with a view to conceal mining outside lease areas;
- (k) forging or misusing valid transportation permits and using forged transport permits and other documents to raise, transport, trade and export minerals;

14. The conclusion of the Justice Shah Commission in respect of mining in Goa states in relation to the above is *unequivocal*:

“From the inquiry conducted by this Commission, it is apparent that all modes of illegal mining, as stated in the above Notification, are being committed in the State of Goa.” (Vol- 1, Pg 53)

Major findings:

15. The Justice Shah Commission of Inquiry Report presents the following facts and figures

on violation of law by the mining industry in Goa.

- 1) Illegal mining by way of mining pits, overburden dumps, etc., outside sanctioned mining lease areas is quantified as Rs.35,000 crore. (Vol 3, Pg 495) Total encroachment identified is about 2796.24 Ha. Out of this encroached area, about 578.42 Ha. is illegally used for illegal extraction or removal of iron ore. (Vol -3, p. 485, 486, 488, 490, 495). The amount works out to an astounding Rs. 239,661 (Rs. 34925.9928 crores / 1457723 persons as per Census 2011) per person in Goa or Rs. 958,643 for a family of 4.
- 2) Extraction of ore in excess of EC limits occurs in a number of mining leases that were in operation. Mines which have produced ore in excess of the limits laid down under the environment clearance order – **69 leases** (Vol -1, Pg 170 – 208)
- 3) Leases operating within 1 km of wildlife sanctuaries – **33 leases** (Vol -1, Pg 126-134)
- 4) Environment clearances granted prior to Supreme Court's order dated 4.12.2006 but not referred to NBWL – **49 leases** (Vol -1, Pg 138 – 150)
- 5) Mines which have been renewed without a prior order under the FCA 1980 – **20 leases** (Vol -2, Pg 349 – 350)
- 6) Mining leases which have been renewed in violation of Rule 24A (4) (5) of MCR 1960 – **97 leases** (Vol 2, Pg 351-362)
- 7) Leases deemed rejected on the basis of Rule 24A (2) (4) (5) (6) MCR 1960 – **54 leases** (Vol 2, Pg 363-369)
- 8) Leases renewed in violation of then Rule 24A (2) of MCR 1960 and Sec. 8 (2) of MMDR 1957 – **10 leases** (Vol 2, Pg 370)
- 9) Leases operating without one renewal of application in violation of then Rule 24 A (2) (4) (5) (6) and Sec. 8 of MMDR – **16 leases** (Vol-2, Pg 371)
- 10) Leases renewed for 10 years operating under deemed extension after 10 years – **62 leases (Vol-2, Pg.374-380)**
- 11) Leases where delay in filing applications for renewal was legally condoned and mines allowed to operate – **42 leases (Vol.2, Pg.391-395)**
- 12) Leases where applications were filed after 24.11.1988 but rejected – **22 leases (Vol.2, Pg.396-397)**

- 13) Leases violating Rule 38 of MCR 1960 – **16 leases** (p 466, 467) (Vol.2, Pg.478-480)
- 14) There is complete lack of government control over the working of mining leases in Goa. (Vol.1, Pgs.71, 72, 75, 124,)
- 15) There are large scale irregularities, illegalities and corruption, abuse of law and regulations in the State. The regulatory mechanism in the State has totally collapsed. (Vo.1, p. 248, Vol.2, p.389)
- 16) There are substantial differences in the details of production of mining leases by various departments of Govt. (Vol.1, p.71)
- 17) Illegal mining has adversely affected the natural eco-system of the area. (Vol.1. p. 79, 112, 239, 247, Vol.2. p.261)

16. **Important Extracts from the Justice Shah Commission Report:**

I) General picture of mining scenario in Goa

Vol.1. Page 248:

“Inaction, delayed action and mild actions have had created fearless atmosphere, abuse of law and regulations in the Goa State. This has paved ways for large scale irregularities, illegalities and corruption. Unwarranted ‘legal opinions’, seem to be intentional, have further aggravated the matter. In all, the legal opinions, it is observed, have gone in favour of lessees and not otherwise. The regulatory mechanism has been totally collapsed and irregularities due to maladministration have risen to its peak. In the process, the sole loser is environment, eco-system of the Western Ghats, general public and treasury of Goa State.”

Vol.3, Page p.529:

“If the permission granted for extraction of 66 million tonnes by IBM and MoEF is taken into consideration, then the reserve would last only for 9 years. If 30 million tonnes is taken as average production per year, the iron ore would last for 20 years only.”

II. On the failure of the State Govt and the Central Govt:

Vol.1, Page 71:

“...it is observed that there is total collapse of fabric of monitoring and regulatory mechanism in the State.”

Vol.1. Page 72:

“It is amply clear that the Hon’ble Minister of Mines and Hon’ble Chief Minister were well aware about non- compliance of conditions and other illegalities / irregularities happening in the mining sector. Complaints regarding water pollution, natural streams, rivers, ponds, agriculture destruction and failure of horticulture crops are well known to the entire administration. But no inspection has been carried out resulted into fear-free environment which has caused loss to the ecology, environment, agricultural, ground water, natural streams, ponds, rivers, biodiversity, etc.”

Vol.1. Page 75:

“It is possible to pose a question as to whether inaction on the part of the officials of IBM and more particularly DMG of State of Goa of not inspecting mines in exercise of powers vested under a statute (Section 24 of MM(DR) Act, 1957) is a case of dereliction of duties or it is a deliberate omission which resulted into illegal mining and huge loss to Government Exchequer. It is observed that in number of occasions complaints have been received by Government of Goa through responsible persons about the illegal mining activity. Despite that, no inspections were carried out. It is clear that to avoid action the duty to inspect mines might have been evaded by DMG for such a long period i.e. more than 5 years.”

Vol.1. Page 124;

“It is pertinent to state here that such illegal act can’t happen without connivance of the politicians, bureaucrats and lessees. There is a complete collapse of the system.”

III. On the Utilisation of Public Resources

Vol.1. Page 79:

“In today’s scenario, public auction of lease hold interest is bound to tremendously increase income of the State whereby it can utilize the increased income for remedying the difficulties faced by the public.”

Vol.1. Page 247:

“Large scale mining, overexploitation of minerals would result into change of natural eco-system of the area. This will affect the Tourism Industry of State. The impact of mining including illegal mining has already been felt. The IBM and MoEF have increased production without a proper justification purely on commercial grounds ignoring the impact of mining on protected areas, environment and eco-system. Approval of increased production is also in violation of spirit of Rule 10(1) of MC(DR), 1988.”

