

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE**

**Execution Application No. 10/2023  
in  
Original Application No. 47 of 2012 (WZ)**

**IN THE MATTER OF:**

**Sandip Ganpat Desai &**

**Anr.**

**...Applicant**

**Versus**

**State of Goa & Ors.**

**...Respondents**

**ADDITIONAL AFFIDAVIT ON BEHALF OF THE MINISTRY OF  
ENVIRONMENT, FOREST AND CLIMATE CHANGE (RESPONDENT No.  
4)**

**MOST RESPECTFULLY SHOWETH:**

I, Dr. Dola Bhattacharjee, currently working as Scientist "B" in the Ministry of Environment, Forest and Climate Change (MoEFCC), Regional Office, Bengaluru, do hereby solemnly affirm and state as under:

1. That I, in my official capacity in the Ministry of Environment, Forest and Climate Change, Regional Office, Bengaluru i.e. Respondent No.4 in the above-mentioned matter, I am authorized and competent to swear this affidavit.



*Dola Bhattacharjee*

**Dr. Dola Bhattacharjee  
Scientist 'B'**

MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE  
Integrated Regional Office, Kendriya Sadan  
IVth Floor, E&F Wings, Bengaluru - 560 034.

2. The Hon'ble National Green Tribunal vide its order dated 01.08.2024 has directed that :

*“We find huge vagueness in the affidavit filed by the respondent No.4- MoEF&CC because it is not made clear specifically as to whether NPV was calculated by the MoEF&CC or not and if yes, what was the amount so calculated and whether the same was more than Rs.5 lakh or less than the same. Despite this, it has been written that the CA and NPV has already been realized. Therefore, we direct the respondent No.4 to file a clear affidavit stating therein all these facts regarding compliance of the order in question.”*

3. In this regard, it is submitted that the amount of Net Present Value (NPV) recovered from the User Agency (UA) against the broken up area is more than Rs. 5 lacs. That, as far as calculation of NPV is concerned, the Ministry has circulated the NPV rates to all States/UTs and the calculation of NPV is done by the concerned States/UTs as per prescribed rates. In this case the State Government vide its letter dated 07.06.2013 had intimated that NPV for the entire area of 100 ha in the instant matter was deposited by the User Agency (UA). A copy of the letter dated 07.06.2013 is annexed herewith and marked as **Annexure R4/1**.
4. That the Regional Office Bengaluru of the Ministry of Environment Forest and Climate Change has conducted a site inspection of the said area on 03.04.2024 and ascertained the broken up area to be 12.9714 ha. The User Agency has deposited an amount of Rs 8,11,22,618/- as NPV for the entire forest area of 100 ha. Out of this



*[Signature]*  
**Dr. Dola Bhattacharjee**  
 Scientist 'B'  
 MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE  
 Integrated Regional Office, Kendriya Sadan  
 IVth Floor, E&F Wings, Bengaluru - 560 034.

amount, the NPV recovered against the broken up area of 12.9714 ha comes out to be Rs. 90,79,980/-. A copy of the site inspection report is annexed herewith and marked as **Annexure R4/2**.

5. That the answering Ministry vide its letter dated 02.07.2024 directed the State Govt. that the NPV for the 17.8356 ha (12.9714ha + 4.8642) forest area for which Stage-I and Stage-II was granted shall not be refunded from the already deposited NPV amount of Rs. 8,11,22,618/-. A copy of the letter dated 02.07.2024 is annexed herewith and marked as **Annexure R4/3**.
6. It is pertinent to mention herein that the corresponding amount of NPV against the 17.8356 ha forest area is Rs. 1,40,36,606/-.
7. In view of the afore-mentioned facts and circumstances, this Hon'ble Tribunal may kindly be pleased to pass appropriate order(s).

  
**DEPONENT**

**Dr. Dola Bhattacharjee**  
 Scientist 'B'

MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE  
 Integrated Regional Office, Kendriya Sadan  
 IVth Floor, E&F Wings, Bengaluru - 560 034.



SWORN TO BEFORE ME



**B.M. CHANDRASHEKAR**  
 Advocate & Notary Public  
 B.D.A. Complex, Koramangala,  
 BANGALORE - 560 034.

Sl. No. 751 Page No. 30  
 Book No. EVI (56) Date 27/8/2024

**VERIFICATION**

I, the above named deponent do hereby verify that the contents of the above affidavit are true and correct on the basis of official record maintained by the Respondent No. 1 in daily course of its business, no part of it is false and nothing material has been concealed there from.

Verified at Bengaluru on this 27<sup>th</sup> day of August, 2024.

**DEPONENT**

**Dr. Dola Bhattacharjee**  
Scientist 'B'

MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE  
Integrated Regional Office, Kendriya Sadan  
IVth Floor, E&F Wings, Bengaluru - 560 034.



SPEED POST  
FAX

GOVERNMENT OF GOA  
Office of the Principal Chief Conservator of Forests  
Forest Department  
Panaji, Pin 403001  
Ph:- 0832-2224747, 2224748 Fax:-0832-2224748.

No.6-13-(244)-2011-FD/1414

Dated: 07/06/2013

To,  
The Director,  
Ministry of Environment and Forests,  
Government of India,  
(F C Division), Paryavaran Bhawan,  
CGO Complex, Lodhi Road,  
New Delhi 110 003.

TO (FC) *[Handwritten signature]*  
21/6/13  
URGENT  
22/6/13  
Mounto

O/O AICT (FC)  
Dy. No... 48.2...  
Date... 21/6/13

Sub:- Audit Memo No. 45 dated 11.04.2013 regarding diversion of 100 ha of forest land for renewal of deemed mining lease in favour of M/s Elray Minerals & Company in Sacorda village, Sanguem Taluka North Goa Forest Divisions.

Sir,

I am directed to refer to your letter No. 8-58/2006-FC dated 20/05/2013 on the subject cited above. The details of Net Present Value recovered for the full 100 ha. deposited in Ad-hoc CAMPA is furnished below.

In compliance with the conditions in Stage I clearance, NPV was recovered for 12.9714 ha. broken up area and 4.8642 ha. forest area to be broken up @ Rs. 7.00 lakhs per ha. The difference for Eco - Class I open forest for 12.9714 ha. @ of Rs. 0.30 lakhs / ha. and for Eco - Class I dense forest for 4.8642 ha. @ Rs. 2.39 lakhs/ha. was recovered subsequently.

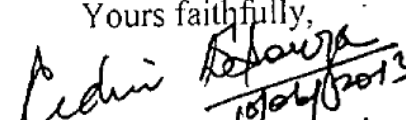
In compliance with the condition in the Stage II Clearance, NPV for the balance forest area in the lease was recovered for 48.1644 ha. as Eco - Class I open forest @ Rs. 7.30 lakhs per ha. and for 34.0000 ha. as Eco - Class I dense forest @ Rs. 9.39 lakhs per ha.

The amounts recovered and the details of deposit in Ad-hoc CAMPA account bearing account No. CA-1600 in Corporation Bank, New Delhi Branch are as below.

Date	Area	Class of Forest	Amount recovered	Date of deposit	Ad-hoc CAMPA account no.	Vr. No	Amount
20/10/08	12.9714	Open Forest	90,79,980/-	27.10.2008	CA-1600	14	1,40,81,732/-
20/10/08	4.8642	Dense Forest	34,04,940/-	27.10.2008			
19/11/08	12.9714	Difference for Eco Class-I - Open forest	3,89,142/-	24.11.2008	CA-1600	22	15,51,686/-
19.11.08	4.8642	Difference for Eco Class-I - Dense forest	11,62,544/-	24.11.2008			
26.10.08	34.0000	Dense Forest Eco Class-I	3,19,26,000/-	4.11.2009	CA-1600	14	6,70,86,012/-
26.10.08	48.1644	Open Forest in Eco Class-I	3,51,60,012/-	4.11.2009			

\*This amount includes NPV and CA charges.

The above status of recovery is submitted for favour of perusal and necessary action.

Yours faithfully,  
  
 (Cedric S. D'Souza)  
 Dy. Conservator of Forests,  
 Monitoring & Evaluation.



