BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
APPEAL NO. 73 OF 2024 (WZ)

SWAPNESH SHERLEKAR & ORS ...APPELLANTS

VERSUS

MOEF & CC & ORS ...RESPONDENTS

AFFIDAVIT IN REPLY ON BEHALF OF RESPONDENT NO. 4

I, Mr. Narayan Gad, Director of Mines and Geology, Government of Goa, major of age, having office at Menezes Braganza Building, Panaji, Goa-403001 do hereby on solemn affirmation state and submit on oath as under:

1. I say that I am holding the post of Director of Mines and Geology, Government of Goa. I say that I am authorised to file the present affidavit in reply on behalf of Respondent No. 4. I say that I am filing the present affidavit based on the records available with my office and that I am competent to depose in this case.

2. At the very outset, Respondent No 4 denies all the averments, allegations and contentions raised by the Appellant *in toto*, save and what are matter(s) of record. Nothing stated in the

present appeal shall be deemed to be admitted by Respondent No 4 unless specifically admitted hereinafter.

3. I say that I am filing the present Affidavit-in-Reply for the purpose bringing certain facts on record before this Hon'ble Tribunal and opposing the reliefs sought by the Appellant. Nothing in the aforementioned Appeal filed by the Appellant may be deemed to have been admitted for mere want of specific denial. Nothing may be deemed to have been admitted for want of *traverse seriatim*.

4. I say that the reliefs sought in the instant Appeal are unfounded, baseless and the same are liable to be rejected at the very outset by this Hon'ble Tribunal.

5. I say that the Appellant has challenged the Environmental Clearance dated 23.01.2024 (**"EC"**) issued by the Ministry of Environment, Forest and Climate Change (**"MoEF & CC"**) for mining of Iron Ore (3.0 MTPA) in the mine lease area of 478.5206 hectares at Bicholim Mineral Block No. I, located at Bicholim Taluka of North Goa, Goa.

6. I say that all of the above grounds as canvassed by the Appellant are devoid of merit.

7. I say that mining in Goa came to a halt from the year 2018. I say that mining as an industry is a very important to a small State like Goa as it generates substantial employment and revenue.

8. I say that the Appellant herein has alleged that the mining operations in Bicholim Mineral Block No. I (**"subject Mining Project"**) has been wrongly classified as a "Greenfield Project" at the time of obtaining EC. It is alleged by the Appellant that the subject Mining Project had to be classified as a "Brownfield Project". I say that the subject Mining Project has been correctly classified as Greenfield Project. I say that the process for grant of EC to a Greenfield project is more rigorous and stringent as compared to a Brownfield Project.

9. I say that it is pertinent to note that Clause 7(i) of the EIA Notification 2006 provides for "Stages in the Prior Environmental

Clearance (EC) Process for New Projects" i.e., 'Greenfield Projects'. I say that the stages include (a) Screening, (b) scoping, (c) Public Consultation and (d) Appraisal by the EAC. I say that Clause 7(ii) of the EIA 2006 provides for "Prior Environmental Clearance (EC) process for Expansion or Modernization or Change of product mix in existing projects" i.e., 'Brownfield Projects'. I say that in case of 'Brownfield Projects, the stages of Screening, scoping and Public Consultation are not contemplated. Applications for ECs of Brownfield projects are directly sent for the consideration of the concerned EAC.

10. I say that the process for grant of EC to a Greenfield project is more rigorous and stringent as compared to a Brownfield Project.

11. I say that the EAC was aware that the subject mine had been previously worked on. I say that this is evident from the Specific Condition No. 4.6 of the TOR wherein the EAC sought a clarification, which is reproduced herein below:

> *"During the meeting, the EAC noted that old excavated pits exist within the mine lease area. Hence, the Project*

Proponent needs to submit a letter from the Department of Geology and Mining, Government of Goa clarifying whether any illegal mining within the mine lease area has been carried out or not and whether the same has been carried out by M/s. Vedanta Limited or not?"

12. I say that the Environmental Impact Assessment Notification 2006 (**"EIA Notification 2006"**) under Clause 2 only makes a distinction between a "new project" or an "expansion/modernisation of an existing project or activity". Clause 2 of the EIA Notification, 2006 provides as under:

"2. Requirements of prior Environmental Clearance (EC):-

...

(i) All new projects or activities listed in the Schedule to this notification;

(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range."

13. I say that a "Greenfield project" would amount to a 'new project' and would be governed by sub-clause (i) of Clause 2 whereas, a 'Brownfield project' would amount to expansion and modernization of existing project and would be governed by sub-clause (ii) of Clause 2.

14. I say that this is evident from a Press Information Bureau, Government of India, MoEF & CC note dated 19.12.2011 titled "Implementation of Green Field Projects", which reads as follows:

> *"The Environmental Impact Assessment (EIA) Notification, 2006 provides that all developmental projects, listed in the Schedule-1 to the Notification require prior environmental clearance for establishment of new (Greenfield) projects or for expansion (Brownfield) of existing projects."*

Hereto annexed is a copy of the Press Information Bureau, Government of India, MoEF & CC note dated 19.12.2011 marked as "**Annexure A**".

15. I say that the Bicholim Mineral Block No. I, corresponds to the erstwhile Mining Concession bearing T. C. No. 11-15/41 granted under the Portuguese regime. I say that upon enactment

of the Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act 1987 (**"Abolition Act"**), the erstwhile mining concessions were abolished and they were deemed to be mining leases granted under the Mines and Minerals (Development and Regulation) Act, 1957 (**"MMDR Act"**).

16. I say that the Hon'ble Supreme Court in the case *of Goa Foundation v. Union of India*, **(2014) 6 SCC 590** ("**Goa Foundation-I Judgment**"), held that the deemed mining leases of the lessees in Goa expired on 22nd November, 1987 and the period of First Renewal (20 years), of the deemed Mining leases in Goa expired on 22nd November 2007.

17. I say that pursuant to the Goa Foundation-I judgment, several mining leaseholders applied for second renewal of their mining leases. I say that the second renewal orders issued by the State Government were challenged before the Hon'ble Supreme Court in *Goa Foundation v. Sesa Sterlite Ltd & Ors*, **(2018) 4 SCC 218** ("**Goa Foundation–II**")

18. I say that the Hon'ble Supreme Court *vide* Judgment 07.02.2018 Goa Foundation–II quashed the Second Renewals granted in respect of the 88 mining leases. The Hon'ble Supreme Court further directed that in terms of the decision, declaration and the directions in Goa Foundation-1, the State of Goa was obliged to grant fresh mining leases in accordance with law and not second renewals of the mining leaseholders.

19. I say that by its order dated 23.04.2018, the MoEF cancelled the ECs granted to 88 mining leases covered by the Hon'ble Supreme Court's decision in Goa Foundation-II.

Annexed hereto is a copy of the MoEF & CC order dated 23.04.2018 marked as "**Annexure B**".

20. I say that pending Goa Foundation-II Petition in the Hon'ble Supreme Court, there has been legislative amendment to the MMDR Act, by Amendment Act of 2015 with effect from 12th January, 2015. I say that by virtue of Section 8A of the Amendment Act, 2015, the lease period of the mining leases have been extended upto period ending 31st March, 2020 or

period of 50 years from the date of "grant of lease", i.e., whichever is later.

21. I say that the MMDR (Amendment) Act 2015 provides that grant of mining leases shall be only through auction process. I say that the subject Bicholim Mineral Block No. I comprises of 5 out of the 88 leases that were the subject matter of Goa Foundation II Judgment. I say that the subject Bicholim Mineral Block No. I was put up for auction following all due procedure. I say that Respondent No. 3 was declared to be the successful bidder of the subject Bicholim Mineral Block No. I.

22. I say that the Parliament enacted Mineral Laws (Amendment) Act, 2020 introducing Section 8B with limited retrospective effect from 10.01.2020 (the date of the Ordinance). I say that this provision transfers all valid approvals, rights, clearances, and licenses of a previous lessee to a new lessee for a period of two years.

23. I say that the Parliament, by MMDR (Amendment) Act 2021, which entered into force on 28.03.2021, substituted the

amended Section 8B by removing the validity period of two years regarding valid approvals, rights, clearances, and licenses. The substituted Section 8B transferred and vested in the new lessee the valid approvals, rights, clearances and licenses. As a result, new lessees could operate mining leases based on valid approvals, rights, clearances, and licenses granted to former lessees.

24. I say that the Government of Goa had earlier opined that Section 8B would apply to the mineral blocks in Goa comprising of the 88 leases that were the subject matter of Goa Foundation II as well.

25. I say that W.P. (f) No. 400 of 2023 was filed before the Hon'ble High Court of Bombay at Goa in which the primary issue was the effect of Section 8B of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) upon the environmental clearances (ECs) for mining leases that were the subject matter of the decisions of the Hon'ble Supreme Court in Goa Foundation Vs Union of India (GF-I) and Goa Foundation Vs Sesa Sterlite Limited and others (GF-II).

26. I say that the Hon'ble High Court of Bombay at Goa *vide* its order dated 26.04.2023 in the abovementioned W.P. (f) No. 400 of 2023 held that the proper construction of Section 8B of the MMDR Act, 1957 indicates that only valid ECs were to stand transferred and vested in the new lessees/successful auction purchasers. The Hon'ble High Court held that since the ECs of the 88 leases were cancelled by the MoEF by order dated 23.04.2018, they would not amount to "valid" ECs. The Hon'ble High Court directed that held that fresh ECs will have to be obtained even by the successful bidders to Block -VII or other Blocks to which the decisions of the Hon'ble Supreme Court in GF-I and GF-II apply or to mining blocks in respect of which the ECs were cancelled by the MoEF by order dated 23.04.2018. Annexed hereto are copies of judgment of the Hon'ble Supreme Court in Goa Foundation I, Goa Foundation II and the judgment of the Hon'ble Bombay High Court dated 26.04.2023 in W.P. (f) No. 400 of 2023 marked as "**Annexure C-colly**".

27. I say that pursuant to the above directions of the Hon'ble High Court, the successful bidders were asked to obtain fresh

ECs for the purpose of mining operations in the said auctioned mineral blocks.

28. I say that the Hon'ble Supreme Court's judgment in GF-I and GF-II apply to the subject Mining Project. I say that the subject Mining Project is a new mining project is new/fresh project as is evident from the perusal of the judgments of the Hon'ble Supreme Court in the case of Goa Foundation I and Goa Foundation II.

29. I say that the subject Mining Project has been correctly classified as a "Greenfield Project".

30. I say that on 11.08.2023 a public hearing was conducted by the Collector as per the EIA Notification 2006 with respect of the subject Mineral Block. I say that the views/comments/objections of the Village Panchayat were considered at this public hearing as is evident from the minutes dated 12.08.2023 of the said public hearing dated 11.08.2023. I say that the views/objections/suggestions of all the individuals present at the

public hearings were also considered. I say that the recorded minutes were read out/explained to the public in Konkani and subsequently after receiving suggestions, were signed by the Collector and a Member of the GSPCB. I say that the people present at the public hearing were asked to file their written objections/suggestions within 7 days to GSPCB, if they so desired.

31. I say that the present appeal bears no merit and is liable to be dismissed.

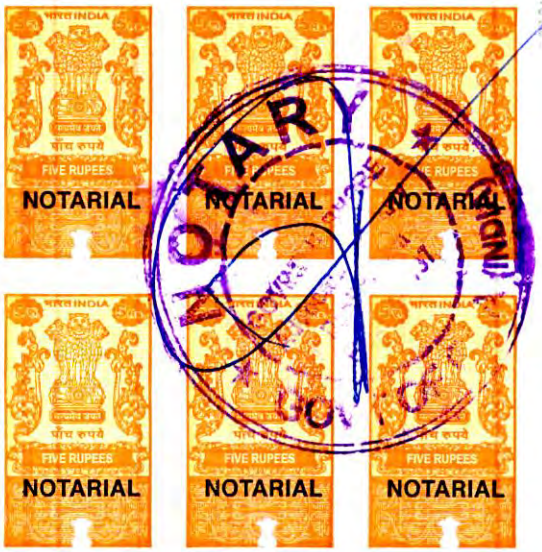
32. I say that what has been stated in Paras 1 to 31 are true to my own knowledge and/or are based on documents/records available with the Respondent and the contents of the same are true and correct and nothing material has been concealed herein.

Solemnly Affirm on Oath

Place: Panaji, Goa.
Date: 14.10.2024

DEPONENT

Identified by:



SOLEMNLY AFFIRMED AND VERIFIED
BEFOR ME BY Km. Narayan Gad-
REG. NO 5425 DATED 14/10/2024

Govind U. Bhobe
Advocate & Notary
Panjim-Goa
Reg. No.137

ANNEXURE-A

Press Information Bureau
Government of India
Ministry of Environment, Forest and Climate Change.

19-December-2011 16:35 IST

Implementation of Green Field Projects

The Environmental Impact Assessment (EIA) Notification, 2006 provides that all developmental projects, listed in the Schedule-1 to the Notification require prior environmental clearance for establishment of new (Greenfield) projects or for expansion (Brownfield) of existing projects. For those projects involving forestland, prior approval for diversion of forestland is required; vide provisions of the Forest (Conservation) Act 1980.

A total of 3138 projects in the sectors of Thermal Power, Hydropower including Irrigation, Mining, Industry and Building & Construction has been granted environmental clearance during the past three years and the current year. This includes 141 projects of the above sectors from the State of Karnataka. A total of 2034 projects have been approved for diversion of forestland covering the sectors of Thermal and Hydropwer including Irrigation, Mining and Road infrastructure. This includes 22 cases form the State of Karnataka.

The steps taken by the Government for expedition of the process leading to grant of environmental and forestry clearance to Greenfield and Brownfield projects include the following:

i. Regular meetings of the Expert Appraisal Committee constituted for the appraisal of projects covering the various sectors for environmental clearance and of the Forest Advisory Committee for forestry clearance.

ii. Regular updation of status of projects for environmental clearance on the Ministry's website for the benefit of all stakeholders.

iii. Sector specific Manuals have been prepared and uploaded on the Ministry website to facilitate better preparation of EIA-EMP Reports by the project proponents.

iv. A number of Circulars on the EIA Notification 2006 and the process for obtaining environmental clearance have also been uploaded on the MOEF website to facilitate the project proponents in preparation of EIA-EMP reports with all relevant information.

The Minister of State for Environment and Forests (independent charge) Shrimati Jayanthi Natarajan gave this information in a written reply to a question by Shri Dhruva Narayana in Lok Sabha today.

KP

14113207

ANNEXURE - B

By Speed Post

F.No. L-11011/211/2017-IA.II(M)
Government of India
Ministry of Environment, Forest & Climate Change
Impact Assessment Division

3rd Floor, Vayu Wing,
Indira Paryavaran Bhawan,
Jorbagh Road, Aliganj,
New Delhi-110003
Dated: 23rd April, 2018

To

The Principal Secretary,
Environment,
Governemnt of Goa,
Secretariat, Panaji,
Goa-403001

Office of the PCCF
Inward No. 1496 Book No. 1/18
Date: 04/05/18

Sub: Cancellation of the ECs granted to 88 mine leases in the State of Goa in view of the Hon'ble Supreme Court Judgment dated 07.02.2018-reg.

Sir,

Hon'ble Supreme Court in their Judgment dated 07.02.2018 in Special Leave to Appeal (Civil) No. 32138 of 2015 in the matter of Goa Foundation Vs. M/s Sesa Sterlite Ltd. & Ors and the interlocutory matters SLP(C) Nos. 32699-32727 of 2015, Writ Petition(C) No. 711 of 2015 and Writ Petition (C) No. 720 of 2015 has inter-alia cancelled the 88 mine leases and directed the mine lease holders to stop all mining operations in the State of Goa with effect from 16th March, 2018, until fresh mining leases (not fresh renewals or other renewals) are granted and fresh environmental clearances are granted, and that the Ministry of Environment and Forest should also take all necessary steps to grant fresh environmental clearances to those who are successful in obtaining fresh mining leases.

2. The matter was examined in the Ministry and it has been decided that the ECs of the 88 mine lease holders covered in the above mentioned judgment should be cancelled. Accordingly, the ECs for all these mines, earlier issued by the Ministry and irrespective of their validity as on date, are hereby cancelled with immediate effect. The details are as under:

Sr. No	Lease No.	Name of the Lessee	EC letter number and date of Issue
1	40/51	Late Shri.N.S. Narvekar rep. By M/s N.S. Narvekar Minerals	J-11015/101/2005-IA,II(M) dt. 14.5.2007
2	35/52	M/s V.S.Dempo & Co.Pvt. Ltd/Sesa Resources Ltd	J-11015/156/2005-IA.II (M) dt:17.11.2005 & extended by J-11015/156/2005-IA-II(M) dt: 02.01.2008.
3	6/61	Shri.Gandhar.N. Agrawal	J-11015/402/2005.IA II (M) 22-12-2006
4	29/52	Shri.Pramod P. Timblo legal heir of late shri Pandurang Timblo	J- 11015/359/2007-IA.III. I (M) Dt: 26/7/2007.
5	34/50	Sociedade Timblo Irmaos Limitada represented by M/s. Panduronga Timblo Industrias.	J-11015/360/2007-IA,II(M) dt. 26.7.2007
6	39/56	M/s.V. M. Salgaocar & Bro. Pvt. Ltd	J-11015/43/2005-IA.II (M) dt:17.11.2005
7	01/55	M/s Damodar Mangalji & Co.Ltd.	J-11015/609/2005-IA.II (M) Dated: 17.11.2006
8	02/51	M/s M.S.Talaulikar & Sons Pvt.Ltd.	J-11015/105/2005-IA.II (M) Dated: 25.11.2005 extended by J-11015/105/2005-IA-II(M) dt: 18.10.2007
9	03/54	M/s Sesa Goa Ltd/Sesa Sterlite Ltd	J-11015/28/2006-IA.II (M) Dated: 6.7.2007
10	03/57	Kunda Gharse	J-11015/149/2005-IA.II (M) Dated: 30.9.2005 amended by J-11915/149/2005-IA.II(M) dated 06.07.2007
11	04/49	M/S RAJARAM BANDEKAR (SIRIGAO) MINES PVT. LTD.	No. J-11015/40/2006-IA.II (M) Dt: 17.1.2007.
12	05/53	Shri.Manuel Da Costa	J-11015/29/2005-IA.II (M) dated 30.9.2005 extended by J-11015/29/2005-IA.II(M) dated 31.07.2007
13	08/50	Shri Raju R. Poiguinkar LH of Late Ramakanta Rajaram Poinguinkar	J-11015/148/2005-IA (M) dated 30.9.2005
14	08/61	M/s Madachem Bhat Mines Pvt. Ltd.	J-11015/475/2006-IA.II (M) Dated: 21.1.2008
15	09/49	M/s Sesa Goa Ltd/Sesa Sterlite Ltd	J-11015/28/2006-IA.II (M) Dated: 6.7.2007
16	10/49	M/s Sesa Goa Ltd/Sesa Sterlite Ltd	J-11015/28/2006-IA.II (M) Dated: 6.7.2007
17	10/51	Shri shabbar Khan LH of. Late Haider Kasim Khan	J-11015/365/2005-IA.II (M) dt:15.2.2006
18	110/53	M/s.Cosme Costa & Sons	J-11015/350/2005-IA.II (M) dt:4.9.2006 and J-11015/26/2008-IA.II (M) Dated: 26.3.2009

19	12/52	Late Shri.N.S. Narvekar rep. By M/s N.S. Narvekar Minerals	J-11015/101/2005-IA,II(M) dt. 14.5.2007(2006
20	12/57	CHOWGULE & CO.PVT. LTD	J-11015/65/2006-IA.II (M) dt:1.12.2006
21	126/53	SESA STERLITE Limited	J-11015/27/2005-IA.II (M) dated 6.9.2005 and J-11015/1133/2007-IA.II (M) Dt: 29.12.2008.
22	13/49	M/s. Chowgule & Co. Ltd.	J-11015/32/2005-IA.II (M) dt: 27.12.2005 extended by J-11015/32/2005-IA.II(M) dated 05/11/2007
23	13/55	M/s. V.M. Salgaocar & Bro. Pvt Ltd.,	J-11015/384/2005-IA.II (M) dt:28.3.2006
24	14/52	M/s. Baddrudin Hussainbhai Mavani	J-11015/42/2005-IAII. (M) dated 30.9.2005 amended by J-11-15/42/2005-IA.II(M) dated 14.08.2007
25	14/53	Sociedade Timblo Irmoas Ltda. (SFI), rept. By Sociedade de Fomento Industries Pvt. Ltd.	J-11015/259/2007-IA,II(M) dt. 20.8.2007 ammended by J-11015/259/2007-IA-II(M) dt: 04.03.2016
26	14/58	SOCIEDADE TIMBLO IRMAOS LTDA REPT. TIMBLO PVT. LTD;	J-11015/60/2006-IA.II (M) Dated: 5.7.2007
27	143/53	M/s. Sociedade Timblo Irmaos Ltda., (PTI)	J-11015/345/2005-IA.II (M) dt: 18.5.2006
28	16/51	Shri Vijay V. Chowgule, LH of late V.D. Chowgule	J-11015/64/2006-IA.II (M) dt:24.11.2006
29	16/55	M/s V. G. Quenim	J-11015/310/2005-IA.II (M) dt:18.5.2006 extended by J-11015/310/2005-IA-II(M) dt. 27.06.2007
30	18/53	M/s Damodar Mangalji &Co.Ltd.	J-11015/884/2007-IA.II (M) dt: 14.5.2009
31	19/52	M/s. V.M. Salgaocar & Bro. Pvt Ltd.,	J-11015/43/2005-IA.II (M) dt:17.11.2005
32	19/54	Smt. Kunda R.Gharse	J-11015/149/2005-IA.II (M) dated 30.9.2005 amended by J-11915/149/2005-Ia.II(M) dated 06.07.2007
33	19/58	M/s. V.M. Salgaocar & Bro. Pvt Ltd.,	J-11015/385/2005-IA.II (M) dt:28.03.2006
34	22/50	CHOWGULE & CO.PVT. LTD	J-11015/65/2006-IA.II (M) dt:1.12.2006
35	23/53	M/s Emco Pvt Ltd	J-11015/34/2005-IA.II (M) dt:16.2.2006
36	24/57	Shri Ramakanta V.S. Velingkar	J-11015/344/2005-IA.II (M) dt:19.2.2007 Further expansion given vide Lr. No. J-11015/344/2005-IA. II (M), dated 19/02/2008.
37	28/51	M/s Sesa Goa Ltd/Sesa Sterlite Ltd	J-11015/27/2006-IA.II (M) dt:15.9.2006 Further expansion given vide No. J-11015/1239/2-007-IA.II (M) Dt: 24.12.2009.
38	29/54	M/s. V.M. Salgaocar & Bro. Pvt Ltd.,	J-11015/385/2005-IA.II (M) dt: 28.03.2006

667/c

39	29/55	Shri A.V.S. Velingkar (Late)	J-11015/162/2005-IA.II (M).dt:26.12.2005 amended J-11015-162/2005-IA.II(M) dated 23.10.2007
40	31/53	M/s. Chowgule & Co. Pvt. Ltd.	J-11015/20/2006-IA.II (M) dt:24.11.2006
41	33/53	M/s Damodar Mangalji & Co.Ltd.	J-11015/608/2007-IA.II (M) Dated: 23.10.2007
42	33/57	Kunda R. Gharse	J-11015/149/2005-IA.II (M) dated 30.9.2005 amended by J-11915/149/2005-IA.II(M) dated 06.07.2007
43	38/51	CHOWGULE & CO.PVT. LTD	J-11015/65/2006-IA.II (M) dt:1.12.2006
44	4/55	Marzook & Cadar Pvt. Ltd.	J-11015/34/2006-IA,II(M) dt. 30.4.2007
45	40/50	Shri Vijay V. Chowgule, LH of late V.D. Chowgule	J-11015/64/2006-IA.II (M) dt:24.11.2006
46	41/54	Ahiliabai Sardessai	11015/60/2005-IA.II (M) Dt: 11.11.2005 extended J-011015/60/2005-IA.II(M) dated January 2,2008
47	41/55	M/S Salgaocar Mining Industries	J-11015/274/2006-IA,II(M) dt. 27.7.2007
48	41/56	M/s. Chowgule & Co. Pvt. Ltd.	J-11015/20/2006-IA.II (M) dt:24.11.2006
49	44/56	M/s. V.M. Salgaocar & Bro. Pvt Ltd.,	J-11015/43/2005-IA.II (M) dt:17.11.2005
50	45/52	M/s Sociedade Timblo Irmoas Ltda. (SFI) rep. By Sociedade de Fomento Industries Pvt. Ltd.	J-11015/260/2007-IA,II(M) dt. 22.8.2007
51	45/54	M/S SOVA	J-11015/58/2005-IA (M) dated 28.10.2005 extended J-11015/58/2005-IA(M) dated. 23.10.2007
52	47/54	M/s. V.M. Salgaocar & Bro. Pvt Ltd.,	J-11015/384/2005-IA.II (M) Dated: 28.03.2006
53	48/58	Shri Devendra Sawant Talaulikar	J-11011/537/2007-IA,II(I) dt. 31.12.2008
54	5/49	M/s. Chowgule & Co. Ltd.	J-11015/32/2005-IA.II (M) dt: 27.12.2005 extended by J-11015/32/2005-IA.II(M) dated 05/11/2007
55	50/53	M/s. V.M. Salgaocar & Bro. Pvt Ltd.,	J-11015/384/2005-IA.II (M) dt:28.3.2006
56	51/52	Smt.Kunda R. Gharse	J-11015/386/2005-IA.II (M) dt:23.3.2006
57	59/51	Smt.Annapurna Dayanand Neugui, Legal heirs of Shri Zairam B. Neugi	J-11015/521/2007-IA II (M), Dt:18.10.2007
58	6/55	M/s. Sesa Sterlite Ltd.	J-11015/437/2005-IA.II (M) dt:5.12.2006 Further expansion given vide No. J-11015/1241/2007-IA.II (M) Dt: 24.12.2009

59	61/53	SOCIEDADE TIMBLO IRMAOS LTDA.REPT. BY PANDURANG TIMBLO INDUSTRIES	J-11015/161/2005-IA.II (M) dated 20.10.2005
60	62A/52	Smt. Shashikala Kakodkar & Others D. B. Bandodkar & Sons Pvt. Ltd.	J-11015/36/2006-IA.II (M) Dated: 4.10.2006
61	62B/52	M/s. V.M. Salgaocar & Bro. Pvt Ltd.,	J-11015/385/2005-IA.II (M) dt:28.3.2006
62	69/51	SESA STERLITE Limited	J-11015/27/2005-IA.II (M) dated 6.9.2005(1994) and J-11015/1133/2007-IA.II (M) Dt: 29.12.2008.
63	7/41	M/s Emco Pvt Ltd	J-11015/34/2005-IA.II (M) dt:16.2.2006
64	70/52	SESA STERLITE Limited	J-11015/27/2005-IA.II (M) Dated: 06.09.2005 & expansion J-11015/1133/2007-IA.II (M) Dated: 29.12.2008
65	76/52	M/s Sesa Sterlite Ltd	J-11015/70/2006-IA.II (M) Dated: 18.04.2007
66	8/41	SHRI GANGADHAR N. AGRAWAL	J-11015/100/2005-IA.II (M) Dated: 26.10.2005 ammended by J-11015/100/2005-IA.II (M) dt: 13.08.2007
67	83/52	M/s. V.M. Salgaocar & Bro. Pvt Ltd.,	J-11015/385/2005-IA.II (M) dt:28.3.2006
68	84/52	M/s Bandekar Bros.Pvt. Ltd.	No. J-11015/351/2005-IA.II (M) Dt: 18.4.2007
69	86/53	Salitho Ores Pvt. Limited	J-11015/415/2005-IA,II(M) dt. 30.4.2007
70	87/53	M/s. Sociedade Timblo Irmaos Ltda., (PTI)	J-11015/343/2005-IA.II (M) dt:13.7.2006
71	88/52	M/s. Sociedade Timblo Irmaos Ltda., (SFI)	J-11015/104/2005-IA,II(M) dt. 3.9.2007
72	89/52	M/S Lithoferro	J-11015/305/2006-IA,II(M) dt. 4.5.2007
73	92/52	Sociadade. Timblo Irmaos Ltd.,Rep. by Timblo Pvt., Ltd.,	J-11015/36/2005-IA.II (M) dt:30.9.2005 amended by J-11015/36/2005-IA.II(M) dated 19.07.2007
74	95/52	Damodar Mangalji & Co.Ltd.	J-11015/302/2006-IA,II(M) dt. 9.4.2007
75	98/52	M/s. Chowgule & Co. Pvt.Ltd.	J-11015/399/2005-IA.II (M) dt:17.8.2006 extended by J-1105/399/2005-IA.II (M) dated 05/11/2007
76	55/51	Geetabala M. N. Parulekar	J-11015/401/2005-IA.II (M) dt: 17.1.2007 ammended by J-11015/85/2008-IA.II (M) dt: 12.12.2008 and further expansion given vide No. J-11015/157/2009-IA-II (M) Dt: 18.1.2010
77	70/51	M/s R.S. Shetye & Bros.	J-11015/56/2005-IA.II (M) dated 30.9.2005 extended by J-11015/56/2005-IA-II(M) dt: 21.08.2007

668/c

78	06/49	Shri Uday H. Gosalia LH of Late Hiralal Khodidas	J-11015/180/2006-IA,II(M) dt: 12.3.2007
79	11/41	M/s Sesa Mining Corp. LTd.	J-11015/45/2005-IA.II (M) dt:17.11.2005 and J-11015/45/2005-IA.II (M) dt:17.09.2007
80	12/41	M/s Sesa Mining Corp. LTd.	J-11015/45/2005-IA.II (M) dt:17.11.2005 and J-11015/45/2005-IA.II (M) dt:17.09.2007
81	13/41	M/s Sesa Mining Corp. LTd.	J-11015/45/2005-IA.II (M) dt:17.11.2005 and J-11015/45/2005-IA.II (M) dt:17.09.2007.
82	14/41	M/s Sesa Mining Corp. LTd.	J-11015/45/2005-IA.II (M) dt:17.11.2005 extended by J-11015/45/2005-IA.II (M) dt:17.09.2007
83	15/41	M/s Sesa Mining Corp. LTd.	J-11015/45/2005-IA.II (M) dt:17.11.2005 and extended by J-11015/45/2005-IA.II (M) dt:17.09.2007
84	3/51	SESA RESOURCES LTD,	J-11015/155/2005-IA.II (M) dt:17.11.2005 and extended by J-11015/155/2005-IA-II(M) DT: 02.01.2008
85	40/54	SESA RESOURCES LTD.	J-11015/155/2005-IA.II (M) dt:17.11.2005 and extended by J-11015/155/2005-IA-II(M) dt: 02.01.2008
86	21/54	M/s Sesa Resources Ltd.,	J-11015/44/2004-IA.II (M) dt :17.11.2005 and extended by J-11015/44/2004-IA-II(M) dt: 01.01.2008
87	5/54	M/s. Sesa Resources Ltd.	J-11015/44/2004-IA.II (M) dt::17.11.2005 and extended by J-11015/44/2004-IA-II(M) dt: 01.01.2008
88	20/54	M/s. Sesa Resources Ltd.	J-11015/44/2004-IA.II (M) dt :17.11.2005 and extended by J-11015/44/2004-IA-II(M) dt: 01.01.2008

3. As and when Govt. of Goa grants fresh mine lease, the lease holders may apply to MoEF&CC as per EIA Notification, 2006 to get fresh.EC.

4. This issues with the approval of the competent authority.

(Surendra Kumar)
Advisor / Scientist 'G'

Copy to:

1. The concerned 88 project proponents.
2. The Secretary, Ministry of Mines, Government of India, Shastri Bhawan, New Delhi.
3. The Principal Secretary, Department of Mines and Geology, Government of Goa, Panaji.
4. The Principal Secretary, Department of Forests, Government of Goa, Panaji.
5. The Chief Wildlife Warden, Government of Goa, Panaji.

6. The Chairman, Central Pollution Control Board, Parivesh Bhawan, CBD-Cum-Office Complex, East Arjun Nagar, New Delhi-110 032.
7. The Chairman, Goa State Pollution Control Board, Dempo Tower, EDC Plaza, 1st Floor, Panaji, Goa- 403 001
8. The Member Secretary, Central Ground Water Authority, A2, W- 3 Curzon Road Barracks, K.G. Marg, New Delhi-110001.
9. The Controller General, Indian Bureau of Mines, Indira Bhavan, Civil Lines, Nagpur- 440 001.
10. The Additional Principal Chief Conservator of Forests, Regional Office Chennai, Kendriya Sadan, 4th Floor E&F, Wings 17th Main Road, 1 Block, Koramangala, Bangalore-560 034.
11. Monitoring File.
12. Guard File.
13. MoEF Website

23/4/18

(Surendra Kumar)
Advisor / Scientist 'G'

(2014) 6 Supreme Court Cases 590 : 2014 SCC OnLine SC 354

In the Supreme Court of India

(BEFORE A.K. PATNAIK, S.S. NIJJAR AND F.M. IBRAHIM KALIFULLA, JJ.)

GOA FOUNDATION . . Petitioner;

Versus

UNION OF INDIA AND OTHERS . . Respondents.