Vol.2, Page 389:

“Minerals in Goa State are not utilized for domestic consumption. It is being exported to various countries, mainly to China. The requirement of this country for having GDP @ 8% to 10% requires large quantity of steel which cannot be met by irrational exploitation and export. The conservation of natural resources should be the prime goal of country. The trust imposed to keep in custody of the natural resources under the Constitution, the State Government including its Ministers, Bureaucrats and Executives, have totally been breached by manipulations, misinterpretation and misuse of law and power. This requires to deal with iron hands.”

Vol.3, p.523

“In the name of the development or for free trade, let us not forget our legal duty and moral obligation to protect the nature and natural resources. Commercial objectives of a few lease holders to earn more profits at the cost of society and natural resources should not be encouraged so as to have adverse impact on forest, environment and social fabrics of the State and the Country.”

IV. On illegal Mining Dumps and Encroachments:

Vol.1. Page 58-60:

Directions of the High Court dated 18.7.2003 in Writ Petition No.77 of 2001 that:

(i) No new place for dumping overburden, waste, rejects, etc. will be commenced, worked or started without the permission and approval as required under Chapter III of the Mineral Conservation and Development Rules, 1988;

(ii) No new mining dump will also be operated without first obtaining clearance under the Goa Irrigation Act, 1973;

were consistently violated by mining companies by creating new dumps wherever they chose and without approvals.

Vol.1. Page 71:

“In the years of 2008-09, 2009-10 and 2010-11, there is large quantity of difference between production (despatch) under permitted quantum and actuals. This excess difference has been conveniently shown as “ore retrieved” from old dumps. On careful examination, it is noticed that such excess production claimed to be from old dumps is actually the ore extracted on proxy from the running mines. Actual minerals were removed from mining pits of regular mines but shown as dump handling.”

Vol.3, Pages 485-486

On personal visits by the team of this Commission and also after verification with the Google Images, it is apparent that there are large extent of encroachments by various

occupants of mining leases. In the accompanying maps / image of this Chapter, area covered by A, B, C, D indicates the extent of unauthorized occupation of the adjoining areas and considered as encroachment. Wherever the extraction of iron ore is observed as encroachment, it is specified in the column of "Encroachment Area as "pit".

Vol.3. Page 488

"The total encroachment so identified is about 2796.24 Ha. Out of this encroached area, about 578.42 Ha. is illegally used for illegal extraction or removal of iron ore."

Vol.3. Page 490

"This is a serious offence and considered as theft of the government property i.e. iron ore which is removed from non leased area."

Vol.3. Page 495

"By taking average export cost @ \$ 60 per MT of Iron Ore from 2006 to 2011 with conversion rate of Rs. 47 Per US Dollar than the total loss to the State comes out as (127257400.00 x 60 x 47) Rs. 34935,9288000=00. For the actual loss to State from each mine and other illegal mining, it should be calculated based on ground realities by a team of experts in the field with latest 3D LASER Measurement Equipments and other factors."

V. On the non-implementation of NBWL Clearance

Vol.1. Page 106:

"This can be attributed to the failure on the part of the MoEF having not considered this issue with its seriousness even after a decision of National Board for Wild Life and order of Hon'ble Supreme Court of India.

Vol.1. Page 240:

"All the mining activities should be stopped with immediate effect including transportation for all mining leases where there is no approval or clearance of the Standing Committee of NBWL and are falling within 10 kms. of eco-sensitive buffer zone."

VI. On Environment Clearances and Damage to Environment and Wildlife:

Vol.1 Page 112:

"A substantial irreparable damage has already been caused to this eco-sensitive zone in Goa which is one of Hot Spot of Mega Biodiversity on the earth by extracting large quantity of Iron Ore. This could have been avoided, had there been timely action taken in the matter."

Vol.1. Page 239:

"This has caused an irreversible and irreparable damage to bio-diversity, wildlife,

environment and ecosystem as a whole in the eco-sensitive zone of the Western Ghats of State of Goa. Immediate action should be taken in this regard wherever necessary and responsibility and accountability should be fixed on the officers concerned.”

Vol.1. Page 242:

“It is noticed during field visits that the conditions stipulated in the EIA Clearances and also conditions imposed by the Chief Wild Life Warden (Goa) are not implemented and monitored at the field. No conservation wildlife plans have been prepared and implemented. The approvals of CWLW are only for name sake. They are seemed to be 'decorative gems' on paper.”

Vol.1. Page 249:

“During the investigation by the Commission, it was observed that the distance of mining leases from the nearest wildlife sanctuary are recorded wrongly in almost all cases.”

Vol.2. Page 261:

“The spirit of Environmental Clearance system has been substantially wounded, resulting into amassing of wealth by certain individuals/companies at the cost of environmental sustainability and ecosystem. The impact is so high that the environment and ecosystem in the buffer zone have been made vulnerable to withstand.”

VII. Environment/Mining Laws Violated:

Vol.2. Page 381: Violation of Rule 24A (10)

“On going through the records, submitted by the Director of Mines Department, State of Goa, it has been observed that by having apparent misinterpretation of Rule 24A (10) (amended on 27.9.1994) illegal and unlawful delay condonations, first renewals have been accorded by condoning the delay in submission of Form J applications and allegedly allowed the leases to operate under deemed extension provision. This is one of the serious illegalities committed by the State.”

Vol.2. Page 482: Violation of Rule 24A

“In number of cases, renewal applications were entertained after the expiry date and non-existing leases. Mainly, those renewal applications were filed from the year 1995 onwards. Without any authority and power with the State delay is condoned and renewal applications were entertained. While at the same time, having the same yardsticks, in some cases delay condonation applications are rejected.

“In some cases, renewal is granted in violation of the then Rule 24A (2), (4) (5) and (6) of the MCR, 1960. While in remaining cases, there is no renewal of lease and yet the

persons are permitted to occupy mines and are extracting illegally the iron ore. This is in blatant violations of all laws.

“No approval for first renewal of Central Government is obtained in number of cases though the applications are filed in time in 1988. The mines are occupied and running presently in violation of the then Rule 24A, (2), (4), (5) and (6) of the MCR, 1960. In number of other cases, the mines are running on deemed extension at the end of first renewal given for 10 years.

“In some cases, legal opinion is obtained for favouring some lease holders. However, grant of delay condonation application as discussed in the Chapter, is totally against the law.”

Vol.2. Pages 476-477: Violation of Rule 38

Rule 38 of Mineral Concession Rules, 1960:

“38. Amalgamation of leases:-- The State Government may, in the interest of mineral development and with reasons to be recorded in writing, permit amalgamation of two or more adjoining leases held by a lessee:

Provided that the period of amalgamated leases shall be co-terminus with the lease whose period will expire first.....”

“The violation of Rule 38 of MCR, 1960 is not a technical breach because the same leads to other illegalities and irregularities prejudicial to the mining activities which are otherwise codified.”

“How did 16 lease holders were able to get their mining plan to operate different leasehold areas as one unit and also obtained Environmental Clearance as one unit is a question which needs investigation and needful action thereon.