भारत सरकार  
GOVERNMENT OF INDIA  
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय  
MINISTRY OF ENVIRONMENT, FOREST &  
CLIMATE CHANGE  
क्षेत्रीय कार्यालय  
REGIONAL OFFICE



Kendriya Sadan, IVth Floor, E& F Wings, 17<sup>th</sup>  
Main Road, IInd Block, Koramangala, Bangalore –  
560 034.  
Tel.No.080-25635905, E.Mail: rosz.bng-  
mef@nic.in

**BY SPEED POST**  
F.No.4-GOA216/2006-BAN  
Dated the 21 May, 2024

To  
**The Assistant Inspector General of Forests,**  
Forest Conservation Division,  
Indira Paryavaran Bhavan,  
Ministry of Environment, Forest and Climate Change,  
New Delhi-110003.

**Sub:- Site inspection of mining lease with T.C. No.1/37 of M/s. Elray Minerals and Co., in the Village Sancordem, Taluka Dharbandora in North Goa Forest Division, Goa-Reg**

**Reference: - Ministry's letter No. 8-58/2006-FC dated 28.02.2024**

Sir

With reference to the Ministry's Letter No. 8-58/2006-FC dated 28.02.2024, I am directed to inform that the forest land was inspected by the DIGF(C), RO Bangalore on 3rd April 2024 along with DDGF-RO, Bengaluru, officials of State Forest Department and User Agency. Accordingly, a detailed site inspection report along with the recommendation of DDGF (C), Bangalore is enclosed for information and further necessary action.

Yours faithfully,

**(B.N. ANJAN KUMAR)**  
Asstt. Inspector General of Forest (Central)

**Recommendations of the DDGF (Central) Regional Office, MoEF&CC,  
BANGALORE**

The INSTANT proposal is regarding request for refund of compensatory levies of mining lease T.C.No. 1/37 of M/S Elray Minerals and Co. in the village Sancordem, Dharbandora Taluka in North Goa Forest Division, Goa. It is recommended for reimbursement of NPV amount for the unbroken area of the lease, since there are reasonable grounds that the mining operations have been stopped since long and the report of the state government on the broken-up area may be accepted.

  
(Dr. V. George Jenner)

DDGF (Central),  
Regional Office, MoEF&CC, Bangalore

## Site Inspection Report

**Subject:** *Site inspection of mining lease with T.C. No.1/37 of M/s. Elray Minerals and Co., in the Village Sancordem, Taluka Dharbandora in North Goa Forest Division, Goa.*

**Reference:** - *Ministry's letter No.8058/2006-FC dated 28.02.2024*

1. Ministry vide its letter dated 28.02.2024 (**Annexure I**) had directed this office to carry out a site inspection of the mining lease with TC No.1/37, Goa, regarding:
  - (i) The User Agency's request dated 12.10.2022 to refund the Compensatory levies paid towards NPV, CA, Safety Zone & fencing/ protection works.
  - (ii) Site inspection in accordance with the Hon'ble NGT order
2. The site inspection was carried out on 3<sup>rd</sup> April 2024 along with DDGF-RO, Bengaluru, CF (Conservation)-Government of Goa, DCF-North Goa Forest Division, related field staff of Goa Forest Department and representative/ Power of Attorney holder of the user agency Mr. Devendra N. Kamat (copy of PoA enclosed as **Annexure II**).

### **3. Request for refund of Compensatory levies – regarding:**

- During the site inspection it was noticed that the mining lease was not operational and there were no tell-tale signs of any mining and allied operations in the recent past. Vegetation, representative to the region, has come up in most of the area except in part of the broken-up pit and on laterite rocky patches. It was enquired with the User Agency and departmental staff if any mining operations have been carried out in the recent past. Both the user agency and the department gave the reply in negative.
4. The report of the jurisdictional DCF was accessed (**Annexure III**) and noted in its content that between 11.02.2009 (Stage II approval under FCA) and 27.10.2010 (when mining was stopped in the lease), the user agency had worked in 3 hectares + 2.5 hectares = Total 5.4 hectares, within the already broken up area of 12.971 hectares.

The KML file of the 17.8356 hectares as prepared and submitted by the DCF was verified and found that the broken-up area is within the limits of 12.971 ha. On



verification of the times-series satellite imageries (oldest available and latest available in free access) (**Annexures IV & V**), the broken-up area matches by and large with the details given by the DCF.

5. The same was corroborated with records in the Regional Office at Bengaluru:
- i. Joint Site inspection Reported by Environment and Forest Section of RO, Bengaluru submitted letter dated 4.8.2011 based on the Ministry's direction dated 19.5.2011 (**Annexure VI**)
  - ii. Monitoring report by RO Bengaluru dated 25.10.2012 (**Annexure VII**)

In both the reports there are no adverse findings as to working beyond the broken-up area.

6. Photos taken during site inspection are enclosed for ready reference (**Annexure VIII**)
7. The amount paid by the User agency as verified from the Records of this office is given below for ready reference:

**Details of the amount paid: -**

NPV	- Rs.8,11,22,618/-
CA	- Rs. 9,04,052/-
Safety Zone CA	- Rs. 4,15,656/-
Safety zone Fencing, protection, etc.	- Rs. 2,77,104/-
<b>TOTAL</b>	<b>- Rs.8,27,19,430/-</b>

- 8. Conclusion:** Based on the site inspection, discussion with the field officers and corroboration with available records/Documents, it can be concluded on reasonable grounds that mining operations have been stopped since long and the report of the State Government as to the broken-up area be accepted.

It is recommended for reimbursement of NPV amount for the unbroken area of the lease.



9. **National Green Tribunal Order- regarding:** The NGT, Principal Bench vide its judgement dated 23<sup>rd</sup> November 2012 quashed and set aside the Environmental Clearance, Forest Clearance and the permission by the Chief Wildlife Warden (Judgement enclosed as **Annexure IX**), among other things.

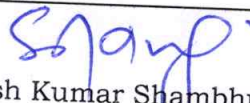
Point number C of the reliefs granted by the NGT, which is relevant for the site inspection is reproduced below for ready reference:

*"C. The Respondent no.6 (project proponent) shall deposit an amount of Rs 5 lakhs or the NPV of the forest area cleared by it (it is to be ascertained by the MoEF through officers who were not at any stage involved with grant of any of the approvals related to this project), whichever is more, with the Government of Goa. The amount shall be utilized through an appropriate agency identified by the State Government for afforestation of the broken area".*

The user agency has paid an NPV of Rs 8,11,22,618 (Rupees Eight Crores eleven Lakhs Twenty Two Thousand Eight Hundred and Eighteen only) in 2008 and 2009, for the entire 100-hectare lease, much before the NGT order dated 23.11.2012. But the User agency has not cleared any fresh area (as deduced in the earlier part of this report) other than operating partly in the already broken up area of 12.9714 hectares.

Date  
Place

17/5/24  
Bengaluru

  
Mahesh Kumar Shambhu  
DIG of Forests (Central)  
MoEFCC, RO-Bengaluru

**List of Annexures:**

- Annexure-I** - Ministry letter dated 28.02.2024  
Annexure-II - Copy of Power of Attorney  
Annexure-III - Report of DCF  
Annexure-IV & V - Time-series satellite imageries (oldest and latest available)  
Annexure-VI - Joint Site inspection Reported by Environment and Forest Section of RO, Bengaluru.  
Annexure-VII - Monitoring report by RO Bengaluru dated 25.10.2012  
Annexure-VIII- Photos taken during site inspection  
Annexure-IX - Judgement of Hon'ble NGT dated 23<sup>rd</sup> November 2012.

## ANNEXURE-I

Government of India  
Ministry of Environment, Forest and Climate Change  
(Forest Conservation Division)

\*\*\*\*\*

Indira Paryavaran Bhawan,  
Aliganj, Jor Bag Road,  
New Delhi - 110003.

Dated: February, 2024

28/2/24

To  
Deputy Director General of Forests (Central)  
Regional Office, Kendriya Sadan,  
4th Floor, E&F Wings, 17th Main Road,  
Koramangala II Block, Bangaluru (Karnataka)

**Sub: Regarding refund of NPV and CA charges for diversion of 17.8356 ha. of Forest land (12.9714 ha already broken plus 4.8642 ha to be broken) for renewal of mining lease under TC no. 1/37 in favour of M/s. Elray Minerals & Co., in the Village boundary of Sancordem, Taluka Dharbandora in north Goa Forest Division, Goa.**

Madam/Sir,

I am directed to refer to the User Agency letter dated 12.10.2022 requesting to refund the compensatory levies paid towards the NPV, CA, Safety Zone & fencing protection and safety zone afforestation work, w.r.t. the above mentioned subject proposal. The State Govt has also recommended for the said refund of NPV and CA charges (letter of the State Govt is enclosed for reference). In this regard, it is requested to carry a site inspection in accordance with the direction of the Hon'ble NGT order and submit a report to the Ministry at the earliest for further action in the matter.