Writ Petition (C) No. 435 of 2012[1] with Nos. 99, 184 of 2013, Transferred Cases Nos. 131-36 and 138-43 of 2013, decided on April 21, 2014

A. **Environment Protection and Pollution Control — Mining — Illegal and uncontrolled and unmonitored mining affecting environment and revenue — Expired mining leases in State of Goa — Continuance of, in violation of Ss. 8(2) & (3), MMDR Act — Impermissibility and consequential remedial measures**

— S. 8(2) of MMDR Act permitting only one time renewal option for a period not exceeding 20 yrs (availing said option, present leases renewed from 22-11-1987 to 22-11-2007) — S. 8 (3) permitting a second renewal for specified minerals (that is those not mentioned in Sch. I Pts. A & B, MMDR Act) but conditions in S. 8(3) for second renewal not having been fulfilled (that is State Government not having formed any opinion nor recording the same that the second renewal is in the interest of mineral development) — Held, said illegal mining leases cannot continue beyond 22-11-2007 neither under S. 8(2) nor under S. 8(3), MMDR Act — Therefore, impugned orders suspending said leases and keeping in abeyance their environmental clearances (that is impugned orders dt. 10-9-2012 and 14-9-2012 of State Government and MoEF respectively), held, were proper — Said orders directed to continue till issue of grant of fresh leases by State Government and environmental clearances by MoEF had been duly decided as per law — Mines and Minerals (Development and Regulation) Act, 1957, Ss. 8(2), 8(3) and Sch. I Pts. A, B & C

(Paras 24 to 28, 82, 87.1 and 89)

B. **Environment Protection and Pollution Control — Mining — Illegal and uncontrolled/unmonitored mining affecting environment and revenue — Expired mining leases in State of Goa — Minerals excavated after expiration of lease — Sale proceeds after e-auction of said minerals as per directions of Supreme Court — Manner of utilisation and appropriation of said sale proceeds — Directions issued**

— State Government (under supervision of Monitoring Committee) directed to make the following payments (after duly calculating the same): (a) Average/approximate costs (not actual costs) of excavation of minerals to lessees, (b) 50% of wages and DA to eligible workers as per S. 25-C, ID Act who suffered due to suspension of mining leases by State Government, (c) 50% of claim towards storage charges of Marmagao Port Trust for storage of minerals after 5-10-2012 (that is, date from which Supreme Court suspended mining leases) — After said payments 10% of balance amount directed to be paid to Goa Iron Ore Permanent Fund for the purpose of sustainable

Page: 591

development and intergenerational equity — And the rest of balance amount directed to be appropriated by State Government as owners of said ore — Labour Law — Industrial Disputes Act, 1947 — S. 25-C — Compensation under, for affected eligible workers, for suspension of mining leases under directions of Government/Court — Entitlement to

(Paras 85, 86 and 88.8)

C. **Mines and Minerals — Mineral Concession Rules, 1960 — Rr. 24-A(8), (6), (9), (4), (5) and R. 42-A(9) — Deemed renewal of mining leases if applications for renewal are not disposed of within stipulated time under R. 24-A(8) — Such applications having been made and such time having expired, mining leases, held, had been duly renewed up to 21-11-2007 — Thus, finding of Shah Commission that continuance of leases up to 21-11-2007 was without valid renewal, is**

not correct

(Paras 20 to 23)

D. **Mines and Minerals (Development and Regulation) Act, 1957 — Ss. 8(3) & (2) — Renewal of mining lease under R. 8(3) — General principle of R. 24-A(6) of 1960 Rules (that there cannot be any hiatus in mining), held, is inapplicable to said renewal without express orders of State Government recording reasons for said renewal — Mineral Concession Rules, 1960, R. 24-A(6)**

(Para 28)

Goa Foundation v. *Union of India*, (2014) 6 SCC 738, *relied on*

Tisco Ltd. v. *Union of India*, (1996) 9 SCC 709, *affirmed*

Goa Foundation v. *Union of India*, WP (C) No. 435 of 2012, order dated 5-10-2012 (SC), *vacated*

Vassudeva Madeva Salgaocar v. *Union of India*, (1985) 1 Bom CR 36; *Shantilal Khushaldas and Bros. (P) Ltd.* v. *Union of India*, WP No. 177 of 1990, decided on 20-6-1997 (Bom); *Shantilal Khushaldas and Bros. (P) Ltd.* v. *Union of India*, SLP (C) No. 23827 of 1997, order dated 2-3-1998 (SC); *State of U.P.* v. *Lalji Tandon*, (2004) 1 SCC 1, *referred to*

E. **Public Accountability, Vigilance and Prevention of Corruption — Commissions of Inquiry Act, 1952 — Ss. 8-B and 8-C — Principles of natural justice under — Non-compliance with — Effect on Inquiry Commission report — Extent to which findings in report may be relied on**

— Shah Commission inquiring into illegal mining in State of Goa giving its report without giving any opportunity of hearing to lessees of alleged illegal mining — Central Government and State Government pleading that they would not take any action against said lessees on basis of said findings prior to giving an opportunity of hearing to lessees — Therefore, Shah Commission Report not quashed (as prayed for by the lessees) — At the same time, the prosecution of mining leases cannot be directed on the basis of the findings in the Report of the Justice Shah Commission, if they have not been given the opportunity of being heard and to produce evidence in their defence and not allowed the right to cross-examine and the right to be represented by a legal practitioner before the Commission as provided in Ss. 8-B and 8-C — However, the legal and environmental issues raised in the Report of the Justice Shah Commission can be examined and on the basis of the said findings on these issues the reliefs prayed for from both sides can be considered — Administrative Law — Natural Justice — Audi Alteram Partem — Right to Hearing — Reasonable Opportunity/Right of Representation

(Para 14)

Kiran Bedi v. *Committee of Inquiry*, (1989) 1 SCC 494; *State of Bihar* v. *Lal Krishna Advani*, (2003) 8 SCC 361; *Union of India* v. *Tulsiram Patel*, (1985) 3 SCC 398 : 1985 SCC (L&S) 672, *referred to*

F. **Environment Protection and Pollution Control — Mining — Mining waste — Dumping of, outside leased area, held, is not permissible under MMDR Act and Rules made thereunder — Clarified that even if land outside the mining area is privately owned mineral wastes cannot be dumped there without prior environmental clearance under R. 5(3) of 1986 Rules**

— Expert Committee directed to submit its report within six months on how the mining dumps in the State of Goa should be dealt with — Environment (Protection) Rules, 1986 — R. 5 (3) — Mines and Minerals (Development and Regulation) Act, 1957 — Ss. 9, 4 and 3(d) — Mineral Concession Rules, 1960 — R. 64-C and R. 31 r/w Form K — Terms of lease deed under Form K and principles of dumping of mineral waste under R. 64-C — Clarified — None of said provisions, held, permits dumping of mineral waste outside leased area — Mineral Conservation and Development Rules, 1988 — R. 16 — Forest (Conservation) Act, 1980, S. 2

(Paras 30 to 37, 87.2 and 88.11)

Central Bank of India v. *Workmen*, AIR 1960 SC 12, *relied on*

Samaj Parivartana Samudaya v. *State of Karnataka*, (2013) 8 SCC 154, *referred to*

G. **Environment Protection and Pollution Control — Mining — Safety/prohibition zones around natural parks, wildlife sanctuaries and protected areas — Extent of prohibition zones for State of**

Goa, considering its local needs for development, occupational structure and geographical availability of land

— Reiterating direction of Supreme Court in *T.N. Godavarman Thirumulpad*, (2010) 13 SCC 740, all mining within a distance of 1 km from national parks and sanctuaries, held, are prohibited — Regarding extension of safety zones to 10 kms at six proposed sites, MoEF directed to proceed as per statutory procedure and consider the objections of State Government in this regard (that is regarding needs of local people, development needs, availability of land and geographical constraints peculiar to State of Goa) — Environment (Protection) Rules, 1986 — Rr. 5(1)(viii) & (x) and Rr. 5(2) & (3) — Environment (Protection) Act, 1986 — S. 3(2)(v) — Wildlife (Protection) Act, 1972 — S. 5-C(2)(b) — Constitution of India, Arts. 21 and 32

(Paras 38 to 53, 87.3, 87.4 and 88.1)

Noida Memorial Complex near Okhla Bird Sanctuary, In re, (2011) 1 SCC 744, *relied on*

T.N. Godavarman Thirumulpad v. *Union of India*, (2010) 13 SCC 740, *explained* and *relied on*

Goa Foundation v. *Union of India*, (2011) 15 SCC 791, *explained*

T.N. Godavarman Thirumulpad v. *Union of India*, (2002) 10 SCC 634, *referred to*

H. **Mines and Minerals — Mineral Concession Rules, 1960 — Rr. 37(1)(a) and 38 — Violation of, by mining lessees by resorting to illegal transfers and amalgamations — Clarified that iron ore mines (not being specified in Sch. I Pt. A or B but being specified in Pt. C, MMDR Act) could**

Page: 593

not be transferred without the previous written consent of State Government — Further clarified that amalgamation of mines is not permitted, if the State Government has not recorded its reasons for said amalgamation — And that the period of such amalgamation cannot exceed the period of lease whose term expires first — State Government, therefore, directed to initiate action against all mining lessees who had violated Rr. 37 and 38, MC Rules so that there is no loss of revenue and mining is effectively controlled — Mines and Minerals (Development and Regulation) Act, 1957 — Sch. I Pts. A, B and C — Transfer of Property Act, 1882 — Ss. 10 and 11 — Statutory bars on transfer of property

I. **Mines and Minerals — Mineral Concession Rules, 1960 — R. 37 — Intent of rule-making authorities under, explained — The intent is to ensure that there is no loss of revenue and mining is effectively controlled**

Held :

The Justice Shah Commission has found in its Report that in the State of Goa, 16 companies/firms/individuals are carrying out mining operations under different leases granted to them as a single unit as if the leases are amalgamated. CEC has reported that there are several complaints received by the State Government that the leases have been operated by persons other than the lessees. As per Rule 37(1)(*a*) of the MC Rules, 1960 the lessee cannot assign, sub-let, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein, without the previous consent in writing of the State Government in the case of those minerals which are not specified in Part A and Part B of the First Schedule to the MMDR Act. Since iron ore is specified in Part C of the First Schedule to the MMDR Act, the previous consent in writing of the State Government is necessary before any such transfer is made by a mining lessee.

(Paras 54 to 57)

The intent of the rule-making authority in making these provisions in Rule 37 of the MC Rules, 1960 is that the liabilities and conditions in a mining lease are also enforceable against the transferee and that the transferee pays his dues towards income tax regularly. Rule 37, therefore, cannot be allowed to be violated by the lessees with impunity and the State Government cannot overlook transfers by saying that the transfers of the mining leases are part of the mining practice in the State of Goa. If these violations of Rule 37 of the MC Rules, 1960 are allowed, there shall be substantial leakage of revenue and mining operations cannot be effectively regulated and controlled by the State Government. The State Government, therefore, must initiate action against those mining leases who violate Rule 37 of the MC Rules, 1960.

(Para 60)

Rule 38 of the MC Rules, 1960 provides that 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. If the State Government has not permitted amalgamation of adjoining leases in the interest of mineral development and has not recorded the reasons for such permission, the State Government cannot allow the amalgamation of the leases. The State Government will initiate action against those mining lessees who violate Rules 37 and 38 of the MC Rules, 1960.

(Para 61)

Page: 594

J. **Environment Protection and Pollution Control — Mining — Illegal and uncontrolled/unmonitored mining affecting environment and revenue — Monitoring and regulatory mechanism — Need of strict implementation of statutory provisions and powers by regulatory bodies — Directions issued to regulatory bodies**

— Judicial notice taken of fact that Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013 has adequate provisions to deal with illegal mining and that the regulatory bodies have failed in their endeavour to restore the environment from the damage caused by mining — State of Goa directed to enforce provision of MMDR Act and Rules made there under and to strictly enforce 2013 Rules — Goa State Pollution Control Board also directed to exercise the immense powers conferred under S. 33-A, 1974 Act and 31-A, 1981 Act — Further directed that as and when Regulator as directed in *T.N. Godavarman Thirumulpad*, (2014) 4 SCC 61, is appointed, it would carry out its functions as per order passed under S. 3(3), Environment (Protection) Act, 1986 — Mines and Minerals (Development and Regulation) Act, 1957 — S. 23-C — Air (Prevention and Control of Pollution) Act, 1981 — S. 31-A — Water (Prevention and Control of Pollution) Act, 1974, S. 33-A

(Paras 62, 63, 69 to 71, 75 to 78 and 88.6)

K. **Environment Protection and Pollution Control — Mining — Sustainable development — Illegal and uncontrolled/unmonitored mining affecting environment and revenue — Rationale why mining cannot be totally prohibited in State of Goa, explained — Goa is heavily dependent upon iron ore mining for its revenue and employment — People have taken bank loans, purchased trucks and many people depend upon mining for their livelihood — Therefore, mining cannot be totally prohibited in Goa**

(Paras 77, 78, 88.9 and 88.10)

L. **Constitution of India — Arts. 21 and 32 — Sustainable development — Goa Iron Ore Permanent Fund — In future, lessees directed to deposit 10% of their sale proceeds from iron ore towards said fund in the interest of sustainable development and inter-generational equity as the damage caused cannot be rectified by regulation/monitoring alone — CEC directed to submit a comprehensive scheme within six months in this regard — Environment Protection and Pollution Control — Polluter pays principle**

(Paras 77, 78, 88.9 and 88.10)

M. **Constitution of India — Arts. 21 and 32 — Sustainable development — Cap on annual excavation of iron ore in State of Goa — Based on reports of experts, and until a final report by Expert Committee, a cap of 20 Million MT on said excavation fixed — Expert Committee directed to submit said report within 12 months — Environment Protection and Pollution Control — Sustainable development**

(Paras 88.4 and 88.5)

T.N. Godavarman Thirumulpad v. *Union of India*, (2014) 4 SCC 61; *Lafarge Umiam Mining (P) Ltd.* v. *Union of India*, (2011) 7 SCC 338, *considered*

Goa Foundation v. *Union of India*, (2014) 6 SCC 738; *Goa Foundation* v. *Union of India*, WP (C) No. 435 of 2012, order dated 18-11-2013 (SC); *Samaj Parivartana Samudaya* v. *State of Karnataka*, (2013) 8 SCC 154, *referred to*

Page: 595

Report of Expert Committee, Reports of ISM, Dhanbad and Neeri, *referred to*

N. **Environment Protection and Pollution Control — Mining — Mining leases — Mode by which should be granted — Whether State Government should be directed to grant said leases only by way of auction — Held, it is for the State Government to decide as a matter of policy, in what manner the leases are to be granted — MMDR Act does not prohibit the State from holding auction — The State Government may also adopt any other method — But said methods must conform to Constitution and law and are subject to judicial review — Mines and Minerals (Development and Regulation) Act, 1957 — Ss. 4 to 11 — Constitution of India — Arts. 21, 32 and 39(b) — Government Grants, Largesse, Public Property and Premises — Allotment/Grant/Lease/Licence of land — Mode of grant of**

(Paras 79 to 81 and 87.5)

Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1, *relied on*

Centre for Public Interest Litigation v. *Union of India*, (2012) 3 SCC 1, *referred to*

SS-D/53204/C

Advocates who appeared in this case:

A.N.S. Nadkarni, Advocate General, Suryanarayana Singh, Additional Advocate General, Datta Prasad Lawande, Government Advocate, Nikhil D. Pai and Ms Neha Umesh Kholkar, Additional Government Advocates, Mukul Rohatgi, Senior Advocate [Prashant Bhushan, Amit Sharma, Yashraj Singh Deora, M/s K.J. John & Co., Harish Pandey, P.S. Sudheer, M/s Mitter & Mitter Co., A. Venayagam Balan, Abhijat P. Medh, P.V. Yogeswaran, Ms Jyoti Mendiratta, Ms Madhu Sikri, Dr (Ms) Vipin Gupta, Ninad Laud, Ms Aparna Singhal, Mahesh Agarwal, E.C. Agarwala, Ms Sudha Gupta, M/s Parekh & Co., Shadman Ali, D.S. Mahra, Yashraj Singh Deora, Mohan Pandey, Shreekant N. Terdal, M/s J.S. Wad & Co., Abhijit Gosavi, Jayant Mohan, Harish Pandey, M/s K.J. John & Co., Chander Shekhar Ashri, Mohit Abraham, Shiv Kr. Suri, P.S. Sudheer, T. Mahipal, Parijat Sinha, S.M. Walawaikar, Rameshwar Prasad Goyal, M.P. Jha, Siddharth Bhatnagar, Ms A. Subhashini, Bhavanishankar V. Gadnis, A. Venayagam Balan, Prafulla Hede, Advocates] for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (2014) 6 SCC 738, *Goa Foundation* v. *Union of India* 599*d-e*, 600*a-b*, 626*d-e*, 628, 635*d-e*, 635*f*, 63(
2. (2014) 4 SCC 61, *T.N. Godavarman Thirumulpad* v. *Union of India* 632*b*
3. (2013) 8 SCC 154, *Samaj Parivartana Samudaya* v. *State of Karnataka* 609*d*, 63
4. WP (C) No. 435 of 2012, order dated 18-11-2013 (SC), *Goa Foundation* v. *Union of India* 626*a*
5. (2012) 10 SCC 1, *Natural Resources Allocation, In re, Special Reference No. 1 of 2012* 634*b-c*, 63
6. (2012) 3 SCC 1, *Centre for Public Interest Litigation* v. *Union of India* 633*e*
7. WP (C) No. 435 of 2012, order dated 5-10-2012 (SC), *Goa*

Foundation v. *Union of India* 599*a*, 635*d*, 638*f*

8. (2011) 15 SCC 791, *Goa Foundation* v. *Union of India* 613*c*, 613*f*, 614*a*, 614*b*, 614 617*b*, 617*g-h*, 618*a*, 618 618*d-e*, 63

9. (2011) 7 SCC 338, *Lafarge Umiam Mining (P) Ltd.* v. *Union of India* 632*c*

10. (2011) 1 SCC 744, *Noida Memorial Complex near Okhla Bird Sanctuary, In re* 616*g*

Page: 596

11. (2010) 13 SCC 740, *T.N. Godavarman Thirumulpad* v. *Union of India* 613*f-g*, 614*g*, 617*b*, 617*b-c*, 61 *-d*, 617*f*, 637*b*

12. (2004) 1 SCC 1, *State of U.P.* v. *Lalji Tandon* 606*g*

13. (2003) 8 SCC 361, *State of Bihar* v. *Lal Krishna Advani* 600*e*

14. (2002) 10 SCC 634, *T.N. Godavarman Thirumulpad* v. *Union of India* 61

15. SLP (C) No. 23827 of 1997, order dated 2-3-1998 (SC), *Shantilal Khushaldas and Bros. (P) Ltd.* v. *Union of India* 597*c*, 59

16. WP No. 177 of 1990, decided on 20-6-1997 (Bom), *Shantilal Khushaldas and Bros. (P) Ltd.* v. *Union of India* 597*b-c*, 59

17. (1996) 9 SCC 709, *TISCO Ltd.* v. *Union of India* 607*a*, 60

18. (1989) 1 SCC 494, *Kiran Bedi* v. *Committee of Inquiry* 600*e*

19. (1985) 3 SCC 398 : 1985 SCC (L&S) 672, *Union of India* v. *Tulsiram Patel* 600*e*

20. (1985) 1 Bom CR 36, *Vassudeva Madeva Salgaocar* v. *Union of India* 59

The Judgment of the Court was delivered by

A.K. PATNAIK, J.— This batch of writ petitions and transferred cases relate to mining in the State of Goa and as issues raised are common to the writ petitions and the transferred cases, the cases have been analogously heard and are being disposed of by this common judgment.

Facts relating to mining in Goa

2. Prior to 19-12-1961 when Goa was a Portuguese territory, its Portuguese Government had granted mining concessions in perpetuity to concessionaires. On 19-12-1961, Goa was liberated and became part of the Indian Union and on 1-10-1963, the Mines and Minerals (Development and Regulation) Act, 1957 (for short "the MMDR Act") was made applicable to the State of Goa. On 10-3-1975, the Controller of Mining Leases issued a Notification calling upon every lessee and sub-lessee to file returns under Rule 5 of the Mining Leases (Modification of Terms) Rules, 1956 and sent copies of the notification to the concessionaires in Goa. Aggrieved, the concessionaires moved the Bombay High Court, Goa Bench, and by judgment dated 29-9-1983, in *Vassudeva Madeva Salgaocar* v. *Union of India*[1], the Bombay High Court restrained the Union of India from treating the concessions as mining leases and from enforcing the notification against the concessionaires.

3. Parliament thereafter passed the Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987 (for short "the Abolition Act") which received the assent of the President on 23-5-1987. Section 4 of the Abolition Act abolished the mining concessions and declared that with effect from the 20th day of December, 1961, every mining concession will be deemed to be a mining lease granted under the MMDR Act and that the provisions of the MMDR Act will apply to such mining lease. Section 5 of the Abolition Act further provided that the concession holder shall be deemed to have become a holder of the mining lease under

the MMDR Act in relation to the mines in which the concession relates and the period of such lease was to extend up to six months from the date when the Abolition Act received President's assent i.e. up to 22-11-1987. On 14-10-1987, sub-rules (8) and (9) were inserted in Rule 24-A of the Mineral Concession Rules, 1960 (for short "the MC Rules") which deal with renewal of mining leases in Goa, Daman and Diu.

4. The Abolition Act was challenged by the lessees before the Bombay High Court in a writ petition. The High Court passed an interim order permitting the lessees to carry on mining operations and the mining business in the concessions for which renewal applications had been filed under Rule 24-A of the MC Rules. Subsequently, the High Court held in its judgment dated 20-6-1997[2] that the Abolition Act was valid but Section 22(*i*)(*a*) of the Abolition Act would operate prospectively and not retrospectively. The concessionaires filed special leave petition against the judgment dated 20-6-1997[2] before this Court. On 2-3-1998[3], this Court passed an interim order permitting the concessionaires to carry on mining operations and mining business in the mining areas for which renewal applications have been made on the condition that the lessee pays to the Government dead rent from the date of commencement of the Abolition Act. Subsequently, this Court granted leave in the special leave petition and continued the aforesaid interim order[3].

The Justice Shah Commission and its Report

5. As reports were received from various State Governments of widespread mining of iron ore and manganese ore in contravention of the provisions of the MMDR Act, the Forest

(Conservation) Act, 1980, the Environment (Protection) Act, 1986 and other rules and guidelines issued thereunder, the Central Government appointed the Justice Shah Commission under Section 3 of the Commissions of Inquiry Act, 1952 by Notification dated 22-11-2010. Paras 2 and 3 of the Notification, which are relevant, are extracted hereinbelow:

"**2.** The terms of reference of the Commission shall be—

(*i*) to inquire into and determine the nature and extent of mining and trade and transportation, done illegally or without lawful authority, of iron ore and manganese ore, and the losses therefrom; and to identify, as far as possible, the persons, firms, companies and others that are engaged in such mining, trade and transportation of iron ore and manganese ore, done illegally or without lawful authority;

(*ii*) to inquire into and determine the extent to which the management, regulatory and monitoring systems have failed to deter, prevent, detect and punish offences relating to mining, storage, transportation, trade and export of such ore, done illegally or without lawful authority, and the persons responsible for the same;

Page: 598

(*iii*) to inquire into the tampering of official records, including records relating to land and boundaries, to facilitate illegal mining and identify, as far as possible, the persons responsible for such tampering; and

(*iv*) to inquire into the overall impact of such mining, trade transportation and export done illegally or without lawful authority, in terms of destruction of forest wealth, damage to the environment, prejudice to the livelihood and other rights of tribal people, forest dwellers and other persons in the mined areas, and the financial losses caused to the Central and State Governments.

3. The Commission shall also recommend remedial measures to prevent such mining, trade, transportation and export done illegally or without lawful authority."

6. The Justice Shah Commission visited Goa and issued notices under Section 4 of the Commissions of Inquiry Act, 1952 calling for information from the authorities concerned and the lessees and submitted its interim report on 15-3-2012 to the Ministry of Mines, Union of India. On 7-9-2012, the Justice Shah Commission Report on Goa was tabled in Parliament along with an Action Taken Report of the Ministry of Mines and on 10-9-2012 the State Government of Goa passed an Order suspending all mining operations in the State of Goa with effect from 11-9-2012. Pursuant to this Order of the State Government, on 11-9-2012 and 12-9-2012 the District Magistrates of the State of Goa banned transportation of iron ore in their respective districts and the Director of Mines and Geology ordered for verification of mineral ore which was already extracted. On 13-9-2012, the Director of Mines and Geology, Government of Goa issued show-cause notices to 40 mining leases. On 14-9-2012, the Ministry of Environment and Forests of the Union of India also directed that all environmental clearances granted to mines in the State of Goa be kept in abeyance.

7. On the basis of findings in the Report of the Justice Shah Commission on illegal mining in the State of Goa, Goa Foundation has filed Writ Petition (C) No. 435 of 2012 as public interest litigation praying for directions to the Union of India and the State of Goa to take steps for termination of the mining leases of lessees involved in mining in violation of the Forest (Conservation) Act, 1980, the Mines and Minerals (Development and Regulation) Act, 1957, the Mineral Concessions Rules, 1960, the Environment (Protection) Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 as well as the Wild Life (Protection) Act, 1972. Goa Foundation has prayed that a direction be issued to the respondents to

prosecute all those who have committed offences under the different laws and are involved in the pilferage of State revenue through illegal mining activities in the State of Goa including the public servants who have aided and abetted the offences. Goa Foundation has also sought for appointment of an independent authority with full powers to take control, supervise and regulate mining operations in the State of Goa and to ensure the implementation of the laws. Besides, the

Page: 599

aforesaid main reliefs, Goa Foundation has also prayed for some incidental and consequential reliefs.

8. On 5-10-2012, this Court issued notice in *Goa Foundation* v. *Union of India*[4] to the respondents and directed the Central Empowered Committee (for short "CEC") to submit its report on the writ petition and also directed that till further orders, all mining operations in the leases identified in the report of the Justice Shah Commission and transportation of iron ore and manganese ore from those leases, whether lying at the mine-head or stockyards, shall remain suspended, as recommended in the report of the Justice Shah Commission.

9. Different mining lessees of the State of Goa and the Goa Mining Association also filed writ petitions in the Bombay High Court, Goa Bench for a declaration that the report of the Shah Commission is illegal and for quashing the findings in the Report of the Justice Shah Commission and also for quashing the Order dated 10-9-2012 of the Government of Goa suspending mining operations in the State of Goa and the Order dated 14-9-2012 of the Ministry of Environment and Forests, Government of India, directing that the environmental clearances granted to the mines in the State of Goa be kept in abeyance. These writ petitions have been transferred to this Court for hearing along with the hearing of Writ Petition (Civil) No. 435 of 2012 filed by Goa Foundation.

10. The writ petitions and the transferred cases were heard during September, October and November 2013. On 11-11-2013[5], an order was passed by this Court directing that the inventory of the excavated mineral ores lying in different mines/stockyards/jetties/ports in the State of Goa made by the Department of Mines and Geology of the Government of Goa be verified and thereafter the whole of the inventoried mineral ores be sold by e-auction and the sale proceeds (less taxes and royalty) be retained in separate

Page: 600

fixed deposits (leasewise) by the State of Goa till the Court delivers the judgment in these matters on the legality of the leases from which the mineral ores were extracted. The Court has also directed that this entire process of verification of the inventory, e-auction and deposit of sale proceeds be monitored by a Monitoring Committee appointed by the Court. By the said order dated 11-11-2013[5], this Court also constituted an Expert Committee to conduct a macro-EIA study on what should be the ceiling of annual excavation of iron ore from the State of Goa considering its iron ore resources and its carrying capacity, keeping in mind the principles of sustainable development and intergenerational equity and all other relevant factors. On 11-11-2013 the case was also reserved for judgment.

Challenge to the Report of the Justice Shah Commission

11. As we have already noticed, in the cases transferred from the Bombay High Court to this Court, the mining lessees have prayed for quashing the Report of the Justice Shah Commission. Mr K.K. Venugopal, learned Senior Counsel appearing for the mining lessees,

submitted that the Justice Shah Commission did not issue any notice under Section 8-B of the Commissions of Inquiry Act, 1952 to the mining lessees giving a reasonable opportunity of being heard in the inquiry and to produce evidence in their defence. He further submitted that the Justice Shah Commission also did not permit the mining lessees to cross-examine the witnesses, to address the Commission and to be represented by legal practitioners before the Commission contrary to the provisions of Section 8-C of the Commissions of Inquiry Act, 1952. He submitted that even otherwise there is gross breach of the principles of natural justice and fair play by the Justice Shah Commission and, therefore, the Report of the Commission was violative of Article 14 of the Constitution. He submitted that the Report of the Justice Shah Commission should, therefore, be quashed. In support of this submission, he relied on the decisions of this Court in *Kiran Bedi* v. *Committee of Inquiry*[6], *State of Bihar* v. *Lal Krishna Advani*[7] and *Union of India* v. *Tulsiram Patel*[8].

12. Mr Mohan Parasaran, learned Solicitor General for the Union of India, on the other hand, submitted that as the Notification dated 22-11-2010 of the Central Government appointing the Justice Shah Commission under Section 3 of the Commissions of Inquiry Act, 1952 would show, reports were received from various State Governments of widespread mining of iron ore and manganese ore in contravention of the MMDR Act, the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 or other rules and licences issued thereunder and for this reason, the Central Government appointed the Justice Shah Commission for the purpose of making inquiry into these matters of public importance. He submitted that

Page: 601

after the Justice Shah Commission submitted the Report pointing out various illegalities, the Union Government has kept the environment clearances in abeyance and it will take legal action on the basis of its own assessment of the facts and not on the basis of the facts as found in the Justice Shah Commission's Report.

13. Similarly, Mr Atmaram N.S. Nadkarni, the Advocate General appearing for the State of Goa, submitted that after going through the Report of the Justice Shah Commission, the State Government has suspended all mining and transportation of ores and no legal action will be taken against the mining lessees on the basis of the findings in the Justice Shah Commission's Report unless due opportunity is given to the mining lessees to place their defence against the findings of the Justice Shah Commission.

14. We find that Section 8-B of the Commissions of Inquiry Act, 1952 provides that if a person is likely to be prejudicially affected by the inquiry, the Commission shall give to that person a reasonable opportunity of being heard and to produce evidence in his defence and Section 8-C of the Commissions of Inquiry Act, 1952 provides that every such person will have a right to cross-examine and the right to be represented by a legal practitioner before the Commission. As the State Government of Goa has taken a stand before us that no action will be taken against the mining lessees only on the basis of the findings in the Report of the Justice Shah Commission without making its own assessment of facts and without first giving the mining lessees the opportunity of hearing and the opportunity to produce evidence in their defence, we are not inclined to quash the Report of the Justice Shah Commission on the ground that the provisions of Sections 8-B and 8-C of the Commissions of Inquiry Act, 1952 and the principles of natural justice have not been complied with. At the same time, we cannot also direct prosecution of the mining lessees on the basis of the findings in the Report of the Justice Shah Commission, if they have not been given the opportunity of being heard and to produce evidence in their defence and not allowed the right to cross-examine and the right to be represented by a legal practitioner before the Commission as provided in Sections 8-B and 8-C respectively of the Commissions of Inquiry Act, 1952. We will, however, examine the legal and

environmental issues raised in the Report of the Justice Shah Commission and on the basis of our findings on these issues consider granting the reliefs prayed for in the writ petition filed by Goa Foundation and the reliefs prayed for in the writ petitions filed by the mining lessees, which have been transferred to this Court.

Whether the leases held by the mining lessees have expired

15. According to the Justice Shah Commission Report, prior to 7-1-1993, sub-rule (4) of Rule 24-A of the MC Rules provided that the renewal application of the lessee is required to be disposed of within six months from the date of its receipt and sub-rule (5) of Rule 24-A provided that if the

Page: 602

application is not disposed of within stipulated time, the same shall be deemed to have been refused. The Justice Shah Commission has found that the applications of several mining leases for renewal were not disposed of within the stipulated time and there was no provision in the MC Rules to condone the delay and, therefore, these leases are in contravention of the MC Rules and are void and have no effect as provided in Section 19 of the MMDR Act.

16. CEC in its report has stated that under Section 4 of the Abolition Act, the concessions were abolished from 23-5-1987 and treated as deemed leases under the MMDR Act and the period of deemed leases under Section 5 of the Abolition Act was extended up to six months with effect from the date of assent to the Abolition Act (23-5-1987) i.e. up to 22-11-1987. CEC has further stated that by Notifications dated 20-11-1987 and 20-5-1988, however, the Government of Goa allowed extension of six months each (totalling one year) for making applications for the first renewal of deemed mining leases and this one year period expired on 22-11-1988. CEC has further stated that as per the information provided to CEC, out of 595 mining concessions abolished and converted into deemed mining leases under Section 4 of the Abolition Act, as many as 379 deemed mining lease-holders have filed applications for the first renewal of the mining leases before 22-11-1988 and 59 such lessees have filed applications for the first renewal of the deemed mining leases after 22-11-1988 i.e. beyond the time-limit permitted under Rule 24-A(8) of the MC Rules.

17. In reply, the learned counsel for the lessees and Mr Arvind Datar, learned Senior Counsel appearing for the State of Goa, submitted that sub-rules (4) and (5) of Rule 24-A of the MC Rules did not apply to the State of Goa. They submitted that sub-rules (8) and (9) of Rule 24-A of the MC Rules apply specifically to the State of Goa and sub-rule (8) of Rule 24-A of the MC Rules provides that an application for the first renewal of the deemed mining lease referred to in Section 4 of the Abolition Act shall be made to the State Government in Form J before the period of six months of the mining lease as provided in Section 5(1) of the Abolition Act. They submitted that the proviso to sub-rule (8) of Rule 24-A of the MC Rules conferred power on the State Government to extend time for making such application up to a total period not extending one year. They submitted that, by two Notifications, the State Government extended time for a period of one year up to 22-11-1988 and within this period most of the lessees have applied for the first renewal of the deemed mining lease. The learned counsel for the lessees and the learned counsel for the State of Goa submitted that sub-rule (9) of Rule 24-A of the MC Rules makes it clear that if an application for first renewal is made within the time referred to in sub-rule (8) of Rule 24-A of the MC Rules or within the time allowed by the State Government under the proviso to sub-rule (8) of Rule 24-A of the MC Rules, the period of that lease shall be deemed to have been extended by a further period till the State Government passes orders thereon.

Page: 603

18. For easy reference, Chapter II containing Sections 4 and 5 of the Abolition Act is extracted hereinbelow:

"CHAPTER II

ABOLITION OF MINING CONCESSIONS AND DECLARATION AS MINING LEASES UNDER THE MINES AND MINERALS ACT

4. ***Abolition, etc., of mining concessions***.—(1) Every mining concession specified in the First Schedule shall, on and from the appointed day, be deemed to have been abolished, and shall, without effect from that day, be deemed to be a mining lease granted under the Mines and Minerals Act, and the provisions of that Act shall, save as otherwise provided in this Act, apply to such mining lease.

(2) Every mining concession specified in the Second Schedule shall, on and from the day next after the date of grant of the said concession and specified in the corresponding entry in the eighth column of the said Schedule, be deemed to have been abolished, and shall, with effect from that day, be deemed to be a mining lease granted under the Mines and Minerals Act, and the provisions of that Act shall, save as otherwise provided in this Act, apply to such mining lease.

(3) If, after the date of assent, the Central Government is satisfied, whether from any information received by it or otherwise, that there has been any error, omission or misdescription in relation to the particulars of any mining concession or the name and residence of any concession holder specified in the First or the Second Schedule, it may, by notification, correct such error, omission or misdescription, and on the issue of such notification, the First or the Second Schedule, as the case may be, shall be deemed to have been amended accordingly.

5. ***General effect of declaring the mining concessions to be mining leases***.—(1) Where a mining concession has been deemed to be a mining lease under Section 4, the concession holder shall, on and from the day mentioned in that section, be deemed to have become the holder of such mining lease under the Mines and Minerals Act in relation to the mine to which the mining concession relates, subject to the condition that the period of such lease shall, notwithstanding anything contained in that Act, extend up to a period of six months from the date of assent.

(2) On the expiry of the period of any mining lease under sub-section (1), it may, if so desired by the holder of such lease and on an application being made by him in accordance with the provisions of the Mines and Minerals Act and the rules made thereunder, be renewed on such terms and conditions, and up to the maximum period, for which such lease can be renewed under the provisions of that Act and the rules made thereunder."

19. For easy reference, Rule 24-A of the MC Rules is also extracted hereinbelow:

"**24-A.** ***Renewal of mining lease***.—(1) An application for the renewal of a mining lease shall be made to the State Government in Form J, at least twelve months before the date on which the lease is due to expire, through such officer or authority as the State Government may specify in this behalf.

(2) The renewal or renewals of a mining lease granted in respect of a mineral specified in Part A and Part B of the First Schedule to the Act may

Page: 604

be granted by the State Government with the previous approval of the Central Government.

(3) The renewal or renewals of a mining lease granted in respect of a mineral not specified in Part A and Part B of the First Schedule to the Act may be granted by the State Government:

Provided that before granting approval for second or subsequent renewal of a mining lease, the State Government shall seek a report from the Controller General, Indian Bureau of Mines, as to whether it would be in the interest of mineral development to grant the renewal of the mining lease.

Provided further that in case a report is not received from Controller General, Indian Bureau of Mines in a period of three months of receipt of the communication from the State Government, it would be deemed that the Indian Bureau of Mines has no adverse comments to offer regarding the grant of the renewal of mining lease.

(4) An application for the renewal of a mining lease shall be disposed of within a period of six months from the date of its receipt. (*Omitted*)

(5) If an application is not disposed of within the period specified in sub-rule (4) it shall be deemed to have been refused. (*Omitted*)

(6) If an application for the renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of the lease shall be deemed to have been extended by a further period till the State Government passes order thereon.

(7) *Omitted*.

(8) Notwithstanding anything contained in sub-rule (1) and sub-rule (6) an application for the first renewal of a mining lease, so declared under the provisions of Section 4 of the Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987, shall be made to the State Government in Form J before the expiry of the period of mining lease in terms of sub-section (1) of Section 5 of the said Act, through such office or authority as the State Government may specify in this behalf:

Provided that the State Government may, for reasons to be recorded in writing and subject to such conditions as it may think fit, allow extension of time for making of such application up to a total period not exceeding one year.

(9) If an application for first renewal made within the time referred to in sub-rule (8) or within the time allowed by the State Government under the proviso to sub-rule (8), the period of that lease shall be deemed to have been extended by a further period till the State Government passes orders thereon.

(10) The State Government may condone delay in an application for renewal of mining lease made after the time-limit prescribed in sub-rule (1) provided the application has been made before the expiry of the lease."

20. Sub-rule (8) of Rule 24-A of the MC Rules has been inserted by G.S.R. 855(E), dated 14-10-1987 and this sub-rule (8) of Rule 24-A of the MC Rules provides that notwithstanding anything contained in sub-rule (1) and sub-rule (6), an application for the first renewal of a deemed mining lease, referred to in Section 4 of the Abolition Act, shall be made to the State Government in Form J before the expiry of the six months' period of deemed

mining lease as provided in Section 5(1) of the Abolition Act. The proviso to sub-rule (8) of Rule 24-A of the MC Rules, however, empowers the State Government to extend the time for making such application up to a total period not extending one year. In exercise of these powers in the proviso to sub-rule (8) of Rule 24-A of the MC Rules, the State Government of Goa has, in fact, extended time for making applications for first renewal up to 22-11-1988, by two Notifications dated 20-11-1987 and 20-5-1988.