“For such violation appropriate action, including stopping of mining activities including transportation of minerals should be taken immediately.”

VIII. On non-enforcement of law by the Goa State Pollution Control Board

Vol.1. Page 98:

“The Goa State Pollution Control Board ... has allowed the situations at its lowest ebb by permitting the mining units to violate the conditions prescribed under the EC and its own conditions.”

Vol.1. Page 246:

“The GSPCB has ignored or defied the provisions of the Acts and taken a soft stand availing a long period which has facilitated illegal mining in the State at large. No action

has been taken in the claims of “waste dump” handling in the eco-sensitive zone. It is a major illegality taken place in Goa State causing huge loss to Govt. exchequer and environment.”

IX. On Investigations and Penalty

Vol.1. Page 120:

“It is noted here that the Director of Mines, the Secretaries of Mines and Environment, the Scientists of the Regional Office, Bangalore, MoEF New Delhi, the Chief Conservator of Forest, in the MoEF Regional office, Bangalore, the Member Secretary and Chairman of Pollution Control Board were/are responsible for non- compliance of the conditions and loss to the State. Action should be initiated against them after having identification by name.”

Vol.1. Page 124:

“Further, the mines which are running without approval is required to be stopped and the money should be recovered at the rate of export price or market price whichever is applicable. Other consequential action should also be taken.

Vol.2. Page 269:

“There should be further enquiry/investigation on certain specific violations committed by lessees and involvement of officers/officials/politicians in the subject matter by a competent agency.”

Vol.2. Page 383:

“The iron ore extracted and dispatched from these mining leases [delay condoned] should be considered as illegal / irregular and unlawful and amount at market / export rate thereof should be recovered. Penal action should be initiated against all responsible in this act of hatching conspiracy for approval of leases. There is criminal misconduct on the part of officials, officers and ministers, who were part of processing the cases illegally and their approval of delay condonation, renewal, etc. and allowed in certain cases to operate the mine even before reaching finality of approvals.”

X. On Mine lessees / mine operators:

Vol.1. Page 99:

“Allowing to continue and non initiation of prosecution against the violators (lessees) has caused fear free atmosphere and ways for illegalities.”

Vol.1. Page 79:

“This Commission has observed that natural resource namely iron ore has made only few persons billionaires who are holding leasehold interest in mining of iron ore and tribals/ villagers from where the minerals are transported / exported are suffering adverse

environmental effects, their drinking water remains polluted and roads remains badly damaged/congested. Nobody has bothered for remedying their difficulties on the ground of alleged lack of funds.”

D. Findings of the Central Empowered Committee on its examination of the Justice Shah Commission’s Report:

17. The CEC’s Report is based on site visit to Goa and information provided by the Ministry of Environment, the State of Goa, the associations of mining industries, lease-holders and the petitioners and examination of the Shah Commission report.

18. The CEC has identified the following important issues for the consideration of the Court (para 30 and paras 112-120):

1. Environment clearances have been granted to leases within the wildlife sanctuaries – 19 cases.
2. Environment clearances to mining leases within one km – 23 cases
3. Environment clearances to mines within 10 km without permission of NBWL held – 120 cases.
4. CEC has examined several cases of violation of Rule 37 of MCR 1960.
5. Complete lack of control on production and transportation of ore from mining leases, illegal mining, overburden dumps outside lease areas etc.
6. Illegal mining (mining pits and overburden dumps) outside the sanctioned lease areas.
7. Production of iron ore beyond permissible limits laid down in the environment clearance.
8. Infrastructure is inadequate for the present level of mining.
9. There is need to prescribe a CAP on the maximum permissible annual production from all mining leases in Goa.
10. There are large number of leases where extraction of ore is being undertaken below ground water table. Mining leases which have gone below the water table

should be halted except in very exceptional cases.

11. Erroneous environmental clearances – e.g., status of land is mentioned as non-forest whereas lease area comprises partly/wholly forest.
12. Some leases located in catchment area of Selaulim dam which meets the drinking water of south Goa.
13. Renewal applications made after due date and delay have been condoned by State Government.
14. Within 2006-2007 to 2010-2011 illegal exports were to the tune of 395.645 lakhs tons (p.73)
15. Mineral extraction from dumps require environment clearance (p. 98).

19. Important Extracts from the CEC Report:

(i) General Findings:

CEC Report, Page 96; Para 121: “...The mining operations in Goa have violated with impunity the relevant Acts, Rules and Regulations and orders of this Hon’ble Court.”

CEC Report, Pages 91-92; Para 112. “As per the environment clearances granted by the MoEF to the 183 mining leases the total permitted production would work out to around 65 Million MT per annum. In addition, there are a number of other mining leases for which the terms of reference have been approved by the MoEF and the public hearings are in progress or have concluded. The existing infrastructure facilities, the proven and probable mineral reserves and the area available for overburden dumps will under no circumstances permit such a level of mining in an environmentally sustainable basis, There is therefore a real need to prescribe a cap on the maximum permissible annual production from all the mining leases located in each of the four talukas.”

(i) On the failure of the State authorities:

CEC Report, Page 71: paras 83-84

Para 83. “Unlike the other major iron ore producing States, no such system exists in the State of Goa. There is no system of periodic verification of the iron ore produced in the mining leases, payment of royalty after such verification, issue of permits for transportation of mineral by the Mining Department, issue of transit permits by the Forest Department, reconciliation of the quantity of the mineral stated to have been produced in the mining

lease with the quantity of the mineral for which royalty has been paid and transit permits have been issued, verification of the transit permits at the check posts, verification of the quantity of the mineral exported/domestically used vis-à-vis the quantity legally produced. There is absolutely no system / Rules in existence for checking / verification the actual quantity of the iron ore produced and transported from the mining leases. Consequently, illegal mining can easily be undertaken outside the mining lease areas and which can conveniently be shown to have been done legally in the lease area.”

CEC Report, Page 72, Para 84. “Under the provisions of the MMDR Act, 1987 and the rules made there under, the lessees are required to file Monthly Returns and Annual Returns (Forms F-1 and H-1) with the IBM with copies to the Mines Department of the State Government. There does not appear to be any effective system in place for verifying the details given in the Annual Returns with the Monthly Returns and the details given in the Annual Returns with the quantities of mineral for which royalty has been paid, transported, exported and other details. In a number of returns the details of the opening balance plus production minus dispatch do not tally with the closing balance. The quantity of ROM mineral used during the month / year does not tally with the production details of the lumps and fines. The closing balance of a month / year does not tally with the opening balance of the next month / year.”