Signed by

Yours faithfully

Dheeraj Mittal

Date: 28-02-2024 10:14:01

(Dr. Dheeraj Mittal)

Assistant Inspector General of Forests

Copy to:

1. Additional Chief Secretary (Forest), Government of Goa, Panaji.
2. PCCF (HoFF), Government of Goa, Panaji.
3. APCCF cum Nodal Officer (VSESA), Forest Department, Government of Goa, Panaji.
4. DDGF (Central), Regional Office, Bangalore of MoEF&CC.
5. Monitoring Cell of Forest Conservation Divisions, MoEF&CC, New Delhi.
6. User Agency.



गोवा GOA

Sl. No. 11 Place of vendor: MARGAO Date of issue: 2/4/17 373559Value of stamp paper: 500/-

Name of the purchaser: \_\_\_\_\_

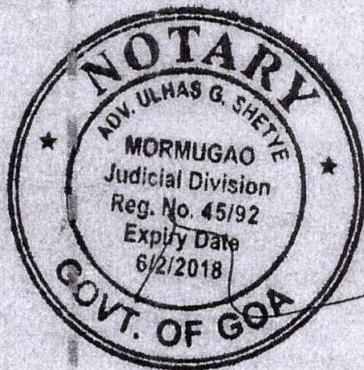
Son of: \_\_\_\_\_

As there is no single \_\_\_\_\_ Rs. \_\_\_\_\_

This stamp paper is for the collection of \_\_\_\_\_ with.

Licence No. 000/000 issued on 07-02-2008Name of stamp vendor: M.R. DAS

Signature of Vendor: \_\_\_\_\_ Signature of Purchase: \_\_\_\_\_

SPECIFIC POWER OF ATTORNEY

TO ALL TO WHOM these present shall come M/S ELRAY MINERALS & CO. a Partnership firm represented by its partners, SMT. MARIA RAYNOR PEREIRA, w/o late Mr. Elesbao Pereira, major of age, Indian National and Mr. Melquides Elray Pareira, Mr. Jean Paul Pereira, Mr. Leslie Hector Pereira, all, major of age & sons of late Elesbao Pereira, all residing at Elray Mansion, H. No 27 Mangor Hill, Vasco-da- Gama, Goa, herein the above three partners are represented by their Attorney holder SMT. MARIA RAYNOR PEREIRA SEND GREETINGS,

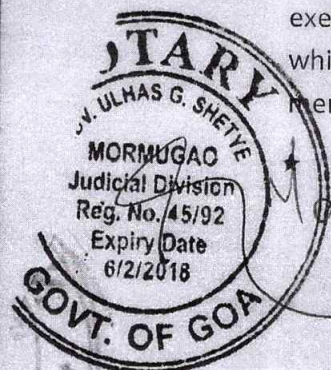
WHEREAS we, are having a mining concession and title in the name of Iron and Manganese Ore Mining called "AILLI VAGURBEM", situated at Sancordem village of present Dharmandora Taluka, Goa, held under Title No. 1 of 1937 granted by the erstwhile Portuguese regime (herein after referred to "THE SAID MINING CONCESSION/ MINING LEASE" ) The same Concession (Abolition & Declaration as Mining Leases).

*Mania Raynor Pereira*

AND WHEREAS being personally unable to attend to and do the business, of and in the said mining concession, we are desirous of appointing some fit and proper person to represent us, for the purpose hereinafter set forth, NOW KNOWN TO US AND THESE PRESENTS WITNESS THAT, I on behalf of the Partners & Partnership Co. would like to nominate, constitute and appoint MR DEVENDRA KAMAT, s/o late Narayan Kamat, married, major in age, r/o S/5, Pitul Kamat Plaza, Aquem Alto Margao, Salcete Goa, to be our true and lawful Attorney & to do these acts and things as to have been done by us and also further given/further entrust to, a person, fit to carry out, all or some of the acts/things, on our behalf to do such acts and things mentioned here in below:

1. To communicate and study constant changes in the laws pertaining to the manner in which the mining activity needs to be carried out in the State of Goa. As the state Govt. has made certain amendments, to the existing mining laws, of which, it was made mandatory for a Concession holder to pay Stamp Duty charges, applicable to the total area of the Concession, charged per Sqmtr. from the Govt. of Goa and the Department of Mines and Geology, the stamp duty charges and obtain details of the various permissions wanting for renewals which in turn are necessary to carry the mining activity on the said mine.
2. To do all the necessary acts and deeds and to sign all such documents/ papers, receipts that are needed to facilitate the renewal of the permissions, with all the departments involved, Local &/ Central Govt., that are lapsed &/ which are needed/ mandatory, and facilitate the commencement of the mining operations.
3. To arrange more such funds required to do the necessary payments like, the stamp duty charges as mentioned herein above and which should facilitate commencement of the mining operations only after obtaining my specific approval.
4. To enter into such agreement with any Individual/ Firm/ Co./ Association, to arrange funds, such funds, necessary to pay the dues/ stamp duty charges needed to commence operation of the mine only after obtaining my specific approval in writing and intimating me the name of any individual/firm/co/association/ from whom funds will be borrowed and the amount of funds borrowed.
5. AND generally to do all acts in relation to the matters aforesaid mentioned and to execute and to do all or cause to be done all deeds, acts and things on our behalf which otherwise we could have done personally with respect to the above mentioned matter.

*Manie Raynor Beneine*



IN WITNESS WHEREOFF, I have made and signed this instrument of specific power of attorney at Vasco-da-Gama, Goa on this 14<sup>th</sup> day of month of February, 2017.

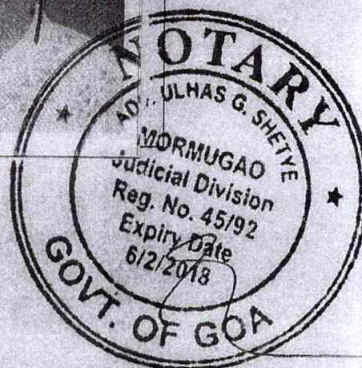
THE EXECUTANT :

*Maria Raynor Pereira*



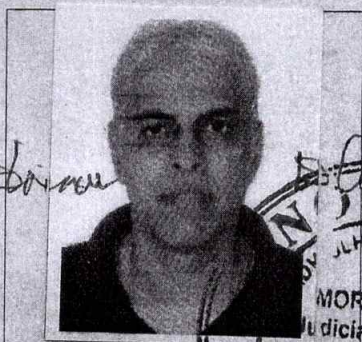
Maria Raynor Pereira

SMT. MARIA RAYNOR PEREIRA



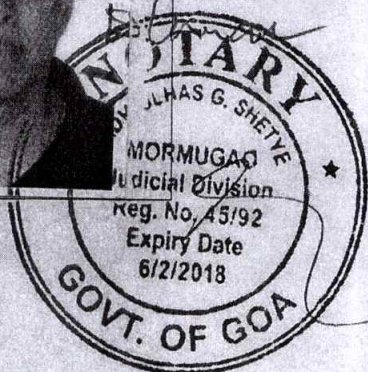
Accepted :

*Devendra*



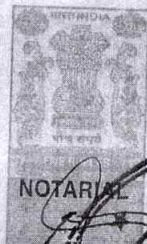
*Devendra*

Mr. DEVENDRA N. KAMAT



Witness :

- B. S. Bakhle*  
*B. S. Bakhle*
- Lesya Pereira* *L*



EXECUTED BEFORE ME BY Maria Raynor Pereira WHICH I ATTEST

*Ulhas G. Shetye*  
6/2/2017



**GOVERNMENT OF GOA**  
Office of the  
**Deputy Conservator of Forests**  
North Goa Division  
Ponda-Goa, 403 401

Phone No: 0832- 2312856 Fax: 0832- 2312095 e mail: dcfnorth-forest.goa@nic.in  
No: 5/FCA-81/DCFN/TECH/2023-24/1486 Dated:- 28 /03/2024

To,  
The Dy. Conservator of Forests  
Monitoring & Evaluation,  
Panaji Goa

**Sub.:-** Regarding refund of NPV and CA charges for diversion of 17.8356 ha of Forest land in favour of M/s. Elray Minerals & Co. for renewal of ML 1/37 within village boundary of Sancordem, Taluka Dharbandora - reg. & Import - reg.