21. Sub-rule (9) of Rule 24-A of the MC Rules, which was also inserted by G.S.R. 855 (E), dated 14-10-1987, reads as follows:

> "In an application for first renewal made within the time referred to in sub-rule (8) or within the time allowed by the State Government under the proviso to sub-rule (8), the period of that lease shall be deemed to have been extended by a period of one year from the date of expiry of lease or date of receipt of application, whichever is later, provided that the period of deemed extension of lease shall end with the date of receipt of the orders of the State Government thereon, if such orders are made earlier."

Sub-rule (9) was substituted by G.S.R. 724(E) dated 27-9-1994 by the existing sub-rule (9) (extracted above at para 19) to provide that if an application for first renewal is made within the time referred to in sub-rule (8) or within the time allowed by the State Government under the proviso to sub-rule (8), the period of that lease shall be deemed to have been extended by a further period till the State Government passes orders thereon. In our considered opinion, the intention of the rule-making authorities is very clear from sub-rule (9) as was originally inserted by G.S.R. 855(E), dated 14-10-1987 and sub-rule (9) as was substituted by G.S.R. 724(E), dated 27-9-1994, that until orders were passed by the State Government on an application for first renewal of a lease filed by a lessee within the time allowed, the lease was deemed to have been extended.

22. The lessees have contended that they had filed their applications by 22-11-1988 i.e. the date up to which the State Government had allowed time under the proviso to sub-rule (8) of Rule 24-A of the MC Rules. The State Government has also taken the stand that most of the applications for first renewal were filed within the time allowed by the State Government and this stand is also supported by the facts found by CEC. The result is that most of the mining leases in which the State Government has not passed orders are deemed to have been extended under sub-rule (9) of Rule 24-A of the MC Rules. Hence, the finding in the Justice Shah Commission Report that the applications for renewal were not disposed of within the stipulated time and the leases are in contravention of the MC Rules is, thus, not correct. This opinion of the Justice Shah Commission, as we have noticed, was based on sub-rules (4) and (5) of Rule 24-A of the MC Rules, which were applicable generally to an application for renewal of mining leases, stood excluded to the extent that specific provisions have been subsequently made by the rule-making authorities in sub-rules (8) and (9) of Rule 24-A of the MC Rules in respect of the deemed leases in Goa.

23. Mr Prashant Bhushan, learned counsel for Goa Foundation, however, submitted that sub-section (2) of Section 8 of the MMDR Act prior to its amendment provided that a mining lease may be renewed for only ten years and, therefore, if the deemed mining leases of the lessees expired on 22-11-1987, even if the lease was renewed on the application of first renewal made by the lessees in Goa, the period of lease under the first renewal would expire on 21-11-1997 and after 21-11-1997, there can be no deemed extension. Alternatively, he submitted that sub-section (2) of Section 8 of the MMDR Act as amended by Act 25 of 1994 provided that the mining lease may be renewed for a maximum period not exceeding twenty years. He submitted that as the deemed mining leases expired on 22-11-1987, the lessees would be entitled to a renewal for a maximum period of twenty years up to 21-11-2007 and after 21-11-2007, the lessees would not be entitled to any renewal and hence the lessees were not entitled to operate the lease beyond 21-11-2007.

24. The learned counsel for the lessees, on the other hand, submitted that sub-section (3) of Section 8 of the MMDR Act makes it clear that notwithstanding anything contained in sub-section (2) of Section 8 of the MMDR Act, the State Government can authorise

renewal of a mining lease in respect of minerals not specified in Part A and Part B of the First Schedule for a further period or periods not exceeding twenty years in each case. They submitted that iron ore is specified in Part C in the First Schedule and hence the State Government can authorise renewal of the mining lease in respect of iron ore for a period or periods not exceeding twenty years in each case. They also referred to sub-rule (3) of Rule 24-A which provided that renewal or renewals of a mining lease granted in respect of a mineral not specified in Part A and Part B of the First Schedule to the MMDR Act may be granted by the State Government provided that before granting approval for second or subsequent renewal of a mining lease, the State Government shall seek a report from the Controller General, Indian Bureau of Mines, as to whether it would be in the interest of mineral development to grant the renewal of the mining lease. The learned counsel for the lessees submitted that as the application of the lessees for renewal of mining leases have not been disposed of by the State Government before the date of expiry of lease, the period of lease shall be deemed to have been extended by a further period till the State Government passes orders thereon as provided in sub-rule (6) of Rule 24-A of the MC Rules. They submitted that it will be clear from sub-rule (6) of Rule 24-A of the MC Rules that the intention of rule-making authorities is that there may not be any hiatus in mining, and mineral development in the country may continue without break, without any loss to the economy and loss of revenue to the Government. They cited the judgment of this Court in *State of U.P.* v. *Lalji Tandon*[9], in which this Court has held that there is a difference between an extension of lease and renewal of lease and whereas in the case of extension of lease it is not necessary to have a

Page: 607

fresh deed of lease executed, in case of renewal of lease, a fresh deed of lease shall have to be executed between the parties. They also cited *TISCO Ltd.* v. *Union of India*[10] in support of their argument that under sub-section (3) of Section 8 of the MMDR Act, the Government can renew the mining lease for a further period if it was in the interest of mineral development.

25. Mr Nadkarni, learned Advocate General for the State of Goa, submitted that the then State Government of Goa allowed the working of the mines from 2007 till 2012 based on deemed extension status but it has been decided by the State Government now in the Goa Mining Policy of 2013 that no mine can be allowed on deemed extension basis. The clear stand of the State Government of Goa in the résumé of arguments filed by the learned Advocate General Mr Nadkarni is that the deemed extension status would not mean that a mine can be allowed to run indefinitely without a decision on the renewal application.

26. Section 8 of the MMDR Act is extracted hereinbelow:

"**8. *Periods for which mining leases may be granted or renewed*.**—(1) The maximum period for which a mining lease may be granted shall not exceed thirty years:

Provided that the minimum period for which any such mining lease may be granted shall not be less than twenty years;

(2) A mining lease may be renewed for a period not exceeding twenty years.

(3) Notwithstanding anything contained in sub-section (2), if the State Government is of opinion that in the interests of mineral development it is necessary so to do, it may, for reasons to be recorded, authorise the renewal of a mining lease in respect of minerals not specified in Part A and Part B of the First Schedule for a further period or periods not exceeding twenty years in each case.

(4) Notwithstanding anything contained in sub-section (2) and sub-section (3), no mining lease granted in respect of mineral specified in Part A or Part B of the First

Schedule shall be renewed except with the previous approval of the Central Government."

27. Sub-section (1) of Section 8 of the MMDR Act, which provides the maximum and minimum periods for which a mining lease may be granted will not apply to deemed mining leases in Goa because sub-section (1) of Section 5 of the Abolition Act provides that the period of such deemed mining leases will extend up to six months from the date of assent notwithstanding anything contained in the MMDR Act. In other words, notwithstanding anything contained in sub-section (1) of Section 8 of the MMDR Act, the period of a deemed mining lease in Goa was to expire on 22-11-1987 (six months from the date of assent). Under sub-section (2) of Section 8 of the MMDR Act, a mining lease may be renewed for a period not exceeding twenty years. Sub-section (3) of Section 8, however, provides that notwithstanding anything contained in sub-section (2), if the State Government is of the opinion that in the interest of mineral development, it is

Page: 608

necessary so to do, it may for reasons to be recorded, authorise the renewal of a mining lease in respect of minerals not specified in Part A and Part B of the First Schedule for a further period or periods not exceeding twenty years in each case. Thus, renewal beyond the first renewal for a period of twenty years is conditional upon the State Government forming an opinion that in the interest of mineral development, it is necessary to do so and also conditional upon the State Government recording reasons for such renewal of a mining lease in respect of iron ore which is not specified in Part A and Part B of the First Schedule. In *Tisco Ltd.* v. *Union of India*[10], this Court has held (at SCC p. 720, para 34) that the language of sub-section (3) of Section 8 is quite clear that ordinarily a lease is not to be granted beyond the time specified in sub-section (2) and only if the Government is of the view that it would be in the interest of mineral development, it is empowered to renew lease of a lessee for a further period after recording sound reasons for doing so. This Court has further held in the aforesaid case that this measure has been incorporated in the legislative scheme as a safeguard against arbitrariness and the letter and spirit of the law must be adhered to in a strict manner.

28. The MC Rules have been made under Section 13 of the MMDR Act by the Central Government and obviously could not have been made in a manner inconsistent with the provisions of the Act. Sub-rule (6) of Rule 24-A of the MC Rules provides that:

"**24-A. (6)** If an application for renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period till the State Government passes order thereon."

This sub-rule cannot apply to a renewal under sub-section (3) of Section 8 of the MMDR Act because the renewal under this provision cannot be made without express orders of the State Government recording reasons for renewal in the interest of mineral development. In other words, so long as there is a right of renewal in the lessee which in the case of a mining lease is for a maximum period of twenty years, the provision regarding deemed extension of a lease can operate, but if the right of renewal of a mining lease is dependent upon the State Government forming an opinion that in the interest of mineral development it is necessary to do so and the State Government recording reasons therefor, a provision regarding deemed extension till orders are passed by the State Government on the application of renewal cannot apply. We are, therefore, of the opinion that sub-rule (6) of Rule 24-A of the MC Rules will apply to a case of first renewal under sub-section (2) of Section 8 of the MMDR Act other than a case covered under sub-rule (9) of Rule 24-A of the MC Rules, but will not apply to renewal under sub-section (3) of Section 8 of the MMDR Act. In our view, the deemed mining leases of the lessees in Goa expired on 22-11-1987 under

sub-section (1) of Section 5 of the Abolition Act and the maximum of 20 years renewal period of the deemed mining leases in Goa as provided in sub-section (2) of Section 8 of the MMDR Act read with sub-rules (8) and (9) of Rule 24-A of the MC Rules expired on 22-11-2007.

Whether dump can be kept beyond the lease area?

29. The Report of the Justice Shah Commission states that about 2796.24 ha of area have been found to be under encroachment by the mining lessees out of which about 578.42 ha have been found to have been illegally used for extraction/removal of iron ore. CEC in its report has stated that CEC visited some of the areas stated to be under encroachments and a number of lease-holders have filed representations against the findings of the Shah Commission stating that they are not involved in any encroachment. According to Goa Foundation, this was a gross illegality committed by the mining lessees.

30. Mr A.D.N. Rao, Amicus Curiae, referred to Section 9 of the MMDR Act to submit that any removal of minerals from the leased area can be made by holder of a mining lease only on payment of royalty. He submitted that the waste material and overburden, therefore, cannot be dumped outside the leased area without payment of royalty. He referred to para 48 of the judgment of this Court in *Samaj Parivartana Samudaya* v. *State of Karnataka*[11] in which this Court has observed that dumping of mining waste (overburden dumps) also constitutes mining operations within the meaning of Section 3 (*d*) of the MMDR Act and, therefore, the use of forest land for such activity would require clearances under the Forest (Conservation) Act, 1980. He submitted that in the event dumping of mining waste outside the leased area is to be done, it can only be done after clearance is obtained under the Forest (Conservation) Act, 1980.

31. The learned counsel appearing for the mining lessees submitted that the lessees have actually used areas outside the mining lease which are also owned mostly by the lessees for clearing the dump and this was permissible under the Mineral Conservation and Development Rules, 1988 (for short "the MCD Rules") and the MC Rules. In particular, they referred to Rule 16 of the MCD Rules, which provides for separate stacking of non-saleable minerals, such as overburden and waste material obtained during mining operation, on the ground earmarked for the purpose, which should be away from the working pit. They also referred to Rule 64-C of the MC Rules which provides that on removal of tailings or rejects from the leased area for dumping outside leased area, such tailings or rejects are not liable for payment of royalty. The State Government has supported this stand of the mining lessees that dumping of the overburden and mining waste outside the lease area was permissible under the MC Rules and the MCD Rules.

32. Sections 4(1) and 9(2) of the MMDR Act, Rule 64-C of the MC Rules and Rule 16 of the MCD Rules are extracted below:

"**4. *Prospecting or mining operations to be under licence or lease.***—(1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made thereunder:

Provided that nothing in this sub-section shall affect any prospecting or mining

operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:

Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government company within the meaning of Section 617 of the Companies Act, 1956:

Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union Territory of Goa, Daman and Diu.

* * *

9. *Royalties in respect of mining leases*.—(1) * * *

(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any (mineral removed or consumed by his agent, manager, employee, contractor of sub-lessee) from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral."

"**64-C. *Royalty on tailings or rejects*.**—On removal of tailings or rejects from the leased area for dumping and not for sale or consumption, outside leased area such tailings or rejects shall not be liable for payment of royalty:

Provided that in case so dumped tailings or rejects are used for sale or consumption on any later date after the date of such dumping, then, such tailings or rejects shall be liable for payment of royalty."

"**16. *Separate stacking of non-saleable minerals*.**—(1) The overburden and waste material obtained during mining operations shall not be allowed to be mixed with non-saleable or sub-grade minerals/ores. They shall be dumped and stacked separately on the ground earmarked for the purpose.

(2) The ground selected for dumping of overburden, waste material, the sub-grade or non-saleable ores/minerals shall be away from working pit. It shall be proved for absence or presence of underlying mineral deposits before it is brought into use for dumping.

(3) Before starting mining operations, the ultimate size of the pit shall be determined and the dumping ground shall be so selected that the dumping is not carried out within the limits of the ultimate size of the pit except in cases where concurrent backfilling is proposed."

33. Under Section 4 of the MMDR Act, a person who holds a mining lease granted under the MMDR Act and the Rules made thereunder is entitled to carry on mining operations in accordance with the terms of the lease in the leased area and may carry on all other activities connected with mining within the leased area. Rule 31 of the MC Rules prescribes that the lease deed will be in Form K or in a form near thereto. Part I of Form K delineates the area of the lease and Part II of Form K authorises the activities that can be done by the lessee in the leased area. Thus, a holder of a mining lease does not have any right to dump any reject, tailings or waste in any area outside the leased area of the mining lease on the strength of a mining lease granted under the MMDR Act and the Rules made thereunder. Such area outside the leased area of the mining lease may belong to

the State or may belong to any private person, but if the mining lease does not confer any right whatsoever on the holder of a mining lease to dump any mining waste outside the leased area, he will have no legal right whatsoever to remove his dump, overburden, tailings or rejects and keep the same in such area outside the leased area. In other words, dumping of any waste materials, tailings and rejects outside the leased area would be without a valid authorisation under the lease deed.

34. Moreover, Section 9(2) of the MMDR Act makes the holder of a mining lease granted on or after the commencement of the Act liable to pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area. Thus, the moment the mineral is removed or consumed from the leased area, the holder of a mining lease has to pay royalty. By virtue of Section 9 of the MMDR Act, tailings and rejects excavated during mining operations being minerals will also be exigible to royalty the moment they are removed from the leased area.

35. Rule 64-C of the MC Rules states that on removal of tailings or rejects from the leased area for dumping and not for sale or consumption, outside leased area such tailings or rejects shall not be liable for payment of royalty. Rule 64-C of the MC Rules, therefore, exempts the removal of tailings or rejects from the leased area for the purpose of dumping and not for the purpose of sale or consumption from the levy of royalty. Rule 64-C of the MC Rules does not authorise dumping of tailings or rejects in any area outside the leased area. This Court has held in *Central Bank of India* v. *Workmen*[12] that "if a rule goes beyond what the section contemplates, the rule must yield to the statute". In our view, if Rule 64-C of the MC Rules suggests that tailings or rejects can be dumped outside the leased area, it must give way to Section 4 of the MMDR Act, which does not authorise dumping of minerals outside the leased area and must give way to Section 9 of the MMDR Act which does not authorise removal of minerals outside the leased area without payment of royalty. We, therefore, hold that dump cannot be kept by the lessees beyond the leased area.

Page: 612

36. Rule 16 of the MCD Rules provides that the overburden and waste material obtained during mining operations shall be dumped and stacked separately on the ground earmarked for the purpose and the ground selected for dumping of overburden, waste material shall be away from working pit. There is nothing in sub-rules (1), (2) and (3) of Rule 16 of the MCD Rules, which provides that such overburden or waste material obtained from mining operations shall be kept "outside the leased area". On the other hand, clause (7) of Part II of Form K provides as follows:

> "**7. *To use land for stacking, heaping, depositing purposes***.—Liberty and power to enter upon and use a sufficient part of the surface of the said lands for the purpose of stacking, heaping, storing or depositing therein any produce of the mines or works carried on and any tools, equipment, earth and materials and substances dug or raised under the liberties and powers mentioned in this part."

The expression "said lands" in clause (7) of Part II of Form K quoted above refers to the area of the lease in Part I of Form K and, therefore, is confined to the leased area. Rule 16 of the MCD Rules, therefore, cannot be read to permit dumping of overburden and waste materials obtained from mining operations outside the leased area.

37. The learned counsel for the lessees, however, submitted that many of these areas in which they have dumped the overburdens, tailings and rejects are lands owned by them and by virtue of their ownership right they could dump the mining waste on their own lands. This contention of the learned counsel appearing for the lessees loses sight of the fact that most of these lands are located in forest areas where non-forest activity, such as

mining, is prohibited under Section 2 of the Forest (Conservation) Act, 1980 without the prior permission of the Central Government. Moreover, the notification issued under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 requiring prior environmental clearance covers the activity of mining. Sub-rule (3) of Rule 5 empowers the Central Government to impose prohibition or restrictions on the location of an industry or the carrying on of processes and operations in an area for the purpose of protecting the environment. Inasmuch as the activity of dumping mineral wastes will pollute the environment, it will come within the meaning of activity of mining included in the Schedule to the notification issued under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986. Thus, for dumping of mining waste on a private land, a prior clearance of the Central Government under the notification issued under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 would be necessary. We, therefore, do not find any merit in the contention of the learned counsel for the lessees that they can dump mining waste outside the leased area.

Within what distance from the boundaries of National Parks and Wildlife Sanctuaries, is mining not permissible in the State of Goa?

38. The Justice Shah Commission has stated in its Report that the National Board for Wildlife (NBWL) adopted "the Wild Life Conservation

Strategy, 2002" and took a decision in its meeting held on 21-1-2002 under the chairmanship of the Prime Minister to notify the areas within 10 km from the boundaries of national parks and sanctuaries as eco-fragile zones under Section 3(*v*) of the Environment (Protection) Act and Rule 5 sub-rules (1)(*viii*) and (*x*) of the Environment (Protection) Rules and this decision has been communicated on 5-2-2002 to the Chief Wildlife Warden, Government of Goa and the State Government has been requested to list out such areas and furnish a detailed proposal for their notification as eco-sensitive areas under the Environment (Protection) Act, 1986. The Justice Shah Commission has found that this has not been done till date but the Government of Goa has allowed mines to operate.

39. In this context, the Justice Shah Commission Report has referred to the order dated 4-12-2006 of this Court in *Goa Foundation* v. *Union of India*[13] by which this Court had directed MoEF to refer to the Standing Committee of the National Board for Wildlife, under Sections 5-B and 5-C(2) of the Wild Life (Protection) Act, the cases in which environmental clearance has already been granted where activities are within 10 km zone. According to the Report of the Justice Shah Commission, in spite of the clear provisions of Section 3(2)(*v*) of the Environment (Protection) Act, 1986 and the EIA notifications, conferring the jurisdiction, power and authority on the Central Government (MoEF) to grant or refuse prior environment clearance for any iron ore mining activity within 10 km of national parks, sanctuaries and protected areas and despite provisions in Section 5-C(2)(*b*) of the Wild Life (Protection) Act, 1972 putting a restriction on mining activities inside national parks, sanctuaries and other protected and eco-sensitive areas, mining activities have been permitted within 10 km and inside the national parks, sanctuaries and protected areas.

40. The Report of the Justice Shah Commission further states that out of the environmental clearances, the clearances with regard to 74 mining leases should have been placed before the Standing Committee of the National Board for Wildlife in accordance with the order dated 4-12-2006[13] of this Court. The Report of the Justice Shah Commission further states that there has been a total failure on the part of MoEF in not considering this issue while granting the environmental clearances.

41. The Justice Shah Commission in its Report has further stated that in the order dated 4-8-2006 of this Court in *T.N. Godavarman Thirumulpad* v. *Union of India*[14], this Court has taken a view that 1 km from the boundaries of national parks and sanctuaries

would be a safety zone, subject to the orders that may be made in IA No. 1000 regarding Jamua Ramgarh Sanctuary and the State will not grant any temporary working permit (TWP) in these safety zones comprising 1 km from the boundaries of national parks and sanctuaries and yet some of the mines within 1 km from the boundaries of national parks and sanctuaries have been allowed in the State of Goa.

Page: 614

42. CEC in its report is of the view that had MoEF implemented this Court's orders dated 14-2-2000[15] and 4-12-2006[13], the unregulated and environmentally unsustainable manner in which mining has taken place in Goa would have been avoided. CEC has suggested that all environmental clearances granted for mining leases located up to a distance of 10 km from the boundaries of national parks and wildlife sanctuaries should be directed to be kept in abeyance and the environmental clearances should be directed to be considered by the Standing Committee of the National Board for Wildlife in accordance with this Court's order dated 4-12-2006[13] and the Additional Principal Chief Conservator of Forests, Regional Office, MoEF, Bangalore, should be directed to verify, after examining the EIA/EMP reports and other relevant details, whether the mining operations will have adverse impact on the flora, fauna and wildlife habitat and whether the distance of the national parks/wildlife sanctuaries and that the status of the "forest" have been correctly stated in the EC/application for taking a decision regarding ECs and only after considering the recommendations of the Standing Committee of the National Board of Wildlife and the report of the Additional Principal Chief Conservator of Forests (Central) and other relevant information/details, this Court may take a decision.

43. Mr Prashant Bhushan, learned counsel appearing for Goa Foundation, submitted that there should be no mining activity within any national parks/wildlife sanctuaries or within 10 km from the boundaries of national parks and wildlife sanctuaries so that the flora, fauna and wildlife habitat of national parks and wildlife sanctuaries are protected.

44. The learned counsel for the lessees, on the other hand, stated that so far as the State of Goa is concerned, on the one side, there is a coastal regulation zone in which mining is not permitted and, on the other side, are the national parks and wildlife sanctuaries in which again mining is not permitted and as a consequence a very small strip of land is available for mining. They submitted that there is no basis for presuming that an area outside the limits of a national park or a wildlife sanctuary is required to be maintained as a buffer zone. They submitted that by the order dated 4-12-2006 of this Court passed in *Goa Foundation* v. *Union of India*[13], this Court did not finally fix the buffer zone of 10 km from the boundaries of national parks and wildlife sanctuaries, but granted a last opportunity to the States to submit their recommendations for eco-sensitive zone and that the issue is still pending in IA No. 1000 in Writ Petition No. 202 of 1995 in *T.N. Godavarman Thirumulpad* v. *Union of India*. They further argued that by the order dated 4-8-2006[14], this Court had only directed that no mining would be permitted by temporary working permits within 1 km from the national parks and wildlife sanctuaries and by the said order, absolute ban has not been imposed against mining even within 1 km from the boundaries of national

Page: 615

parks and wildlife sanctuaries. They argued that for declaration of eco-sensitive zone, a notification under Section 3 of the Environment (Protection) Act, 1986 is mandatory and till date no such notification has been issued for the State of Goa delineating any eco-sensitive zone and in the absence of such a notification mining activities cannot be

prohibited beyond the boundaries of a national park/wildlife sanctuary.

45. Mr Nadkarni, learned Advocate General appearing for the State of Goa, submitted that presently the State of Goa is not permitting mining inside any national park or wildlife sanctuary. He submitted that each of the seven wildlife sanctuaries in the State of Goa have got revenue villages and local habitation of people inside the sanctuaries and before notifying the buffer zone around a wildlife sanctuary the consequences of the restrictions of the buffer zone on the local population and on the local development have to be weighed. He submitted that the State Government is of the considered opinion that while evolving a conservation strategy, the following peculiar local constraints in the State of Goa have to be considered:

(*i*) The State of Goa is the third smallest State in the Union; with a total geographical area of only 3702 sq m; and out of that, an area of 1440 sq m is under "forest" (protected/reserved/private) which is almost about 38% of the total geographical area;

(*ii*) Out of the said area under "forest" nearly 62% i.e. 75.35 sq m has been declared as "national park", and/or "wildlife sanctuary";

(*iii*) An area of approximately or more than 70 sq km falls under the "coastal regulation zone" (CRZ). Indeed, CRZ runs into 106 km, of the coastal belt of the State of Goa;

(*iv*) In fact, the total land mass available to the State of Goa, free from various restrictions, would further be reduced by 196.80 sq km i.e. up to 5.32%, on account of rivers, lakes and other water bodies;

(*v*) Indeed, approximately 40% of the land is under agriculture which the Government has decided not to be diverted under any circumstances;

(*vi*) Further, the State Government has also directed that no "forest land" is to be diverted for any mining purpose.

He submitted that considering all these constraints, the State Government has recommended that an area up to 1 km from the boundaries of national parks/wildlife sanctuaries should be treated as safety zones but even in these safety zones mining activity should be prohibited in a phased manner in 5 to 10 years.

46. Mr Mohan Parasaran, learned Solicitor General, submitted that the Principal Chief Conservator of Forests and Chief Wildlife Warden, Government of Goa, vide his letter dated 2-5-2013 has submitted six proposals for declaration of eco-sensitive zones around six protected areas in the State of Goa (national parks/wildlife sanctuaries) and the proposals were referred to a committee constituted under the chairmanship of Dr Rajesh Gopal, Additional Director General of Forests and Member Secretary of National Tiger Conservation Authority, with the following terms of reference:

(*i*) The Committee will undertake a site-specific site survey of all six protected areas in Goa, with reference to studying the topography and report on the existing natural boundaries around that is outside each protected area. Such boundaries could include inter alia rivers, hills, etc.

(*ii*) The Committee will draw up a definition of what could constitute a credible natural boundary, always keeping in mind that the object is to protect the flora, fauna and biodiversity in the PA from biotic pressure.

(*iii*) The Committee will submit its views on whether any of the natural boundaries of the PAs in Goa could be an effective boundary of a robust eco-sensitive zone around the PA.

Mr Parasaran submitted that the Committee has submitted its report on 18-10-2013 and the report has been considered by the Ministry of Environment and Forests and by Office Memorandum dated 24-10-2013, the Ministry of Environment and Forests has not accepted the recommendation of the Government of Goa regarding buffer zone and instead accepted the recommendation of the Committee to define the eco-sensitive zones in site-specific manner subject to the relevant Court orders on the subject and that a draft notification defining eco-sensitive zones around each of the six protected areas would be issued for stakeholder consultations.

47. We have considered the submissions of the learned counsel for the parties and we find that presently no mining operations are being carried on inside any national park or wildlife sanctuary, and the State of Goa has taken a stand before us that it will not permit any mining operations inside any national park or wildlife sanctuary. Hence, the only question that we have to decide is whether mining could have been permitted or could be permitted within a certain distance from the boundaries of the national park or wildlife sanctuary in the State of Goa.

48. This Court in exercise of its power under Article 32 of the Constitution can direct the State to prohibit mining activities in an area adjacent to a national park or a wildlife sanctuary for the purpose of protecting the flora, fauna and wildlife habitat of the national park/wildlife sanctuary because these constitute part of the natural environment necessary for healthy life of persons living in the State of Goa. The right to life under Article 21 of the Constitution is a guarantee against the State and for enforcing this fundamental right of persons the State, which alone has a right to grant mining leases of the mines located inside the State, can be directed by the Court by an appropriate writ or direction not to grant mining leases or not to allow mining that will be violative under Article 21 of the Constitution. *Noida Memorial Complex near Okhla Bird Sanctuary, In re*[16] a three-Judge Bench (Forest Bench) of this Court has observed: (SCC pp. 776-77, para 74)

> "*74*. … Environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution. Environment is, therefore, a matter directly under the Constitution and if the Court

perceives any project or activity as harmful or injurious to the environment it would feel obliged to step in."

Thus, the submissions of the learned counsel for the lessees that until a notification is issued under the Environment (Protection) Act, 1986 and the Rules made thereunder prohibiting mining activities in an area outside the boundaries of a national park/wildlife sanctuary, no mining can be prohibited by this Court is misconceived.

49. We may now examine whether this Court has by the orders passed on 4-8-2006[14] and 4-12-2006[13], prohibited mining activities around national parks or wildlife sanctuaries. When we read the order of this Court passed on 4-8-2006 in *T.N. Godavarman Thirumulpad* v. *Union of India*[14], we find that the Court while considering the question of grant of temporary working permits for mining activities in national parks, sanctuaries and forest areas, directed that temporary working permits shall be granted only where the conditions stipulated in the said order are satisfied. Conditions (*ii*) and (*iii*) stipulated in the order dated 4-8-2006[14] are extracted hereinbelow: (SCC p. 743, para 19)

> "*19*. … (*ii*) The mine is not located inside any national park/sanctuary notified under Sections 18, 26-A or 35 of the Wild Life (Protection) Act, 1972;
>
> (*iii*) The grant of TWP would not result in any mining activity within the safety zone around such areas referred to in (*ii*) above (as an interim measure, one kilometre safety zone shall be maintained subject to the orders that may be made in IA No. 1000 regarding Jamua Ramgarh Sanctuary);"

It would, thus, be clear that this Court was of the opinion that grant of temporary working permits should not result in any mining activities within the safety zones around a national park or wildlife sanctuary and as an interim measure, one kilometre safety zone was to be maintained subject to the orders that may be made in IA No. 1000 in Jamua Ramgarh Sanctuary. This order dated 4-8-2006[14] has not been varied subsequently nor any orders made in IA No. 1000 regarding Jamua Ramgarh Sanctuary saying that temporary working permits can be granted within one kilometre safety zone beyond the boundaries of a national park or wildlife sanctuary. The result is that the order passed by this Court saying that there will be no mining activity within one kilometre safety zone around national park or wildlife sanctuary has to be enforced and there can be no mining activities within this area of one kilometre from the boundaries of national parks and wildlife sanctuaries in the State of Goa.

50. When, however, we read the order dated 4-12-2006 of this Court in *Goa Foundation* v. *Union of India*[13], we find that the Court has not prohibited any mining activity within 10 kilometre distance from the boundaries of the

Page: 618

national parks or wildlife sanctuaries. The relevant portion of the order dated 4-12-2006[13] is quoted hereinbelow: (SCC pp. 792-93, paras 4-5)

> "*4.* The Ministry is directed to give a final opportunity to all States/Union Territories to respond to its Letter dated 27-5-2005. The State of Goa also is permitted to give appropriate proposal in addition to what is said to have already been sent to the Central Government. The communication sent to the States/Union Territories shall make it clear that if the proposals are not sent even now within a period of four weeks of receipt of the communication from the Ministry, this Court may have to consider passing orders for implementation of the decision that was taken on 21-1-2002, namely, notification of the areas within 10 km of the boundaries of the sanctuaries and national parks as eco-sensitive areas with a view to conserve the forest, wildlife and environment and having regard to the precautionary principles. If the States/Union Territories now fail to respond, they would do so at their own risk and peril.
>
> *5.* MoEF would also refer to the Standing Committee of the National Board for Wildlife, under Sections 5-B and 5-C(2) of the Wild Life (Protection) Act, the cases where environment clearance has already been granted where activities are within 10 km zone."

It will be clear from the order dated 4-12-2006[13] of this Court that this Court has not passed any orders for implementation of the decision taken on 21-1-2002 to notify areas within 10 km of the boundaries of national parks or wildlife sanctuaries as eco-sensitive areas with a view to conserve the forest, wildlife and environment. By the order dated 4-12-2006[13] of this Court, however, the Ministry of Environment and Forests, Government of India, was directed to give a final opportunity to all States/Union Territories to respond to the proposal and also to refer to the Standing Committee of the National Board for Wildlife the cases in which environment clearance has already been granted in respect of activities within the 10 km zone from the boundaries of the wildlife sanctuaries and national parks. There is, therefore, no direction, interim or final, of this Court prohibiting mining activities within 10 km of the boundaries of national parks or wildlife sanctuaries.

51. Apart from the powers of the Court to give a direction prohibiting mining activities up to a certain distance from the boundaries of national parks or wildlife sanctuaries, the Central Government has powers under Rule 5 of the Environment (Protection) Rules, 1986 to prohibit carrying on of mining operations in areas which are proximate to a wildlife sanctuary or a national park. Rule 5 of the Environment (Protection) Rules, 1986 is extracted hereinunder:

> "**5. *Prohibitions and restrictions on the location of industries and the***

carrying on processes and operations in different areas.—(1) The Central Government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas—

Page: 619

(*i*) Standards for quality of environment in its various aspects laid down for an area.

(*ii*) The maximum allowable limits of concentration of various environment pollutants (including noise) for an area.

(*iii*) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.

(*iv*) The topographic and climatic features of an area.

(*v*) The biological diversity of the area which, in the opinion of the Central Government, needs to be preserved.

(*vi*) Environmentally compatible land use.

(*vii*) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.

(*viii*) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, national park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972, or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.

(*ix*) Proximity to human settlements.

(*x*) Any other factors as may be considered by the Central Government to be relevant to the protection of the environment in an area.

(2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.

(3)(*a*) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the location of an industry or the carrying on of processes and operations in an area, it may by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.

(*b*) Every notification under clause (*a*) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the location of the industries and carrying on of processes or operations in that area.

(*c*) Any person interested in filing an objection against the imposition of prohibition or restriction on carrying on of processes or operations as notified under clause (*a*) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.

(*d*) The Central Government shall, within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette, consider all the objections received against such notification and may within one hundred and eighty days from such day of publication impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.

(4) Notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (*a*) of sub-rule (3)."

52. Sub-rule (1) of Rule 5 lists the number of factors, which the Central Government has to take into consideration while prohibiting or restricting the carrying on of processes and operations in different areas. Sub-rule (2) of Rule 5 provides that before prohibiting the processes and operations in the area the Central Government has to follow the procedure laid down in sub-rule (3). The procedure in sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 includes giving notice of the intention of the Central Government to prohibit the carrying on of processes and operations in the reserved area, giving brief description of the area, the operations and processes in that area relating to which the notification pertains and also specifying the reasons for the imposition of the prohibition on carrying on of the processes or operations in that area, and an opportunity to the persons interested in filing an objection against the imposition of such prohibition on carrying on of processes or operations by the Central Government. These procedural checks have been made in Rule 5 because a notification issued by the Central Government prohibiting an operation or a process will have serious consequences on the rights of different persons. For example, persons who are carrying on the process or operation and those who are directly or indirectly employed in the process or the operation may be affected by the proposed prohibition of the process or the operation in the entire area. Therefore until the Central Government takes into account various factors mentioned in sub-rule (1), follows the procedure laid down in sub-rule (3) and issues a notification under Rule 5 prohibiting mining operations in a certain area, there can be no prohibition under law to carry on mining activity beyond 1 km of the boundaries of national parks or wildlife sanctuaries.

53. In fact, we find that the process of issuing a notification under Rule 5 of the Environment (Protection) Rules, 1986 prohibiting mining activities in eco-sensitive zones around the national parks or wildlife sanctuaries in the State of Goa has now been initiated. The Government of Goa vide Letter dated 2-5-2013 submitted the following six proposals for declaration of eco-sensitive zones around protected areas in the State of Goa to the Ministry: (*i*) Cotigao Wildlife Sanctuary; (*ii*) Netravali Wildlife Sanctuary; (*iii*) Bhagwan Mahaveer Wildlife Sanctuary and Bhagwan Mahaveer National Park; (*iv*) Madei Wildlife Sanctuary; (*v*) Bondla Wildlife Sanctuary; and (*vi*) Dr Salim Ali Bird Sanctuary. These six proposals were referred to a committee constituted under the chairmanship of Dr Rajesh Gopal, Additional Director General of Forests and Member-Secretary of National Tiger Conservation Authority, with specified terms of reference and the Committee gave its findings and the Ministry of Environment and Forests, Government of India by the Office Memorandum dated 24-10-2013 have accepted the findings of the Committee and rejected the proposals of the Government of Goa. It is also stated in the Office Memorandum dated 24-10-2013 of the Ministry of

Environment and Forests, Government of India that a draft notification defining eco-sensitive zones around each protected area is being issued for stakeholder consultations. This notification will have to be issued under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, and after objections are received, the Central Government will have to consider the same and thereafter take the decision regarding imposition of prohibition of mining activities in the eco-sensitive areas within the period stipulated in

sub-rule 3(*b*) of Rule 5 of the Environment (Protection) Rules, 1986. At this stage, we can only direct the Ministry of Environment and Forests to follow the procedure and issue the notification of eco-sensitive zones under Rule 5 of the Environment (Protection) Rules, 1986 within six months.