(i) On Environment Clearances:

CEC Report, Page 94; Paras 116 – 117

Para 116. “In a number of environmental clearances the status of the land is mentioned as non-forest whereas the lease area comprises partly / wholly of forest land. The Additional PCCF, Southern Region Office of the MoEF may be asked to verify all the environmental clearances and wherever the lease is found to contain forest land (but in the environmental clearance / application for the environmental clearance the status is mentioned as non-forest land) the environmental clearances should be kept in abeyance and appropriate action against the concerned lessee and others should be taken.”

Para 117. “The environmental clearances for the mining leases containing forest land should become effective only after the grant of approval under the Forest (Conservation) Act, 1980 for the non-forestry use of the forest land.”

(i) On Mining Operations and Water Sources

CEC Report, Page 94; Para 118. “During the site visit the CEC visited three mining leases located in the forest areas falling in the catchments area of Selaulim Dam and which meets the drinking water requirement of South Goa. During the site visit a number

of representations were received by the CEC stating that the mining leases including the above three have been contaminating the water supply in the reservoir thereby adversely affecting the quality of potable water in the Dam.”

CEC Report, Page 93; Para 114. “There are a large number of mining leases wherein the extraction of mineral below the ground water table has been permitted / is being undertaken. During the site visit the CEC received a number of representations that the mining below the ground level is adversely affecting the water availability in the nearby areas and such mining is damaging the aquifers and consequently the charging of the ground water is adversely affected. It has also been represented that such mining is resulting in increased salinity of the ground water and that the silt deposition from the mining overburden has degraded the soil fertility in the adjoining agricultural fields. Almost all the dug wells have dried up.”

(i) On Exporting Mining dumps:

CEC Report, Page 97; Para 123. “During the last two years more than 20 Million MT of iron ore is stated to have been produced from the overburden dumps located outside the mining lease areas without environmental clearance, approved mining plan and / or approval of competent authorities. There was no system of verifying the actual quantity of mineral produced from such overburden dumps.”

CEC Report, Page 78; Para 94. “The CEC is of the considered view that in view of (a) the complete absence of an effective system of checks and balances regarding the actual quantities of mineral produced and transported from the mining leases and verification of the mineral during transit, (b) lack of reliable details of the legal and illegal overburden dumps lying within the lease and outside the lease and (c) in the absence of the reliable data regarding sub-grade mineral available in each of the overburden dumps within the lease and outside the lease and also (d) in the absence of any effective mechanism to regulate the working of the overburden dumps, particularly lying outside the lease area, the production details of the mineral stated to have been extracted from the overburden dumps cannot be accepted.”

(i) On Mining Law Violations

CEC Report, Page 97; Para 124. “A very large number of mining leases were being operated by persons other than the lessees and in flagrant violation of the provisions of the MCR, 1960 and in all probability with the tacit approval of the State Government. Based on the unregistered and dubious General Power of Attorneys and other documents, the mining lease have been allowed to be operated by persons having clout by treating the

leases granted to individual persons as those granted to partnership firms and the inclusion of such persons as partners in the firms (and retirement of the genuine lease holders). Two of such leases were being operated by the subsidiaries of a company registered outside India.”

CEC Recommendations for directions from Supreme Court of India:

20. The CEC has made several significant recommendations for directions from this Hon'ble Court:

CEC Report, Pages 100-109, Para 134:

- A. The environmental clearances granted by the Ministry of Environment & Forests, Government of India (MoEF) for the 19 mining leases located within the Wildlife Sanctuaries and for another 23 mining leases located within a distance of upto 1 km from the boundaries of nearby National Parks / Sanctuaries (and in other similarly placed cases), being in violation of this Hon'ble Court's orders dated 14th February, 2000 and 4th August, 2006 and subsequent orders, may be revoked by this Hon'ble Court. ... The mining operations in such mining leases may be prohibited. [Page 101, No.I]
- I. The MoEF, may be directed, in compliance of this Hon'ble Court's order dated 4th December, 2006, to place the environmental clearances granted for 120 mining leases located within a distance of upto 10 kms of the National Parks / Sanctuaries (excluding those dealt with at sub-para I above) before the Standing Committee of the National Board for Wildlife (NBWL) for its consideration (and other similarly placed cases). [Page 101, No.II]
- I. The Additional Principal Chief Conservator of Forests, Regional Office, MoEF, Southern Region, Bangalore may be directed to verify ... that (a) the mining operations will not have adverse impact on the flora, fauna or Wildlife habitat and (b) the distance of the National Parks / Wildlife Sanctuaries and the status of the forest areas have correctly been stated in the environmental clearances / applications for seeking environmental clearances. [Page 102, No.III]
- I. This Hon'ble Court may consider taking a decision regarding validity of such

environmental clearances after considering the recommendations of the Standing Committee of the NBWL, the Report of the Additional Principal Chief Conservator of Forests, Regional Office, MoEF, Bangalore and other information / details. Till then the such environmental clearances may be directed to be held in abeyance. [Page 102, No.IV]

- I. The environmental clearances granted for the mining leases comprising of wholly / partly forest land may be directed to become operative only after the approvals under the Forest (Conservation) Act, 1980 for non-forestry use of the forest lands included in the mining leases are granted and that till then all such environmental clearances should be held in abeyance and the mining operations may not be permitted to be resumed. [Page 103, No.V]

- I. The State of Goa may be directed to constitute a Committee under the Chairmanship of the Chief Secretary, Goa with (a) the Principal Secretary, Mines, Government of Goa, (b) Additional Principal Chief Conservator of Forests, Regional Office, MoEF, Southern Zone, Bangalore and (c) an officer not below the rank of Joint Secretary, to be nominated by the Secretary, Ministry of Mines, Government of India as its Members...to ascertain...the details of the mining leases which have been operated by persons other than the lease holders and in violation of the Rule 37 (1) of the Mineral Concession Rules, 1960. ... The mining leases which are prima facie found to have been involved in violation of Rule 37 (1) Mineral Concession Rule, 1960 may not be permitted to resume mining operations. The State of Goa may be directed to take immediate action for determination of the mining leases found to have been operating in violation of Rule 37 (1) of the Mineral Concession Rule, 1960 in accordance with Rule 37 (3), Mineral Concession Rule, 1960. [Page 103-104, Nos.VI-VIII].

- I. The State of Goa may be directed to ascertain the lease wise details of the iron ore legally produced by the lease holders from the year 2005-2006 onwards ... qua the consignor wise details of the iron ore of Goan origin exported and used domestically and based thereon quantify the illegal iron ore exported by the consignors. [Page 105, Nos.X].

- I. The State of Goa may be directed that the extraction of mineral from the overburden dumps located outside the approved mining lease areas should not be permitted till an environmentally sustainable Scheme of Mining for the removal of mineral from

overburden dumps is prepared along with the relevant information regarding the ownership of the dumps, realistic assessment regarding mineral available (grade wise) in such dumps and approved by the statutory authorities and permitted by this Hon'ble Court. [Page 106, No.XI].