**Ref. No.:-** 1) 6-13(244)-2023-24-FD/Vol. III/5708 dated 13/03/2024.

2) MOEF & CC letter No. Nil dated 28.02.2024.

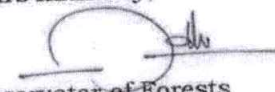
Sir,  
With reference to the above subject, based on the joint Inspection & total station survey of the area, the point wise reply is submitted as under;

- i) It is to submit that the broken up area in field as per the latest joint inspection in field also shown that 12.8456 ha. area (including road) is already broken up and to be broken up area in field is 4.9900 Ha.
- ii) It is to submit that, during the intervening period, the user agency has not touched any fresh area beyond already broken up area. Further it is clarified that the already broken up area falls both within sy. no. 7 and sy. no. 11. The User agency has done the facing/terraing works within this already broken up areas (12.62 Ha.) only and which was verified infield during the latest joint survey carried out in field and with the survey maps with kml files prepared and submitted.

The survey plan of the broken up, the plan of total mining lease is already submitted by this office vide the letter No. 5/FCA-81/DCFN/TECH/2023-24/1853 dated 31/01/2024.

Further it is to submit that this office had realized Rs. 8,11,22,618/- towards Net Present Value from the user agency in respect of the forest clearance issued by MOEF& CC's dated 11/02/2009.

Yours faithfully,

  
Dy. Conservator of Forests  
North Goa Division  
Ponda - Goa

"Swachh Bharat Nital Goem"  
"Towards Cleaner & Greener Goa"

IMAGE DATE : March 2011

Broken area

12.52 Ha.

0.88 Ha

Unbroken area

4.1 Ha



200 m



त्वरित डाक द्वारा  
BY SPEED POST

EP/12.7/36/GOA/9473  
Date: 4.8.2011

To,

Shri. Om Prakash  
Deputy Director,  
Ministry of Environment & Forests,  
Paryavaran Bhavan,  
CGO Complex, Lodhi Road,  
New Delhi - 110 003.

Sub :- Writ Petition No. 778/2010 filed by Shri. Sandeep Desai and  
Others.

Ref :- Your letter Number Dated: L-11011/1/2011-IA.II(M),  
Dated :19.5.2011

Sir,

With reference to the above mentioned subject the said project was visited by the undersigned on 27.7.2011, with the Deputy Conservator of Forests of this office, State Forest Department Officials of Goa and project representative.

Based on the site inspection and the available information in this office, a site inspection report along with draft parawise comments are prepared for some of the paras for consideration and approval and for the remaining paras the Ministry may prepare a draft reply and send to this office at the earliest so that counter affidavit can be filed. A copy of the inspection report, draft parawise comments, EIA report and public hearing minutes obtained from the project representative are enclosed herewith for your information and further necessary action.

Thanking you,

Yours faithfully,

*(Signature)*  
(Dr.C.KALIYAPERUMAL)  
Scientist "E"

*Encls: 05*

**Inspection Report on diverted forest land of 17.8356 ha in favour of  
M/s. Elray Minerals, Goa**

The Project Site was visited by the undersigned on 27.7.2011 along with State Forest Department Officials and representative of user agency. This inspection was carried out in view of the W.P.No.778/2010 in the Hon'ble High Court of Bombay at Goa Bench. The detailed observations pertaining to the issues raised in writ petition are given below:-

**i. Location of mining lease.**

M/s. Elray Minerals ML is located in Sacorda Reserve Forest of Sacorda village, Sanguem Taluk, South Goa District. This ML is located on Sacorda-Dharbandora road, passing through just on the western side of the ML and this road joins the NH-17 after about 8 km.

The Western side of the ML area is highly elevated one. From here a katcha road is running towards the Eastern side of the mining lease. The height level between the Eastern & Western broken up area / pits is very high. A seasonal nallah is passing through between these two pits in the ML area and joining in the river Ragada. As stated by DCF, North Goa, Bhagawan Mahaveer Wildlife Sanctuary is situated at a distance of about 2 kms, Madei Wildlife Sanctuary and Bondla Wildlife Sanctuaries are situated at a distance of about 7 km from the mine.

**ii. Status of Forest Land Diverted for the Mining.**

During the visit the DCF, North Goa informed that the 100 ha of forest land was originally granted to the user agency as a perpetual Mining Concession by the Portugese in 1937 as per the law laid down vide a Portugese decree in 1906. Out of 100 ha forest area given as Mining Concession to the user agency, 60.6082 ha. has subsequently been notified under Section 20 of IFA-1927, and the remaining has been notified under Section 4 of IFA-1927. DCF, North Goa further informed

that out of 100 ha leased area, 12.9714 ha area was already broken for mining in the past and in addition to that 4.8642 ha of fresh area was diverted for mining in the year 2009 under FCA-1980. During our visit to mining lease, it was also found that portion of the area was broken up for the mining in the past. However, recently diverted 4.8642 ha area has not so far been disturbed for mining by the user agency.

iii. **Present Status of Mining Lease.**

As stated by the DCF, North Goa, the working permission was issued by the State Forest Department, Government of Goa on 17.2.2010 to work in the already broken up area. Based on this the project authorities started work in an area of about 3 ha in the already broken up area. On 30.8.2010 the Director Mines and Geology wrote to Additional PCCF and informed that the lease deed has not been executed for the second renewal period and the applicant has not yet submitted the mining plan for the renewal period, without which the lessee cannot conduct the mining operation. Based on this on 27.10.2010 the DCF, North Goa had informed the project authorities not to carry out any mining activity.

The petitioner has alleged that mining has never happened in said mining lease and hence there is no question of considering 12.9714 ha. as already broken up area from the view point of diversion of forest land under Forest (Conservation) Act, 1980. But from the inspection mining lease, it appears that in the past mining has been done in that area. Since there was a long gap, at few patches good vegetation has come up naturally.

iv. **Compliance of Environmental Clearance Conditions.**

As per the Environmental Clearance No.J-11015/207/2006-IA.III(M), Dt:17.5.2007, the project authority was supposed to submit a copy of an advertisement and inform the land development work as well as financial closure to Regional Office. Even though the work was carried out during the period between February and October, 2010, the project

authority have not submitted any of the above documents. They have also not submitted six monthly reports. During the visit a copy of EIA, mining plan and minutes of public hearing were collected from the representative of the project.

v. **Vegetation Type and Density.**

The crown density of vegetation in the unbroken area of the Mining Concession has been observed to be between 0.5 to 0.7. The forest type is mostly of moist-deciduous and semi-evergreen vegetation comprising of *Terminalia sps.*, *Lagerstroemia sps.*, *Albizia lebeck*, *Acacia sps.*, *philipensis*, *xylopyrus*, *Zizyphus caracutta*, *Calycopteris floribunda*, etc. As per the information provided by the local RFO, total number of trees that are required to be felled in the diverted unbroken area of 4.8642 ha is about 1000 trees. There are many large trees and having canopy height up to 20 meters. But so far none of these trees have been felled for the mining purpose. In already broken up area also there is some vegetation at few patches.

vi. **Status of Wildlife.**

The petitioner has challenged the diversion of 17.8356 ha. of forest land for mining in favour of M/s Elray Minerals because the diverted forest area is located in the mid of reserve forest and is located close to the protected areas namely Madei Wildlife Sanctuary, Bhagawan Mahaveer Wildlife Sanctuary and the Mollem National Park and it is very rich in flora and fauna. In this regard during our visit it is observed that concerns expressed by the petitioner are true as the ML is located closed to the wildlife sanctuaries. Regarding presence of wild animals in this locality, The local forest officials reported that the diverted area is known for the occurrence of wildlife such as porcupines, wild-boars, jackals, rabbits & hares, and occasionally leopards. Snakes, lizards and avi-fauna are common.

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vi. Impact of Mining on Flora and Fauna.