Whether there has been a violation of Rules 37 and 38 of the MC Rules by the mining lessees in the State of Goa?

54. The Justice Shah Commission has found in its Report that in the State of Goa, 16 companies/firms/individuals are carrying out mining operations under different leases granted to them as a single unit as if the leases are amalgamated. The Shah Commission has referred to Rule 38 of the MC Rules which provides that 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 Justice Shah Commission is of the opinion that as amalgamation of two leases can only be permitted by the State Government for reasons to be recorded in writing, and no such permission has been taken from the State Government for the amalgamation of different leases as a single unit, the lessees who are operating different leases as a single unit have violated Rule 38 of the MC Rules.

55. CEC in its report, however, has not stated about any violation of Rule 38 of the MC Rules and has instead stated that Rule 37 of the MC Rules which provides that the lessee shall not, without the previous consent in writing of the State Government assign, sub-let, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein, has been violated by several lessees. CEC has reported that there are several complaints received by the State Government that the leases have been operated by the persons other than the lessees. CEC has observed in its report that Rule 37 itself provides that in such cases of violation of Rule 37, the State Government may determine the mining lease, but the State Government has taken no action and has taken a stand that working of the mining leases by a person other than lease-holder is a prevailing mining practice in Goa and these facts are in the knowledge of the Government. Mr Prashant Bhushan, learned counsel for Goa Foundation, submitted that in all these cases the violation should be identified by a committee headed by the Chief Secretary, Goa, and those lessees who have been found to have violated Rule 37 of the MC Rules, should be penalised by determination of the leases.

Page: 622

56. Rules 37 and 38 of the MC Rules are extracted hereinbelow:

"**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, sub-let, mortgage, or in 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:

Provided further that where the mortgagee is an institution or a Bank or a Corporation specified in Schedule V, it shall not be necessary for the lessee to obtain any such consent of the State Government.

(1-A) The State Government shall not give its consent to transfer of mining lease unless the transferee has accepted all the conditions and liabilities which the transferor was having in respect of such mining lease.

(2) Without prejudice to the provisions of sub-rule (1) the lessee may, subject to the conditions specified in the proviso to Rule 35, transfer his lease or any right, title or interest therein to a person who has filed an affidavit stating that he has filed an up-to-date income tax return, paid the income tax assessed on him and paid the income tax on the basis of self-assessment as provided in the Income Tax Act, 1961 (43 of 1961), on payment of a fee of five hundred rupees to the State Government:

Provided that the lessee shall make available to the transferee the original or certified copies of all plans of abandoned workings in the area and in a belt 65 metres wide surrounding it:

Provided further that where the mortgagee is an institution or a Bank or a Corporation specified in Schedule V, it shall not be necessary for any such institution or Bank or Corporation to meet with the requirement relating to income tax:

Provided further that the lessee shall not charge or accept from the transferee any premium in addition to the sum spent by him, in obtaining the lease, and for conducting all or any of the operations referred to in Rule 30 in or over the land leased to him;

(3) The State Government may, by order in writing determine any lease at any time if the lessee has, in the opinion of the State Government, committed a breach of any of the provisions of sub-rule (1) or sub-rule (1-A) or has transferred any lease or any right, title, or interest therein otherwise than in accordance with sub-rule (2):

Provided that no such order shall be made without giving the lessee a reasonable opportunity of stating his case.

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:

Provided further that prior approval of the Central Government shall be required for such amalgamation in respect of leases for minerals specified in Part A and Part B of the First Schedule to the Act."

57. It will be clear from sub-rule (1)(*a*) of Rule 37 that the lessee cannot assign, sub-let, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein, without the previous consent in writing of the State Government in the case of those minerals which are not specified in Part A and Part B of the First Schedule to the Act. Since iron ore is specified in Part C of the First Schedule to the Act, the previous consent in writing of the State Government is necessary before any such transfer is made by a mining lessee. Sub-rule (1-A) of Rule 37 further states that the State Government shall not give its consent to transfer of a mining lease unless the transferee has accepted all the conditions and liabilities which the transferor was having in respect of such mining lease. Sub-rule (3) of Rule 37 further provides that the State Government may, by order in writing determine any lease at any time if the lessee has, in the opinion of the State Government committed a breach of any of the provisions of sub-rule (1) or sub-rule (1-A) of Rule 37 of the MC Rules. These provisions have been made in Rule 37 to ensure that all the conditions and liabilities to which a lessee is subjected to under a mining lease are also accepted by the transferee.

58. Sub-rule (2) of Rule 37 further provides that without prejudice to the provisions of sub-rule (1), the lessee may transfer his lease or any right, title or interest therein to a person who has filed an affidavit stating that he has filed up-to-date income tax returns, paid the income tax assessed on him and paid the income tax on the basis of self-assessment as provided in the Income Tax Act, 1961. This provision is meant to ensure that the transferee of a mining lease is an income tax assessee and is paying his income tax assessed on him and due from him on the basis of self-assessment.

59. Sub-rule (3) of Rule 37 empowers the State Government to determine any lease at any time if the lessee has, in the opinion of the State Government, committed a breach of any of the provisions of sub-rule (1) or sub-rule (1-A) or has transferred any lease or any right, title, or interest therein otherwise than in accordance with sub-rule (2) after giving the lessee a reasonable opportunity of stating his case.

60. The intent of the rule-making authority in making these provisions in Rule 37 is that the liabilities and conditions in a mining lease are also enforceable against the transferee and that the transferee pays his dues towards income tax regularly. Rule 37, therefore, cannot be allowed to be violated by the lessees with impunity and the State Government cannot overlook transfers by saying that the transfers of the mining leases are part of the mining practice in the State of Goa. In our view, if these violations of Rule 37 are allowed, there shall be substantial leakage of revenue and mining operations cannot be effectively regulated and controlled by the State Government. The State Government, therefore, must initiate action against those mining leases who violate Rule 37 of the Rules.

Page: 624

61. Rule 38 of the MC Rules provides that 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. If the State Government has not permitted amalgamation of adjoining leases in the interest of mineral development and has not recorded the reasons for such permission, the State Government cannot allow the amalgamation of the leases.

Was there a complete lack of control on production and transportation of mineral from the mining leases in the State of Goa?

62. CEC in its report has stated that in the State of Goa, there is no system of periodic verification of the quantity of iron ore produced in the mining leases, the payments of royalty, the permits issued for transportation of mineral by the Mining Department, the transit permits issued by the Forest Department nor any 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, and there is no verification of the transit permits at the check posts and no verification of the quantity of the mineral exported/domestically used vis-à-vis the quantity legally produced. According to CEC, in the absence of such checks/verifications/controls, illegal mining can easily be undertaken and the actual quantity of iron ore produced and transported from the mining leases may not be accounted for by the State of Goa or by the lessees, resulting in leakage of revenue. CEC in its report has given a chart to show the difference of figures in the iron ore exported as provided by the Goan Mineral Ore Exporters' Association and the total iron ore produced in the State of Goa as per reports compiled by the Indian Bureau of Mines, which is extracted hereinbelow:

Year	*Goan Iron Ore Exports*	*Total production*	*(in lakh MT) Excess of exports*

			over production
2006-2007	308.940	277.931	31.009
2007-2008	334.334	300.091	34.253
2008-2009	380.752	315.994	64.758
2009-2010	456.869	331.649	125.22
2010-2011	468.464	328.059	140.405
Total	*1949.359*	*1553.724*	*395.645*

According to CEC, there is every reason to believe that the excess quantity of 395.645 lakh MT, as shown in the aforesaid chart, is illegally mined ore.

63. We entirely agree with the CEC report that in the absence of proper checks, verifications and controls, there is bound to be illegal mining, storage and transportation of minerals, but we find that after the CEC report, the Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules,

2013 have been framed by the State Government under Section 23-C of the MMDR Act. A reading of these Rules shows that several provisions have been made in these Rules to prevent illegal mining and to regulate the sale, export and transit of ore, storage of mineral and transportation and winning of mineral. The Rules also provide for establishment of check posts, barriers and weighbridges and inspection of minerals in transit. Moreover, these Rules empower any person authorised by the Government to enter, inspect, search and seize articles. These Rules will have to be strictly enforced by the State Government and we hope that by such strict enforcement of these Rules, the mining, storage and transportation of minerals in the State of Goa will get controlled and regulated and the leakages and evasion of revenue will, to a large extent, be prevented.

To what extent mining has damaged the environment in Goa and what measures are to be taken to ensure intergenerational equity and sustainable development?

64. Mr Prashant Bhushan, learned Senior Counsel appearing for Goa Foundation, relying on the Report of the Justice Shah Commission, submitted that substantial damage has been caused to the eco-sensitive zone in Goa by excavating large quantities of iron ore through mining and as suggested by the Justice Shah Commission action should be taken in this regard. He submitted that the conditions stipulated in the EIA clearances imposed by the Chief Wildlife Warden, Goa, have not been implemented. He submitted that the environmental clearance system has actually collapsed resulting in amassing of wealth by certain individuals and companies at the cost of the environment and the ecosystem. He submitted that principles of sustainable development and intergenerational equity which were part of the fundamental right under Article 21 of the Constitution, require that a cap should be put on the annual excavation of iron ore from different mines in the State of Goa, after taking into account the need to conserve iron ore resources for future generations and the carrying capacity of the State of Goa for mining and transportation of mineral ores.

65. The learned counsel appearing for the lessees, on the other hand, submitted that there are adequate provisions in the MCD Rules for preventing damage to the environment and for restoration of the environment. They referred to Rules 23-A, 23-B, 23-D and 23-E of the MCD Rules which relate to the mine closure plan which must provide for protective measures including reclamation and rehabilitation work. They submitted that the holder of the mining lease, therefore, has to take all the protective measures including reclamation and rehabilitation work before abandoning the mine. They submitted that Chapter V of the MCD Rules also contains various provisions which a holder of mining lease has to comply and these provisions include precautions for protection of environment and controlling of

pollution while conducting mining operations in the area.

66. In reply to the submissions of Mr Bhushan that there should be a cap on the annual excavation of mineral ore in the State of Goa to ensure that

future generations are not denied the mineral resources, Mr Mukul Rohatgi, learned Senior Counsel appearing for Sesa Goa Ltd., relied on a publication of the British Geological Survey and submitted that there would never be any scarcity of mineral resources and there would be enough for the future generations. He submitted that Sesa Goa Ltd. has also taken steps to reclaim the land which was damaged through mining operation and produced photographs to show how reclamation and rehabilitation work has been done after mining was over in any area.

67. Mr N.S. Nadakarni, learned Advocate General for the State of Goa, submitted that in the Goa Mineral Policy of 2013, the State Government has proposed a capping of the mineral ores to be excavated annually in the State of Goa based on the carrying capacity of public roads and the need to protect intergenerational equity. He submitted that as per the Goa Mineral Policy of 2013, until the road capacity in Goa improves, there should be a gross capping at 45 MT per annum.

68. After considering the aforesaid submissions of the learned counsel for the parties, we took the view that a Committee of Experts must conduct a macro-EIA study and propose ceiling of the annual excavation of iron ore from the State of Goa, considering its iron ore resources and its carrying capacity and keeping in mind the principles of sustainable development and intergenerational equity and all other relevant factors. Accordingly, by orders dated 11-11-2013[5] and 18-11-2013[17], we constituted an Expert Committee comprising Prof. C.R. Babu (Ecologist), Dr S.C. Dhiman (Geologist/

Hydrogeologist), Prof. B.K. Mishra (Mineralogist), Prof. S. Parameswarappa (Forestry), Shri Parimal Rai (nominee of the Ministry of Environment and Forests, Government of India). This Expert Committee has submitted an interim report dated 14-3-2014. In this report, the Expert Committee has indicated that the economy of Goa depends on tourism and iron ore mining, besides agriculture, horticulture and minor industries, but in recent years, while there has been increase in the growth rate in tourism and mining, there has been a decline in the growth rate of agriculture and fishing.

69. The Expert Committee has in particular highlighted the damage that has been done by increase in the production of iron ore through mining to the environment in Goa in the following words:

> "The production of iron ore has jumped from 14.6 million tons in 1941 to 41.17 million tons in 2010-2011. In 1980s the production was about 10 MT per annum. The quantum jump in iron ore production in Goa was essentially due to steep rise in exports of fines and other low grade ore of 42% Fe content to China. This has led to massive negative impacts on all ecosystems leading to enhanced air, water, and soil pollution affecting quality of life across Goa. This is evident by three important reports i.e. (*i*) Areawise Environmental Quality Management (AEQM) Plan for the Mining belt of Goa by Tata Energy Research Institute, New Delhi and Goa (1997) and it was submitted to the Directorate of Planning, Statistics, and Evaluation, Government of Goa, (*ii*) Environmental and Social Performance Indicators and Sustainability Markers in Minerals Development Reporting Progress towards Improved Ecosystem Health and Human Well-being, Phase III by TERI and International Development Research Centre, Ottawa,

Canada (2006) and (*iii*) the Regional Environmental Impact Study of Iron Ore Mining in Goa region sponsored by MoEF, New Delhi (2014) by Indian School of Mines. Besides the above three main reports, a number of scientific research papers on the impact of iron ore mining on the environment and ecology of diverse ecosystems were published by scientists working at Goa University and NIO.

These reports and publications substantiate that the mining, particularly the enhanced level of annual production contributed to adverse impacts on the ecological systems, socio-economics of Goa and health of people of Goa leading to loss of ecological integrity. This is due to enhanced levels of pollutants, particularly RSPM and SPM, sedimentation of materials from dumps and iron ore in rivers, estuaries and shallow depth (20 m) of sea water, agricultural fields, high concentration of Fe and Mn in surface waters and their bioaccumulation."

The Expert Committee has also studied the sustainability of iron ore mining in Goa and after analysing the existing data from TERI Report, 1997, ISM, Dhanbad Report, 2013, Pollution Control Board, Goa (Annual Report) and relevant literature relating to sustainability and after adopting the Folchi method has given the opinion that mining at the rate of 20 to 27.5 million

Page: 628

tons per annum appears sustainable in the State of Goa. However, in its summary of recommendations, the Expert Committee has made these recommendations:

"*10*. To eliminate the element of subjectivity, due to the time constraints and limitation of available authentic time series data relating to mineral resources and environmental impact of mining in the State of Goa, this Committee suggests that mining be permitted to be carried out at the level of 20 million tons per annum with adequate monitoring of impacts on different ecological and environmental parameters, which will also help this Committee in its future appraisal.

11. Till the scientific study by this Committee is completed, which may take about 12 months more, the mining activity at levels as directed by the Hon'ble Supreme Court, be strictly monitored and regulated by the Department of Mines and Geology and the State Pollution Control Board of the State of Goa, in consultation with other statutory bodies such as Indian Bureau of Mines, Ministry of Environment and Forests (Government of India) and others."

It, thus, appears that the Expert Committee has suggested that for the time being annual excavation of 20 million tons of iron ore may be permitted in Goa with adequate monitoring impacts on different ecological and environmental parameters, which will also help the Expert Committee in its future appraisal. Regarding the authorities or agencies which should strictly monitor and regulate the mining activities in Goa, the Expert Committee has recommended that the Department of Mines and Geology of Government of Goa and the Goa State Pollution Control Board in consultation with other statutory bodies such as Indian Bureau of Mines, Ministry of Environment and Forests (Government of India) should carry on such monitoring and regulation strictly. The Expert Committee, however, has said nothing about how the mining dumps inside or outside the leased areas noticed by the Justice Shah Commission are to be dealt with presumably because in our order dated 11-11-2013[5] we had not issued any direction in this regard. We think that we should seek the opinion of the Expert Committee in this regard.

70. We find that the State Government has also engaged the services of NEERI for macro-level EIA study for clusters of iron ore mines in the State of Goa, but NEERI in its preliminary report has not recommended as to what should be the total quantum of annual production of iron ore in Goa in future. We also find that the Ministry of Environment and Forests, Government of India had entrusted the Indian School of Mines (ISM), Dhanbad to carry out a regional environment impact assessment study of mining in

Goa region and ISM, Dhanbad has submitted its report proposing a cap of 24.995 MT per annum on the basis of the carrying capacity of the existing infrastructure of

Page: 629

Goa. The relevant portion of the report of ISM, Dhanbad, is extracted hereinbelow:

"***20.7.4.7: Cluster-wise capping on transport***

The cap of 24.995 MTPA proposed in the aforementioned section is dependent primarily on the existing infrastructure and must be followed based on the spatial variations. To present an overall capacity of mining in North Goa and South Goa, the road capacity has been taken as a parameter. The capacity was arrived at 13.685 MTPA for North Goa and 11.31 MTPA for South Goa. The cap proposed will not include the mines lying within the buffer zones as these have imposed restriction of phasing out in time-bound period. Further, this cap can be represented into a cluster-wise scenario to decipher how much each cluster will be able to transport under the existing transport facilities. The values are presented in table below.

20.7.19: Cluster-wise capping on transport based on existing transport facilities

Cluster	*Routes*	*Capacity of the routes (MTPA)*	*Capacity of the cluster (MTPA)*
Adwalpal-Bicholim	Adwalpale to Sirsai Jetty	0.81	5.875
	Shrigao to Sirsai Jetty	1.26	
	Shrigao to Kalvin Jetty	1.16	
	Dahbdhaba to Sarmanas Jetty	2.645	
Velguem-Pissurlem	Sonshi to Amona Jetty	2.11	7.9
	Sanquelim to Amona Jetty	0.52	
	Honda to Navelim (Maina)	1.32	
	Sonshi to Khazan Jetty	1.32	
	Ambesi to Cotambi Jetty	1.29	
	Digneum to Surla Jetty	1.34	
Codli-Costi	Codli to Amona Jetty	1.94	4.69
	Codli to Capxem Jetty	1.24	
	Costi to Sanvordem	1.51	
Collem	Collem to Amona Jetty	1.94	2.76
	Shigao to Sanvordem	0.82	
Tollem	Tollem to Shelvona Jetty	1.71	1.71
Maina-Sulcorna	Sulcorna to Shelvona Jetty	1.02	2.06

	Maina to Shelvona	1.04	
Total capacity of the region			24.995

Thus, the cumulative ore transportation capacity of the existing road networks is 24.995 MTPA."

Page: 630

71. We, therefore, find that the Expert Committee as well as ISM, Dhanbad, after considering the available data and after considering the adverse impact on environment and the limited carrying capacity of the transport system in Goa, are of the opinion that a cap between 20 to 27.5 million tons per annum should be fixed for excavation of iron ore in the State of Goa. In its recommendations, however, the Expert Committee has suggested that till the scientific study by the Expert Committee is completed in about 12 months or so, and more of data including impacts on different ecological environmental parameters is available through monitoring of the impacts by different agencies including the Goa State Pollution Control Board, 20 million tons per annum should be fixed as the annual excavation of iron ore in Goa. Even this mining of 20 million tons per annum in the State of Goa, according to the Expert Committee, has to be strictly monitored and regulated by the Department of Mines and Geology, Government of Goa and the Goa State Pollution Control Board in consultation with other statutory bodies such as the Indian Bureau of Mines, the Ministry of Environment and Forests (Government of India) and others. It was the responsibility of the Government of Goa, Department of Mines, to enforce the provisions of the MMDR Act, the MC Rules and the MCD Rules, but as we have already noticed, this responsibility was not properly discharged. We hope that in future, it will enforce the provisions of the MMDR Act, the MC Rules, the MCD Rules and the Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013.

72. The Goa State Pollution Control Board has immense powers under the Water (Prevention and Control of Pollution) Act, 1974 (for short "the 1974 Act") to prevent pollution of water. Section 33-A of the 1974 Act which confers on the State Pollution Control Board the power to give directions is quoted hereinbelow:

> "**33-A.** ***Power to give directions***.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.
>
> *Explanation*.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—
>
> (*a*) the closure, prohibition or regulation of any industry, operation or process; or
>
> (*b*) the stoppage or regulation of supply of electricity, water or any other service."

73. Similarly, the Air (Prevention and Control of Pollution) Act, 1981 (for short "the 1981 Act") confers immense powers on the State Pollution Control Board to prevent air pollution. Section 31-A of the 1981 Act which

Page: 631

confers powers on the State Pollution Control Board to give directions is quoted hereinbelow:

> "**31-A.** ***Power to give directions***.—Notwithstanding anything contained in any

other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

(*a*) the closure, prohibition or regulation of any industry, operation or process; or

(*b*) the stoppage or regulation of supply of electricity, water or any other service."

74. It will be clear from the aforesaid provisions of Section 33-A of the 1974 Act and Section 31-A of the 1981 Act that the Goa State Pollution Control Board had powers to issue any direction including the power to close, prohibit or regulate mining operations or even to stop or regulate supply of electricity, water or any other service with a view to prevent water pollution or air pollution. Yet, from the report of the Expert Committee as well as the reports of ISM, Dhanbad and NEERI, it is clear that iron ore production in Goa has led to massive negative impacts on all ecosystems leading to enhanced air, water and soil pollution affecting quality of life across Goa. The Goa State Pollution Control Board in its note filed in Writ Petition (C) No. 435 of 2012, however, states:

"*Details of monitoring of water quality (with regards to mining leases) from 2007 to 2012* — The Board conducts inspections during the monsoon and other seasons also to verify the discharge of surface runoff/discharge from the pit outside the mining lease and also collects samples for analysing in the Board Laboratory. Wherever the parameters exceed the prescribed limits necessary directions are issued to the mining units to take remedial measures for controlling the waste water being discharged into the water bodies/fields without treatment. Directions are also issued to provide settling ponds, arrestor walls, filter beds so as to ensure that no untreated waste water is discharged into the water bodies/fields.

Details of monitoring of air quality (with regards to mining leases) from 2007 to 2012 — The Board is presently carrying out the periodic monitoring of Air Quality in pre-selected areas throughout the State to comply with one of the mandates of the Central Pollution Control Board (CPCB) under National Ambient Monitoring Programme (NAMP) at 16 stations."

75. We do not agree with Mr Arvind Datar, learned Senior Counsel for the Goa State Pollution Control Board, that sincere efforts were made by the

Pollution Control Board to monitor the water quality and air quality in the mining areas. Rather, it appears that the Goa State Pollution Control Board, though conferred with immense statutory powers, has failed to discharge its statutory functions and duties. We hope that in future the Goa State Pollution Control Board exercises strict vigil and monitors the water quality and air quality in accordance with the provisions of the two Acts and if necessary, exercises the powers conferred on it to close down mining operation of a lessee, if the lessee does not conform to the air emission and water discharge standards while carrying on mining operations and does not take other preventive measures as directed by the State Pollution Control Board.

76. Regarding the regulation by the Ministry of Environment and Forests, in our order dated 6-1-2014 passed in *T.N. Godavarman Thirumulpad* v. *Union of India*[18], we have already directed the Union of India to appoint a Regulator with offices in as many States as possible under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 as directed in the order in *Lafarge Umiam Mining (P) Ltd.*[19] As and when the Union of India appoints a Regulator under sub-section (3) of Section 3 of the Environment (Protection)

Act, 1986 with an office for Goa in compliance with the aforesaid direction of this Court, the Regulator so appointed will carry out its functions in accordance with the order passed under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986.

77. The regulatory and monitoring measures enforced by the Departments of Mines and Geology, the Goa State Pollution Control Board and the Regulator appointed by the Central Government under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 cannot, however, restore entirely the environment that is damaged in course of mining operations. The Expert Committee has, therefore, recommended that a permanent fund for intergenerational equity and sustainability of mining for all times to come named as "Goan Iron Ore Permanent Fund" be created and an expert group may be constituted by the State for working out the details of this fund. Mr Harish Salve, learned Amicus Curiae, submitted that as the lessees of mining leases earn out of the sale proceeds of the iron ore excavated by them, they should be directed to contribute 10% of the sale proceeds of all iron ore excavated in the State of Goa and sold by them towards the Goan Iron Ore Permanent Fund. He cited the judgment of this Court in *Samaj Parivartana Samudaya* v. *State of Karnataka*[11] in which this Court has similarly directed for creation of a Special Purpose Vehicle out of 10% of the sale proceeds of the ore sold by e-auction. There is a lot of force in the aforesaid submission of Mr Salve.

78. We find from the report of the Expert Committee that the State of Goa heavily depends on iron ore mining for revenue as well as employment.

The legislative policy behind the MMDR Act made by Parliament is mineral development through mining. The State Government of Goa has also adopted the executive policy to encourage mining of minerals in Goa. Moreover, as Mr Ravi Shankar Prasad, learned Senior Counsel appearing for 33 Panchayats, has submitted about 1.5 lakh people are directly employed in mining in Goa and large number of persons have taken bank loans and purchased trucks for transportation of iron ore. Hence, people who earn their livelihood through work in connection with mining will be seriously affected if mining is totally banned to protect the environment. We cannot, therefore, prohibit mining altogether, but if mining has to continue, the lessees who benefit the most from mining, must contribute from their sale proceeds to the Goan Iron Ore Permanent Fund for sustainable mining. Accordingly, in exercise of our powers under Article 32 read with Article 21 of the Constitution, we direct that henceforth 10% of the sale proceeds of iron ore excavated in the State of Goa and sold by the lessees must be appropriated towards the Goan Iron Ore Permanent Fund for the purpose of sustainable development and intergenerational equity and the State of Goa in consultation with CEC will frame a comprehensive scheme in this regard and submit the same to this Court within six months.

Whether in future the mining leases are to be auctioned or have to be granted in accordance with the policy of the State and the provisions of the MMDR Act and the MC Rules?

79. Mr Prashant Bhushan, learned counsel for Goa Foundation, submitted that in Article 39(*b*) of the Constitution, it is provided that the ownership and control of the material resources of the community should be so distributed so as to best subserve the common good and, therefore, the State cannot distribute the material resource of the community in any way it likes. He submitted that in *Centre for Public Interest Litigation* v. *Union of India*[20], a two-Judge Bench of this Court has held relying on Article 39(*b*) of the Constitution that the State is the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good. He submitted that in the aforesaid case, the two-Judge Bench has further held that a duly publicised auction conducted fairly and impartially is perhaps the

best method for discharging this burden and methods like "first-come-first-served" when used for alienation of natural resources/public property are likely to be misused by unscrupulous people who are only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. He relied on the conclusion of the two-Judge Bench of this Court in the aforesaid case that while transferring or alienating the natural resources, the State is duty-bound to adopt the method of auction

Page: 634

by giving wide publicity so that all eligible persons can participate in the process. He submitted that as the MMDR Act does not prohibit the State from holding auction of the mining leases, this Court should direct that in future the mining leases must be auctioned by the State Government.

80. The learned counsel for the lessees and the learned Advocate General, on the other hand, submitted that the MMDR Act and the MC Rules have made specific provisions regarding the manner in which the State is to grant mining leases and it is for the State to take decisions on grant of mining leases in accordance with the policy and the provisions of the MMDR Act and the MC Rules. They cited the opinion of the Constitution Bench of this Court in *Natural Resources Allocation, In re, Special Reference No. 1 of 2012*[21] that auction despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources and, therefore, every method other than auction cannot be struck down as ultra vires the constitutional mandate.

81. We are of the considered opinion that it is for the State Government to decide as a matter of policy in what manner the leases of these mineral resources would be granted, but this decision has to be taken in accordance with the provisions of the MMDR Act and the Rules made thereunder and in consonance with the constitutional provisions and the decision taken by the State of Goa to grant a mining lease in a particular manner or to a particular party can be examined by way of judicial review by the Court. To quote the opinion of four Judges out of five Judges expressed by D.K. Jain, J. in *Natural Resources Allocation, In re, Special Reference No. 1 of 2012*[21]: (SCC pp. 98-99, para 149)

> "*149*. … Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution."

Page: 635

Whether suspension of mining operations in the State of Goa by Order dated 10-9-2012 of the Government of Goa and the suspension of the environmental clearances granted to the mines in the State of Goa by Order dated 14-9-2012 were legal and valid?

82. As we have held that the deemed mining leases of the lessees in Goa expired on 22-11-1987 and the maximum period (20 years) of renewal of the deemed mining leases in Goa has also expired on 22-11-2007, mining by the lessees in Goa after 22-11-2007 was illegal. Hence, the Order dated 10-9-2012 of the Government of Goa suspending mining operations in the State of Goa and the Order dated 14-9-2012 of MoEF, Government of India, suspending the environmental clearances granted to the mines in the State of Goa, which have been impugned in the writ petitions in the Bombay High Court, Goa Bench (transferred to this Court and registered as transferred cases) cannot be quashed by this Court. The Order dated 10-9-2012 of the Government of Goa and the Order dated 14-9-2012 of MoEF will have to continue till decisions are taken by the State Government to grant fresh leases and decisions are taken by MoEF to grant fresh environmental clearances for mining projects.

83. On 5-10-2012, this Court while issuing notice in *Goa Foundation* v. *Union of India*[4] also passed orders that all mining operations in the leases identified in the report of the Justice Shah Commission and transportation of iron ore and manganese ore from those leases, whether lying at the mine-head or stockyards, shall remain suspended. Thereafter on 11-11-2013[5], this Court passed an order that the inventory of the excavated mineral ores lying in different mines/stockyards/jetties/ports in the State of Goa made by the Department of Mines and Geology of the Government of Goa be verified and thereafter the whole of the inventoried mineral ores be sold by e-auction and the sale proceeds (less taxes and royalty) be retained in separate fixed deposits (leasewise) by the State of Goa till this Court delivers judgment in these matters on the legality of the leases from which the mineral ores were extracted. In our order passed on 11-11-2013[5], we had also directed that this entire process of verification of the inventory, e-auction and deposit of sale proceeds be monitored by a Monitoring Committee appointed by the Court. The Monitoring Committee comprising Dr U.V. Singh (Additional Principal Chief Conservator of Forests, Karnataka), Shri Shaikh Naimuddin (former Member of Central Board of Direct Taxes) and Parimal Rai (nominee of Government of Goa) have in the meanwhile monitored the e-auction.

84. We extract hereinbelow the relevant portion of the interim report dated 12-3-2014 of the Monitoring Committee:

> "After the two e-auctions, the total ore auctioned is about 1.62 million MT and the total value realised is Rs 260.68 crores approximately. As directed by this Hon'ble Court, the State Government

has been requested to maintain separate accounts, leasewise, and keep the sale proceeds as fixed deposits in nationalised banks.

> The process of transportation of ore for export has not yet been initiated because of the storage charges being demanded from the successful bidder by the Marmagao Port Trust (MPT). As a result, the process of e-auction is likely to slow down. The extent of storage charges demanded is as per Annexure MC III."

85. As we have held that renewal of all the deemed mining leases in the State of Goa had expired on 22-11-2007, the mining lessees will not be entitled to the sale value of the ores sold in e-auction but they will be entitled to the approximate cost (not actual cost) of the extraction of the ores. On account of suspension of mining operations in the State of Goa, the workers who were employed by the lessees claim that they have not been paid their wages. Under Section 25-C of the Industrial Disputes Act, 1947, when a workman whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid off, he is entitled to be paid by the employer for all the days which he is so laid off, except for such weekly holidays as may intervene, compensation which shall be equal to 50% of the total

of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off. Following this principle of lay-off compensation, we hold that workers who could not be paid wages by the lessees will have to be paid compensation at the rate of 50% of their basic wages and dearness allowance during the period of non-employment on account of suspension of mining operations. Moreover, Marmagao Port Trust will have to be paid 50% of their charges for storage of the mineral ores after 5-10-2012.

86. The entire sale value of the stock of mineral ores sold by e-auction, less the average cost of excavation, 50% of the wages and allowances and 50% of the storage charges to be paid to Marmagao Port Trust is thus due to the State Government which is the owner of the mineral ores which have been sold by e-auction. The State Government will set aside 10% of this balance amount for the Goan Iron Ore Permanent Fund for the purpose of sustainable development and intergenerational equity. This entire exercise of calculating the average cost of extraction of ores to be paid to the mining lessees, 50% of the basic wages and dearness allowance to be paid to the workers, 10% of the balance amount towards the Goan Iron Ore Permanent Fund and the balance amount to be appropriated by the State Government will be done by the Director of Mines and Geology, Government of Goa, under the supervision of the Monitoring Committee. Till this exercise is over and the report of the Monitoring Committee is filed, the Monitoring Committee will continue and their members will be paid their remuneration allowances as directed in the order dated 11-11-2013[5].

Page: 637

87. In the result, we declare that:

87.1. The deemed mining leases of the lessees in Goa expired on 22-11-1987 and the maximum of 20 years renewal period of the deemed mining leases in Goa expired on 22-11-2007 and consequently mining by the lessees after 22-11-2007 was illegal and hence the impugned Order dated 10-9-2012 of Government of Goa and the impugned Order dated 14-9-2012 of MoEF, Government of India are not liable to be quashed.

87.2. Dumping of minerals outside the leased area of the mining lessees is not permissible under the MMDR Act and the Rules made thereunder.

87.3. Until the order dated 4-8-2006[14] of this Court is modified by this Court in IA No. 1000 in *T.N. Godavarman Thirumulpad* v. *Union of India*, there can be no mining activities within one kilometre from the boundaries of national parks and sanctuaries in Goa.

87.4. By the order dated 4-12-2006 in *Goa Foundation* v. *Union of India*[13], this Court has not prohibited mining activities within 10 kilometres' distance from the boundaries of the national parks or wildlife sanctuaries.

87.5. It is for the State Government to decide as a matter of policy in what manner mining leases are to be granted in future but the constitutionality or legality of the decision of the State Government can be examined by the Court in exercise of its power of judicial review.

88. And we direct that:

88.1. MoEF will issue the notification of eco-sensitive zones around the national park and wildlife sanctuaries of Goa after following the procedure discussed in this judgment within a period of six months from today.

88.2. The State Government will initiate action against those mining lessees who violate Rules 37 and 38 of the MC Rules.

88.3. The State Government will strictly enforce the Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013.

88.4. The State Government may grant mining leases of iron ore and other ores in Goa

in accordance with its policy decision and in accordance with the MMDR Act and the Rules made thereunder in consonance with the constitutional provisions.

88.5. Until the final report is submitted by the Expert Committee, the State Government will, in the interests of sustainable development and intergenerational equity, permit a maximum annual excavation of 20 million MT from the mining leases in the State of Goa other than from dumps.

88.6. The Goa Pollution Control Board will strictly monitor the air and water pollution in the mining areas and exercise powers available to it under the 1974 Act and the 1981 Act including the powers under Section 33-A of

Page: 638

the 1974 Act and Section 31-A of the 1981 Act and furnish all relevant data to the Expert Committee.

88.7. The entire sale value of the e-auction of the inventoried ores will be forthwith realised and out of the total sale value, the Director of Mines and Geology, Government of Goa, under the supervision of the Monitoring Committee will make the following payments:

(*a*) Average cost of excavation of iron ores to the mining lessees;

(*b*) 50% of the wages and dearness allowance to the workers in the muster rolls of the mining leases who have not been paid their wages during the period of suspension of mining operations;

(*c*) 50% of the claim towards storage charges of Marmagao Port Trust.

Out of the balance, 10% will be appropriated towards the Goan Iron Ore Permanent Fund and the remaining amount will be appropriated by the State Government as the owner of the ores.

88.8. The Monitoring Committee will submit its final report on the utilisation and appropriation of the sale proceeds of the inventoried ores in the manner directed in this judgment within six months from today.

88.9. Henceforth, the mining lessees of iron ore will have to pay 10% of the sale price of the iron ore sold by them to the Goan Iron Ore Permanent Fund.

88.10. The State Government will within six months from today frame a comprehensive scheme with regard to the Goan Iron Ore Permanent Fund in consultation with CEC for sustainable development and intergenerational equity and submit the same to this Court within six months from today; and

88.11. The Expert Committee will submit its report within six months from today on how the mining dumps in the State of Goa should be dealt with and will submit its final report within twelve months from today on the cap to be put on the annual excavation of iron ore in Goa.