- I. The Indian Council for Forestry Research and Education (ICFRE), Dehradun may be directed to carry out Macro Level EIA Studies regarding the impact of mining in the State of Goa and to suggest Taluka-wise ceiling on production from all the mining leases. [Page 107, No.XIII].

- I. The State of Goa may be directed to engage reputed agency such as the Indian Council for Forest Research and Education, Dehradun for preparation of the lease-wise R&R Plans. The "guidelines for preparation of the R&R Plans" approved by the this Hon'ble Court by order dated 13th April, 2012 for the purpose of preparation of the R&R Plans for the mining leases in Districts, Bellary, Chitradurga and Tumkur in the State of Karnataka may be directed to be followed with appropriate modifications as considered necessary and with the approval of this Hon'ble Court. [Page 107, Nos.XIV].

- I. In conclusion, the mining operation may be allowed to be resumed in the State of Goa by the mining leases not found to be involved in any illegalities only after (a) the Macro Level EIA study Report of the ICFRE is received by this Hon'ble Court and a decision regarding the Taluka wise ceiling on permissible annual production from all the mining leases is taken (b) the survey and demarcation of the mining leases by the team constituted by this Hon'ble Court is completed and (c) the R&R Plans are prepared and lease wise permissible annul production are fixed after considering the mineral availability, area available for over burden dump and available infrastructure facilities particularly the carrying capacity of the existing roads. The resumption of mining operations by the mining leases found to be involved in illegalities including the violation of Rule 37 (1), MCR, 1960 and working beyond the sanctioned mining lease boundaries may not be permitted till a decision regarding compensation payable by such lease holders is taken and complied with and the preparation and implementation of the R&R Plans is completed. [Page 108-109 No.XVI.]

E. Findings of the Western Ghats Ecology Experts Panel (WGEEP) on mining in State of Goa

- 1) The WGEEP Panel was asked by the Ministry of Environment & Forests to provide inputs into the current moratorium on fresh environment clearances for mining in Goa. (Vol- 8, IA. 76, Pg 24-28) In its report, the WGEEP has recommended an “indefinite moratorium on new environmental clearances for mining in Ecologically Sensitive Zones 1 and 2 in Goa and a phasing out of mining to 2016 in Ecologically Sensitive Zone 1 as defined by the WGEEP.” (Vol-6, p.106)
- 2) A total of 49 mining leases fall within Zone ESZ 1 as demarcated by the WGEEP. The balance of the mining leases operating in the State fall into ESZ 2. (Vol.8, pp. 15-23)
- 3) Most of the mining in Goa is in the Western Ghats, as per the Panel which has recommended that all mining should be excluded from ecologically sensitive areas/zones. (Vol.6, p.107)
- 4) There was total failure to implement the community resources provisions of Forest Rights Act as many mining leases were allowed to operate in tribal areas of the State without the necessary Gram Sabha approvals. (Vol.6, p.111)
- 5) The EIA process which is so central to protect the ecosystems in the Westerns Ghats was found to be defective at several points. (Vol.6. p.111)
- 6) The Environment Clearance granted stipulates that if there are any water courses, they should not be disturbed and that dense natural vegetation be maintained for a distance of 50 metres on either side of the water courses. Field inspection revealed that these conditions were totally violated; that the streams were dammed, their flow diverted and stream bank vegetation destroyed. There is on-going social strife in this area due to this and other such violations of conditions. This state of affairs has led to enormous dissatisfaction in the state regarding mining activity...It seems to us that mining in Goa has crossed the social and environmental carrying capacity of this small state. (Vol.6.p.112)
- 7) For mining in Goa, cumulative EIAs must be made mandatory rather than entertaining EIAs for individual leases in the same areas (Vol.6.p.115)

F. Summary of Issues raised in the PIL and Prayers

21. Accordingly, the issues raised in the PIL writ petition and which require this Hon'ble Court's adjudication in public interest may be grouped in five major categories. These

are listed below along with prayers for directions from this Hon'ble Court. The Shah Commission report and CEC report have concurred in several of these recommendations. The five issues are:

I) CAPPING THE PRODUCTION OF ORE IN THE INTEREST OF INTER-GENERATIONAL EQUITY, SUSTAINABLE EXTRACTION AND CONSERVATION OF ENVIRONMENT

There exists a large mineral ore asset belonging to the State of Goa and its citizens amounting to 927.172 million tonnes (MT) (as per IBM data in Shah Commission report) of which 350.000 MT is already extracted over several years, while 577.172 MT is left, valued at Rs.3 lakh crores (@US\$100 per tonne). This asset will exhaust in 9 years (SCR Vol.3.p.495). Its extraction therefore needs to be spaced out over a hundred years, on grounds of intergenerational equity and to ensure the extraction does not immobilize the environment. This Hon'ble Court is several judgments has held that "inter-generational equity" is part of the principle of "sustainable development" which is an important facet of Right to Environment and Right to Life guaranteed under Article 21 of the Constitution. In *Glanrock case (2010) 10 SCC 96*, a 3 judge bench of this Hon'ble Court held: "*Forests in India are an important part of environment. They constitute national asset. In various judgments of this Court delivered by the Forest Bench of this Court in the case of T.N. Godavarman v. Union of India [Writ Petition No. 202 of 1995], it has been held that "inter-generational equity" is part of Article 21 of the Constitution. What is inter-generational equity? The present generation is answerable to the next generation by giving to the next generation a good environment. We are answerable to the next generation and if deforestation takes place rampantly then inter-generational equity would stand violated. The doctrine of sustainable development also forms part of Article 21 of the Constitution.*"

Prayers (Intergenerational Equity):

- (i) *This Hon'ble Court may fix a cap or ceiling to be fixed on production/extraction of ore. ICFRE or similar body to do a comprehensive or macro-level EIA in connection with a cap on production and also taluka-wise ceiling on production from all mining leases (CEC Report, p.108-109). This Hon'ble Court may also associate the Central Ground Water Authority with the study.*

- (ii) This Hon'ble Court may also fix lease-wise permissible annual production (PAP) after considering mineral availability and infrastructure as per Bellary model (CEC Report, p. 107-108). At present, there are large gaps between production permitted under EC and sustainable production defined a la the Karnataka model (total reserve divided by lease period).*
- (i) This Hon'ble Court may direct renewal of leases which have since expired (21.11.2007) to be subject to auction for realising maximum value to the exchequer (SCR Vol.1. p. 79). Determination of leases is necessary in view of this Hon'ble Court's judgement on inapplicability of MMDR Act, 1957 to private lands.*

II) ACTION TO BE TAKEN AGAINST LEASES OPERATING IN VIOLATION OF LAW. THESE VIOLATIONS FALL INTO THREE CATEGORIES:

- (a) Leases Violating Supreme Court's Orders;*
- (b) Leases Violating Environment Laws; and*
- (c) Leases Violating Mining Laws.*