The petitioner has expressed his concern over the loss of bio-diversity and the loss of also the importance of Western Ghats in conservation of bio-diversity with specific reference to the present diverted forest site for the mining. From forest and wildlife conservation point of view his concerns are very true, so allowing mining in this kind of eco sensitive areas will have disastrous effect on forest flora and fauna.

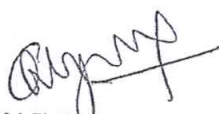
vii. Impact of Mining on Existing Nallah/Stream.

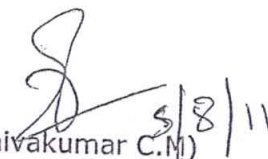
With reference to the flow of water in the stream/nallah in the mining area, it is observed that a fairly big nallah flows through the diverted forest area and it ultimately joins Ragada River. If proper treatment plans are not adopted by the user agency, definitely mining will result in heavy erosion of soil and silt deposition in the nallah.

viii. Public Hearing.

As per the information provided by the representative of the project, the public hearing was conducted by the Goa State Pollution Control Board in Madgaon which is about 35 kms from the mine site on 9.11.2005. Copy of the public hearing minutes is enclosed herewith. It appears that very few local people were participated in the public hearing.

Submitted for kind information and necessary action, please.

  
(Dr.C.KALIYAPERUMAL)  
Scientist "E"

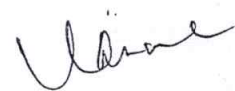
  
(Shivakumar C.M)  
Deputy Conservator of Forests (C)

MONITORING PROFORMAMONITORING OF THE ACTION ON STIPULATED CONDITIONS IN CASE OF PROPOSALS APPROVED BY THE GOVERNMENT OF INDIA UNDER SECTION-2 OF THE FOREST (CONSERVATION) ACT, 1980.MONITORING REPORT BY: SHRI N. S. MURALI,  
DEPUTY CONSERVATOR OF FORESTS (CENTRAL) ON: 25.10.2012PART-I (General Particulars)

- |   |  |  |
|---|--|--|
| 1 | Name/purpose of the proposal   | Diversion of 17.8356 ha. of forest area (12.9714 ha. already broken plus 4.8642 ha. to be broken) for renewal of mining lease under T.C.No.1/37 in favour of M/s Elray Minerals & Company in North Goa Forest Division in South Goa district of Goa. |
| 2 | Number and date of the Government of India's letter according permission | Government of India's letter No.8-58/2006-FC dated 11.02.2009.   |
| 3 | Area permitted to be diverted (in Ha)                                    | 17.8356 ha. (12.9714 ha. already broken plus 4.8642 ha. to be broken)  |
| 4 | District and Forest Division   | South Goa District & North Goa Forest Division.  |
| 5 | Area actually diverted (in Ha)   | 17.8356 ha.  |

PART-II(Details of Compensatory Afforestation)

- |   |  |  |
|---|--|--|
| 1 | Location of the area   | <b>CA not stipulated in FC. The following information is furnished by the DCF North Goa.</b><br>Stipulated C.A on twice the area to be broken (4.8642HaX2) =9.7284 Ha. |
|   | Extent   | 13.0 ha.<br><u>(remaining 3.2716 ha is against part of 1.5 times safety zone plantation)</u>   |
|   | District   | South Goa  |
|   | Division   | South Goa  |
|   | Khasra No./Survey No.  | In Colem Range, 5.0 ha. in Gurkiem, Darbandora and 7.0 ha. in Aglot.   |
| 2 | Whether Afforestation is made on forest or non-forest area   | Forest land.   |
| 3 | If on non-forest land, the land has been declared as protected/Reserve Forest (endorsement copy of the notification) | ----   |
| 4 | If no, the steps taken to declare it protected forest  |  |



- 5 Whether the afforestation cost was paid by the user agency Paid
- 6 If yes, the amount paid Rs.9, 04,052 (@Rs.92368/-) for C.A vide D.D No.26795 dt 14.10.08 has been paid.
- 7 Whether the amount paid was deposited in separate fund and was utilized in addition to the normal funds for forestry operation (give details) Yes. It is deposited in CAMPA FUND, GOA A/C No.1600. However no documentary proof was shown during monitoring.
- 8 Details of plantation raised:
- a) Species planted NA  
Area in Ha.  
Year 2011-12  
Expenditure NA
- b) If compensatory plantation not made, the reasons for the lapse
- c) Condition of plantation Further details not made available.  
CA areas not monitored.
- 9 Remarks:  
It should be mentioned that the plantations are identifiable as specifically related to the project.

PART-III(Planting of dwarf trees in case of transmission line)

- 1 Number of trees planted
- 2 Species
- 3 Year of planting
- 4 Expenditure paid by
- 5 Present condition of plantation

PART-IV(Reclamation of the area worked under mining/quarrying)

- 1 Mining/quarrying work completed Mine is not operated at present. Only the old area is broken up. The natural vegetation is growing on the abandoned mining pit. No new diverted area has been broken up.
- 2 Reclamation work done Ultimate pit depth is yet to be reached.
- 3 Present condition of the area worked/reclaimed. Mine is not operated at present. The natural vegetation is growing on the abandoned mining pit. In the unbroken area diverted for breaking up about 10000 trees are existing and many trees have a large canopy.



## PART-V

(Conditions stipulated by the Government of India other than mentioned above)

Sl. No	Nature of the terms/conditions	Actions taken by the State Government
1	Legal status of the diverted forest land shall remain unchanged.	Remains unchanged.
2	Wherever possible & technically feasible, the user agency shall undertake by involving local community, the afforestation measures in the blanks within the lease area, as well as along the roads outside the lease area diverted under this approval, in consultation with the State Forest Department at the project cost.	<b>Not complied with.</b>
3	Fencing, protection and regeneration of the safety zone area (7.5 metre strip all along the outer boundary of the mining lease area), wherever feasible, shall be done at the project cost. Besides this, afforestation on degraded forest land, to be selected elsewhere, measuring one and a half times the area under safety zone shall also be done at the project cost.	<b>Not complied with.</b>
4	Following activities shall be undertaken by the State Forest Department at the project cost:	
	(i) Proper mitigative measures to minimize soil erosion and choking of streams shall be prepared and implemented.	Not complied with
	(ii) Planting of adequate drought hardy plant species and sowing of seeds to arrest soil erosion.	Not complied with
	(iii) Construction of check dams, retention/toe walls to arrest sliding down of the excavated material along the contour.	Not complied with
	(iv) The top soil management plan should be strictly adhered to.	No top soil is generated and the mine is closed.
5	The period of diversion under this approval shall be twenty (20) years subject to possession of valid lease by user agency under the MMDR Act, 1957.	Forest clearance is in currency and mining lease is under deemed clause of MMDR Act 1957, as per the information provided by the user agency representatives during monitoring.
6	(i) The user agency shall take up planting work on the static dumps during the advance mining operations.	No mining activity.
	(ii) All the dumps shall be fully reclaimed by afforestation immediately after closure of the mine in the shortest possible period	No mining activity.



- under supervision of the State Forest Department.
- 7 The user agency shall furnish an undertaking to pay the additional NPV, if so determined, as per the final decision of Hon'ble Supreme Court of India. Furnished as per the information provided by DCF, North Goa.
- 8 The approval under the Forest (Conservation) Act, 1980 is subject to the clearance under the Environment (Protection) Act, 1986 & other requisite clearances. Environment Clearance obtained vide EC No. J-11015/207/2006-IA.II(M) dated 17.05.2007 and is subject to obtaining clearance under the Wildlife (Protection) Act 1972 from the Competent Authority. As per the orders of the Hon'ble Supreme Court of India dated 4.12.2006 in WP 460 of 2004, reference to the Standing Committee of NBWL is required which has not been complied with so far as the Bhagwan Mahaveer WLS is located within a distance of about 2 km from the lease boundary. The non-compliance has been brought to the notice of the Ministry vide Regional Office letter no. No.EP/12.7/5/GOA dated 10.10.2011.
- 9 A realistic and effective plan for reclamation and rehabilitation of mined area should be drawn up along with specific time limits for each prescribed activity and an effective monitoring mechanism should be put in place for this purpose. The annual report about the progress of reclamation should be submitted to the CCF (Central), Bangalore. Mine is still mineralized. The stage of reclamation and rehabilitation has not reached as yet. To be monitored in future.
- 10 The user agency shall also take up study on soil erosion/soil flow from the over-burden areas with the help of GIS in consultation with the Forest Department. **Not complied with.**
- 11 The user agency will fulfill and follow all the terms and conditions contained in the order dated 04.01.2008 of the Hon'ble Supreme Court. Complied with and FC is granted on 11.02.2009.
- 12 The user agency is required to pay the NPV for the balance forest area to retain the same within the lease area. As per the information provided during monitoring,  
1. for 12.9714 Ha @7.0 lakhs- Paid Rs,90,79,980/- vide D.D Nos.267977 to 267987 dt 14.10.08