89. With the aforesaid declarations and directions, Writ Petition (C) No. 435 of 2012 is allowed. The transferred cases and IA filed by Marmagao Port Trust as well as other IAs also stand disposed of. The interim order dated 5-10-2012[4] of this Court is vacated. These matters will be listed as and when the Monitoring Committee and the Expert Committee submit their final reports and the State Government submits the scheme for the Goan Iron Ore Permanent Fund. The parties shall bear their own costs.

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† Under Article 32 of the Constitution of India

[1] (1985) 1 Bom CR 36

[2] *Shantilal Khushaldas and Bros. (P) Ltd.* v. *Union of India*, WP No. 177 of 1990, decided on 20-6-1997 (Bom)

[3] *Shantilal Khushaldas and Bros. (P) Ltd.* v. *Union of India*, SLP (C) No. 23827 of 1997, order dated 2-3-1998 (SC)

[4] *Goa Foundation* v. *Union of India*, WP (C) No. 435 of 2012, order dated 5-10-2012 (SC), wherein it was directed:

"1. Issue notice. Dasti service in addition.

2. The Central Empowered Committee (CEC) is directed to submit its report on this writ petition, which is essentially based on the report of Justice M.B. Shah (a former Judge of this Court), Chairman of the Commission of Enquiry for illegal mining of iron ore and manganese. The Secretaries of the Ministries of Mines and Forest and Environment, Union of India, and the Chief Secretary of the State of Goa are directed to furnish all information that CEC may require for making its report for the Court in light of the Shah Commission's Report.

3. A preliminary report from CEC should reach this Court within four weeks from today. Put up on receipt of the report from CEC. Till further orders, all mining operations in the leases identified in the Shah Commission's Report and transportation of iron ore and manganese ore from those leases, whether lying at the mine-head or stockyards, shall remain suspended, as recommended in the Commission's Report.

4. IAs Nos. 2580 and 2669 of 2009 in Writ Petition (Civil) No. 202 of 1995 may also be listed along with this writ petition."

[5] *Goa Foundation* v. *Union of India*, (2014) 6 SCC 738

[6] (1989) 1 SCC 494

[7] (2003) 8 SCC 361

[8] (1985) 3 SCC 398 : 1985 SCC (L&S) 672

[9] (2004) 1 SCC 1

[10] (1996) 9 SCC 709

[11] (2013) 8 SCC 154

[12] AIR 1960 SC 12

[13] *Goa Foundation* v. *Union of India*, (2011) 15 SCC 791

[14] *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 740

[15] *T.N. Godavarman Thirumulpad* v. *Union of India*, (2002) 10 SCC 634

[16] (2011) 1 SCC 744

[17] *Goa Foundation* v. *Union of India*, WP (C) No. 435 of 2012, order dated 18-11-2013 (SC), wherein it was directed:

"These matters have been listed for the limited purpose of finalising the names of the Expert Committee which is to conduct the Macro Environmental Impact Assessment study as per the directions in our order dated 11-11-2013. The Expert Committee will consist of:

(*i*) Dr C.R. Babu, Head of the Centre for Environmental Management of Degraded Ecosystems, Delhi University—(Ecologist).

(*ii*) Dr S.C. Dhiman, Geologist/Hydrogeologist, Former Chairman of the Central Ground Water Board/Authority—(Geologist).

(*iii*) Prof. B.K. Mishra, Director of the Institute of Minerals and Materials Technology, a CSIR Institution formerly called the Regional Research Laboratory, Bhubaneshwar—(Mineralogist).

(*iv*) Prof. S. Parameswarappa, Former PCCF (Karnataka), Director ICFRE—(An expert on Forestry).

(*v*) A representative of Department of Mines, Government of Goa not less than the rank of Joint Secretary to be nominated by the Chief Secretary, Goa.

(*vi*) A representative of Ministry of Environment and Forests, Government of India not less than the rank of Joint Secretary to be nominated by the Secretary, Ministry of Environment and Forests, Government of India."

[18] (2014) 4 SCC 61

[19] *Lafarge Umiam Mining (P) Ltd.* v. *Union of India*, (2011) 7 SCC 338

[20] (2012) 3 SCC 1

[21] (2012) 10 SCC 1

(2018) 4 Supreme Court Cases 218 : 2018 SCC OnLine SC 98

In the Supreme Court of India

(BEFORE MADAN B. LOKUR AND DEEPAK GUPTA, JJ.)

GOA FOUNDATION . . Petitioner;

Versus

SESA STERLITE LIMITED AND OTHERS . . Respondents.

SLP (C) No. 32138 of 2015[1] with Nos. 32699-727 of 2015, WPs (C) Nos. 711 and 720 of 2015, decided on February 7, 2018

A. **Mines and Minerals — Mines and Minerals (Development and Regulation) Act, 1957 — Ss. 8 (2), (3), 10-B and 11 — Mining leases declared to be illegal in *Goa Foundation*, (2014) 6 SCC 590 — Grant of second renewal — Impermissibility of — State of Goa should have granted fresh mining leases instead of granting a second renewal — Such second renewal, held, illegal in view of *Goa Foundation*, (2014) 6 SCC 590 — Second renewal of mining leases set aside — Consequential directions issued**

— Court in *Goa Foundation case* was aware and conscious of illegal and indiscriminate mining for which it did not interfere with State Government's Order dt. 10-9-2012 suspending said mining leases and MoEF's Order dt. 14-9-2012 keeping in abeyance environmental clearance — Thus Court never intended renewal of said illegal mining leases but instead intended that State should grant of fresh mining leases — When Court declared that State Government should decide in what manner mining leases are to be granted in future, it was explicit and related to grant of fresh mining leases and not a second renewal — Subsequent events like dismissal of IAs also confirm this intention — (Paras 37 to 46)

— Though renewal of lease is a fresh lease, the converse is not true — When Court directed grant of "fresh leases" in *Goa Foundation case*, it was a deliberate and conscious decision, distinct and different from granting a second renewal of expired mining leases — (Paras 57 and 59)

— Though State of Goa at first correctly understood judgment in *Goa Foundation case*, it was overtaken by erroneous interpretation of said judgment given in *Lithoferro*, 2014 SCC OnLine Bom 997 on 13-8-2014 — High Court in said judgment incorrectly understood judgment in *Goa Foundation case* — Decision in *Lithoferro case* set aside — (Paras 47 to 53, 153 and 153.5)

— Consequential directions in view of illegal grant of mining leases — Time given to mining leaseholders to stop mining by 16-3-2018 — Authorities directed to grant fresh mining leases and fresh environmental clearances

Page: 219

— [Ed.: *See* Shortnotes *E* and *G* for illegality on account of lack of fresh environmental clearances] — Investigation reports should be given by various investigating teams entrusted with said task and State of Goa should implement said reports unless there are very good reasons for rejecting them — Government take steps for recovery of amounts due from mining leaseholders — Property Law — Transfer of Property Act, 1882 — Ss. 105 and 111 — Though renewal of lease is a fresh lease, the converse is not true — Public Accountability, Vigilance and Prevention of Corruption — Government Grants, Largesse, Public Property and Premises — Illegal mining

(Paras 37 to 60 and 154.1)

The Central Government on 2-11-2010 appointed Justice M.B Shah, a former Judge of the Supreme Court as Commission of Inquiry under Section 3, Commissions of Inquiry Act, 1952 to inquiry into large-scale illegal mining of iron ore and manganese ore. Pursuant to the reports of the said Commission, with respect to illegal mining in the State of Goa, the State Government of Goa, by order dated 10-9-2012, suspended all mining operations with effect from 11-9-2012. The Ministry of Environment and Forests (MoEF), by its order dated 14-9-2012, kept in abeyance the environmental clearances granted to 137

mining leases.

A PIL was filed in the Supreme Court for terminating the said mining leases. Several writ petitions were also filed in the High Court for quashing the two orders, that is, order dated 10-2-2012 suspending the mining leases and order dated 14-9-2012 keeping in abeyance the environmental clearances.

The Supreme Court in *Goa Foundation*, (2014) 6 SCC 590 declared the said mining leases to be illegal and further held that no second renewal of mining leases was permissible without express order in terms of Section 8(3), MMDR Act. And that only fresh mining leases as per law could be granted.

However, the High Court vide its order in *Lithoferro*, 2014 SCC OnLine Bom 997, wrongly interpreted the above order of the Supreme Court and held that renewal of a lease is also a fresh grant.

The Central Government contemplated introduction of Section 10-B, in the MMDR Act which provided that leases in respect of notified minerals could be granted only by way of e-auction by way of competitive bidding. The Ordinance relating to the above amendment was promulgated by the President of India on 12-1-2015. And the Goa Government in great haste also completed the process of second renewal of mining leases on same date, that is on 12-1-2015. To support its said illegal action, the Goa Government had also in great haste, formulated the Goa Grant of Mining Leases Policy, 2014. Thereafter the Goa Government requested the MoEF to lift the abeyance order dated 14-9-2012 in respect of 88 mining leases. MoEF by three orders dated 20-3-2015 lifted the said abeyance order with certain conditions (See paras 31 to 35 for the said conditions).

Thus the following three broad issues arise for consideration in the present case. Firstly, whether second renewal of mining leases was valid. Secondly, whether environmental clearances could have been given in present case. And thirdly, whether the impugned order in *Lithoferro case* was erroneous.

Page: 220

Answering the first two issues in the negative and the third issue in the affirmative, the Supreme Court held as above and below.

There is no doubt that the renewal of a lease is virtually the same as the grant of a fresh lease but a converse direction to grant a mining lease cannot be understood to mean granting a renewal of a mining lease. Obviously, the grant of a fresh lease is not the same as the renewal of a lease and when the Court in *Goa Foundation case* required the State of Goa to grant a fresh lease, it did not require the State to renew the existing (expired) lease. The Court could have explicitly declared and directed the State of Goa to grant a second renewal of the mining leases rather than to say it in a roundabout manner that it should do so by granting a fresh lease equivalent to a renewal.

(Para 57)

When the Judges directed the grant of "fresh leases" in *Goa Foundation case* it was a deliberate and conscious decision, distinct and different from granting a second renewal of expired mining leases.

(Para 59)

Goa Foundation v. *Union of India*, (2014) 6 SCC 590; *Goa Foundation* v. *Union of India*, (2015) 1 SCC 153, *relied on*

DDA v. *Durga Chand Kaushish*, (1973) 2 SCC 825, *explained* and *distinguished*

Provash Chandra Dalui v. *Biswanath Banerjee*, 1989 Supp (1) SCC 487; *M.C. Mehta* v. *Union of India*, (2004) 12 SCC 118; *State of W.B.* v. *Calcutta Mineral Supply Co. (P) Ltd.*, (2015) 8 SCC 655 : (2015) 4 SCC (Civ) 395; *Common Cause* v. *Union of India*, (2014) 14 SCC 155, *distinguished*

Lithoferro v. *State of Goa*, 2014 SCC OnLine Bom 997 : (2015) 3 AIR Bom R 32, *reversed*

Goa Foundation v. *Union of India*, (2014) 6 SCC 738; *Goa Foundation* v. *Union of India*, (2014) 6 SCC 590 (footnote 17); *State of M.P.* v. *Krishnadas Tikaram*, 1995 Supp (1) SCC 587; *Goa Foundation* v. *Union of India*, (2014) 6 SCC 590 (footnote 4); *Gajraj Singh* v. *STAT*, (1997) 1 SCC 650, *referred to*

B. **Constitution of India — Arts. 14, 39(b), 298, 299 and Preamble — Mode of alienation of natural resource — Freedom available to executive in this regard and scope of judicial review — Principles reiterated**

— Alienation through competitive bidding or auction, reiterated, as per law laid down in *Natural Resources Allocation*, (2012) 10 SCC 1, though the preferable mode of allocation, is not mandatory or a constitutional obligation, other than cases of allocation of spectrum as held in *Centre for Public Interest Litigation*, (2012) 3 SCC 1 — There is no constitutional imperative in

economic policies — Art. 14 does not predefine any economic policy as a constitutional mandate — Alienation of natural resources is a policy decision, and means adopted for same executive prerogative

— Decision to not auction a natural resource is liable to challenge and subject to restricted and limited judicial review under Art. 14 of the Constitution

— In case of alienation to private party for commercial pursuit for maximising profits, auction is more preferable method — But decision to not auction a natural resource and sacrifice maximisation of revenues might be

Page: 221

justifiable if decision is taken for social good or public good or common good such as when alienation is to provide affordable housing to members of SCs or STs or to implement housing schemes for Below the Poverty Line (BPL) families — If not for social good, public good or common good, it cannot be dissipated in favour of a private entrepreneur virtually free of cost or for a consideration not commensurate with its worth without attracting Arts. 14 and 39(b)

(Paras 61 to 80.5 and 154.2)

Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1; *Ajar Enterprises (P) Ltd.* v. *Satyanarayan Somani*, (2018) 12 SCC 756; *BALCO Employees' Union* v. *Union of India*, (2002) 2 SCC 333, *relied on*

Centre for Public Interest Litigation v. *Union of India*, (2012) 3 SCC 1, *held, clarified*

Manohar Lal Sharma v. *Union of India*, (2014) 9 SCC 516, *referred to*

Kasturi Lal Lakshmi Reddy v. *State of J&K*, (1980) 4 SCC 1, *cited*

C. **Constitution of India — Arts. 14, 39(b), 298, 299 and Preamble — Grant of mining leases concerned by State of Goa — Financial/economic necessity vis-à-vis sustainable development, environmental and ecological protection — Hasty decision to grant renewal of mining leases to benefit a few private persons and some royalty to State and said grants not conducive to interest of mineral development and against Goa Mineral Policy causing damage to environment and ecology and affecting health of people of Goa — Held, arbitrary and unjust — Second renewal of mining leases, set aside**

— Virtual chaos projected by State of Goa for suspension of mining leases could be an exaggeration but that is why issue of arbitrariness of policy decision is left open in present case — Nevertheless, decision of State of Goa to quickly renew mining leases while ostensibly complying with requirement of S. 8(3), MMDR Act and thereby jettisoning rule of law was unjustified — Second renewal of mining leases was unduly hasty, without considering relevant material and not in interests of mineral development — It only augmented revenues of State which is outside purview of S. 8(3), MMDR Act — Second renewal granted by State of Goa, set aside — (Paras 127, 128 and 154.3)

— Goa Grant of Mining Leases Policy, 2014 — Relevant that decision of State of Goa to not auction grant of mining leases was flawed in that it did not serve common or public or social good but primarily assisted in filling coffers of private entrepreneurs — It was extracted primarily for export to China and Japan without any value addition to domestic industry — (Paras 93 to 97)

— Decision of the Bombay High Court — It seemed as if High Court was not alive to possibility of auction of mining leases — It categorised mining leases on basis of those who had paid stamp duty and those who had not and granted relief on that basis — (Paras 89 to 92)

— Mines and Minerals — Mines and Minerals (Development and Regulation) Act, 1957, Ss. 8 (2) & (3), 10-B and 11

(Paras 82 to 97, 127, 128 and 154.3)

Page: 222

D. **Constitution of India — Arts. 14, 39(b), 298, 299 and Preamble — Grant of mining leases**

concerned by State of Goa — Held, arbitrary and unjust — Sole beneficiaries of rapacious, chaotic, unregulated and illegal mining in Goa were mining leaseholders/private entities — Some others like barge owners, truck owners, etc. were also collateral beneficiaries — Surely, all this cannot be ignored or brushed aside particularly since exploitation of mineral resources for five years had no element of social or public purpose, no concern for society and no regard for the environment and laws

(Paras 82 to 85)

E. **Constitution of India — Arts. 14, 39(b), 298, 299 and Preamble — Grant of mining leases concerned by State of Goa — Complete disregard of environmental laws — Vishwanath Anand Expert Appraisal Committee report discussed — Said report highlights damage to environment and ecology by mining leaseholders and complete indifference by all concerned towards all environmental laws — Leases did not even get clearance from Central Ground Water Board for which there were serious consequences like groundwater got depleted at much faster rate than expected and its quality also deteriorated**

(Paras 86 to 88)

F. **Constitution of India — Arts. 14, 39(b), 298, 299 and Preamble — Grant of iron ore mining leases by State of Goa — Non-application of mind, undue haste and against interest of mineral development of State**

— During second renewal of mining leases concerned State of Goa ignored relevant factors and showed undue haste — All mining leaseholders had committed illegality — Instead of waiting for report of teams proving said illegality, State of Goa renewed their mining leases in violation of Grant of Mining Leases Policy — Undue haste was also showed by State of Goa to renew said mining leases so as to defeat Central Government's proposed policy of granting mining leases by way of competitive bidding through e-auction — Ordinance of Central Government in this regard was made known to public on 5-1-2015 and it was promulgated on 12-1-2015 — Within said seven days, State of Goa, granted second renewal to as many as 56 mining leases

— Concept of mineral development encompasses concept of captive mining — State Government should have applied its mind to requirement of different industries and principles of equitable distribution — Admittedly, iron ore is not extracted in Goa for import substitution or value addition but only as a last option, that is, export — Matters of interests of mineral development should be considered holistically and not in an isolationist manner — Therefore, while said miners contributed virtually nothing to domestic industry, they made considerable profits through exports — Though this might contribute to foreign exchange reserves, real-time damage to environment, ecology and health of Goan people is incalculable — Export benefits cannot be weighed against said damage — No social or public purpose attached to said mining operations — Only objective was profit maximization — This certainly cannot

Page: 223

be described as being "in the interests of mineral development" — Mines and Minerals — Mines and Minerals (Development and Regulation) Act, 1957 — Ss. 8(2) & (3), 10-B and 11 — Mineral Concession Rules, 1960, Rr. 37 and 38

(Paras 108 to 121)

Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1, *relied on*

Sandur Manganese and Iron Ores Ltd. v. *State of Karnataka*, (2010) 13 SCC 1, *distinguished*

T.N. Godavarman Thirumulpad v. *Union of India*, (2010) 13 SCC 740; *Goa Foundation* v. *Union of India*, (2011) 15 SCC 791; *State of Assam* v. *Om Prakash Mehta*, (1973) 1 SCC 584; *Quarry Owners' Assn.* v. *State of Bihar*, (2000) 8 SCC 655; *CIT* v. *Anjum M.H. Ghaswala*, (2002) 1 SCC 633; *Sube Singh* v. *State (NCT of Delhi)*, (2004) 6 SCC 440; *State of U.P.* v. *Singhara Singh*, AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2) : (1964) 4 SCR 485; *Tisco Ltd.* v. *Union of India*, (1996) 9 SCC 709, *cited*

G. **Environment Law — Environmental Clearance/NOC/Environment Impact Assessment — Grant of/Quashment of/Irregularity in/Judicial review — Deemed environmental clearance (EC) — When invalid — MoEF granted deemed environmental clearance (EC) in 2014-2015 in violation of environmental law and against ruling in *Goa Foundation*, (2014) 6 SCC 590, set aside — Judicial review — Approach — Holistic approach is required for issues impacting society — Larger context of constitutionalism, rule of law, environmental jurisprudence as well as**

fundamental right of people of Goa to have clean air and protection of fragile ecology must be considered — One or two violations here and there may be wished away as inconsequential, but multiple violations by several persons can result in serious problems — Governance dehors interests of people not proper — Uncomfortable decisions are inevitable for balancing rights and equities

— Some mining leaseholders had environmental clearances under EIA 1994 while others under EIA 2006 — Pursuant to requests made by State of Goa, MoEF granted EC to them notwithstanding that fresh leases could only have been permitted in view of ruling in *Goa Foundation case* and no renewals were permissible and thus fresh leases required fresh ECs

— Clarified, for renewal of mining leases in 2014-2015, lessees having valid environmental clearance (EC) under EIA 1994 also required fresh EC under 2006 EIA — Moreover EC under EIA 1994 is valid for 5 yrs and EC under EIA 2016 is valid for estimated project life or a maximum of 30 yrs — 37 mining leases which had EC under EIA 2006, thus though seemingly protected were actually not in view of ruling in *Goa Foundation case* that no second renewals were permissible, and only fresh renewals were permissible — Hence, fresh EC in terms of EIA 2006 was required

(Paras 129 to 150 and 154.4)

Goa Foundation v. *Union of India*, (2014) 6 SCC 590; *Goa Foundation* v. *Union of India*, (2014) 6 SCC 738; *Goa Foundation* v. *Union of India*, (2014) 6 SCC 590 (footnote 17); *M.C. Mehta* v. *Union of India*, (2004) 12 SCC 118; *Common Cause* v. *Union of India*, (2017) 9 SCC 499; *Ambica Quarry Works* v. *State of Gujarat*, (1987) 1 SCC 213; *Rural Litigation and Entitlement Kendra* v. *State of U.P.*, 1989 Supp (1) SCC 504; *State of M.P.* v. *Krishnadas Tikaram*, 1995 Supp (1) SCC 587, *relied on*

Page: 224

S.N. Mohanty v. *Union of India*, 2012 SCC OnLine Del 4000, *distinguished*

H. **Constitution of India — Art. 145(3) — Request for reference to a Bench of nine Judges, rejected**

(Para 152)

Property Owners' Assn. v. *State of Maharashtra*, (2013) 7 SCC 522 : (2013) 3 SCC (Civ) 603, *referred to*

SS-D/59847/C

Advocates who appeared in this case :

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Chronological list of cases cited ***on page(s)***

30. (1980) 4 SCC 1, *Kasturi Lal Lakshmi Reddy* v. *State of J&K* 25

31. (1973) 2 SCC 825, *DDA* v. *Durga Chand Kaushish* 24

32. (1973) 1 SCC 584, *State of Assam* v. *Om Prakash Mehta* 263g

33. AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2) : (1964) 4 SCR 485, *State of U.P.* v. *Singhara Singh* 26

Page: 226

The Judgment of the Court was delivered by

MADAN B. LOKUR, J.— Rapacious and rampant exploitation of our natural resources is the hallmark of our iron ore mining sector coupled with a total lack of concern for the environment and the health and well-being of the denizens in the vicinity of the mines. The sole motive of mining leaseholders seems to be to make profits (no matter how) and the attitude seems to be that if the rule of law is required to be put on the backburner, so be it. Unfortunately, the State is unable to firmly stop violations of the law and other illegalities, perhaps with a view to maximise revenue, but without appreciating the long-term impact of this indifference. Another excuse generally put forth by the State is that of development, conveniently forgetting that development must be sustainable and equitable development and not otherwise.

2. Effective implementation and in some instances circumvention of the mining and environment related laws is a tragedy in itself. Laxity and sheer apathy to the rule of law gives mining leaseholders a field day, being the primary beneficiaries, with the State being left with some crumbs in the form of royalty. For the State to generate adequate revenue through the mining sector and yet have sustainable and equitable development, the implementation machinery needs a tremendous amount of strengthening while the law enforcement machinery needs strict vigilance. Unless the two marry, we will continue to be mute witnesses to the plunder of our natural resources and left wondering how to retrieve an irretrievable situation.

3. The Government of India appears to have received information of large-scale illegal mining of iron ore and manganese ore in different States in contravention of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (the MMDR Act); the Forest (Conservation) Act, 1980; the Environment (Protection) Act, 1986 and other rules and guidelines issued on the subject from time to time.

4. Acting on this information, the Government of India appointed Justice M.B. Shah, a former Judge of this Court as a Commission of Inquiry under Section 3 of the Commissions of Inquiry Act, 1952 by a Notification dated 22-11-2010. The terms of reference of the Commission for the State of Goa were as follows:

"2. The terms of reference of the Commission shall be—

(*i*) to inquire into and determine the nature and extent of mining and trade and transportation, done illegally or without lawful authority, of iron ore and manganese ore, and the losses therefrom; and to identify, as far as possible, the persons, firms, companies and others that are engaged in such mining, trade and transportation of iron ore and manganese ore, done illegally or without lawful authority;

(*ii*) to inquire into and determine the extent to which the management, regulatory

and monitoring systems have failed to deter, prevent, detect and punish offences relating to mining, storage,

transportation, trade and export of such ore, done illegally or without lawful authority, and the persons responsible for the same;

(*iii*) to inquire into the tampering of official records, including records relating to land and boundaries, to facilitate illegal mining and identify, as far as possible, the persons responsible for such tampering; and

(*iv*) to inquire into the overall impact of such mining, trade, transportation and export, done illegally or without lawful authority, in terms of destruction of forest wealth, damage to the environment, prejudice to the livelihood and other rights of tribal people, forest dwellers and other persons in the mined areas, and the financial losses caused to the Central and State Governments.

3. The Commission shall also recommend remedial measures to prevent such mining, trade, transportation and export done illegally or without lawful authority."

5. Justice Shah visited Goa and after calling for and receiving information from the authorities concerned as well as the mining leaseholders, he submitted a report on 15-3-2012 and another on 25-4-2012 to the Ministry of Mines in the Government of India. The reports were tabled in Parliament on 7-9-2012 along with an Action-Taken Report and as a result, the Government of Goa passed an order dated 10-9-2012 suspending all mining operations in the State with effect from 11-9-2012. The Ministry of Environment and Forests (MoEF) of the Government of India acted similarly and kept in abeyance the environmental clearances granted to 139 mines (actually 137 mines—there is some duplication) in the State of Goa by an order dated 14-9-2012.

6. Subsequent to the reports given by Justice Shah, a writ petition was filed by Goa Foundation in this Court being WP (C) No. 435 of 2012. The writ petition was a public interest litigation praying, inter alia, for directions to the Union of India and the State of Goa to take steps to terminate the mining leases where mining was carried out in violation of various statutes.

7. Similarly, several mining leaseholders preferred writ petitions in the Bombay High Court for a declaration that the reports given by Justice Shah are illegal and also for quashing the orders dated 10-9-2012 and 14-9-2012 whereby mining operations were suspended and environmental clearances were kept in abeyance. The writ petitions filed in the High Court were transferred to this Court for hearing along with WP (C) No. 435 of 2012.

8. This Court heard all these matters and rendered its decision in *Goa Foundation* v. *Union of India*[1] on 21-4-2014. Among other conclusions arrived at, it was held by the Court that all the iron ore and manganese ore leases had expired on 22-11-2007. Consequently, any mining operation carried out by the mining leaseholders after that date was illegal. It was also held that all the mining leaseholders had enjoyed a first deemed renewal of the mining lease and for a second renewal an express order was required to be passed in view

of and in terms of Section 8(3) of the MMDR Act. For a second renewal of the mining lease, it was held that the State Government must apply its mind and record reasons for renewal being in the interest of mineral development and the necessity to renew the mining lease. Any decision taken by the State Government should also be in conformity with the

constitutional provisions. The decision taken by the State of Goa to grant a mining lease in a particular manner or to a particular party could be examined by way of judicial review. It was also held that the orders dated 10-9-2012 and 14-9-2012 are not liable to be quashed and that they would continue till decisions are taken to grant fresh leases and fresh environmental clearances for mining projects.

Goa Mineral Policy, 2013

9. During the pendency of the proceedings before the Court, the State of Goa announced the draft Goa Mineral Policy on 21-8-2012. After suggestions, etc. were received, the Mineral Policy was finalised and gazetted on 28-9-2013.

10. A few salient features of the Mineral Policy may be mentioned. It is stated in the Preamble to the Mineral Policy:

> "The Goan economy is heavily dependent on the iron ore industry insofar as the major share of the regional income from the mineral industry and its allied activities like transport and trade is concerned."
>
> "However, during the period from 2006-2007 to 2011-2012, due to huge spurt in demand of low grade ore in international market followed by *illegalities and irregularities* in the previous regulatory regime, the State has witnessed the peak of *chaotic and unregulated mining* without any concern for fragile ecology and environment of the State or for the general well-being of an average Goan. It has resulted in massive export of unaccounted ore from unidentified sources like dumps and tailings. The *reckless exploitation* without any concern for sustainability that the State has witnessed in last five years has serious implications. Minerals are a finite and non-renewable natural resource and must be exploited wisely in the larger interest of the State.
>
> It is high time that the new Government that has received an unprecedented mandate from the people of Goa should take note that dependence on mining presents extreme externalities and *the State has to tread cautiously promoting a sustainable extraction regime to facilitate systematic, scientific and planned utilisation of mineral resources* and to streamline mineral based development of the State, keeping in view, protection of environment, health and safety of the people in and around the mining areas rather than race to bottom."
>
> (emphasis supplied)

11. Notwithstanding this serious indictment of the pre-existing "policy" for mining natural resources in Goa, the Mineral Policy did not address itself to the allocation or distribution of the natural resources in any of its 20 paragraphs and many sub-paragraphs. The topics dealt with in the Mineral Policy include objectives and parameters, sustainable mining and mineral conservation, mineral administration, regulation of mines and minerals, pollution and its social impact and policy highlights. Some of the other topics dealt with in the Mineral Policy include capping, based on carrying capacity of public roads and

to protect intergenerational equity, mines safety and rehabilitation of affected people, stakeholder participation (including corporate social responsibility), welfare and social responsibilities and establishment of the Goa Minerals Development Fund, etc.

12. However, what is of some significance is that Paras 1.4.4 and 1.4.5 of the Mineral Policy state that Goan iron ore is low grade, that is, having low iron (or Fe) content and that its extraction provides no or minimal domestic value addition. Almost all the iron ore extracted in Goa is exported and we were informed that only one mining leaseholder captively consumes Goan extracted iron ore. Paras 1.4.4 and 1.4.5 of the Mineral Policy

read as follows:

"1.4.4. *No domestic value addition*.—The nature of Goan iron ore is such that value addition opportunities in the domestic market are minimal. The Chinese and Japanese use Goan iron ore for blending purposes to bring down the average cost of iron ore, whereas Indian steel producers have a wide range of high grade fines to choose from. *Despite the closure of mining operations in the neighbouring State of Karnataka, Goan iron ore is not used in Indian Steel Industry due to its low Fe content.*

1.4.5. *Low grade v/s high grade*.—Goan iron ore has always been of low grade Fe content in comparison with that of Odisha, Jharkhand and Karnataka. *The low grade of ore has been competitive in global markets, because of the non-reliance on railways and close distances of mines to ports thereby reducing the overall cost*. The high silica presence in Goan ore also is a favourable factor for preference for Goan ore over Australian and Brazilian low grade ore."

(emphasis supplied)

13. It appears from the above that the extraction of iron ore in Goa is geared only towards export and not for domestic purposes because of the low Fe content and high silica presence.

Vishwanath Anand Expert Appraisal Committee

14. During the pendency of the writ petition in the Court, the MoEF constituted an Expert Appraisal Committee (EAC) on 21-3-2013 with Shri Vishwanath Anand, former Secretary in the MoEF as the Chairman to specifically look into issues related to illegal mining in the State of Goa. The terms of reference of the EAC were as follows:

(*a*) To examine the information/documents submitted by each of the 139 project proponents in response to the aforesaid direction dated 14-9-2012 under the Environment (Protection) Act, 1986 for keeping environment clearance in abeyance and making case-by-case recommendations to the MoEF;[2]

(*b*) To evaluate status of compliance with respect to conditions stipulated as part of environment clearance;

(*c*) * * *

(*d*) To examine the observations relating to MoEF in Justice Shah Commission Report on illegal mining of iron and manganese ore in the State of Goa and make appropriate recommendations.

15. The EAC gave its report sometime in October 2013 with regard to 137 mining leases. Very briefly, the EAC found that many of the mining leaseholders had: (*i*) no approval from the National Board of Wildlife; or (*ii*) indulged in excess mining; or (*iii*) indulged in dump mining; or (*iv*) intersected groundwater level; or (*v*) no clearance from the Central Ground Water Board to draw groundwater; or (*vi*) no forest clearance. We may also note that the EAC also recommended the revocation of environmental clearance granted to several mining leaseholders for a variety of reasons.

16. The Mineral Policy and the report of the EAC were perhaps placed before the Court in the writ petition filed by Goa Foundation and the transferred cases, but not dealt with, except for a brief mention of the Mineral Policy.

17. All the cases before the Court were heard quite extensively in September, October and November 2013. Judgment was reserved on 11-11-2013[3] and pronounced on 21-4-2014[1]. Some of the conclusions arrived at by the Court relevant for our discussions have already been mentioned above.

18. At this stage, it may be mentioned that on 11-11-2013[3] read with an order dated

18-11-2013[4] this Court constituted an Expert Committee: (*Goa Foundation case*[3], SCC pp. 743-44, para 12)

"*12.* … [to] conduct a macro EIA study on what should be the ceiling of annual excavation of iron ore from the State of Goa considering its iron ore resources and its carrying capacity keeping in mind the principles of sustainable development and intergenerational equity and all other relevant factors."

The members of the Expert Committee were:

1. Dr C.R. Babu (Ecologist),
2. Dr S.C. Dhiman (Geologist/Hydrogeologist),
3. Prof. B.K. Mishra (Mineralogist),
4. Prof. S. Parameswarappa (Forestry),
5. Shri Parimal Rai (nominee of the Ministry of Environment and Forests, Government of India).

19. The Expert Committee submitted an Interim Report dated 14-3-2014 to the Court after considering reports prepared by the Tata Energy Research Institute (TERI), New Delhi (1997); TERI and International Development Research Centre, Ottawa, Canada (2006); MoEF (2014); research papers prepared by the Goa University and the National Institute of Oceanography; Indian Institute of Technology (Indian School of Mines), Dhanbad (2013); Pollution Control Board, Goa (Annual Report) and other literature. It noted

large-scale degradation of the environment in Goa due to mining operations. A Final Report was also submitted by the Expert Committee to the Court on or about 12-4-2015—it was obviously not available to the Court.

Other proceedings in the High Court

20. Quite independent of the cases pending in this Court, writ petitions were filed by several mining leaseholders in the Bombay High Court praying either for consideration of their application for a second renewal of the mining lease or for the grant of a mining lease on second renewal. The High Court heard those writ petitions and delivered its judgment on 13-8-2014[5]. In the course of its judgment, the High Court referred to the Mineral Policy and observed: (*Lithoferro case*[5], SCC OnLine Bom para 3)

"The State Government also framed Goa Mineral Policy, 2013, which was duly gazetted on 28-9-2013 and was placed on record before the Supreme Court in Writ Petition (C) No. 435 of 2012. The State Government, in terms of this policy, in principle, agreed to renew 28 leases. These leaseholders were also asked to pay stamp duty. In some cases, after payment of the stamp duty, decision under Section 8(3) of the MMDR Act was taken to renew the leases and that decision is also gazetted. Thus, the petitions are classified in three categories mentioned hereinbelow:

(A) Where there is notification issued in the Official Gazette after taking a decision for renewal;

(B) Where there is a decision for renewal and there is stamp duty collected; and

(C) Where there are renewal applications made and are still pending.

All the petitioners initially sought directions to the State Government to decide their applications for renewal filed in the year 2007. However, the petitions which fell in the first two categories were subsequently amended and directions were sought against the Government to execute second renewal lease deeds."

21. In its decision, the High Court held:

(*i*) The decision of this Court (in *Goa Foundation*[1]) is not an impediment on the State of Goa in considering the applications filed by the petitioners before the High Court for a

second renewal of the mining lease. On the contrary, the decision casts an obligation on the Government of Goa to consider all the applications for renewal under Section 8(3) of the MMDR Act;

(*ii*) Consideration of the applications should be in accordance with the Mineral Policy, the provisions of the MMDR Act and the Rules made thereunder and in accordance with constitutional provisions;

Page: 232

(*iii*) The expression "fresh leases" occurring in para 67(82) of the decision of this Court (in *Goa Foundation*[1]) is an affirmation of the law that the renewal of a lease is also a fresh grant.

For arriving at this conclusion, the High Court placed reliance on *State of M.P.* v. *Krishnadas Tikaram*[6].

22. The High Court finally held: (*Lithoferro case*[5], SCC OnLine Bom para 16)

"*16*. In the case in hand, admittedly, all the petitioners have made applications for second renewal within the time-limit i.e. before expiry of the term of first renewal of the mining leases. The mining plans for the second renewal, thereafter, came to be approved by the IBM. The IBM also recorded its subjective satisfaction that the same is in the interest of mineral development. Thus, there is enough material on record to show that the Government agreed to grant the second renewal of mining leases under Section 8(3) of the MMDR Act and thereafter amended the Stamp Act and directed some of the petitioners to pay the stamp duty and even accepted the same. Thus, the Government gave promise that the mining leases would be executed under Section 8 (3) and pursuant to the promise, the petitioners altered their position by depositing the huge stamp duty. Therefore, it is now not open for the Government to resile from the promise as it is estopped by the doctrine of promissory estoppel from doing so. The petitioners legitimately expected that after payment of the stamp duty, the Government would execute the second leases under Section 8(3) of the MMDR Act. In our considered opinion, the principle of promissory estoppel is squarely applicable to the facts of the present case. The Government is reluctant to execute the lease deeds under Section 8(3) only on the ground that it is not open for it to do so in the light of the Apex Court judgment[1] in Writ Petition (C) No. 435 of 2012. We have already held that the Supreme Court judgment[1] in Writ Petition (C) No. 435 of 2012 is not an impediment in the Government's way in executing the leases in terms of Section 8(3) of the MMDR Act."