(a) LEASES OPERATING IN VIOLATION OF SC ORDERS:

Prayers:

- i) This Hon'ble Court may direct all leases operating within wildlife sanctuaries to be identified and cancelled (CEC Report, p.101)*
- ii) This Hon'ble Court may also pass orders on CEC report dated 30.3.2009 in IA No.2580 and 2669 in WP.No.202/1995 (which is tagged with this petition) and which deals with orders of the Collector and Revenue Officer (CRO) deleting 55 mining leases from the Netravalli WLS.*
- i) This Hon'ble may direct all leases operating within 1 km safety zone of wildlife sanctuaries and national parks to be identified and cancelled (CEC Report, p.101)*
- i) This Hon'ble Court may direct all leases operating within 10 km of wildlife sanctuaries/ National Park w/o NBWL clearance to be identified and sent to NBWL for wildlife clearance and that no resumption of mining is permitted without NBWL clearance. (CEC Report, p.101)*

(b) MAJOR VIOLATIONS OF ENVIRONMENT LAWS

1) Mining production in excess of norms imposed by Environment Clearance issued under Environment Protection Act, 1986

Production on all mining leases (ore removal from lease) is limited to the quantity declared in the environment clearance order. Both Shah Commission and CEC report that there has been excess mining on majority of mines in violation of the limits imposed in the EC. In the Karnataka judgement, this Hon'ble Court has held that activity outside sanctioned lease areas but intimately connected with mining, such as overburden dumps and dumps containing sub-grade are part of the definition of mining operations (para 40 of the Karnataka judgement).

Prayers:

- (i) This Hon'ble Court may direct investigation to be done into details of ore produced and exported.*
- (ii) This Hon'ble Court may direct imposition of penalties on mine operators who have carried out illegal mining.*
- (iii) This Hon'ble Court may direct that all dumps be notified for location, quantity and quality and that dumps be operated only after obtaining statutory approval from IBM as part of mining plan and through E-auction method through Monitoring Committee.*

2) Environment clearance orders based on erroneous/wrong information

All authorities (including Goa government) agree that information provided on the basis of which ECs have been issued for mining leases in Goa is defective. Further, the ECs have been issued per mine and w/o assessment of the cumulative impact of mines operating in clusters on Goa's environment (including rivers, fields and estuaries) outside of the leases as a whole.

Prayers

- (i) This Hon'ble Court may direct all ECs already suspended to be cancelled. The MOEF itself has already decided to review them in view of the fact that they were recklessly granted and violated with impunity. The lease holders may be asked to go through the process of EIA and EC anew where a panel of MoEF, Member CEC and an eminent*

ecologist would review the applications.

- (ii) *This Hon'ble Court may direct the MOEF to produce the report of the EAC specifically set up to decide the issue of suspension of ECs for Goa mines together with the report of the MoEF (Bangalore regional office) on violations of ECs by mining companies.*
- (iii) *This Hon'ble Court may direct the Principal Chief Conservator of Forests (Regional office, MOEF) to verify distances from sanctuaries and also certify no-impact on flora and fauna.*
- (iv) *This Hon'ble Court may direct ICFRE or any other body to conduct the macro-level EIA study.*
- (v) *This Hon'ble Court may decide on validity of environment clearances after above procedures are completed and may direct that the EC shall become operative only after FCA and wildlife clearances are also obtained.*

3) Mining leases extracting ore below ground water table

CEC recommends that mining leases which have gone below the water table should not be allowed to resume mining operations except under exceptional circumstances. (CEC Report, p.93, paras 114-115)

Prayers *(i) This Hon'ble Court may direct the Central Ground Water Authority, Central Hydrology Institute to examine the issue of permanent and irreversible destruction of ground water aquifers by mining operations especially in State's water catchment areas and may stay the operations of all mining leases that have intersected ground water till further study and orders.*

4) Violation of Forest Conservation Act, 1980

Several mining leases have been renewed without prior approval under the FCA, 1980. Leases with forest on them were permitted to operate under deemed extension clause. This Hon'ble Court may call for CEC report filed in IA No.2348-49 in WP No. 202/1995 also filed by the Goa Foundation and awaiting this Court's final order.

Prayers: *This Hon'ble Court may be pleased to decide the issue of whether mines can operate under deemed extension when FCA approval is not obtained on expiry of lease. If this Hon'ble Court accepts the CEC's recommendations in its aforesaid report, this Hon'ble Court may cancel the leases renewed without prior approval.*

(c) MAJOR VIOLATIONS OF MINING LAWS

1) Mining activity outside lease area (encroachments)

Both Shah Commission (SCR Vol.3, p.495) and CEC report (CEC Report p.89, paras 108-109) that mining pits/overburden dumps/encroachments are to be found outside sanctioned lease area. Shah Commission estimates encroached area for dumping at around 2500 ha of which 500 ha comprises of extraction of ore from mining pits extended outside the lease boundaries. The value of ore extracted from this 500 ha alone is around Rs.35,000 crores.

Prayers: (i) *This Hon'ble Court may direct that lease boundaries be surveyed and demarcated and encroachments identified by a joint survey team. (CEC Report, p. 106, para XII)*

(ii) *This Hon'ble Court may direct preparation of R & R plans for those areas mined outside the lease, with compensation charges for working areas or dumping outside the lease and that mining will not be resumed till R & R is completed. (CEC Report, p. 107, para XIV)*

1) Leases operated by persons/agencies other than lessees (Violation of Section 37 of MCR 1960)

The asset (mineral ore) was allotted to certain individuals by the erstwhile colonial regime (between 1910-1960) at nominal amounts. The original concessionaires have mostly divested their responsibilities and holdings to large mining firms, etc., without the State earning appropriate revenues if the leases had been returned or determined and then auctioned. State is the loser and so is the public good. The CEC highlights this as a serious violation (no lease can be operated or sub-contracted to another without a formal order of transfer of lease) which needs to be investigated and those leases found involved are to be determined. CEC recommends that a committee under Chief Secretary, Goa may identify the violations from the records (CEC Report, p.103-104, paras VI-VIII)).

Prayer:

This Hon'ble Court may direct setting up of the Committee as proposed by the CEC.

3) Leases operating in violation of Section 6 & 16 of the MMDR Act, 1960

Several mining lessees (companies and individuals) are mining in lease areas in excess of 10 sq.km either by buying out or sub-leasing leases from other lease owners and this constitutes violation of Section 6 r/w Section 16 of MMDR Act, 1957 Act.