2. For 4.8642 Ha @7.0 lakhs-  
Paid Rs,34,04,940/- vide  
D.D Nos.267988 to 267991  
dt.14.10.08 and
3. for the balance area of 34  
Ha@9,39,000=Rs.3,19,26,0  
00 and for  
48.01644Ha@7,30,000=  
Rs.3,51,60,012 vide D.D  
No.268795 dt.23.10.09  
&
4. Difference in amount of NPV  
for 12.9714HaX  
30000=3,89,142 paid vide  
D.D No.268093 dt18.11.08  
and for 4.8642 Ha X  
2,39,000=11,42,544 vide  
D.D No.268094& 268095  
dt.18.11.08

Total NPV Paid=Rs.8,11,22,618/-

- |    |  |   |
|----|--|---|
| 13 | No damage to the flora and fauna of the area shall be caused.  | No damage to the flora and fauna is reported by the Forest staff. But some amount of damage to flora and fauna cannot be ruled out in the course of mining and allied activities. |
| 14 | It shall be ensured that no labour-camps are set up inside the forest area.  | No labour camps seen.   |
| 15 | The user agency shall take up afforestation and soil moisture conservation works inside the forest area in 100 m radius from the permitted lease area in consultation with the Forest Department.  | <b>Not complied with.</b>   |
| 16 | The mining lease area shall be demarcated on ground at the project cost, using four feet high RCC pillars with each pillar inscribed with the serial number, forward and backward bearings and distance between two adjacent pillars.                            | <b>Complied with. However, forward and reverse bearings and distance between two adjacent pillars not indicated.</b>  |
| 17 | The forest land shall not be used for any purpose other than that specified in the proposal.   | Complied with.  |
| 18 | The user agency shall also contribute for implementation of comprehensive Wildlife Management Scheme to mitigate the adverse impacts of mining on flora and fauna and Elephant Depredation Scheme for the area as per the demand of the State Forest Department. | As per the information provided by the DCF, North Goa, so far no indent is placed to the User Agency.   |
| 19 | The user agency shall take up the de-silting of the village tanks within one KM area from the mine lease boundary as a Corporate social responsibility so as to  | No complied with.   |

- 20 mitigate the impact of siltation of such tanks if any. None.
- Any other condition that the Chief Conservator of Forests (Central), Regional Office, Bangalore may impose from time to time in the interest of conservation, protection or development of forests.

PART-VI

(Conditions informed by the State Government in addition to the Government of India's conditions and other steps taken to preserve forest, wildlife and prevent soil erosion, etc)

Conditions/purposesAction takenPART-VII

- 1 Whether any Committee has been formed for monitoring of the action on the conditions stipulated. No information made available
- 2 If no, give reasons. If yes, give details of the Committee.
- 3 Reports of the monitoring committee, if any.


PART-VIII

- 1 Abstract reports of inspection of forest officers, if any.

Monitoring was attended by Sri GT Kumar, DCF, North Goa and Sri. Sunil Dhaulikar, user agency representative along with their other staff.

1. CA has not been stipulated in the FC. However, the forest department has realised CA charges for afforestation on twice the area to be broken (4.8642HaX2) =9.7284 Ha.
  2. Safety zone maintenance and 1.5 times Safety Zone area plantation stipulation is yet to be complied with
  3. In the boundary pillars, forward and reverse bearings and distance between two adjacent pillars not indicated.
  4. The stipulation that the user agency shall take up a study on soil erosion/soil flow from the over-burden areas with the help of GIS in consultation with the Forest Department has not been so far complied with.
- 2 Remarks of the CCF in regard to progress of the action on the stipulated conditions.
- 3 Effect of the project on forests and wildlife. Bhagwan Mahaveer WLS is located within a distance of about 2 km from the lease boundary as per the information gathered during monitoring. This TC is in the catchment of River Ragada and a seasonal nallah flows through to join the River.

Name and Designation  
of Inspecting Officer:

  
(N. S. MURALI) 27/10/12  
Deputy Conservator of Forests  
(Central)

**ANNEXURE -VIII**

**PHOTOS**









NATIONAL GREEN TRIBUNAL PRINCIPAL BENCH, NEW DELHI  
AT  
Court of Board of Revenue, Legislative Council Building, Council Hall,  
Pune, Maharashtra

Application No. 47 of 2012(T) (Bombay High Court W.P. No. 778/2010)  
Friday, the 23<sup>rd</sup> day of November, 2012

Quorum:

1. Hon'ble Justice V.R. Kingaonkar  
(Judicial Member)
2. Hon'ble Dr. Devendra Kumar Agrawal  
(Expert Member)

BETWEEN:

1. Shri Sandeep Desai  
Son of Ganpat Hari Desai,  
Aged 38 years,  
Occupation Agriculture  
Residing at House No. 282, Sacorda,  
Taluka Sanguem(via Tisk)  
Goa- 403 406
2. Mr. Uday Hari Desai,  
Occupation Agriculture,  
Residing at House No. 62  
Panshe, Taluka Sattari, Goa,
3. Shri Prakash Hari Desai  
Occupation Agriculture,  
Residing at House No. 62  
Panshe, Taluka Sattari, Goa,
4. Shri Ulhas Krishna Naik  
Occupation Agriculture  
Residing at Sacorda,  
Taluka Sanguem, Goa

5. Shri Shankar Jog  
Occupation Agriculture  
Residing at Sacorda,  
Taluka Sanguem, Goa

6. Shri Sonu Pandhari Kerkar,  
Occupation Agriculture,  
Residing at Deulwada,  
Sacorda, Goa 403406

....Applicants

AND

1. State of Goa  
Through its Chief Secretary  
Having his office at  
Secretariat,  
Porvorim, Goa.

2. The Additional Chief Principal Conservator of Forests  
Govt. of Goa  
Having his office at  
'Dayanand Smruti Building'  
Panaji, Goa.

3. The Director of Mines  
Department of Mines & Geology  
Govt. of Goa,  
Udyog Bhavan, Panaji, Goa.

4. Union of India  
Through its Secretary,  
Ministry of Environment and Forests,  
Paryavaran Bhavan,  
CGO Complex, Lodhi Road,  
New Delhi-110003

5. Controller of Mines,  
Indian Bureau of Mines,  
Govt. of India,  
Fatorda, Margao, Goa.

6. M/s. Elray Minerals & Co.  
Melquiedes Building  
Fr. Joseph Vaz Road,  
Vasco-da-Gama, Goa 403 802

.....Respondents

(Advocates appeared: M/s SashiKant N. Joshi along with Mr. B.P.Natekar  
For Appellant, Mr Mahesh Amonkar for Respondent No. 4 and 5, Mr.  
Arvind Gupta along with Anand P. Akut for Respondent No.6)

### Oral Judgement

1. This application filed u/Sec. 18(1) r/w Sec. 14,15,16 and 17 of the National Green Tribunal Act, 2010 is registered with the National Green Tribunal after transfer of W.P. No. 778 of 2010 originally filed by the applicants in the High Court of Bombay at Goa. The applicants challenge legality and validity of Environmental Clearance granted by MoEF dated 17.05.2007, Forest Clearance granted by MoEF (F.C. Division) dated 13<sup>th</sup>/15<sup>th</sup> May, 2008 and permission granted by the Chief Wildlife Warden, Goa dated 08.02.2010 (Annexure – P1 to P3). The applicants seek quashing of the above 3 Orders referred in the application, on the ground that they have been issued illegally without following the regular norms and procedure.

2. The Writ Petition No. 778 of 2010 from Bombay High Court at Goa was transferred to the National Green Tribunal in view of the observations of the Supreme Court of India in Bopal Gas Peedith Mahila

Udyog Sangathan & Ors. V/s. Union of India & Ors. [2012 STPL(web) 424 SC].