23. In view of the above conclusions, the High Court passed the following orders: (*Lithoferro case*[5], SCC OnLine Bom para 18)

"(I) The respondent State of Goa is directed to execute the lease deeds under Section 8(3) of the MMDR Act in favour of the petitioners leaseholders who/which have already paid the stamp duty pursuant to the orders of the Government, in accordance with the Goa Mineral Policy, 2013 placed before the Supreme Court in Writ Petition (Civil) No. 435 of 2012 and subject to the conditions laid down by the Apex Court in the said writ petition.

Page: 233

(II) So far as the petitioners leaseholders who/which have not paid the stamp duty

are concerned, the respondent State of Goa is directed to decide their renewal applications under Section 8(3), as expeditiously as possible, and preferably within a period of three months from the date of receipt of copy of this order."

24. Two petitions for special leave have been filed directed against the judgment and order passed by the High Court on 13-8-2014[5] being SLP (C) No. 32138 of 2015 and SLPs (C) Nos. 32699-727 of 2015 and these are also before us.

Goa Grant of Mining Leases Policy, 2014

25. Keeping in mind the orders and directions passed by this Court and the High Court, the State of Goa formulated the Goa Grant of Mining Leases Policy, 2014. We were informed by the learned Additional Solicitor General that the Grant of Mining Leases Policy was approved by the Council of Ministers of the Goa State Cabinet on 1-10-2014. It was issued on 4-11-2014 and placed on the website of the Directorate of Mines and Geology of the Government of Goa on the same day. However, it was gazetted on 20-1-2015 with two paragraphs deleted from the document issued on 4-11-2014. The two deleted paragraphs are indicated below.

26. The Grant of Mining Leases Policy makes for some very important and interesting reading and includes an impassioned plea for rejecting the process of competitive bidding of mining leases *for the time being*. It also contains the statement made by the Chief Minister on the floor of the Goa State Legislative Assembly. While the Grant of Mining Leases Policy is a large document, it is necessary to read relevant extracts from it since it indicates the factors that went into taking the policy decision and also to appreciate if there was any violation of Article 14 of the Constitution. The relevant extracts read as under:

"*Background*.—In accordance with the directions contained in the judgment and order of the Hon'ble Supreme Court dated 21-4-2014[1] in Writ Petition (Civil) No. 435 of 2012, the Hon'ble Supreme Court has declared that all the mining leases in the State of Goa have expired on 22-11-2007. ...

It has further been directed by the Hon'ble Supreme Court that it is for the *State Government to decide as a matter of Policy, in what manner mining leases are to be granted in the future*. ...

The Hon'ble Supreme Court has in its judgment and order dated 21-4-2014[1] clearly held that the action of allowing the mines to be run on deemed extension basis from the years 2007 to 2012 was completely illegal and has further declared that the so-called deemed mining leases in the State of Goa have expired in the year 2007. ...

Few things emerge out of the Hon'ble Supreme Court's order. In the first place, the mining leases have been held to have expired in the year 2007. *In the second place, the State Government has been directed, in accordance with its policy to grant fresh leases in the State*.

With these, the options available with the State Government are as follows—

The State Government can directly auction the leases in order to secure the best returns for the grant of leases by way of a competitive bidding process,

(*a*) The State Government can also form a State Corporation and undertake the mining activities through the State Mineral Development Corporation.

(*b*) The State Government could also proceed to grant fresh leases, in terms of the MMRD Act by the following the process of preferential grant of leases to certain persons as specified in the MMRD Act.

(*c*) Yet another option available to the State Government was to decide the renewal applications which were pending since the year 2006 and which had

remained without any disposal.

Each of the aforesaid modes has its own merits and demerits. ...

While the State Government was in the process of deliberating on all these issues at various levels, the judgment and order of the Hon'ble High Court in writ petition filed by certain leaseholders came to be delivered on 13-8-2014[5] whereby the Hon'ble High Court has directed the execution of the lease deeds under Section 8(3) of the MMRD Act in favour of the leaseholders who have already paid the stamp duty pursuant to Orders of the State Government in accordance with the Goa Mineral Policy, 2013, placed before the Hon'ble Supreme Court and subject to the conditions. ...

This judgment and order of the Hon'ble High Court virtually leaves no choice to the State Government, thereby to completely abandon the process of competitive bedding [bidding] for earning the best revenue to the State Government. While this was the position taken by the State Government in the Goa Mineral Policy, 2013, and the Hon'ble High Court has interpreted the Order[1] of the Hon'ble Supreme Court in Writ Petition (Civil) No. 435 of 2012, *the State Government in view of Hon'ble High Court order, has for the present ruled out the process of going for competitive bidding*. The State Government is considering actively, within its constitutional powers and functions, to come out with regulatory and controlling measures and levy and collect appropriate returns having regard to the fact that the soil comprising the land belongs to the State. ... The State Government has also commenced the inquiry and investigation into the violations of matters

under Rules 37 and 38 of the Mineral Concession Rules, 1960 as directed by the Hon'ble Supreme Court. ...

As is seen from the aforesaid, the judgment and order of the Hon'ble High Court is an intervening circumstance inasmuch as it directs the execution of lease deeds in 28 cases and consideration of the application under Section 8(3) by the State Government in the other cases. ...

In the considered opinion of the State Government, it would be futile to challenge the judgment of the Hon'ble High Court before the Hon'ble Apex Court as that would once again delay the commencement of the mining operations. As a matter of fact, a substantial portion of the State's Revenue comes from the mining sector. The State has been virtually starved of funds for undertaking many activities including Infrastructural Projects; and on account of the stopping of the mining operation, the State had to walk a tight-rope as there has been no Revenue coming from one of the major source of Revenue. ...

Having regard to the aforesaid, the State Government thought it proper to act in accordance with the directions of the Hon'ble Supreme Court *by balancing the equities, needs; as also to subserve the public interest and by having sustainable development by protecting the ecological and all other factors*.

Policy Framework.—The State Government has been considering and deliberating the entire matter, and thought it proper having regard to the facts that:

(*a*) The mining leaseholders had applied for the second renewal well within time.

(*b*) The fact that the applications of the mining leaseholders for the second renewal were not disposed of by the then State Government and for which the leaseholders cannot be blamed.

(*c*) Having further regard to the fact that 27 mining leaseholders despite the closure of the mining operations, when called by the State to do so within the period, have paid the stamp duty; as also, other levies.

(*d*) Such payments helped the State Government to override the financial crisis at

that point of time.

(*e*) Having regard to the fact that a large number of labour staff employed with these leaseholders.

(*f*) That mining leaseholders concerned have invested heavily into the development of mines; as also, into the machinery such as ripper dozers, cranes, wheel loader, beneficiation plants, etc.

(*g*) Other methods are not as suitable as this method for various reasons listed [in] Hon'ble Chief Minister statement to the House listed above.

The State Government after having considered the matter from every possible angle, has decided to exercise its power under Section 8(3) of the Mines and Minerals (Development and Regulations) Act, 1957, and *to*

consider each of the cases on their own merits and subject to compliance with the conditions which may be laid down by the State Government including for strict pollution control measures, and thereafter take a decision on the renewal in terms of Section 8(3) of the MMRD Act, 1957, complying fully with the procedure laid down therein.

Though the State Government has in principle decided to follow the route of the renewal of lease under Section 8(3) of the MMRD Act, it shall be subject to the following—

Unless and until the inquiry initiated pursuant to the judgment and order of the Hon'ble Supreme Court of India against those mine leaseholders found to be violating either Rule 37 or Rule 38 of the Mineral Concession Rules, 1960, or otherwise indicted in the Report of the Justice Shah Commission/PAC report or found to be engaged in, any kind of illegality of whatsoever nature such as illegal sale of ore, sale of royalty challan without ore, encroachment of adjoining areas outside the lease overproduction in excess of the limit specified in the environmental clearance; those which have undertaken unscientific mining operations; those who have violated or have not paid the royalty amount; those who have reused old royalty challans for defrauding; and those involved in illegal mining activities *shall not be considered for renewal of the mining leases.*

For this purpose, *presently the inquiries are in progress* at various levels and fora including the investigation by the SIT Team, by the Team of Chartered Accountants which have been set up by the State Government and after the inquiry is complete or during the course of the inquiry where it is found that any violations have taken place, *such persons shall not be considered for grant/renewal of the leases.* ...

Those mining leaseholders who have paid stamp duty, in which there are no violations found in terms of Mr Justice Shah Inquiry/Public Accounts Committee Report, shall be considered for renewal. (Deleted from the Gazetted Policy).

The formation of the entire Policy is aimed that it is required to balance various interests having regard to the Principle of Sustainable Development; but by keeping in mind the commercial interest of the present State of economy, the interest of the labour class, the interest of the working class including other staff, the interest of the market in the mining localities, the interest of the public sector, the interest of the existing mining leaseholders and the overall welfare needs of the State; and require all urgent infrastructural development. By balancing all these interests the present Policy has been formulated by the State Government.

The above Policy is in principle decision of the State Government and will be vetted for exact legal requirements from specific necessities as also from financial viewpoints and notified thereafter."[7] (Deleted from the Gazetted Policy.)

(emphasis supplied)

Page: 237

27. Around this time, and pursuant to the Budget Speech given by the Hon'ble Minister of Finance of the Government of India on 10-7-2014 it appears that steps were being taken by the Ministry concerned in the Government of India to amend the MMDR Act.[§] In fact a draft Mines and Minerals (Development and Regulation) Act, 2014 was prepared on or about 16-11-2014 and uploaded on the website of the Ministry of Mines on 17-11-2014. This information was placed before us from the response given by the Hon'ble Minister of Mines to Unstarred Question No. 2485 to be answered in the Lok Sabha on 8-12-2014. The question was:

(*a*) whether the Government proposes to formulate a new policy on grant of mining leases for various minerals by amending the Mines and Minerals (Development and Regulation) Act, 1957;

(*b*) if so, the details thereof along with the time by which the new policy is likely to be implemented;

And the answer was:

(*a*) & (*b*): Yes Madam. The Ministry has drafted the Mines and Minerals (Development and Regulation) (MMDR) (Amendment) Bill, 2014, which has been uploaded on the website of the Ministry on 17-11-2014, calling for comments/suggestions on the draft Bill. The last date for receipt of the comments/suggestions is 10-12-2014. Based on the comments/suggestions received the draft Bill will be finalised and taken forward for introduction in Parliament.

The Bill is designed to put in place mechanisms for: (*i*) improved transparency in the allocation of mineral resources; (*ii*) obtaining for the Government its fair share of the value of such resources; (*iii*) attracting private investment and the latest technology; and (*iv*) eliminating delay in administration, so as to enable expeditious and optimum development of the mineral resources of the country.

28. What was the nature of the proposed amendments? As far as we are concerned, the introduction of Section 10-B in the MMDR Act (relating to competitive bidding) is significant and this reads:

"**10-B.** ***Mining leases for notified minerals***.—(1) Notwithstanding anything contained elsewhere in this Act, but subject to the provisions of Section 10-A and Section 17-A, the procedure for obtaining a mining lease for notified minerals in respect of land in which the minerals vest in the Government shall be as laid down in this section.

(2)-(3) * * *

(4) For the purpose of granting a mining lease in respect of any notified mineral in such notified area, the State Government shall select, through

Page: 238

auction by a method of competitive bidding, including e-auction, an applicant who satisfies the eligibility conditions.

(5) The Central Government shall prescribe the terms and conditions, and procedure, subject to which the auction will be conducted, including the bidding parameters for the selection, which could include a share in the production of the mineral, or any payment linked to the royalty payable, or any other relevant parameter, or any combination or modification of them.

(6)-(7) * * *"

[Iron ore was proposed as a notified mineral in the draft statute.]

29. Immediately after 4-11-2014 (the date on which the Grant of Mining Leases Policy was uploaded on the website of the Government of Goa) the State Government commenced granting a second renewal of the mining leases from 5-11-2014 onwards and that process was completed on 12-1-2015. The following table gives the dates of second renewal of 88 mining leases granted by the State Government on or before 12-1-2015:

Sl. No.	*Date of renewal order*	*Number of renewal orders passed*
1.	5-11-2014	5
2.	6-11-2014	5
3.	7-11-2014	3
4.	10-12-2014	3
5.	24-12-2014	10
6.	1-1-2015	3
7.	2-1-2015	3
8.	5-1-2015	2
9.	6-1-2015	22
10.	9-1-2015	1
11.	12-1-2015	31
Total = 88		

30. The date of 12-1-2015 is significant since on that date the President promulgated the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 (which was later enacted by Parliament) whereby the grant of mining leases for notified minerals was through competitive bidding or the auction process. It is important to mention here that the approval of the Ordinance by the Cabinet of the Government of India became public knowledge on 5-1-2015[9] and it is within a week from that date that the Government of Goa granted a second renewal to 25 mining leases and to make

matters worse, a second renewal was granted to 31 mining leases on 12-1-2015, the day the Ordinance came into force making a total of 56 renewals of mining leases.

Environmental clearance and orders dated 20-3-2015

31. Following the renewal of 88 mining leases, the State of Goa requested the MoEF by Letters dated 7-1-2015 and 5-2-2015 to lift the abeyance order of 14-9-2012 on the environmental clearances. Consequently, the MoEF passed three orders on 20-3-2015 (the actual sequence of the orders is not very clear).

32. The first order of 20-3-2015 was in the form of a letter addressed to the Principal Secretary, Environment, Government of Goa and it recorded that MoEF had considered all the 139 cases in which the abeyance order has been passed and had taken into account the request of the State Government, the recommendation of the EAC and the directions of this Court. It was noted that the EAC had observed that there were violations of the following nature:

(*i*) no clearance from the National Board of Wildlife and non-compliance with orders of this Court on the subject;

(*ii*) excess production;

(*iii*) dump mining;

(*iv*) intersecting groundwater table and drawal of groundwater without permission of the Central Ground Water Board;

(*v*) No forest clearance obtained where required;

(*vi*) Encroachment and false information/concealment of fact.

It was stated that the MoEF had decided to refer the cases to the appropriate authorities (including the State Government) for taking action on the violations. Accordingly, a request was made to examine the report of the EAC and take appropriate action against the lessees concerned.

33. The second order passed on 20-3-2015 was an Office Memorandum to the effect that if a project proponent has a valid and subsisting environmental clearance for a mining project under the Environment Impact Assessment Notification of 27-1-1994 (EIA 1994) or Environment Impact Assessment Notification of 14-9-2006 (EIA 2006), it will not be required to obtain a fresh environmental clearance at the time of renewal of the mining lease. This was subject to the maximum period of validity of 30 years for the environmental clearance for a mining lease.

34. The third order passed on 20-3-2015 related to lifting the abeyance order dated 14-9-2012 on the environmental clearance of the mining leases for iron ore and manganese ore. The cases of all 139 mining leases in which the abeyance order was passed were considered and the abeyance order lifted in respect of 72 cases. The details in this regard are given in the table below:

Page: 240

Number	*Remarks*	*Remaining*
Total mines = 139		
2	Inadvertent repetitions	137
2	Already withdrawn	135
12	Fully located in protected area (abeyance order cannot be lifted)	123
6	Partly located in protected area (abeyance order cannot be lifted)	117
23	Within 1 km of protected area (awaiting modification of order dated 4-8-2006[10] passed by this Court)	94
22	Not having any forest clearance and will be considered only after clearance is obtained	72
35	Environmental clearance already granted under EIA Notification of 27-1-1994 and no fresh clearance is required in view of Office Memorandum dated 20-3-2015. Abeyance order lifted.	37
37	Environmental clearance already granted under EIA Notification of 14-9-2006. Abeyance order lifted.	0
Abeyance order lifted on 20-3-2015 for 72 mines out of 139		

35. The third order of 20-3-2015 also placed certain additional specific conditions while lifting the abeyance order. These additional conditions were:

1. The State Government of Goa shall develop and implement a credible mechanism to regularly monitor and ensure that capping of 20 MTPA on the mining leases in the State of Goa is implemented as per the directions of the Hon'ble Supreme Court in its order dated 21-4-2014[1] and any further order in the matter of *Goa Foundation* v. *Union of India*, in WP No. 435 of 2012.

2. No mining shall be allowed in the forest land for which FC [forest clearance] is not

available.

3. The mining of dumps is not permitted unless mentioned in approved mine plan and environmental clearance letter.

4. Dumping of material outside the mine lease is not permitted unless mentioned in approved mine plan and environmental clearance letter.

5. Prior permission be obtained from Central Ground Water Board for drawal of groundwater and intersection of groundwater table as applicable.

6. Violations will be dealt as per the existing law and lifting of abeyance of EC will not in any manner affect that.

7. If any violation is observed in future the environmental clearance will be cancelled as per rules.

Page: 241

8. The State Government will take action in cases of violation under Sections 15/19 of the Environment (Protection) Act, 1986 as noted and recommended in EAC Report.

9. Project proponent will file six monthly compliance to the Regional Officer, MoEFCC and the State Pollution Control Board.

Questions for consideration

36. Broadly speaking, on the basis of the submissions and documents placed before us, the questions raised by the Goa Foundation, the State of Goa, the Union of India and the mining leaseholders are threefold:

36.1. (*a*) *Relatable to the second renewal of the mining leases*: (*i*) In view of the decision in *Goa Foundation*[1] only fresh leases were to be granted by the State of Goa and not second renewals. (*ii*) For granting fresh leases, the State of Goa should have introduced competitive bidding or the auction process. (*iii*) Assuming the decision to grant a second renewal to the mining leaseholders was valid, the second renewals were not in accordance with law and should be set aside.

36.2. (*b*) *Relatable to the grant of environmental clearances*: In view of the decision in *Goa Foundation*[1] fresh environmental clearances were required to be obtained by the mining leaseholders.

36.3. (*c*) The impugned judgment and order passed by the High Court in *Lithoferro*[5] on 13-8-2014 was erroneous and deserves to be set aside.

Whether fresh mining leases were required to be granted?

37. The controversy in this regard has arisen in view of what is stated in para 82 of the decision in *Goa Foundation*[1]. It was stated as follows: (SCC p. 635)

"*82.* As we have held that the deemed mining leases of the lessees in Goa expired on 22-11-1987 and the maximum period (20 years) of renewal of the deemed mining leases in Goa has also expired on 22-11-2007, mining by the lessees in Goa after 22-11-2007 was illegal. Hence, the Order dated 10-9-2012 of the Government of Goa suspending mining operations in the State of Goa and the Order dated 14-9-2012 of MoEF, Government of India, suspending the environmental clearances granted to the mines in the State of Goa, which have been impugned[5] in the writ petitions in the Bombay High Court, Goa Bench (transferred to this Court and registered as transferred cases) cannot be quashed by this Court. *The Order dated 10-9-2012 of the Government of Goa and the Order dated 14-9-2012 of MoEF will have to continue till decisions are taken by the State Government to grant fresh leases and decisions are taken by MoEF to grant fresh environmental clearances for mining projects.*"

(emphasis supplied)

38. The issue that arose for discussion before us was the meaning and intention of the

Court in the context of grant of "fresh leases" for mining

projects. Did the Court literally mean that a fresh mining lease was required to be granted or was a second renewal sufficient compliance?

39. As the abovequoted paragraph indicates, the Court was aware and conscious of the fact that the mining leases had expired on 22-11-2007 and the mining operations thereafter carried out by the mining leaseholders was illegal. For this reason, the Court held that the suspension order passed by the State of Goa on 10-9-2012 and the abeyance order passed by the MoEF on 14-9-2012 did not require any interference.

40. Since the mining operations carried out after 22-11-2007 were illegal, the Court, in subsequent paragraphs of the judgment noted (as a follow up) that an order was passed on 5-10-2012[11] suspending transportation of iron ore and manganese ore from those leases identified by the Justice Shah Commission. Thereafter on 11-11-2013[3] it was directed that an inventory be made of the excavated mineral ores and the inventoried mineral ores be sold by e-auction under the supervision of a Monitoring Committee.

41. Further, it was held by the Court on 21-4-2014[1] that from the e-auction-sale of the mineral ores, the mining leaseholders would be entitled to the average cost (not the actual cost) of extraction, the workers would be entitled to 50% wages and allowances on the principle of laid-off compensation and the Marmagao Port Trust would be entitled to 50% of the storage charges. Out of the balance amount, 10% would be appropriated to the Goan Iron Ore Permanent Fund for the purpose of sustainable development and intergenerational equity and the remaining amount would be appropriated by the State who is the owner of the mineral ores illegally excavated by the mining leaseholders and sold by e-auction.

42. With this in mind, the Court declared in para 87.5 of the Report: (*Goa Foundation case*[1], SCC p. 637)

> "*87.5. It is for the State Government to decide as a matter of policy in what manner mining leases are to be granted in future* but the constitutionality or legality of the decision of the State Government can be examined by the Court in exercise of its power of judicial review."
>
> (emphasis supplied)

It was then directed by the Court in para 88.4 of the Report as follows: (*Goa Foundation case*[1], SCC p. 637)

> "*88.4.* The State Government *may grant mining leases* of iron ore and other ores in Goa in accordance with its policy decision and in accordance with the MMDR Act and the Rules made thereunder in consonance with the constitutional provisions."
>
> (emphasis supplied)

43. The Court was quite obviously aware that it was concerned, inter alia, with the second renewal of mining leases and yet it chose to recount the factual situation, make a declaration and pass a direction without adverting to the possibility of a second renewal of a mining lease. The Court was also conscious that the mining leaseholders had carried out indiscriminate and illegal mining for about five years (from November 2007 to September 2012) and had made profits out of the illegal mining. The Court, in our opinion, was rather charitable in not penalising the mining leaseholders for the illegal mining carried out by

them. But be that as it may, quite clearly, the sequence of events from September 2012 onwards, the appointment of a Monitoring Committee to dispose of the illegally mined ore, the declaration and direction unmistakably point to the intention of the Court to end the sordid chapter of illegal mining by the leaseholders and start on a clean slate. Viewed in this perspective, we have no doubt that the Court really did intend the State of Goa to consider the grant of fresh leases in accordance with law.

44. In this context, the declaration of the Court in *Goa Foundation*[1] in para 87.5 of Report is also quite clear, namely: (SCC p. 637)

> "*87.5*. It is for the State Government to decide as a matter of policy in what manner mining leases are to be granted in future...."

The declaration was explicit and related to the grant of mining leases and not a second renewal.

45. Similarly, the direction given in para 88.4 of the Report is that: (SCC p. 637)

> "*88.4*. The State Government may grant mining leases of iron ore and other ores in Goa in accordance with its policy decision...."

was equally explicit and related to the grant of mining leases and not a second renewal.

46. Subsequent events confirm our impression and view. The decision of the Court to e-auction the mined mineral ore was sought to be recalled through IA No. 86 of 2014 filed by M/s Bandekar Brothers Private Ltd. The applicant prayed for a direction to restrain the authorities from e-auctioning the iron ore mined by it prior to 22-11-2007 and that the mined ore should be released to the applicant with the right to dispose of the same. A Bench of three learned Judges (other than those that decided *Goa Foundation*[1]) noted[1,2] that: (*Goa Foundation case*[1,2], SCC pp. 158-59, para 9)

> "*9*. The submissions advanced on behalf of the applicant were premised merely on the assertion, that the mineral ore which the applicant was claiming a right over, had been legitimately mined before 22-11-2007, and therefore, the applicant had an absolute and legitimate ownership over the

same. We may note, that the above position was emphasised, stressed and persistently reiterated to make the stand absolutely crystal clear."

The learned Judges considered the submissions and held by an order dated 14-10-2014[1,2] that the direction in *Goa Foundation*[1] was clear and categorical that the iron ore vested in the State Government and therefore the application deserved dismissal. In other words, the mining leaseholders deserved no latitude for the illegal mining and all issues needed to be dealt with strictly.

47. There is additional material to support the view that the Court had intended the State of Goa to grant fresh mining leases rather than grant a second renewal.

48. From a reading of the decision rendered by the Bombay High Court in *Lithoferro*[5] [subject-matter of SLP (C) No. 32138 of 2015 and SLPs (C) Nos. 32699-727 of 2015] it is evident that the State of Goa understood the decision of this Court in *Goa Foundation*[1] to mean that fresh mining leases were required to be granted on the basis of a policy yet to be framed by the State of Goa and the issue of second renewals did not survive consideration. The contention of the learned Advocate General of the State of Goa in this regard is recorded by the High Court in the following words: (*Lithoferro case*[5], SCC OnLine Bom para 5)

> "*5*. ... The learned Advocate General [of the State of Goa] took us through the judgment[1] of the Apex Court in Writ Petition (C) No. 435 of 2012 and relied upon the observations of the Supreme Court in paras 67, 68, 69 and 70. The learned Advocate General submitted that the Hon'ble Supreme Court has held that the deemed mining leases of the lessees in Goa expired on 22-11-1987 and the maximum of 20 years' renewal period of the deemed mining leases in Goa as provided under sub-section (2)

of Section 8 of the MMDR Act, read with sub-rules 8 and 9 of Rule 24-A of the MC Rules expired on 22-11-2007. *The learned Advocate General submitted that in view of these findings of the Supreme Court, there is no question of renewal of the mining leases. The learned Advocate General submitted that in terms of the Supreme Court decision, it is for the State Government to grant fresh leases in accordance with the policy which is yet to be framed*. The learned Advocate General submitted that the Supreme Court has kept Writ Petition (C) No. 435 of 2012 pending and, therefore, it is for the petitioners to approach the Supreme Court and seek appropriate orders. *The learned Advocate General submitted that the orders on which the petitioners rely, at the most show that the Government in principle has agreed for renewal of the leases for a further period of 20 years and the same was not a final decision. He submitted that in terms of the said*

Page: 245

decision of the Apex Court, it is for the State Government to frame a fresh mining policy and after framing the same, to decide granting of fresh mining leases."

(emphasis supplied)

49. While considering the submissions of the learned Advocate General and the learned counsel, the High Court noted that this Court was alive to the fact that the State of Goa had granted in-principle second renewal to 28 mining leases and had collected renewal fees or stamp duty from 27 mining leases (presumably out of the 28 mining leases) as stated in the brief resume filed by the State of Goa in this Court. The High Court noted: (*Lithoferro case*[5], SCC OnLine Bom para 7)

"*7.* ... (II) In the brief resume presented by the State of Goa and placed on record of the Supreme Court, in Writ Petition (C) No. 435 of 2012, it is inter alia, mentioned thus:

'... Presently in the State of Goa, it is found that the applications for renewal were filed well within time as contemplated by Rule 24-A of the Mineral Concession Rules, 1960. Presently, the State has ordered renewal of 28 mining leases, granted in-principle approvals and has collected renewal fees/stamp duty from 27 mining leases.' "

50. In other words, notwithstanding the in-principle grant of second renewal of 28 mining leases and collection of renewal fees or stamp duty, this Court in *Goa Foundation*[1] consciously required the State of Goa to grant fresh leases. What is equally significant is that the State of Goa also understood the decision of the Court in the same manner and intended to act on that basis.

51. Unfortunately, the State of Goa was overtaken by the events in that the High Court delivered its judgment in *Lithoferro*[5] on 13-8-2014 and while doing so, it misunderstood or incorrectly appreciated the decision of this Court in *Goa Foundation*[1] and disagreed with the view of the State of Goa. While this Court had required the State of Goa to grant fresh mining leases and the State of Goa was willing to comply with this direction, the High Court instead directed it to execute mining leases under Section 8(3) of the MMDR Act in respect of those who had paid the renewal fees or stamp duty. The High Court also directed the State of Goa to decide their pending second renewal applications within a period of three months keeping in mind the provisions of Section 8(3) of the MMDR Act (presumably after paying the renewal fees or stamp duty in terms of the Government Order of 21-2-2013). The understanding by the High Court of the decision of this Court in *Goa Foundation*[1] is totally incorrect.

52. It appears from the contents of the Grant of Mining Leases Policy that in view of the decision of this Court in *Goa Foundation*[1] the State was actively considering a policy for granting fresh mining leases by considering several

Page: 246

factors. However, the decision and directions of the High Court supervened leaving no choice, according to the State, but to completely abandon the process of grant of fresh mining leases through the process of competitive bidding for earning revenue and justify the abandonment.

53. As per the Grant of Mining Leases Policy, the State of Goa therefore had two realistic options before it: (*i*) To implement the judgment and order of this Court in *Goa Foundation*[1] (as understood by the State of Goa) and grant fresh mining leases in the manner felt appropriate and in accordance with law; (*ii*) To abide by the judgment of the High Court (and its understanding of the judgment of this Court in *Goa Foundation*[1] while rejecting its understanding by the State of Goa) and grant second renewal to the mining leases in terms of Section 8(3) of the MMDR Act. The State of Goa appears to have taken the view that challenging the decision of the High Court (and therefore abiding by the decision of this Court) would delay the commencement of mining operations. The State took into consideration that a substantial portion of its revenue comes from the mining sector and that the State had been virtually starved of funds on account of stoppage of mining operations. Therefore, the State decided to grant a second renewal to the mining leases and not grant fresh leases. This is quite apparent from the contents of the Grant of Mining Leases Policy wherein the above facts and conclusions have been stated in greater detail. Was this decision correct?

54. The learned counsel for the mining leaseholders submitted that the renewal of a mining lease is equivalent to or amounts to the grant of a fresh lease and therefore when the mining leases were renewed, it amounted to the grant of a fresh lease in compliance with the directions of this Court. Reliance was placed upon *DDA* v. *Durga Chand Kaushish*[13] wherein this Court held: (SCC p. 829, para 7)

> "*7.* ... A renewal of a lease is really the grant of a fresh lease. It is called a "renewal" simply because it postulates the existence of a prior lease which generally provides for renewals as of right. In all other respects, it is really a fresh lease."

55. Reference was also made to *Provash Chandra Dalui* v. *Biswanath Banerjee*[14] in which it was held in para 14 of the Report that there is a distinction between extension of a lease and renewal of a lease. We do not find any relevance of this to our discussion. Reference was also made to the view expressed in *M.C. Mehta* v. *Union of India*[15] wherein this Court noted that it is settled law that grant of renewal is a fresh grant and must be consistent with law.

Page: 247

56. Finally reliance was placed on *State of W.B.* v. *Calcutta Mineral Supply Co. (P) Ltd.*[16] in which decision it was noted in para 31 of the Report that the renewal of a lease is a fresh grant. This decision also refers to *Gajraj Singh* v. *STAT*[17] wherein this Court observed in para 38 of the Report that the grant of renewal is a fresh grant though it breathes life into the operation of the previous lease or licence granted.

57. There is no doubt that the renewal of a lease is virtually the same as the grant of a fresh lease but a converse direction to grant a mining lease cannot be understood to mean granting a renewal of a mining lease. Obviously, the grant of a fresh lease is not the same as the renewal of a lease and when the Court in *Goa Foundation*[1] required the State of Goa to grant a fresh lease, it did not require the State to renew the existing (expired) lease. The Court could have explicitly declared and directed the State of Goa to grant a second renewal of the mining leases rather than to say it in a roundabout manner that it should

do so by granting a fresh lease equivalent to a renewal. We simply cannot accept the submissions made by the learned counsel for the mining leaseholders in this regard.

58. That apart, as we have already noted above, the context and material on record disabuse the thought that the Court in *Goa Foundation*[1] did not mandate the grant of fresh mining leases in accordance with law.

59. The learned counsel for the mining leaseholders contended that the very same learned Judges that decided *Goa Foundation*[1] permitted the State Government in *Common Cause* v. *Union of India*[18] to consider granting a second renewal of mining leases under Section 8(3) of the MMDR Act. Therefore the requirement in *Goa Foundation*[1] for the grant of "fresh leases" must be understood in a manner similar to what was directed in *Common Cause*[18]. We are unable to accept this contention. The direction given in *Common Cause*[18] was an interim direction and not a final direction as in *Goa Foundation*[1]. Moreover, the facts in both cases are not at all similar so as to warrant a similar order being passed or understood. Finally, the fact that the same set of learned Judges thought it fit to direct the grant of "fresh leases" in one set of cases and thought it fit to direct consideration of a "second renewal" in another set of cases indicates that the learned Judges were aware of the difference in directions. Therefore when the learned Judges directed the grant of "fresh leases" in *Goa Foundation*[1] it was a deliberate and conscious decision distinct and different from granting a second renewal of expired mining leases.

60. In our opinion, the direction in *Goa Foundation*[1] is quite clear and instead of considering the grant of a second renewal of the mining leases, the State of Goa was required to consider the grant of fresh mining leases. Therefore the decision of the State of Goa to grant a second renewal of the mining leases is erroneous, contrary to the decision in *Goa Foundation*[1] and must be and is quashed.

Whether the State of Goa should have auctioned the mining leases?

61. As mentioned in the Grant of Mining Leases Policy there were several options available to the State of Goa. It took the view that all its options were foreclosed post the decision of the High Court and it was obliged to grant a second renewal of the mining leases. We have already held that this was not so and that the decision to grant a second renewal of the mining leases was erroneous and fresh leases were required to be granted in accordance with the decision in *Goa Foundation*[1]. In view of our conclusion, the discussion on whether the State of Goa should have auctioned the mining leases through a process of competitive bidding is now rendered academic. However, since detailed submissions were made by the learned counsel on both sides, including by the learned Additional Solicitor General, we propose to express our views on the subject.

62. The discussion on the question of auction being the only method of allocation or disposal of natural resources arose due to the view expressed by this Court in *Centre for Public Interest Litigation* v. *Union of India*[19]. In that decision (hereafter referred to as *CPIL*—although this case is generally referred to as the *2G scam case*) the Court dealt with the question of following a non-discriminatory policy for alienation of natural resources. While doing so it was observed that an auction is "perhaps the best method for discharging this burden" and concluded by holding that "while transferring or alienating the natural resources, the State is duty-bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process". This led to the belief that the view of this Court was that natural resources should be alienated or disposed of only by auction and by no other method. The Court held in paras 95 and 96 of the Report as follows: (*Centre for Public Interest case*[19], SCC pp. 59-60)

"*95*. This Court has repeatedly held that wherever a contract is to be awarded or a

licence is to be given, the public authority must adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. To put it differently, the State and its agencies/instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy applicants. When it comes to alienation of scarce natural

Page: 249

resources like spectrum, etc. it is the burden of the State to ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in protection of national/public interest.

96. In our view, a duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden and the methods like first-come-first-served when used for alienation of natural resources/public property are likely to be misused by unscrupulous people who are only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. *In other words, while transferring or alienating the natural resources, the State is duty-bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process.*"

(emphasis supplied)

63. In *Manohar Lal Sharma* v. *Union of India*[20] a Bench of three Judges of this Court paraphrased the above passages and observed that the view expressed in *CPIL*[19] necessitated a reference by the President of India to this Court under Article 143(1) of the Constitution being *Natural Resources Allocation, In re, Special Reference No. 1 of 2012*[21].

64. What was the advisory opinion given by this Court in *Natural Resources Allocation*[21]? Among the questions referred for opinion were the following: (SCC p. 41, para 1)

Question 1. Whether the only permissible method for disposal of all natural resources across all sectors and in all circumstances is by the conduct of auctions?

Question 2. Whether a broad proposition of law that only the route of auctions can be resorted to for disposal of natural resources does not run contrary to several judgments of the Supreme Court including those of the larger Benches?

65. In the Reference, it was submitted before the Constitution Bench that paras 94 to 96 in *CPIL*[19] laid down the ratio vis-à-vis disposal of natural resources. It was argued that "these paragraphs lay down, as a proposition of law, that all natural resources across all sectors, and in all circumstances are to be disposed of by way of public auction, and on the other [hand], it was urged that the observations therein were made only qua spectrum".