Prayers on 2) & 3):

- (i) *This Hon'ble Court may direct a Committee to be set up to report on violation of section 6 of MMDR and Rule 37 of MCR 1960.*
- (ii) *This Hon'ble Court may be pleased to decide on the legality of the operation of leases by persons/firms other than the original lessee as this illegal practice is widespread in the State of Goa.*
- (iii) *This Hon'ble Court may direct that all leases that are determined on these grounds be auctioned and compensation to be paid by violators.*

4) Illegal condonation of delay in filing renewal applications under the Goa Abolition of Concessions Act, 1987

There is unanimity between Shah Commission, CEC and State Government that all 42 leases involved need to be determined. State government has issued show cause notices to the 42 lessees. This has been done in September 2012, with no further results.

Prayers: (i) *This Hon'ble Court may be pleased to direct the State of Goa to take a decision on the show cause notices issued by it, within specific time-frame.*

(ii) *This Hon'ble Court may direct that all income raised from mines cancelled on grounds of illegal condonation be recovered by the State (CEC Report, p.108, para XV))*

5) Violation of Rule 38 of MCR, 1960 (amalgamation of leases)

Shah Commission has found several mining leases operating together as a group without a necessary order of amalgamation as required under Rule 38 of MCR, 1960. (SCR Vol.II, pgs. 476-477)

Prayers: *This Hon'ble Court may direct that all operations on mines being worked as a single unit be stayed till amalgamation orders are obtained.*

6) **Misrepresentation of quantity of ore produced**

All companies have filed statutory returns in Form F1 and H1 over past 6 years. Almost all the data submitted in these forms is a fraud and cannot be reconciled. The statutory authorities receiving these returns have not scrutinised them for several years. The records are therefore in a shambles. (See first two paras of the letter of Chief Secretary, 27.11.2012, CEC Annexures Vol.1. p.102-152). There is substantial difference in quantities reported by mining lessees with different statutory authorities. All reports refer to unreconcilability of the records kept in different depts. Chief Secretary to file a statement (CEC Report, p.105-106, para X))

Prayers: *(i) This Hon'ble Court may direct investigation by a criminal agency to fix responsibility.*

(i) This Hon'ble Court may direct payment of penalties for those lessees who have filed fraudulent or misleading returns.

(ii) This Hon'ble Court may direct that all leases involved in filing false or irreconcilable returns be determined.

III. ISSUES RELATING TO DAMAGE TO ENVIRONMENT, REHABILITATION AND RESTITUTION AND PUBLIC HEALTH

Large scale damage to natural assets including agricultural lands, streams, rivers, estuaries, forests, groundwater aquifers, wildlife, etc., and utter failure of MOEF to ensure implementation of conditions in the environment clearances that had partly led to the uproar over mining in Goa. Destruction of environment has been documented by 23 scientific studies. State government now states that no more forest areas will be permitted for mining. However, damage to existing forest stretches of the Western Ghats and wildlife and ground water aquifers needs to be assessed. R & R is to be enforced on all leases involved and *environmental damage outside leases* to be assessed for rehabilitation as well.

Prayers: *(i) This Hon'ble Court may direct that no mining may restart without a comprehensive EIA study of entire Goa State to be carried out by ICFRE and Central Ground Water Authority. (CEC Report, p.107, para XVI)*

- (i) *This Hon'ble Court may direct environmental damages and reparations to be assessed not just for encroachments, but for the general environment of Goa (including estuaries, coral reefs) far outside lease areas, but impacted nonetheless by mining silt and other contaminants from mined areas and including eroding dumps.*

IV. TRANSPORT OF ORE WITHOUT CONTROLS

Transport of ore causes severe air pollution and strains the state's infrastructure. There is documented damage to public health. There is also loss of revenue when ore more than permitted is transported. There is simply no mechanism in the State for regulation and control of mining activity and transport of ore in the State. (This fact is endorsed by the Shah Commission and the CEC.) As per regulations, ore may be transported only with a valid transit pass, and if from a forest area, with a forest pass as well.

Ideally, a comprehensive data control system for mineral ores can be adapted from The Six Tools of the Regional Initiative against the Illegal Exploitation of Natural Resources (RINR) of the ICGLR, which monitors mining of various rare metals from the Great Lakes Region of Africa. This can be implemented by the IBM.

Prayers: (i) *This Hon'ble Court may direct that no transport of ore will be carried outside lease without creation of tamper-proof system of transit passes and a comprehensive, real-time system of GPS tracking and logging of trucks and other modes of transporting ore.*

(ii) *This Hon'ble Court may direct that if ore is being transported out of forest area, it will be done only under a forest transit pass issued by the Forest Department under the Indian Forest Act, 1927. (CEC Report, p.105, para IX)*

(iii) *This Hon'ble Court may also direct evaluation of impact on health of citizens, pursuant to the TERI report.*

V. CRIMINAL NEXUS BETWEEN POLITICIANS, BUREAUCRATS AND MINERS TO BE EFFECTIVELY BROKEN

There is connivance between mine operators, politicians and bureaucrats: the criminal nexus of these parties has been used to enhance private gains and defraud the State exchequer. This is highlighted by the Justice Shah Commission Report. (Vol.1, p.72; Vol.1, p.75 and Vol.1, p.124)

Prayers: *This Hon'ble Court may direct investigation by a criminal agency to fix*

liability of officials, ministers, government officials, directors of mining companies and private lease holders and that the investigation be by SIT or by CBI or by Goa Lok Ayuktha. This Hon'ble Court may also direct that prosecution will remain under the supervision of the Court.

Dated: 17.09.2013

Prashant Bhushan

(Counsel for the Petitioners)

PUBLIC ACCOUNTS COMMITTEE REPORT (EXTRACTS)

The State Government has relied upon the Public Accounts Committee report, to indicate that it is conscious of the illegalities that have occurred in mining. The present government is headed by the very same person who was also the Chairperson of the PAC at the time. Relevant portions of the PAC Report are annexed in the petitioner's rejoinder affidavit to the State of Goa. (Vol – 6, Pg 131-161)

From the Introduction:

Pg. 41: There is a complete breakdown of all machineries provided by the Statute which are required to ensure that mining is undertaken and carried out in a legally permissible manner. The term "irregular mining" is nothing but illegal mining. Mining has to be done in terms of the Mineral Conservation and Development Rules 1988 and other Rules and Regulations including the Mining Plan in force and as approved by the IBM.

Pg. 44: The Committee came to conclusion that the illegal mining has resulted in strain on the Infrastructure, Ecology, Agriculture and threatens to destroy the water security of the state, if not curbed immediately. Further, the overburden of the illegal mining is damaging the prospects of legal mining that has been going on in the state prior to Liberation. If illegalities are not curbed immediately the legal mining also may face closure, resulting into financial crisis in the interior districts of the state.

Chapter I: Condonation of delays for filing "J" form beyond stipulated date

Pg. 48 - Recommendations:

- All such condonations be reviewed and pending review production suspended immediately.
- All such condonation of delays be investigated for criminal breach of trust and responsibility fixed.