3. It is not necessary to elaborate all the facts in detail as narrated by the applicants. Suffice it to say that the chronological events stated in the application have not been disputed by the Respondents, particularly, the Respondent no. 6, who is the project proponent. The Respondent No. 6 did not file any reply to the Writ Petition before the Bombay High Court at Goa as well as to the present application before us and raised no contentious issue in regard to the factual and legal submissions of the applicants.

4. Briefly stated, case of the applicants is that by virtue of Notifications dated 23<sup>rd</sup> August 1979, 15<sup>th</sup> October 1981, 23<sup>rd</sup> July 1984, parts of forests at village Sacorda were declared as reserved forest. The area of the reserved forest, considered comprehensively is 1573.65 Hectares. The reserved forest area connects Madei Wildlife Sanctuary, Bhagwan Mahaveer Wildlife Sanctuary and the Mollem National Park. The Wildlife Sanctuaries and National Park are rich in bio-diversity. So also, reserved forest area is hardly at a distance of about 2 km. from Bhagwan Mahaveer Wildlife Sanctuary. It is also within radius of 10 km. of all the above two Wildlife Sanctuaries and the National Park. This information regarding the distance from the Wildlife Sanctuaries / National Park is as per the Environmental Clearance order, however the applicants dispute the same. They allege that the distance between the Wildlife Sanctuaries/National Park and the project of Iron/Manganese Ore Mining, as proposed by the Respondent no. 6, is quite less (but of

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47/C

course less than 10 km) and therefore, the mining activity could not be permitted under the law. The applicants have come out with a case that without any proper public hearing, the Ministry of Environment & Forests (MoEF) granted the Environmental Clearance. The applicants further allege that the mining activity is likely to cause serious damage to the biodiversity, and will destroy rare species of animals like Barking Deer, Leopard etc. The applicants also raised the issues pertaining to air/noise pollution, source of irrigation from underground water, absence of proper baseline data in EIA report; and ground water table depth with regard to the mining activity, etc. The applicants further say that the Respondent no. 6 started commencement of the mining activity without prior permission/consent of the competent authority and therefore a complaint was made. The activity was later on stopped by the Respondent no. 6. The Respondent no. 6 illegally felled a considerable number of trees and had broken forest area of about 1 square km. in order to commence the mining activity. However, after filing of the complaint and Writ Petition in the Bombay High Court at Goa, that activity was stopped.

5. We have heard Learned Counsel for the parties. Though, Ld. Counsel Mr. Anand Akut appearing for the Respondent No. 6 submitted adjournment application and sought time to file Vakalatnama yet, his request is rejected in as much as already there is Vakalatnama of another lawyer and moreover by order dated 5<sup>th</sup> November, 2012, the parties were given clear understanding that the matter would be heard at Pune Circuit Bench on the scheduled date i.e. today. Apart from this, it is worthwhile to note that the Respondent no. 6, i.e. the project proponent, did not file any Reply Affidavit in the proceedings before the High

Court of Bombay at Goa in the context of W.P. no. 778 of 2010. It is manifestly clear that the Respondent no. 6 did not actively participate in the proceedings of the Writ Petition and also failed to point out that any valid permission was obtained from National Board for Wildlife (N.B.W.L.) before commencement of the project work. It is also amply clear that the Respondent no. 6 stopped the mining activity soon after filing of the Writ Petition and whatever activity was carried out by him was between the period of January to May 2010, only to the extent of felling of trees and clearing a part of the forest. There is no iota of evidence to indicate that actually ore was mined by the Respondent no. 6 and its quantification thereof, if any.

6. The material questions involved in the present application are :-
1. Whether any proper and valid public hearing was conducted before grant of the Environmental Clearance (EC) by the MOEF?
  2. Whether the MOEF considered all the relevant aspects and norms prior to grant of E.C. in question?
  3. Whether the Forest Clearance for renewal of Mining Lease was granted in accordance with the legal norms?
  4. Whether the approval accorded by the Chief Wildlife warden, Goa is legal and proper?

For reasons stated herein below we record 'negative' findings on above questions.

7. From the documents placed on the record and particularly the Affidavits of the authorities of Ministry of Environment and Forest (MoEF) and Indian Bureau of Mines (IBM), it is explicit that the project

proponent was required to obtain all the mandatory clearances as applicable to the project. It is also manifestly clear that the approval granted by Chief Wildlife Warden is not at all in keeping with the directions of the Apex Court in W.P. no. 460 of 2004. By Order dated 4<sup>th</sup> December, 2006, the Apex Court directed that projects located within 10 kms. from the boundary of any National Park or Wildlife Sanctuary are required to obtain prior approval from the Standing Committee of N.B.W.L. Admittedly, no approval from N.B.W.L. was obtained by the Respondent no. 6 for the proposed mining project. There is absolutely no iota of evidence to show that the Respondent no. 6 even applied for such kind of prior approval from the Standing Committee of N.B.W.L.

8. Perusal of the Inspection Report based on joint inspection carried out by Mr. Shivkumar C.M., Dy. Conservator of Forests(C) and Scientist E, Dr. C. Kaliyaperumal; shows that the proposed project is at a distance of about 2 kms. from Bhagwan Mahaveer Wildlife Sanctuary and at a distance of about 7 kms. from Bondla Wildlife Sanctuary and Mollem National Park. It is further clear from the said Report that the project proponent had broken 4.8642 ha area of the forest cover.

9. It is pertinent to note that as no Lease Deed is available on record to show that the project proponent was granted any land on lease for the mining purpose. The record/affidavit of the Director of Mines, Department of Mines & Geology, Govt. of Goa (Respondent No. 3) also do not show that any Lease Deed was executed in favour of the Respondent no. 6 i.e. project proponent. What appears from the record/Affidavits filed by the MoEF (Respondent No. 4) and Director of Mines, Goa (Respondent No. 3) and Dy. Conservator of Forests, Forest Dept. Goa, Govt. of Goa (Respondent No. 2) is that no permission was issued by Director of Mines & Geology for operation of the iron ore mine

to the Respondent No. 6. It is further amply clear that no Mining Lease was executed in favour of the Respondent no. 6. On careful perusal of the Affidavit of Forest Department, Goa it is amply clear that inspection was carried out on 02.01.2010 and that the proposed Mining area is about 2.2 kms. away from boundary of Bhagwan Mahaveer Wildlife Sanctuary. Considered together, the documents would make it crystal clear that the statement with regards to distance from wildlife Sanctuary/National Park as mentioned in the Communication dated 17<sup>th</sup> May, 2007 by the MoEF, while granting EC are not in keeping with the fact situation. The EC Order reads vide paragraph 4 thereof as under :-

*“Based on the information submitted by you, the Ministry of Environment & Forests accords EC for the above project as per Notification dated 14<sup>th</sup> September, 2006 Subject to Following conditions / .....”*

10. Thus, the information submitted by the project proponent was accepted as a gospel truth by the MoEF. The MoEF on its part did not verify the correctness of the information given by the Respondent no. 6. So far as the public hearing is concerned, it is worthy to be noted that the same was conducted at a distance of about 27 kms. from the place of project in question. It is clear that very few public members were present at the said public hearing. There is no record to show that notice of the public hearing was duly published. Nay, it was not even pasted outside the Office of the Village Panchayat of Sacroda. Thus, the only deducible conclusion will be that the EC was granted without following the due procedure as shown in the Notification dated 14<sup>th</sup> September, 2006. The E.I.A. Report also was not duly obtained and authenticated. The MoEF was required to verify the information

regarding source of irrigation, the proximity agricultural lands, presence of corridor through the reserved forest for wildlife, between the 2 Wildlife Sanctuaries and the National Park etc. The data regarding available flora and fauna, ground water depth in the context of mining depth, etc. were also not examined. So also, the Forest Clearance is based on incorrect information about the distance between the Wildlife Sanctuaries/National Park and the mining project in question. It also does not correctly indicate the forest density. The Forest Clearance is based on observation that the canopy is of 0.4 whereas Dy. Conservator of Forest, Goa in his report suggested that it is 0.5 whereas Inspection Report shows it to be between 0.5 to 0.7. Needless to say, everything appears to be fishy, based on untrue facts and inaccuracies.