66. The submissions made by the learned counsel were then discussed and thereafter this Court recorded its conclusions between paras 82 and 84 of *Natural Resources Allocation*[21]. In para 84, it was held: (SCC p. 72)

"*84*. Thus, having come to the conclusion *that 2G case*[19] *does not deal with modes of allocation for natural resources, other than spectrum*, we shall now proceed to answer the first question of the Reference pertaining to

Page: 250

other natural resources, as the question subsumes the essence of the entire reference, particularly the set of first five questions."

(emphasis supplied)

67. Thereafter, while answering the first question in the Reference, the Court considered the issue from various perspectives. It first dealt with the issue in the context of Article 14 and Article 39(*b*) of the Constitution and concluded in para 120 of the Report that the disposal of natural resources for revenue maximisation through auctions is not a constitutional mandate. It was held: (*Natural Resources Allocation case*[21], SCC p. 88)

> "*120*. Therefore, in conclusion, the submission that the mandate of Article 14 is that any disposal of a natural resource for commercial use must be for revenue maximisation, and thus by auction, is based neither on law nor on logic. *There is no constitutional imperative in the matter of economic policies—Article 14 does not predefine any economic policy as a constitutional mandate.* Even the mandate of Article 39(*b*) imposes no restrictions on the means adopted to subserve the public good and uses the broad term "distribution", suggesting that the methodology of distribution is not fixed. Economic logic establishes that alienation/allocation of natural resources to the highest bidder may not necessarily be the only way to subserve the common good, and at times, may run counter to public good. Hence, it needs little emphasis that disposal of all natural resources through auctions is clearly not a constitutional mandate."
>
> (emphasis supplied)

68. The issue was then considered from the standpoint of legitimate deviations from an auction. After adverting to several decisions of this Court where auctions were not the favoured method of allocation of natural resources, it was held between paras 129 and 131 of the Report as follows: (*Natural Resources Allocation case*[21], SCC p. 92)

> "*129*. Hence, it is manifest that there is no constitutional mandate in favour of auction under Article 14. The Government has repeatedly deviated from the course of auction and this Court has repeatedly upheld such actions. The judiciary tests such deviations on the limited scope of arbitrariness and fairness under Article 14 and its role is limited to that extent. *Essentially, whenever the object of policy is anything but revenue maximisation, the executive is seen to adopt methods other than auction*.
>
> *130*. A fortiori, besides legal logic, mandatory auction may be contrary to economic logic as well. Different resources may require different treatment. Very often, exploration and exploitation contracts are bundled together due to the requirement of heavy capital in the discovery of natural resources. *A concern would risk undertaking such exploration and incur heavy costs only if it was assured utilisation of the resource discovered: a prudent business venture would not like to incur the high costs involved in exploration activities and then compete for that resource in an open auction*. The logic is similar to that applied in patents. Firms are given incentives to invest in research and development with the promise of

exclusive access to the market for the sale of that invention. Such an approach is economically and legally sound and sometimes necessary to spur research and development. Similarly, bundling exploration and exploitation contracts may be necessary to spur growth in a specific industry.

> *131*. Similar deviation from auction cannot be ruled out when the object of a State policy is to promote domestic development of an industry, like in *Kasturi Lal case*[22] discussed above. However, these examples are purely illustrative in order to demonstrate that *auction cannot be the sole criterion for alienation of all natural resources*."
>
> (emphasis supplied)

69. Finally, the issue was considered from the point of view of the potential of abuse in allocation of natural resources other than through auction and in this context it was held in

para 135 of the Report: (*Natural Resources Allocation case*[21], SCC pp. 93-94)

> "*135*. Therefore, a potential for abuse cannot be the basis for striking down a method as ultra vires the Constitution. *It is the actual abuse itself that must be brought before the court for being tested on the anvil of constitutional provisions.* In fact, it may be said that even auction has a potential of abuse, like any other method of allocation, but that cannot be the basis of declaring it as an unconstitutional methodology either. These drawbacks include cartelisation, the "winner's curse" (the phenomenon by which a bidder bids a higher, unrealistic and unexecutable price just to surpass the competition; or where a bidder, in case of multiple auctions, bids for all the resources and ends up winning licences for exploitation of more resources than he can pragmatically execute), etc. However, all the same, auction cannot be called ultra vires for the said reasons and continues to be an attractive and preferred means of disposal of natural resources especially when revenue maximisation is a priority. Therefore, *neither auction, nor any other method of disposal can be held ultra vires the Constitution, merely because of a potential abuse*."
>
> (emphasis supplied)

70. The conclusion arrived at by the Constitution Bench was then recorded between paras 148 and 150 of the Report in the following words: (*Natural Resources Allocation case*[21], SCC pp. 98-99)

> "*148*. In our opinion, *auction despite being a more preferable method of alienation/allotment of natural resources*, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources and therefore, every method other than auction cannot be struck down as ultra vires the constitutional mandate.
>
> *149*. Regard being had to the aforesaid precepts, we have opined that auction as a mode cannot be conferred the status of a constitutional principle. *Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However,*

when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution.

> *150. In conclusion, our answer to the first set of five questions is that auctions are not the only permissible method for disposal of all natural resources across all sectors and in all circumstances*."
>
> (emphasis supplied)

71. It is therefore more than explicit that there is no constitutional requirement (let alone a mandate) for allocation of natural resources through the auction method (other than spectrum) but at the same time the auction process should not be given a go-by without any justification—the decision to give a go-by is judicially reviewable though the scope of judicial review might be rather restricted. The melting pot of allocation of a natural resource, a social or welfare purpose and adherence to the requirements of Articles 14 and 39(*b*) of the Constitution in matters of policy was a great leap forward fashioned by the Constitution Bench. Consequently, while there is no mandate, constitutional or

otherwise, that natural resource allocation must be only by auction, it is certainly "a more preferable method". There are exceptions, such as when the natural resource allocation is for a "social or welfare purpose". On the other hand if the natural resource allocation is "for commercial pursuits of profit maximising private entrepreneurs" dehors any social or welfare purpose, then judicial review would be permissible and Article 14 of the Constitution would be attracted and if the executive action is found to be arbitrary, it would be struck down. Therefore, when it comes to natural resource allocation, the executive has a somewhat limited elbow room.

72. In his concurring opinion, Khehar, J. took the view (in para 186 of the Report) that: (*Natural Resources Allocation case*[21], SCC p. 137)

> "*186*. … when natural resources are made available by the State to private persons for commercial exploitation exclusively for their individual gains, *the State's endeavour must be towards maximisation of revenue returns*."
>
> (emphasis supplied)

The learned Judge concluded his opinion by agreeing that an auction is one of the price recovery mechanisms, but not the only one for allocation of natural resources. "That should not be understood to mean that it can never be a

Page: 253

valid method for disposal of natural resources." (SCC p. 144, para 199) It was further held that natural resources cannot be alienated by way of largesse—there must be a reciprocal consideration either in the form of earning revenue or subserving the common good or both. The learned Judge had this to say: (*Natural Resources Allocation case*[21], SCC pp. 143-44)

> "*199*. The policy of allocation of natural resources for public good can be defined by the legislature, as has been discussed in the foregoing paragraphs. Likewise, policy for allocation of natural resources may also be determined by the executive. The parameters for determining the legality and constitutionality of the two are exactly the same. In the aforesaid view of the matter, there can be no doubt about the conclusion recorded in the main opinion that auction which is just one of the several price recovery mechanisms, cannot be held to be the only constitutionally recognised method for alienation of natural resources. That should not be understood to mean that it can never be a valid method for disposal of natural resources (refer to paras 186 to 188 of my instant opinion).
>
> *200*. I would, therefore, conclude by stating that *no part of the natural resource can be dissipated as a matter of largesse, charity, donation or endowment, for private exploitation. Each bit of natural resource expended must bring back a reciprocal consideration. The consideration may be in the nature of earning revenue or may be to "best subserve the common good". It may well be the amalgam of the two. There cannot be a dissipation of material resources free of cost or at a consideration lower than their actual worth*. One set of citizens cannot prosper at the cost of another set of citizens, for that would not be fair or reasonable."
>
> (emphasis supplied)

73. This issue was considered in *Goa Foundation*[1] as well. The Court adverted to *Natural Resources Allocation*[21] in para 81 of the Report and pithily expressed its view that the manner of granting a mining lease is a policy decision of the State Government, but the decision can be examined by way of judicial review. It was held: (*Goa Foundation case*[1], SCC p. 634)

> "*81*. We are of the considered opinion that it is for the State Government to decide as a matter of policy in what manner the leases of these mineral resources would be granted, but this decision has to be taken in accordance with the provisions of the

MMDR Act and the Rules made thereunder and in consonance with the constitutional provisions and the decision taken by the State of Goa to grant a mining lease in a particular manner or to a particular party can be examined by way of judicial review by the Court."

(emphasis supplied)

It was then declared in para 87.5 of the Report that: (SCC p. 637)

"*87.5*. It is for the State Government to decide as a matter of policy in what manner mining leases are to be granted in future *but*

Page: 254

the constitutionality or legality of the decision of the State Government can be examined by the Court in exercise of its power of judicial review."

(emphasis supplied)

74. Similarly, in *Manohar Lal Sharma*[20] this Court adverted to the issue and noted the following in para 98 of the Report: (SCC p. 563)

"*98*. The Constitution Bench [*Natural Resources Allocation*[21]] clarified that the statement of law in *2G case*[19] [*CPIL*] that while transferring or alienating the natural resources, the State is duty-bound to adopt the method of auction was confined to the specific case of spectrum and not for dispensation of all natural resources. The Constitution Bench said that findings of this Court in *2G case*[19] were limited to the case of spectrum and not beyond that and that it did not deal with the modes of allocation for natural resources other than spectrum."

75. The Court in *Manohar Lal Sharma*[20] also referred to the views expressed by Khehar, J. and held, in para 104 of the Report: (SCC p. 568)

"*104*. In light of the above legal position, the argument that auction is the best way to select private parties as per Article 39(*b*) does not merit acceptance."

76. This Court then exercised its power of judicial review and considered the merits of the explanation given by the Central Government for not adopting the competitive bidding route for the allocation of coal blocks. The various submissions made, the various hurdles faced (including objections of the State Governments) as well as the impracticality of opening up the allocation of coal blocks to competitive bidding were considered and then it was held (after opening the window of Article 14 of the Constitution) in para 110 of the Report: (*Manohar Lal Sharma case*[20], SCC pp. 570-71)

"*110*. The above facts show that it took almost 8 years in putting in place allocation of captive coal blocks through competitive bidding. During this period, many coal blocks were allocated giving rise to present controversy, which was avoidable because competitive bidding would have brought in transparency, objectivity and very importantly given a level playing field to all applicants of coal and lowered the difference between the market price of coal and the cost of coal for the allottee by way of premium which would have accrued to the Government. Be that as it may, once it is laid down by the Constitution Bench of this Court in *Natural Resources Allocation*[21] that the Court cannot conduct a comparative study of various methods of distribution of natural resources and cannot mandate one method to be followed in all facts and circumstances, then if the grave situation of shortage of power prevailing at that time necessitated private

Page: 255

participation and the Government felt that it would have been impractical and unrealistic to allocate coal blocks through auction and later on in 2004 or so there was serious

opposition by many State Governments to bidding system, and the Government did not pursue competitive bidding/public auction route, then in our view, the administrative decision of the Government not to pursue competitive bidding cannot be said to be so arbitrary or unreasonable warranting judicial interference. It is not the domain of the Court to evaluate the advantages of competitive bidding vis-à-vis other methods of distribution/disposal of natural resources. *However, if the allocation of subject coal blocks is inconsistent with Article 14 of the Constitution and the procedure that has been followed in such allocation is found to be unfair, unreasonable, discriminatory, non-transparent, capricious or suffers from favouritism or nepotism and violative of the mandate of Article 14 of the Constitution, the consequences of such unconstitutional or illegal allocation must follow.*"

(emphasis supplied)

77. More recently in *Ajar Enterprises (P) Ltd.* v. *Satyanarayan Somani*[23] this Court once again examined the issue of distribution of natural resources and held: (SCC p. 785, para 49)

> "*49.* Undoubtedly, disposal of natural resources by auction is not a mandatory principle for, as the Constitution Bench held[21], individual statutes may provide for modalities of transfer by alternate modes which subserve public interest. … The choice of methods is not left to the unbridled discretion of a public authority. Where a public authority exercises an executive prerogative, it must nonetheless act in a manner which would *subserve public interest and facilitate the distribution of scarce natural resources in a manner that would achieve public good.* Where a public authority implements a policy, which is backed by a constitutionally recognised social purpose intended to achieve the welfare of the community, the considerations which would govern would be different from those when it alienates natural resources for commercial exploitation. When a public body is actuated by a constitutional purpose embodied in the Directive Principles, the considerations which weigh with it in determining the mode of alienation should be such as would achieve the underlying object. *In certain cases, the dominant consideration is not to maximize revenues but to achieve social good such as when the alienation is to provide affordable housing to members of the Scheduled Castes or Tribes or to implement housing schemes for Below the poverty line (BPL) families. In other cases where natural resources are alienated for commercial exploitation, a public authority cannot allow them to be dissipated at its unbridled discretion at the cost of public interest.*"
>
> (emphasis supplied)

Page: 256

The window is now more than ajar.

78. Till fairly recently, policy matters particularly of economic policy were hands-off as far as the courts were concerned.[24] But the recent decisions of this Court, including by the Constitution Bench in its advisory jurisdiction, have partially modified this theory and kept open the window to judicially review such a policy if it does not serve the common good as understood in Article 39(*b*) of the Constitution, if it violates Article 14 of the Constitution and alienates natural resources for maximising profits of private entrepreneurs while sidelining Article 39(*b*) of the Constitution. "The legislature and the executive are answerable to the Constitution and it is there where the judiciary, the guardian of the Constitution, must find the contours to the powers of disposal of natural resources, especially Article 14 and Article 39(*b*) [of the Constitution].[25] (SCC p. 77)"

79. Notwithstanding this, a court must exercise restraint and not set aside Government Policy only because it disagrees with it or because a better policy could be framed or

simply because it has the power to set aside the policy. Policies framed by the State, after due consideration, must be respected and given enough elbow room and flexibility for implementation. Of course, there would be occasions when the implementation of a policy has teething problems or some lacuna is discovered at a slightly later stage, but that does not mean that policy itself is defective. Therefore, courts must be very cautious and circumspect in diluting or setting aside a policy and must do so only if it is constitutionally unavoidable, otherwise good governance could be a casualty.

80. The conclusions that could be drawn from all these decisions are:

80.1. It is not obligatory, constitutionally or otherwise, that a natural resource (other than spectrum) must be disposed of or alienated or allocated only through an auction or through competitive bidding;

80.2. Where the distribution, allocation, alienation or disposal of a natural resource is to a private party for a commercial pursuit of maximising profits, then an auction is a more preferable method of such allotment;

80.3. A decision to not auction a natural resource is liable to challenge and subject to restricted and limited judicial review under Article 14 of the Constitution;

80.4. A decision to not auction a natural resource and sacrifice maximisation of revenues might be justifiable if the decision is taken, inter alia, for the social good or the public good or the common good;

80.5. Unless the alienation or disposal of a natural resource is for the common good or a social or welfare purpose, it cannot be dissipated in favour of a private entrepreneur virtually free of cost or for a consideration not commensurate with its worth without attracting Article 14 and Article 39(*b*) of the Constitution.

Whether the decision of the State of Goa forsaking the auction route is arbitrary?

81. Keeping in mind the broad principles identified above, the question that arises for our consideration is whether the State of Goa was justified in not adopting the auction route for the grant of mining leases and simply granting a second renewal. For a better understanding of this issue, it would be worthwhile to again refer to the Goa Mineral Policy, the report of the EAC, the Grant of Mining Leases Policy and the decision of the Bombay High Court, which documents were relied upon by the learned Additional Solicitor General.

(i) Goa Mineral Policy

82. The Mineral Policy makes it very clear that during the period from about 2006 till about 2012 (for about 5 years) extraction of iron ore in Goa was nothing but a free-for-all situation. Illegalities and irregularities were committed in abundance by all concerned, particularly the mining leaseholders. The Mineral Policy records that the State witnessed the peak of chaotic and unregulated mining. The thought of protecting and preserving the environment, concern for the fragile ecology of Goa was far from the thoughts of the stakeholders—even the well-being of the average Goan was not taken into consideration by the stakeholders. A reading of the initial paragraphs of the Mineral Policy suggests that nothing short of rapacious mining was going on in Goa. Who were the beneficiaries of all this rapaciousness? Could all this be ignored?

83. The Mineral Policy informs us that the beneficiaries of the rapacious-ness were not the domestic industry and certainly not the average Goan. The reason for this is spelt out in the Mineral Policy itself. Iron ore from Goa is not suitable for the Indian industry due to the low Fe content and the high silica presence. Therefore, there is no value addition to the Indian industry and the iron ore was mined only for export — mainly to China and also to Japan. With a port in the vicinity, Goan iron ore was an attractive buy for the global

market and the spin-offs benefited those in the port, transporters and barge owners, etc. The primary beneficiary of this was, of course, the mining leaseholder, a private entity, and the price was paid by the average Goan who had to suffer a polluted environment and witness the damage to the State's ecology.

84. If the issues mentioned in the Mineral Policy are objectively considered in strict monetary terms, the only conclusion that can be drawn is that the extraction of iron ore was for commercial purposes and maximising the revenues of private entrepreneurs and not necessarily the State of Goa. The natural resource was exploited by some mining leaseholders for making profits and nothing else. There were some collateral beneficiaries as well, and they too were commercially driven entities such as barge owners, truck owners, etc. Under these circumstances, the question that arises is whether the mining leaseholders should have been given a second renewal of the mining lease virtually for a song, that is, payment only of royalty, when they were driven only by a profit motive or whether the mining leases ought to have been

Page: 258

auctioned? Unfortunately, the Mineral Policy did not advert to or even consider any solution that would break from the past.

85. As far as the environment, the fragile ecology of Goa and the well-being of the average Goan and the rule of law is concerned, the Mineral Policy categorically states that the State had witnessed, from 2006-2007 till 2011-2012 the peak of chaotic and unregulated mining without any concern for the fragile ecology and environment of the State or for the general well-being of an average Goan. Surely, all this cannot be ignored or brushed aside particularly since the exploitation of mineral resources for five years had no element of social or public purpose, no concern for society and no regard for the environment and the laws.

(ii) Vishwanath Anand Expert Appraisal Committee

86. A reading of the report of the EAC is disturbing and acutely highlights the damage to the environment and ecology by the mining leaseholders. The complete indifference by all concerned is evident from a careful reading of the report. We propose to refer to and quote in extenso the "summary of observations" and the "concluding remarks" from the report of the EAC since they are self-explanatory:

"Summary of Observations

I. The absence of specific conditions highlighting the mandatory requirement to obtain prior approval of the Standing Committee of the NBWL [National Board for Wild Life] in the EC [Environmental Clearance] has led to misinterpretation of the legal requirement. There has been an inordinate delay of more than 5 years before effective action against defaulting units were initiated by the Ministry for non-compliance of the Hon'ble Supreme Court order dated 4-12-2006[26].

II. Out of 137 ECs, the requirement of obtaining approval of the Standing Committee of the NBWL under the WL (P) Act, 1972 [Wild Life (Protection) Act] has not been complied with in 123 cases where the distances are less than 10 km from the nearest PA [protected area].

III. In respect of 10 cases approval of the Standing Committee of the NBWL is not mandatory as the mine leases are located beyond 10 km from nearest PA.

IV. Contrary to the directions of the Hon'ble Supreme Court dated 4-8-2006[10] in Writ Petition (Civil) No. 202 of 1995; ECs have been accorded to 41 mines located within 1 km from the nearest PA.

V. In respect of 20 cases mine leases were renewed under the MMDR Act, 1957 prior to grant of FCs [Forest Clearance].

VI. In 29 cases, project proponents have furnished wrong information about distance

from the nearest PAs.

Page: 259

VII. Non-compliance of various EC conditions such as excess production/unauthorised dump mining/drawal of groundwater without prior approval of CGWB/encroachment; have also been reported in respect of working mines.

Concluding Remarks

A reading of our observations and recommendations would show that *without exception, every proponent to whom an environment clearance was issued has either violated its conditions or has furnished information in the application which has been distant from the truth*. There are basically two types of violations; one that cannot be legally condoned and those that can be rectified with remedial measures. This is the reason why the Committee has recommended that all ECs for mines located within one km from PAs should be revoked and in cases where untruthful information was furnished in the application for EC, such mines should not be allowed to reopen. In the case of those mines which have been closed for more than five years, their reopening has not been recommended without their applying de novo for a fresh environmental clearance as micro environmental conditions on the ground would have changed during the period they remained closed. However, when one looks at the manner in which the directives dated 4-8-2006[10] and 4-12-2006[26] of the Supreme Court have been implemented one cannot help but feel that there is the absence of a bridge mechanism within the Ministry to ensure and oversee that directives of the courts are complied with due diligence and seriousness.

There are two factors which stand out; in some ECs as mentioned in this report, the condition was inserted that the project proponent should seek approval of the CWLW [Chief Wild Life Warden], in others it was stated that approval of the competent authority/Standing Committee of the NBWL should be obtained and in a third category no condition at all was imposed, even though some of these ECs pertain to the same meeting and timelines between 2005 and 2007. It is strange that officials concerned in the MoEF were not aware that other than the Standing Committee of the NBWL no other person was authorised to grant the permission envisaged by the order dated 4-12-2006[26] of the Supreme Court. This is not to state that any discrepancy in the EC letter would absolve the project proponent from complying with the law of the land. This has resulted in creating ambiguity amongst many of the project proponents and it was not until 1-1-2009, that the MoEF issued a public notice clarifying the position.

Considering that some of the project proponents may have been misguided by the ambivalence of the MoEF in not clearly delineating the legal position, it is suggested that in the case of those project proponents who did not conceal facts in their applications but did not apply for permission to the Standing Committee of the NBWL, their applications may be considered for being placed before the Standing Committee of the

Page: 260

NBWL. However this can in no way be construed as a justification on the part of the project proponents for not complying with the requirements of the law. It must be noted for example that in those cases where mining has intersected the groundwater, approval of the CGWB [Central Ground Water Board] had not been taken by the project proponents as was required by the EC. Similarly, there are cases where mining operations have taken

place without obtaining an FC.

* * *

As regards violations of the conditions of the ECs and where environmental damage has been caused, the proponents concerned should be made accountable and the MoEF should examine as to how some monetary damages can be levied through due legal process based on the polluter must pay principle, the proceeds of which could be used for environmental rehabilitation.

There are concerns about the carrying capacity of the area with regard to its ability to sustain the extent and quantum of mining that has taken place there. It is recommended that a carrying capacity study should be commissioned for the area, or if another study by a nationally recognised institution is coming to fruition the result of that should be acted upon. Such a study should also take into account the impact of mining on the hydrology of the region and the extent of pollution caused to surface and groundwater. This study should be compared to the earlier 10 years' baseline data to determine the impact of mining on the biodiversity and hydrology of the area in the last decade. Based on the finding of this, a specific policy for mining of iron ore in the region may be developed. Such a policy along with a proper control and monitoring mechanism is necessary in order to avoid a situation such as the one under question. It would hopefully also ensure that mining in this region is carried out in accordance with best sectoral practices using appropriately clean technologies."

(emphasis supplied)

87. The report of the EAC reveals that there is not a single environment-related or mining-related law or legal requirement that was not violated by one or the other mining leaseholder. Quite clearly, the rule of environmental law in Goa had gone with the wind.

88. There was one extremely important requirement relating to extraction of groundwater—that is, clearance from the Central Ground Water Board—but even that was ignored. During the course of submissions, we were informed that there is plenty of groundwater available in Goa. However, what seems to have been overlooked is that with the intersection of groundwater levels with mining operations, the groundwater would get depleted much faster than expected or the quality of the groundwater would deteriorate. It is for this reason that MoEF insisted that clearance for drawal of groundwater must be taken from the Central Ground Water Board and care taken in respect of the intersection of groundwater level with mining operations (this happened in 46 cases). Unfortunately, no heed was paid to these requirements by the State of Goa or any of the mining leaseholders and not one mining leaseholder has any

clearance (where required) from the Central Ground Water Board, or at least none was brought to our notice.

(iii) Decision of the Bombay High Court

89. The High Court essentially created two classes of applicants for the grant of a mining lease — those in whose favour an in-principle decision had been taken for a second renewal of the mining lease and who had paid the necessary stamp duty in terms of the government order of 21-2-2013 and those who had not yet paid the requisite stamp duty.

90. As regards the first category, the High Court directed execution of the mining lease in their favour in accordance with the provisions of Section 8(3) of the MMDR Act. This was on the belief that the applicants had applied for the second renewal within the prescribed time period; the Indian Bureau of Mines had approved the mining plans of these applicants; the Indian Bureau of Mines was subjectively satisfied that the second renewal was in the interest of mineral development; and that in view of the principles of

promissory estoppel these applicants were entitled to a second renewal of their mining lease since they had altered their position to their detriment by paying the stamp duty demanded.

91. As regards the second category (those who had not paid the stamp duty), the High Court directed the State of Goa to decide their second renewal application within a period of three months keeping in mind the provisions of Section 8(3) of the MMDR Act (and the requirement to pay the stamp duty).

92. The decision of the High Court does not at all discuss the options available to the State of Goa, namely, second renewal of the mining leases versus auction of a natural resource. In fact it appears that the High Court was not at all alive to the possibility of an auction of the mining leases, notwithstanding the view canvassed by the learned Advocate General of the State of Goa.

(iv) Goa Grant of Mining Leases Policy, 2014

93. The Grant of Mining Leases Policy announced and issued on 4-11-2014 is perhaps the most important document in the entire scheme of things and that is the reason it was read out extensively by the learned Additional Solicitor General and that is why we have chosen to quote it extensively.

94. A consideration of the contemporaneous facts beginning with the Budget Speech given by the Hon'ble Minister of Finance of the Government of India on 10-7-2014 makes it clear that an amendment to the MMDR Act was to be effected sooner than later. The Grant of Mining Leases Policy overlooks that and proceeds on the basis that the judgment of the High Court delivered on 13-8-2014[5] left the Government of Goa with no choice but to abandon the grant of mining leases through competitive bidding, even though that might be the most appropriate method of obtaining the best revenue for the public good. The Government of Goa had therefore "for the present" ruled out the process of going in for competitive bidding keeping also in mind that the

State was virtually starved of funds and had to balance the equities and needs of all, including the labour class, working class and other staff, markets in mining localities, public sector, mining leaseholders, welfare needs of the State, environment and fragile ecology of the State and general well-being of the average Goan.

95. The State of Goa was also alive to the fact that many (if not all) mining leaseholders had violated the terms of the mining lease or some statutory obligation. Therefore, it was decided to categorise the offenders as follows:

Category I — Will be those mining leases which have no violations or very minimal violation of any provision/condition of applicable laws/rules, orders/permissions, etc. or those which cannot otherwise be referred to as "violations".

Category II — Are those mining leases which have been found to have violated the Provisions of the Mineral Concession Rules including Rules 37 and 38 and other matters as mentioned in the Public Accounts Committee Report/Justice Shah Commission Report. In this category, the State Government will consider each of the cases on its own merits; and wherever the violations are noticed subject to the same being remedied by paying appropriate penalty/fines including those of forfeiture, the State Government shall pass appropriate orders in accordance with law.

Category III — Mining leases will be those which are found to have violated substantially any provision/condition of applicable laws/rules/orders/permissions, etc. and in which cases the State Government shall determine the lease/reject their "Application for the Second Renewal".

96. The offences ranged, amongst others, from illegal sale of ore, sale of royalty challan without ore, encroachment of adjoining areas outside the lease, overproduction in excess

of the limit specified in the environmental clearance, unscientific mining operations, violations with respect to payment of royalty amount, re-use of old royalty challans for defrauding, illegal mining activities, etc. etc. None of these are "minimal" violations. However, and this is important, the Grant of Mining Leases Policy made it clear that the following shall not be considered for renewal of mining leases:

(*i*) Those facing an inquiry initiated pursuant to the orders of this Court in para 88.2 of *Goa Foundation*[1] for the violation of Rules 37 and 38 of the Mineral Concession Rules, 1960;

(*ii*) Those indicted by the Justice M.B. Shah Commission; and

(*iii*) Those indicted by the Public Accounts Committee.

The Grant of Mining Leases Policy stated that inquiries are already in progress "at various levels and fora" including a Special Investigating Team and a team of Chartered Accountants. We dare say that violations pointed out by the EAC ought also to have been taken into consideration.

Page: 263

97. Be that as it may, there is no doubt that iron ore mining in Goa was solely for commercial purposes — it was extracted primarily for export to China and Japan without any value addition to the domestic industry. True, this brought in considerable foreign exchange — nevertheless iron ore extraction gave insignificant value addition (if at all) to Indian industry. The only advantage that iron ore extraction gave to the State was in terms of royalty, but the larger benefit accrued to the private mining leaseholder who could obtain a mining lease on renewal virtually free and without any social or welfare purpose. In other words, the State sacrificed maximising revenue for no apparent positive reason, virtually surrendering itself to the commercial and profit-making motives of private entrepreneurs and ignoring the interests of Goan society in general. Therefore, in principle, the decision of the State of Goa to not auction the grant of mining leases was flawed in that it did not serve the common or public or social good but primarily assisted in filling the coffers of private entrepreneurs. We are not inclined to go so far as to describe the decision as arbitrary since it is not necessary to do so.

98. However, we make it clear that we have dealt with this issue because it was canvassed before us. We are not inclined to quash the decision of the State of Goa of not going in for competitive bidding for the grant of fresh mining leases since it is not necessary in view of our conclusion that fresh mining leases were required to be granted by the State of Goa.

99. At this stage we must refer to a submission made by Mr C.U. Singh learned counsel appearing for some of the mining leaseholders. He submitted that prior to 12-1-2015 the MMDR Act did not permit the auction of mining leases. Therefore, even if the State of Goa was desirous of introducing competitive bidding for grant of fresh mining leases it could not have done so. He drew our attention to Section 11 of the MMDR Act (as it stood prior to its amendment in 2015) which provided a preferential right for obtaining a prospecting licence or mining lease to the holder of a reconnaissance permit or prospecting licence. He submitted, placing reliance on *Sandur Manganese and Iron Ores Ltd.* v. *State of Karnataka*[27] that since the MMDR Act is a complete code in itself, the method or procedure for grant of a lease cannot travel outside the confines of the statute and the Mineral Concession Rules, 1960 framed thereunder. Reference was made to paras 40 to 43 of the judgment: (SCC pp. 25-26, paras 40-43)

"*40.* In view of the specific parliamentary declaration as discussed and explained by this Court in various decisions, there is no question of the State having any power to frame a policy dehors the MMDR Act and the Rules.

41. In *State of Assam* v. *Om Prakash Mehta*[28] this Court in SCC para 12 held that the MMDR Act, 1957 and the MC Rules, 1960 contain a complete code in respect of the grant and renewal of prospecting licences as well

Page: 264

as mining leases in lands belonging to the Government as well as lands belonging to private persons.

42. Again this Court in *Quarry Owners' Assn.* v. *State of Bihar*[29] held that both the Central and the State Government act as mere delegates of Parliament while exercising powers under the MMDR Act and the MC Rules.

43. It is not open to the State Government to justify grant based on criteria that are dehors the MMDR Act and the MC Rules. The exercise has to be done strictly in accordance with the statutory provisions and if there is any deviation, the same cannot be sustained. It is the normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. This principle has been reiterated in *CIT* v. *Anjum M.H. Ghaswala*[30] SCC at p. 644; *Sube Singh* v. *State (NCT of Delhi)*[31] and *State of U.P.* v. *Singhara Singh*[32]."

(emphasis supplied)

Reference may also be made to para 44 of the Report that reads thus: (SCC p. 26)

"*44.* Mr Harish N. Salve and Mr Dushyant Dave, by drawing our attention to the decision of this Court in *Tisco Ltd.* v. *Union of India*[33], submitted that inasmuch as this Court had upheld the grants based on "captive consumption", there is no flaw or error in the recommendation of the State Government dated 6-12-2004. A perusal of the above decision clearly shows that it concerned with Section 8(3) of the MMDR Act which requires consideration of the extremely general criterion of the interests of mineral development before granting second renewal of a mining lease. Unlike in Section 11(3), no further criteria were specified and it was in this background, this Court upheld on the facts of that case that relevant material taken into account by the Committee set up by the Central Government rightly included "captive consumption". In view of the factual situation, the said decision can have no bearing on initial grants of mining lease where the only permissible criteria are the matters set out in Section 11(3) of the MMDR Act."

100. The controversy in *Sandur Manganese*[27] related to the grant of mining leases contrary to the provisions of Section 11 of the MMDR Act in that a non-statutory criterion was taken into consideration dehors Section 11 of the MMDR Act for evaluating the applications and seeking approval of the Central Government for granting a mining lease. This was held to be impermissible and

Page: 265

it may be so. In any event, para 44 of the Report makes it clear that there is a distinction between the requirements of Section 11(3) of the MMDR Act and Section 8(3) of the MMDR Act. *Sandur Manganese*[27] is not applicable to the facts of the present case.

101. Similarly, reference was made to the Statement of Objects and Reasons for the Bill introduced in 2015 to amend the MMDR Act. It was stated therein that:

"The present legal framework of the MMDR Act, 1957, does not permit the auctioning of mineral concessions."

102. This submission need not detain us since we are not required to adjudicate

whether the State of Goa should have auctioned the mining leases or not. The State of Goa decided to renew the mining leases and we are only called upon to decide: (*i*) Whether the policy decision not to auction the grant of mining leases was arbitrary (we have already held that we are not required to express a final opinion on this). We may, however, recall *en passant* that the Goa Grant of Mining Leases Policy proceeded on the basis that the auction of mining leases was permissible and that had the sanction of the Court in *Goa Foundation*[1]. It may be added that the MMDR Act did not prohibit the auction of mining leases. (*ii*) Whether the second renewals were in accordance with law and the constitutional principles.

103. We may also note that the Constitution Bench in *Natural Resources Allocation*[21] referred to the submission that if auction were the only method of allocating natural resources (as it appears from *CPIL*[19]) then the mandate would create a conflict with some statutes including the MMDR Act. The Constitution Bench dealt with this submission in para 83 of the Report by observing: (SCC p. 72)

> "*83.* Moreover, if the judgment in *2G case*[19] is to be read as holding auction as the only permissible means of disposal of all natural resources, it would lead to the quashing of a large number of laws that prescribe methods other than auction e.g. the MMDR Act."

However, the Constitution Bench did not advert to the consequence vis-à-vis the MMDR Act of holding that auction was not mandated as the only method of allocating a natural resource. Since the question does not arise in these cases, we decline to go into this issue—we need not finally adjudicate whether the State of Goa should have auctioned the mining leases but we are called upon to decide whether the grant of second renewals was valid in law.

Judicial review of renewals

104. In view of decisions of this Court, including in *Natural Resources Allocation*[21] it is permissible for this Court to judicially review, to a limited and restricted extent, the Grant of Mining Leases Policy, among other things, if it falls foul of Article 14 read with Article 39 (*b*) of the Constitution and if it ignores the common or public or social good but benefits private entrepreneurs, particularly when it involves the natural resources, by sacrificing the maximisation of revenue for the State.

105. In *Natural Resources Allocation*[21] the Constitution Bench observed that: (SCC pp. 98-99, para 149)

> "*149.* … Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue may be arbitrary and face the wrath of Article 14 of the Constitution."

106. Similarly in *Goa Foundation*[1] this Court declared that: (SCC p. 637, para 87.5)

> "*87.5.* It is for the State Government to decide as a matter of policy in what manner mining leases are to be granted in future but the constitutionality or legality of the decision of the State Government can be examined by the Court in exercise of its power of judicial review."

107. Despite the dicta of the Constitution Bench and the declaration made by this Court in *Goa Foundation*[1] we do not propose to judicially review the Grant of Mining Leases Policy but to consider on merits whether the grant of second renewal to the mining leases was in accordance with the Grant of Mining Leases Policy and the law.

108. In our opinion, in renewing the mining leases, the State of Goa completely ignored several relevant and important and significant factors giving the impression that the renewals were not quite fair or reasonable.