Chapter II: Ore extracted from leases that have not complied with essential conditions listed in the

Environment Clearance certificate in regards to FCA and wildlife permissions

Pg. 49 - Recommendations:

Immediate stoppage of all extraction and transportation of ore in violating the F.C.A. and Wild Life Act.

Detailed inquiries to be carried out to know how the lapses have occurred and responsibility to be fixed on erring officials of the Forest Department.

Punitive action of exemplary nature be initiated against defaulting extractors.

Chapter III: Iron Ore Extracted from Dumps without approvals

Pg. 51: Production Reports for year 2009-10 and 2010-11 indicates that during year 2009-10, dumps working to the extent of 932,73,718 tonnes and 657060 tonnes of tailing has been extracted. Similarly for year 2010-11 the quantum for dump working has increased to 15217805 tonnes and the quantum of tailings have been 230463 tonnes. Thus during two years itself the volume of dump working and tailing that has been extracted is 2,53,79,046 tonnes i.e. 27.2% of the total Extraction. There are no permissions or any directions issued by DMG in matter of working on dumps. If quantum of dumps are taken into account along with production as enclosed in the annexure there is clear violation of the limits fixed under the Environment Clearance Certificate.

It may be actually beneficial to state in terms of revenues and environmental impact if dumps are worked in controlled and regulated format. Dump working should not be permitted unless cleared and approved in advance by DMG and GSPCB. Further dumps from forest should be auctioned to generate revenue for the state. It is most important that mining particularly working on dumps should not be permitted unless the assessment of capacity of roads to handle the transportation is worked out in consultation with the local population impacted by the same. In fact the present situation of uncontrolled traffic chaos is due to uncontrolled, illegal extractions of dumps, well beyond EC limits specifically in areas such as Rivone, Cavrem Pirla, Usgao etc.

Pg. 51 - Recommendations:

Until proper regulatory mechanism is worked out, and subject to legal provisions all working on dumps be subjected to approval by Goa Pollution Control Board and DMG before start of season of extraction, on annual basis. All such working be made to submit details on monthly basis. Pending such approvals adhoc working on dumps and tailing should be stopped immediately.

All dumps be notified for quantity as also indicating the location such as lease area, non lease area and forest area.

Regulation for working on dumps and quantum be fixed in consultation with locals and before any permission is granted by taking into account the cluster of mining and transport problem posed to local population.

No storage/stocking point should be permitted unless the same is specifically approved by DMG, Commercial tax Department and Goa Pollution Control Board. All traders and exporters of Goan Ore to register compulsorily with DMG. Strict action should be initiated against those who are not registered or do not file details returns regularly as required by making appropriate amendments to various provisions in the Act.

Chapter IV: Report on an individual mining lease

Chapter V: Excess Export over Production

Pg. 57: The above data makes it clear, that the export of Goan origin ore, through Mormugao and Panaji Port totalled to 4,68,463,83 which is marginally less by 15,32,797 Tonnes than the extracted ore, as reported in its Final Data by the DMG (4,83,79,180 tonnes). However, the major surprise is export of huge quantities of unclassified ore by exporters, whose whereabouts and sources in most of the cases are not known to DMG. The Directorate of Mines has been unable to explain the details. As Karnataka has banned export, the residual Karnataka origin ore, that was exported, was meagre quantities of 3,89,219 tonnes. Thus the quantity of 56,56,450 tonnes of ore exported does not have any explanation.

Pg. 59 - Recommendations:

- A. Refer the issue of illegal mining to an independent Investigating Agency such as C.B.I./Lokayukta as the illegality is being carried out in active connivance of local politicians, bureaucrats of the Mines and Forest Departments and the Police Force at the local level. Total export for last ten years needs to be investigated to identify the source of illegal mining exported and the money trail to identify the culprits involved.
- A. Carry out transfers of most of existing officials in Forest and Police department in the talukas of Sanguem, Quepem, Bicholim and Sattari, with a view of breaking the nexus that exists. All the activities on mining front ought to be monitored by Seniors Officials from Forest and Police department besides DMG.

- A. Transport, is to be carried out, only through Regulation which is to be strictly implemented. Let every truck that moves with Ore be recorded, along with Quantum of Ore it carries.

- A. All export, to be carried out by MPT or Panaji Port should be done only on certificate to be issued by DMG indicating the details of ore, and royalty paid.

Chapter VI: Irregularities causing large scale damage to Environment

Pg. 60: The Environment Clearance Certificates that are issued by MoEF are issued without proper documentation & verifications. In fact it appears that issuance of Environment Clearance Certificate by the MoEF has become an additional farce that is being carried out to display compliance with the directions of the apex court without any serious examination of the ground. The realities Environment Clearance Certificate are issued based on the EIA reports that on number of occasion have been found to be manipulated or at the best lacking in proper data or erroneous & outdated data.

In fact, granting of Environment Clearance Certificate has become routine to such an extent that more than 150 Environment Clearance Certificates were granted in four talukas of the state, during four years while only two rejected, before a blanket suspension for issual of Environment Clearance Certificate was granted by Minister (Mines) Government of India. However Environment Clearance Certificate issued already were adequate to cause major damage to the state environment as they were based on incorrect EIA and had not taken into account the local conditions. The cluster impact of these clearances is devastating. The impact on Agriculture, Education, Water Supply, conditions for decent survival is very serious. Trucks plying with excess ore, driven by drivers without licenses and speeding beyond acceptable speed, devastated villages of Rivona, Cavrem-Pirla, Surla, Pale, Usgao, Savordem and many more besides urban areas of Curchorem, Quepem, Sankhali, Sanguem as also villages located enroute. All people in these areas have suffered an irreversible damage to their Health, Agriculture, Education of children and social life. The casual attitude of MoEF is reflected in its issuance of certificates in name of Power of Attorney holder rather than the lease holder or its Legal Heir.

Pg. 61 – Recommendations:

- A. State Government should cap the total quantities of ore that the local area can take, by clustering the leases based on their Geographical locations and available transport network. The powers to do so are available to the State Government.

- A. EIA of all the cases where the EC is granted to be evaluated under the guidance of experts and report submitted to MoEF for review of Environment Clearance Certificate wherever required. Further the

MoEF should be informed that they should not grant or renew any EC unless impact of EC due to clusters of mines and local transport infrastructure is taken into consideration.

- A. Direct the MoEF that EC without proper description of TC numbers & survey numbers of Forest area/ wildlife area will not be accepted by DMG. Non inclusion of the TC number & survey numbers has resulted in misuse of Environment Clearance Certificate.

- A. Environment Clearance Certificate should be issued only in the name of lease holder or legal heir and not to or in name of Power of Attorney holder as is the case in many Environment Clearance Certificates.

- A. No additional diversion of forest land be permitted for mining activities.