11. In case of "Anand Arya Vs. Union of India 2012(2) (FLT) 163 (SC)" it is held that where a project is by the side of Bird Sanctuary, it would be potential danger to ecology. The Supreme Court referred to order dated December 12 1996 in "Godavarman Thirmulkpad Vs. Union of India & Ors. (1997) 2 SCC 267". In that case, it has been observed as under:

*"3. It has emerged at the hearing, that there is misconception in certain quarters about the true scope of the Forest (Conservation) Act, 1980 (for short the 'Act') and the meaning of the word "forest" used therein. There is also a resulting misconception about the need of prior approval of the Central Government, as required by Section 2 of the Act, in respect of certain activities in the forest area which are more often of a commercial nature. It is necessary to clarify that position.*

*"4. The Forest(Conservation) Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of the ownership or classification thereof. The word "forest: must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of section 2(i) of the Forest (Conservation) Act. The term " forest land", occurring in section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership . This is how it has to be understood for the purpose of section 2 of the Act. The provisions enacted in the Forest (Conservation) Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in Ambica Quarry Works v. State of Gujarat, Rural Litigation and Entitlement Kendra v. State of U.P. and recently in the order dated 29.11.1996(Supreme Court Monitoring Committee v. Mussorie Dehradun Development Authority). The earlier decision of this Court in State of Bihar v. Banshi Ram Modi has, therefore, to be understood to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any state Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan even at this late stage,*

*relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any state Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay."*

12. In **State of Bihar v. Bansi Ram Modi** (1985 ) 3 SCC 643, the Supreme Court Observed:

*".....Reading them together, these two parts of the section mean that after the commencement of the Act no fresh breaking up of the forest land or no fresh clearing of the forest on any such land can be permitted by any State Government or any authority without the prior approval of the Central Government. But if such permission has been accorded before the coming into force of the Act and the Forest land is broken up or cleared then obviously the section cannot apply..."*

In the present case, the Respondent No. 6 commenced breaking of the Forest land and actually cleared a part of the forest though with the approval from the Central Government, yet the renewal of lease itself was illegal because there was no lease deed executed between him and the competent authority. Hence he had no legal right to cause breaking of the forest land.

13. Considering the deficiencies mentioned above and the fact that the averments in the application are not controverted by the project proponent, all the three (3) impugned orders of EC, FC and Chief Warden of Wild life are invalid, illegal and improper. All the 3 communications

will have to be therefore, quashed as prayed by the applicants. We are further of the opinion that MoEF and the other authorities casually granted the clearances /approvals without verification of the necessary facts and without following the due procedure. This resulted into undertaking of the mining activity by the Respondent no. 6 though temporarily. The Respondent no. 6 appears to have removed earth for breaking the forest areas and also fell certain trees therefrom. Under these circumstances, we deem it proper to allow the application with the following reliefs :-

- A. The application is allowed.
- B. The EC, FC and the permission granted by the Chief Wildlife Warden (Exhibit – P-1 to P-3) are quashed and set aside.
- C. The Respondent no. 6 (project proponent) shall deposit an amount of Rs.5 Lacs or the NPV of the forest area cleared by( it to be ascertained by the MoEF through officers who were not at any stage involved with grant of any of the approvals related to this project), whichever is more, with the Govt. of Goa. The amount shall be utilized through appropriate agency identified by State Government for afforestation of the broken area.
- D. The MoEF (the competent authority for grant of EC and FC) and the State Government of Goa (in respect of approval by Chief Wildlife Warden) shall initiate departmental proceedings within period of two months against the concerned officers, if any of them is still in service for dereliction in duty and misconduct in granting of the said permission/clearance without following procedure of law and on basis of erroneous statement of facts. If such responsible officers are no more in service, then the estimated loss or an amount of Rs. 5 Lacs (for each approval/clearance) shall be recovered from such officers who participated in the grant of EC/FC and permission by the Chief Warden of wild life by

43/c

- taking proper proceedings against them and after hearing them. The amount shall be deposited with Registrar, NGT within 9 (nine) months.
- E. We further direct that the MoEF shall issue fresh guidelines to the concerned Departments within MoEF for the purpose of avoiding illegality like we have noticed in the context of the three communications referred to above.
- F. The recovery of amounts mentioned in paragraph (c) above to be made within a period of 9 (nine) months hereafter.
- G. The Respondent no. 6 shall pay a cost of Rs. 1 Lac to the applicants. The other Respondents to bear their own costs.

**(Dr. D.K. Agrawal)**  
Expert Member

**(Justice V.R. Kingaonkar)**  
Judicial Member

Government of India  
Ministry of Environment, Forest and Climate Change  
(Forest Conservation Division)

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Indira Paryavaran Bhawan,  
Jor Bagh Road, Aliganj,  
New Delhi: 1100 03,  
**Dated: 02 July, 2024**

To

The Secretary (Forests),  
Department of Forest and Environment,  
Government of Goa,  
Panaji.

**Sub: Regarding refund of NPV and CA charges for diversion of 17.8356 ha. of Forest land (12.9714 ha already broken plus 4.8642 ha to be broken) for renewal of mining lease under TC no. 1/37 in favour of M/s. Elray Minerals & Co., in the Village boundary of Sancordem, Taluka Dharbandora in north Goa Forest Division, Goa.**

Madam/Sir,

I am directed to refer to the User Agency letter dated 12.10.2022 requesting to refund the compensatory levies paid towards the NPV, CA, Safety Zone & fencing protection and safety zone afforestation work, w.r.t. the above mentioned subject proposal. Further, the Hon'ble Supreme Court has stopped the mining activities in 2012 and 2016 by order. The State Govt. vide letter dated 03.03.2023 and additional information submitted vide letter No. 6-13(244)-2022-23-FD/Vol.III/5233 dated 10.02.2024, letter No.6-13(244)-2023-24-FD/Vol.III/204 dated 15.04.2024 and letter No.6-13(244)-2023-24-FD/Vol.III/671 dated 23.05.2024 on the above subject seeking approval of the Central Government under the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 to refund the compensatory levies deposited by the user agency and to say that the competent authority of the MoEF&CC has approved the request of the State Government in this regard and accordingly, approval of the Central Government is hereby granted for the following:

- i. No compensatory afforestation charges shall be refunded.
- ii. NPV for the area (i.e. 17.8356 ha) from which Stage-I and Stage-II was granted shall not be refunded as the working permission was granted by the State Govt and the UA has worked accordingly for upto 8 months before the orders of the Hon'ble Supreme Court.
- iii. NPV of ₹6,70,86,012/- deposited for balance area i.e. 82.1644 (100.0 - 17.8356) shall be refunded as for this area no FC approval was granted. In this regard refund of 90% of the NPV of balance area i.e. ₹6,70,86,012/- will be from State CAMPA funds and 10% from National Fund out of the total amount of ₹6,70,86,012/- deposited by the User Agency.
- iv. The Ministry vide letter dated 18.07.2023 has already clarified that the issue related to refund of interest accrued on compensatory levies realized from the user agency was considered and it has been decided that interest accrued on the compensatory levies realized from the user agency in lieu of diversion of

forest shall not be refunded in any case. **In this regard no interest shall be refunded.** State Government shall submit an undertaking in this regard.

- v. To **revoke** the Stage-I (dated 15.05.2008 read with letter dated 06.08.2008) and Final/Stage-II approval accorded by this Ministry on dated 11.02.2009 considering the order of the Hon'ble Supreme Court.

2. Further, as recommended by the State Govt., the State Govt shall ensure the following:

- a. The entity shall provide confirmation from the Director of Mines & Geology, Goa, that the entity ceases to have any right or entitlement in respect of the subject mine.
- b. The entity shall apply for withdrawal from the subject mine and submits necessary endorsement in that regard.

This issues with approval of the competent authority.

Signed by

Yours faithfully,

Dheeraj Mittal

**(Dr. Dheeraj Mittal)**

Date: 02-07-2024 10:20:38 Assistant Inspector General of Forests

**Copy to: -**

1. Principal Chief Conservator of Forests, Government of Goa, Panaji.
2. CEO, National Authority (CAMPA), Indira Paryavaran Bhawan, MoEF&CC, New Delhi with a request to refund 10% of ₹6,70,86,012/- to the User agency.
3. DDGF (Central) Regional Office, Bengaluru of MoEF&CC.
4. APCCF cum Nodal Officer, Forest Department, Government of Goa, Panaji.
5. Monitoring Cell of Forest Conservation Divisions, MoEF&CC, New Delhi.
6. User Agency.