109. For one, the State ignored the fact that every single mining leaseholder had committed some illegality or the other in varying degrees. To identify these illegalities (although they had already been identified by the Justice Shah Commission and by the EAC), a Special Investigating Team had been set up as also a team of Chartered Accountants. Instead of waiting for a report from any one of these teams, the State acted in violation of the Grant of Mining Leases Policy and renewed the mining leases. Why was the report from the Special Investigating Team not awaited or called for and examined? In the Grant of Mining Leases Policy it was clearly and explicitly stated (as mentioned above) as follows:

Page: 267

> "Unless and until the inquiry initiated pursuant to the judgment and order of the Hon'ble Supreme Court of India against those mine leaseholders found to be violating either Rule 37 or Rule 38 of the Mineral Concession Rules, 1960, or otherwise indicated in the Report of the Justice Shah Commission/PAC Report or found to be engaged in, any kind of illegality of whatsoever nature such as illegal sale of ore, sale of royalty challan without ore, encroachment of adjoining areas outside the lease overproduction in excess of the limit specified in the environmental clearance; those which have undertaken unscientific mining operations; those who have violated or have not paid the royalty amount; those who have reused old royalty challans for defrauding; and those involved in illegal mining activities *shall not be considered for renewal of the mining leases*.
>
> For this purpose, presently the inquiries are in progress at various levels and fora including the investigation by the SIT Team, by the Team of Chartered Accountants which has been set up by the State Government and *after the inquiry is complete or during the course of the inquiry where it is found that any violations have taken place, such persons shall not be considered for grant/renewal of the leases*."
>
> (emphasis supplied)

110. Unfortunately, the undue haste in which the State acted gives the impression that it was willing to sacrifice the rule of law for the benefit of the mining leaseholders and the explanation of satisfying the needs of some sections of society for their livelihood (after keeping them in the lurch for more than two years) was a mere fig leaf. The real intention of the second renewal was to satisfy the avariciousness of the mining leaseholders who were motivated by profits to be made through the exploitation of natural resources.

111. The undue haste also needs to be looked at in the context of the statement made in the final paragraph of the Grant of Mining Leases Policy to the effect that this Policy is an in-principle decision and would be notified after it is vetted for legal requirements "from specific necessities as also from financial viewpoints". In other words, the Grant of Mining Leases Policy as published on 4-11-2014 was not a final policy statement but only an intent that would take final shape after due vetting. The Grant of Mining Leases Policy was eventually published on 20-1-2015 but it was acted upon even before it was gazetted.

112. A partial explanation for this hurry, if we may venture to suggest, is that the State of Goa was aware (like everybody else) on 17-11-2014 if not earlier, of the policy of the Government of India to auction the grant of mining leases which policy was made available in the public domain on that date and suggestions invited. It is on 17-11-2014 that the draft Mines and Minerals (Development and Regulation) Act, 2014 was published on the website of the Ministry of Mines of the Government of India. The policy of the

Government of India proposed to introduce Section 10-B by way of an amendment to the MMDR Act and the proposed amendment made it very clear that if it were to be accepted, auction of mining leases in respect of notified minerals (including iron ore) would become a reality if not an obligation. It appears that to circumvent this rather uncomfortable policy, the State pressed the accelerator on the renewal of mining leases from December 2014 onward to

Page: 268

benefit mining leaseholders. So much so that in respect of 5 mining leases, the State overstepped the law and granted a second renewal in early January 2015 to some entities without even waiting for any approval or deemed approval of the mining plan from the Indian Bureau of Mines or any other authority.

113. This sequence of events acquires further significance when it is recalled that an Ordinance to amend the MMDR Act was made known to the general public on 5-1-2015 and promulgated by the President on 12-1-2015 thereby mandating competitive bidding or auction for the grant of mining leases. The State of Goa perhaps anticipated this in view of the publication of the draft Mines and Minerals (Development and Regulation) Act, 2014 and therefore hurried into the second renewal of mining leases (notwithstanding the Grant of Mining Leases Policy) to defeat the introduction of the auction process. In fact in the period from 5-1-2015 to 12-1-2015 the Government of Goa granted a second renewal to as many as 56 mining leases and from 17-11-2014 the State of Goa granted a second renewal to as many as 75 mining leases. The sudden spurt of renewal of mining leases is beyond comprehension. The judgment and order of the High Court in *Lithoferro*[5] cannot be used as a shield for explaining the haste.

114. These facts must also be appreciated in the context that mining operations were suspended in Goa with effect from 10-9-2012 due to an order passed by the State of Goa. Therefore, mining operations having been suspended for more than two years, the State could have certainly waited for a few weeks more and taken an informed and reasoned decision on granting a second renewal to mining leases — but waiting for a few weeks could have led to an uncomfortable situation that would have compelled the State of Goa to auction the mining leases, hence the haste.

115. This Court held in *Tisco Ltd.* v. *Union of India*[33] that for the purposes of Section 8 (3) of the MMDR Act[34] the concept of "mineral development" encompasses the concept of captive mining, an assessment of its requirement

Page: 269

by different industries as well as the principle of equitable distribution [under Article 39(*b*) of the Constitution]. It is not at all clear from the records before us that the State had applied its mind to these and other factors including the report of Justice Shah, the report of the EAC, the absence of any value addition to the domestic industry and the degradation of the environment as noted by the Expert Committee appointed by this Court in concluding that a second renewal was "in the interests of mineral development". Mere reliance on the acceptance or deemed acceptance of the Indian Bureau of Mines is not enough, as imagined by the State of Goa. The matter of "interests of mineral development" has to be considered holistically and not in an isolationist manner.

116. In this context, it is also necessary to point out that the National Mineral Policy, 2008 provided that: "To maximise gains from the comparative advantage which the country enjoys intra se mineral development will be prioritised in terms of import substitution, value addition and export, in that order." Admittedly, iron ore is not

extracted in Goa for import substitution, or value addition for domestic industry, but only for the last option, that is, export. Can it reasonably be said that the export of iron ore is in the interest of mineral development? We were informed that only one of the mining leaseholders captively consumes the extracted iron ore and it is evident from the Mineral Policy that despite mining operations having closed down for some period in other States, iron ore from Goa was not used in the domestic steel industry. Therefore, it is not at all clear who, other than the mining leaseholders making exports, was benefited by resumption of mining operations in Goa through a second renewal.

117. The Mineral Policy clearly suggests that for a period of five years between 2006 and 2012 the mining leaseholders committed various illegalities and irregularities in the mining process. This is an indication of their exploitative and rapacious attitude having little or no concern for the environment, the fragile ecology of Goa or even the health and well-being of the average Goan. This irreparable damage was being caused by the mining leaseholders without any benefit to the domestic industry. Therefore, while the mining leaseholders may have contributed virtually nothing to the domestic industry, they might have made considerable profits through exports and might have also benefited the foreign exchange reserves of the country, but the real-time damage to the quality of health and life of the average Goan and damage to the environment and ecology of Goa is nevertheless incalculable or at least considerable — and export benefits cannot be weighed against health or the environment.

118. What is unfortunate about the entire commercial activity of the mining leaseholders is that there was no social or public purpose attached to the mining operations. There was one and only one objective behind the mining activity and that was profit maximisation. The renewal of the mining leases would give considerable profits to the mining leaseholders well beyond the benefits that could accrue to the State or to the average resident of Goa. It was observed

Page: 270

by Khehar, J. in *Natural Resources Allocation*[21] that material resources of the country should not be dissipated free of cost or at a consideration lower than their actual worth. This was not kept in mind and mining leases were renewed for a small payment of stamp duty and royalty. It is therefore clear that the considerations that weighed with the State were not for the people of Goa but were for the mining leaseholders. This certainly cannot be described as being "in the interests of mineral development".

119. With the mining leaseholders violating virtually every applicable law or legal requirement, it is clear that the rule of law was not their concern. The list of violations and their variety was documented by the EAC and it makes for some very sad reading. To make matters worse, it was clearly mentioned in the Grant of Mining Leases Policy that a Special Investigating Team and a team of Chartered Accountants would look into all the violations but the State chose not to wait for any of the reports. There is no explanation for this.

120. In this background, there is little to suggest that the State considered the requirements of Section 8(3) of the MMDR Act in that the interests of mineral development were secondary while granting the second renewal of mining leases. The entire exercise undertaken by the State was a hasty charade, regardless of violations of the law by the mining leaseholders, without any benefit to the Indian industry and without any concern for the health of the average Goan.

121. The undue haste with which the State granted the second renewal of mining leases particularly after the amendments proposed to the MMDR Act were placed in the public domain by the Government of India (relating to the auction of mining leases) is a clear indication that the decision of the State was not based on relevant material and not necessarily triggered by the interests of mineral development. The very large number of

renewals granted over a comparatively brief period is a clear indication that the State did not have "mineral development" in mind but had some other non-statutory interests while taking its decision to grant a second renewal to the mining leases. The haste with which the State took its decision also needs to be understood in the background of the fact that mining had been suspended by the State in September 2012 that is more than two years prior to the grant of second renewals. The urgency suddenly exhibited by the State therefore seems to be make-believe and motivated rather than genuine.

122. Facts from the record also disclose some interesting information regarding the second renewal of mining leases. The Table below indicates that except 13 mining leases, all the others were renewed after publication of the draft Mines and Minerals (Development and Regulation) Act, 2014 on 17-11-2014. The Table is given below and is self-explanatory:

Page: 271

Period	*Mining leases renewed*
Between 5-11-2014 and 17-11-2014	13
Between 10-12-2014 and 2-1-2015	19
Between 5-1-2015 and 12-1-2015	56
Total	88
On 12-1-2015	31

123. Of the 13 mining leases renewed in November 2014, it is found that according to the State of Goa all of them are Category I violators (except Geetabala M.N. Parulekar who is a Category II violator). However, it was pointed out by the learned counsel appearing on behalf of Goa Foundation that the report of the Vishwanath Anand EAC indicates that a recommendation was made to revoke the environmental clearance in respect of 6 mining leaseholders; additionally, none of the mining leaseholders had approval from the National Board for Wild Life (where required); all of them (except 2) had mined in excess of the permissible limit under the environmental clearance; all of them had indulged in dump mining; some of them were guilty of encroachments; in almost every case the mining activity intersected groundwater level and none of the mining leaseholders had permission for groundwater withdrawal. These cannot be described as minor violations but were actually multiple violations in almost all cases. How could the State of Goa and MoEF overlook these recommendations and multiple violations?

124. It may be recalled that the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 came into force on 12-1-2015 and on that day as many as 31 mining leases were renewed. In respect of 5 mining leases renewed in January 2015 the report from the Indian Bureau of Mines was called for in January 2015 itself and the mining leases were renewed without receipt of the report from the Indian Bureau of Mines and before expiry of the mandatory period for submitting the report in terms of the second proviso to Rule 24-A(3) of the Mineral Concession Rules, 1960. In other words, without even receipt of any report from the Indian Bureau of Mines and even before the expiry of the statutory waiting period, the State of Goa renewed some mining leases. This is patently illegal.

125. We were informed by the learned Additional Solicitor General that of the 88 mining leases that were renewed, 38 of them are not working for a variety of reasons—making their renewal an empty exercise.

126. These facts are mentioned in the context of the undue haste shown by the State of Goa in granting a second renewal to the mining leases keeping the following dates in mind:

17-11-2014 — The draft Mines and Minerals (Development and Regulation) Act, 2014 was uploaded on the website of the Ministry of Mines of the Government of India.

5-1-2015 — Approval of the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 by the Cabinet of the Government of India became public knowledge.

Page: 272

12-1-2015 — President of India promulgated the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015.

127. It is possible that the State did have some serious governance issues to contend with as mentioned in the Grant of Mining Leases Policy, namely, since iron ore mining had been suspended for more than two years, the State faced a lack of funds resulting in its having difficulty in undertaking infrastructure projects and other activities. The State had also to contend with the adverse effects faced by a large population that was directly or indirectly dependent on the mining sector. Additionally, the transport sector was affected as well as barges used for transport through rivers from jetties. The stoppage of mining operations therefore affected several categories of stakeholders including small business or small commercial ventures and workers/labour. The Grant of Mining Leases Policy also noted that there was a tremendous loss of foreign exchange of about $8 billion through exports and more than Rs 850 crores towards loans/advances on the mining sector for a variety of activities as well as about Rs 1000 crores towards housing, business and other loans. Overall there was a slump in economic activity which also had an impact on the education sector, etc.

128. The State has projected virtual chaos (which could be an exaggeration) but that is why we have left open the issue of arbitrariness of the policy decision. Nevertheless the State is bound by the law, however uncomfortable it might be in granting a second renewal in terms of Section 8(3) of the MMDR Act. Therefore, on an overall consideration of all aspects of the case, we are of the opinion that the decision of the State of Goa to quickly renew the mining leases while ostensibly complying with the requirements of Section 8(3) of the MMDR Act and thereby jettisoning the rule of law was unjustified.

Whether fresh environmental clearances were required to be obtained by the mining leaseholders?

129. The question whether the mining leaseholders required fresh environmental clearances arises in the context of para 82 of the decision rendered in *Goa Foundation*[1] quoted above. It must be stated that some mining leaseholders had environmental clearances under EIA 1994 while others under EIA 2006. Notwithstanding this, since we have held that fresh mining leases were required to be granted, it follows that fresh environmental clearance is required to be obtained by those who are granted a fresh mining lease.

130. That apart, the materials before the Court while deciding *Goa Foundation*[1] included the report of the Justice Shah Commission, the report of the EAC and the report of the Expert Committee constituted by the Court by orders dated 11-11-2013[3] and 18-11-2013[4]. On a combined reading of the material before it, the Court took a broad view that large-scale mining of iron ore led to several adverse impacts including those related to the environment,

Page: 273

ecology and health of the people of Goa and that these illegalities and irregularities were

committed by almost all (if not all) mining leaseholders as reported by the EAC. The Court also accepted the view of the Expert Committee that the ecology of Goa was being degraded through indiscriminate mining and placed a cap on the annual excavation of iron ore. It was noted that mining by the lessees in Goa after 22-11-2007 was illegal and that mining operations were suspended by the State of Goa on 10-9-2012 and environmental clearances granted to the mines were kept in abeyance by the MoEF on 14-9-2012. Considering all this, as well as the law laid down in *Goa Foundation*[1] to the effect that there is no automatic second renewal of a mining lease but that a second renewal must be granted in accordance with the provisions of Section 8(3) of the MMDR Act, the Court used the expression "grant fresh environmental clearances for mining projects" in the passage referred to above.

131. We have already adverted to the report of the EAC. As far as the Expert Committee set up by the Court is concerned, it had furnished an Interim Report dated 14-3-2014 in which it noted large-scale degradation of the environment and recommended placing an annual cap between 20 and 27.5 million tonnes on the extraction of iron ore in Goa. The Expert Committee noted the following (which makes for some very depressing reading):

> "The production of iron ore has jumped from 14.6 million tons in 1941 to 41.17 million tons in 2010-2011. In 1980s the production was about 10 MT/annum. *The quantum jump in iron ore production in Goa was essentially due to steep rise in exports of fines and other low grade ore of 42% Fe content to China. This has led to massive negative impacts on all ecosystems leading to enhanced air, water, and soil pollution affecting quality of life across Goa.* This is evident by three important reports i.e. (*i*) Areawise Environmental Quality Management (AEQM) Plan for the Mining belt of Goa by Tata Energy Research Institute, New Delhi and Goa (1997) and it was submitted to the Directorate of Planning, Statistics, and Evaluation, Government of Goa, (*ii*) Environmental and Social Performance Indicators and Sustainability Markers in Minerals Development Reporting Progress towards Improved Ecosystem Health and Human Well-being, Phase III by TERI and International Development Research Centre, Ottawa, Canada (2006), and (*iii*) the Regional Environmental Impact Study of Iron Ore Mining in Goa region sponsored by MoEF, New Delhi (2014) by Indian School of Mines. Besides the above three main reports, a number of scientific research papers on the impact of iron ore mining on the environment and ecology of diverse ecosystems were published by scientists working at Goa University and NIO.
>
> *These reports and publications substantiate that the mining, particularly the enhanced level of annual production contributed to adverse impacts on the ecological systems, socioeconomics of Goa and health of people of Goa leading to loss of ecological integrity*. This is due to

enhanced levels of pollutants, particularly RSPM and SPM, sedimentation of materials from dumps and iron ore in rivers, estuaries and shallow depth (20 m) of sea water, agricultural fields, high concentration of Fe and Mn in surface waters and their bioaccumulation."

(emphasis supplied)

132. Faced with this material evidence before it, the Court took the view in *Goa Foundation*[1] that fresh environmental clearances must be obtained. Unfortunately however, the State of Goa was more concerned with earning revenue rather than the health of the people of Goa or enforcing the rule of law and therefore gave a complete go-by to the directions of this Court and to the concerns of the citizens of Goa and requested the MoEF to lift the abeyance on the environmental clearances.

133. Acting on the request made by the State of Goa by Letters dated 7-1-2015 and 5-

2-2015, the MoEF passed three orders on 20-3-2015. We have already adverted to the contents of the orders passed on 20-3-2015.

134. The first order of 20-3-2015 is essentially a communication documenting the variety of illegalities and irregularities committed by the mining leaseholders and that the Government of India would be referring the cases for appropriate action and also requesting the Principal Secretary, Environment in the Government of Goa to take necessary action.

135. The second order of 20-3-2015 is an office memorandum to the effect that a project proponent will not be required to obtain a fresh environmental clearance at the time of renewal of the mining lease. This is misleading information and contrary to the decision of this Court in *M.C. Mehta* v. *Union of India*[15] as well as the decision rendered in *Common Cause* v. *Union of India*[35].

136. It was held in *Ambica Quarry Works* v. *State of Gujarat*[36], *Rural Litigation and Entitlement Kendra* v. *State of U.P.*[37] and *State of M.P.* v. *Krishnadas Tikaram*[6] (which decisions were followed in *M.C. Mehta*[15]) that the renewal of a lease, whether under the provisions of the Forest (Conservation) Act, 1980 or otherwise cannot be granted without the leaseholder complying with the necessary statutory requirements particularly since the grant of renewal is a fresh grant and must be consistent with law. The principle of compliance with statutory provisions at the stage of renewal of a lease was re-affirmed in *Common Cause*[35] in paras 105 and 106 of the Report. In para 188(2) of the Report it was categorically held as follows: (SCC p. 569)

> "*188.* ... (2) The renewal of a mining lease after 27-1-1994 will require an EC even if there is no expansion or modernisation activity or any increase in the pollution load."

137. The third order of 20-3-2015 is extremely cryptic in the matter of lifting the abeyance order of 14-9-2012 on environmental clearances. While dealing with 35 mining leases for which environmental clearance had been granted under EIA 1994 and 37 mining leases for which environmental clearance had been granted under EIA 2006, the following is stated:

> "It has been decided in the Ministry that the EC issued under 1994 Notification in case they are valid and subsisting *would not require fresh EC at the time of renewal* [O.M. L-11011/15/2012-IA-II (M) dated 20-3-2015]. Therefore it has been decided to lift abeyance on the 72 cases of which 35 cases had been granted EC under the provisions of EIA Notification 1994 and 37 cases had been granted EC under EIA Notification 2006."

(emphasis supplied)

138. As mentioned above and as held in *M.C. Mehta*[15] and *Common Cause*[35], the renewal of a lease after 27-1-1994 would require an environmental clearance. Therefore, a mining leaseholder having a valid environmental clearance obtained under the EIA 1994 would still require a fresh environmental clearance for renewal of the mining lease in 2014 -2015 as the case may be. That being so there is no doubt at all that the 35 cases referred to in the third order of 20-3-2015 who had an environmental clearance under EIA 1994 did require a fresh environmental clearance at the time of renewal of the mining lease. Since they did not have such a fresh environmental clearance the renewal of these 35 mining leases is clearly bad in law. Moreover, as held in *M.C. Mehta*[15] and *Common Cause*[35] the validity of an environmental clearance granted under EIA 1994 is only for five years. Therefore all environmental clearances granted under EIA 1994 had lost their validity before 2015, EIA 1994 having been replaced by EIA 2006.

139. As regards the 37 mining leases that had obtained environmental clearance under

EIA 2006, since the validity of the environmental clearance is for the estimated project life or a maximum of 30 years in terms of Para 9 of EIA 2006 therefore no violation can be found on the ground of validity for the time period. To this limited extent, no interference is necessary at this stage in respect of these 37 mining leases. We make it clear, however, that this is subject to our conclusion that fresh mining leases were required to be granted by the State of Goa. Consequently, a mining leaseholder obtaining a fresh mining lease would require a fresh environmental clearance in terms of EIA 2006.

140. What is disturbing is that notwithstanding several and various violations, the MoEF granted environmental clearance to 72 mining leases. It seems to us that the MoEF acted without any application of mind in lifting the order placing all the environmental clearances in abeyance. Since the entire exercise carried out by the MoEF on 20-3-2015 was mechanical, at the behest of the State of Goa, without due application of mind, without considering the multiple illegalities and irregularities committed by the mining leaseholders

Page: 276

or passing on the buck to the State of Goa and without considering relevant material such as the report of the EAC and the Expert Committee appointed by this Court, the exercise of lifting the abeyance order on 20-3-2015 by the MoEF must be held void and as directed by the Court in *Goa Foundation*[1] all the mining leaseholders must obtain fresh environmental clearance for their mining project.

141. We were informed by the learned Additional Solicitor General that show-cause notices have now been issued to some mining leaseholders demanding huge amounts—some running into hundreds of crores of rupees towards value of *ore extracted in excess of the environmental clearance*. We were handed over some sample show-cause notices (about 12) issued in September and October 2017 and the figures are quite staggering—the demand raised being about Rs 1500 crores! Similarly, from the Summary of Mining Audit Report submitted by the auditors (and handed over to us by the learned Additional Solicitor General—for the period July 2016 to December 2016) the amount demanded (including interest) by the State of Goa from the mining leaseholders through show-cause notices issued is about Rs 1500 crores! And without making any serious attempt to recover such huge amounts, the State of Goa has granted second renewal of mining leases and the MoEF played ball by lifting the abeyance order in respect of the environmental clearances. The inferences that can be drawn are quite obvious.

142. We must emphasise that issues impacting society are required to be looked at holistically and not in a disaggregated manner. An overall perspective is necessary on such issues including issues that impact on the environment and the people of a community or a region or the State. It is for this reason that it is necessary to look at them broadly otherwise if that broader perspective is lost, everyone will be a loser and no one will be a real beneficiary. One or two violations here and there may be wished away as inconsequential, but multiple violations by several persons can result in serious problems. As the novelist and philosopher Ayn Rand had said: We can evade reality, but we cannot evade the consequences of evading reality. Therefore, there is no doubt that the Mineral Policy, the Grant of Mining Leases Policy, the amendment to the MMDR Act, the report of the EAC and the report of the Expert Committee must be considered in the larger context of constitutionalism, the rule of law, environmental jurisprudence as well as the fundamental right of the people of Goa to have clean air and protection of the fragile ecology. Governance cannot and should not be carried out dehors the interests of the people and some uncomfortable decisions may be inevitable for balancing the equities.

143. Finally, a controversy (wholly unnecessary in our view) was raised with regard to the period of validity of the environmental clearance granted under EIA 1994. Firstly, in the view that we have taken, the validity period of an environmental clearance under EIA

1994 is academic since a fresh environmental clearance was necessary at the time of renewal of a lease. Secondly, the period of validity of an environmental clearance was considered

Page: 277

in *M.C. Mehta*[15] and it was clearly held that it is valid for 5 years only. In para 77 of the Report it was observed: (SCC p. 180)

> "*77.* We are unable to accept the contention that the Notification dated 27-1-1994 would not apply to leases which come up for consideration for renewal after issue of the notification. The notification mandates that the mining operation shall not be undertaken in any part of India unless environmental clearance by the Central Government has been accorded. *The clearance under the notification is valid for a period of five years*. In none of the leases the requirements of the notification were complied with either at the stage of initial grant of the mining lease or at the stage of renewal. Some of the leases were fresh leases granted after issue of the notification. Some were cases of renewal. No mining operation can commence without obtaining environmental impact assessment in terms of the notification."
>
> (emphasis supplied)

144. A similar view was expressed in para 87 in *Common Cause*[35]. Any contrary view expressed in any notification issued by MoEF (including the Notification of 15-1-2016) cannot overrule the decisions of this Court and is void to the extent that it does so.

145. It was submitted that all relevant notifications on the subject had not been placed before the Court and hence an erroneous conclusion was arrived at with respect to EIA 1994. We propose to deal with the notifications placed before us.

146. The Notification of 27-1-1994 (EIA 1994) deals with site clearance in Para 2.II(*d*). This provides, inter alia, that site clearance will be granted for a mining operation by the Central Government and that site clearance will be valid for a period of five years for commencing the operation or mining. Paras 2.III(*a*) and 2.III(*c*) of the Notification deal with the procedure for obtaining environmental clearance, but do not provide for the validity period of the environmental clearance.

147. A Notification of 4-5-1994 refers to the Notification of 27-1-1994 and substitutes Para 2.III(*c*) therein and provides that the environmental clearance "shall be valid for a period of five years from commencement of the construction or operation". What this provides, therefore, is that if environmental clearance is granted on a particular date and the mining operation starts on a later date, then the validity of the environmental clearance commences from the later date and is valid for five years from that date. This was reiterated in the Notification of 10-4-1997.

148. The validity of an environmental clearance is specifically provided for in EIA 2006 in Para 9 thereof. As far as we are concerned, it provides that in respect of mining operations, the environmental clearance would be valid for the "project life as estimated by Expert Appraisal Committee or State Level

Page: 278

Expert Appraisal Committee subject to a maximum of thirty years for mining projects...".

149. For no apparent reason and after EIA 2006, the issue of the validity of an environmental clearance granted under EIA 1994 was raked up and a notification was issued by the MoEF on 21-8-2013 in which it was noted that the Notification of 4-5-1994 provided that "the clearance granted shall be valid for a period of five years from

commencement of the construction or operation". Another Notification of 21-8-2013 goes on to say that the intent of the Central Government has been and has always been that the validity of the environmental clearance is for five years "for" commencement of the construction or operation and not that the environment clearance is only for five years "from" the commencement of construction or operation. Therefore, the Central Government clarified in the Notification of 21-8-2013 that the expression "for a period of five years" shall mean "for a period of five years for commencement of the construction or operation and not five years from commencement of the construction or operation". We do not see how this controversy really arises or its relevance to the present case, but we refer to it since submissions were made to explain the distinction between "for" five years and "from" five years in respect of the validity of an environmental clearance.

150. It is perhaps sought to be contended that if environmental clearance is granted and mining operations commence within the five year period, then the environmental clearance under EIA 1994 is valid till the project or the mining lease period is over. We cannot see how such an inference can be drawn. Moreover, this submission overlooks the decisions in *M.C. Mehta*[15] and *Common Cause*[35] which accept the view that the validity of an environmental clearance granted under EIA 1994 is only five years as also the view that a valid environmental clearance is necessary for the renewal of a mining lease. No notification of the MoEF can overrule decisions of this Court. As far as EIA 2006 is concerned this submission is academic and not relevant since Para 9 of EIA 2006 provides that the environmental clearance would be valid for the estimated project life subject to a maximum of 30 years.

151. The learned counsel for the mining leaseholders also relied upon a decision of the Delhi High Court in *S.N. Mohanty* v. *Union of India*[38] to contend that notwithstanding a Notification issued by MoEF on 4-4-2011 it was not obligatory for a mining leaseholder to obtain a fresh environmental clearance at the time of renewal of a lease, if the environmental clearance was subsisting. In that case, the petitioner had an environmental clearance obtained under EIA 2006 on 15-1-2007 and the first renewal of the mining lease was due on 2-4-2012. In that context, it was submitted that it was not necessary for the

petitioner to obtain environmental clearance for renewal of the mining lease. The Delhi High Court took the view that: (SCC OnLine Del para 22)

> "*22.* ... if a person has a valid and subsisting EC [environmental clearance] at the point of time he seeks a renewal of the mining lease, he would still be required to obtain another EC prior to the grant of renewal by the respondents. That, in our view, is not the intent and purport of the Supreme Court directions in *M.C. Mehta*[15]."

This question does not arise in the context of EIA 1994.

152. One final submission before us was that these cases be referred to a Bench of nine learned Judges since the constitutional validity of the Goa, Daman & Diu Mining Concessions (Abolition & Declaration of Mining Leases) Act, 1987 was under challenge in some cases and the decision in those cases would perhaps render the present proceedings infructuous. In some of these pending cases, this Court had passed an order on 29-10-2002 to await the decision of nine learned Judges in *Property Owners' Assn.* v. *State of Maharashtra*[39]. We are not at all inclined to accept this request and mention it only to reject it.

Correctness of the decision of the High Court in Lithoferro[5]

153. As far as the SLPs are concerned [SLP (C) No. 32138 of 2015 and SLPs (C) Nos. 32699-727 of 2015] we set aside the judgment and order dated 13-8-2014[5] of the High Court in view of our conclusion that the State of Goa was required to grant fresh licences in terms of the decision of this Court in *Goa Foundation*[1]. The High Court proceeded on the

erroneous basis that it could direct the State of Goa to grant a second renewal of the mining leases notwithstanding the direction in *Goa Foundation*[1].

Conclusions and directions

154. In view of our discussion, we arrive at the following conclusions:

154.1. As a result of the decision, declaration and directions of this Court in *Goa Foundation*[1], the State of Goa was obliged to grant fresh mining leases in accordance with law and not second renewals to the mining leaseholders.

154.2. The State of Goa was not under any constitutional obligation to grant fresh mining leases through the process of competitive bidding or auction.

154.3. The second renewal of the mining leases granted by the State of Goa was unduly hasty, without taking all relevant material into consideration and ignoring available relevant material and therefore not in the interests of mineral development. The decision was taken only to augment the revenues of the State which is outside the purview of Section 8(3) of the MMDR Act. The second

Page: 280

renewal of the mining leases granted by the State of Goa is liable to be set aside and is quashed.

154.4. The Ministry of Environment and Forests was obliged to grant fresh environmental clearances in respect of fresh grant of mining leases in accordance with law and the decision of this Court in *Goa Foundation*[1] and not merely lift the abeyance order of 14-9-2012.

154.5. The decision of the Bombay High Court in *Lithoferro* v. *State of Goa*[5] (and batch) giving directions different from those given by this Court in *Goa Foundation*[1] is set aside.

154.6. The mining leaseholders who have been granted the second renewal in violation of the decision and directions of this Court in *Goa Foundation*[1] are given time to manage their affairs and may continue their mining operations till *15-3-2018*. However, they are directed to stop all mining operations with effect from *16-3-2018* until fresh mining leases (not fresh renewals or other renewals) are granted and fresh environmental clearances are granted.

154.7. The State of Goa should take all necessary steps to grant fresh mining leases in accordance with the provisions of the Mines and Minerals (Development and Regulation) Act, 1957. The Ministry of Environment and Forests should also take all necessary steps to grant fresh environmental clearances to those who are successful in obtaining fresh mining leases. The exercise should be completed by the State of Goa and the Ministry of Environment and Forests as early as reasonably practicable.

154.8. The State of Goa will take all necessary steps to ensure that the Special Investigating Team and the Team of Chartered Accountants constituted pursuant to the Goa Grant of Mining Leases Policy, 2014 give their report at the earliest and the State of Goa should implement the reports at the earliest, unless there are very good reasons for rejecting them.

154.9. The State of Goa will take all necessary steps to expedite recovery of the amounts said to be due from the mining leaseholders pursuant to the show-cause notices issued to them and pursuant to other reports available with the State of Goa including the report of Special Investigating Team and the Team of Chartered Accountants.

155. The writ petitions and SLPs are disposed of in accordance with the above conclusions and directions.

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[5] Arising from the Judgment and Order in *Lithoferro* v. *State of Goa*, 2014 SCC OnLine Bom 997 : (2015) 3 AIR Bom R 32 (Bombay High Court, Panaji Bench, WP No. 293 of 2014, dt. 13-8-2014)

[1] *Goa Foundation* v. *Union of India*, (2014) 6 SCC 590

[2] Actually 137 project proponents — there is some duplication.

[3] *Goa Foundation* v. *Union of India*, (2014) 6 SCC 738

[4] *Goa Foundation* v. *Union of India*, (2014) 6 SCC 590 (footnote 17)

[5] *Lithoferro* v. *State of Goa*, 2014 SCC OnLine Bom 997 : (2015) 3 AIR Bom R 32

[6] *State of M.P.* v. *Krishnadas Tikaram*, 1995 Supp (1) SCC 587

[7] <http://www.goadmg.gov.in/Uploads/288.pdf>.

[8] "122. It is my Government's intention to encourage investment in mining sector and promote sustainable mining practices to adequately meet the requirements of industry without sacrificing environmental concerns. The current impasse in mining sector, including, iron ore mining, will be resolved expeditiously. *Changes, if necessary, in the MMDR Act, 1957 would be introduced to facilitate this.*"

(emphasis supplied)

[9] <http://www.businesstoday.in/current/economy-politics/narendra-modi-cabinet-approves-ordinance-for-mines-auction/story/214253.html>.

<https://timesofindia.indiatimes.com/business/india-business/Cabinet-approves-ordinance-for-mines-auction/articleshow/45765290.cms>.

<http://www.financialexpress.com/economy/reforms-cabinet-approves-ordinance-for-mines-auction/26342/>.

<http://www.livemint.com/Politics/VDXphnUmPYGbN4lmzEBslK/Govt-passes-executive-order-to-auction-minerals.html>.

[10] *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 740

[11] *Goa Foundation* v. *Union of India*, (2014) 6 SCC 590 (footnote 4)

[12] *Goa Foundation* v. *Union of India*, (2015) 1 SCC 153

[13] *DDA* v. *Durga Chand Kaushish*, (1973) 2 SCC 825

[14] *Provash Chandra Dalui* v. *Biswanath Banerjee*, 1989 Supp (1) SCC 487

[15] *M.C. Mehta* v. *Union of India*, (2004) 12 SCC 118

[16] *State of W.B.* v. *Calcutta Mineral Supply Co. (P) Ltd.*, (2015) 8 SCC 655 : (2015) 4 SCC (Civ) 395

[17] *Gajraj Singh* v. *STAT*, (1997) 1 SCC 650

[18] *Common Cause* v. *Union of India*, (2014) 14 SCC 155

[19] *Centre for Public Interest Litigation* v. *Union of India*, (2012) 3 SCC 1

[20] *Manohar Lal Sharma* v. *Union of India*, (2014) 9 SCC 516

[21] *Natural Resources Allocation, In re, Special Reference No. 1 of 2012*, (2012) 10 SCC 1

[22] *Kasturi Lal Lakshmi Reddy* v. *State of J&K*, (1980) 4 SCC 1

[23] *Ajar Enterprises (P) Ltd.* v. *Satyanarayan Somani*, (2018) 12 SCC 756

[24] *BALCO Employees' Union* v. *Union of India*, (2002) 2 SCC 333 at paras 46 and 47

[25] *Natural Resource Allocation, In re, Special Reference No. 1 of 2012*, (2012) 10 SCC 1, para 95

[26] *Goa Foundation* v. *Union of India*, (2011) 15 SCC 791

[27] *Sandur Manganese and Iron Ores Ltd.* v. *State of Karnataka*, (2010) 13 SCC 1

[28] *State of Assam* v. *Om Prakash Mehta*, (1973) 1 SCC 584

[29] *Quarry Owners' Assn.* v. *State of Bihar*, (2000) 8 SCC 655

[30] *CIT* v. *Anjum M.H. Ghaswala*, (2002) 1 SCC 633

[31] *Sube Singh* v. *State (NCT of Delhi)*, (2004) 6 SCC 440

[32] *State of U.P.* v. *Singhara Singh*, AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2) : (1964) 4 SCR 485

[33] *Tisco Ltd.* v. *Union of India*, (1996) 9 SCC 709

[34] "**8. *Periods for which mining leases may be granted or renewed***.—(1) The maximum period for which a mining lease may be granted shall not exceed thirty years:

Provided that the minimum period for which any such mining lease may be granted shall not be less than twenty years.

(2) A mining lease may be renewed for a period not exceeding twenty years.

(3) Notwithstanding anything contained in sub-section (2), if the State Government is of opinion that in the interests of mineral development it is necessary so to do, it may, for reasons to be recorded, authorise the renewal of a mining lease in respect of minerals not specified in Part A and Part B of the First Schedule for a further period or periods not exceeding twenty years in each case.

(4) Notwithstanding anything contained in sub-section (2) and sub-section (3), no mining lease granted in respect of mineral specified in Part A or Part B of the First Schedule shall be renewed except with the previous approval of the Central Government."

[35] *Common Cause* v. *Union of India*, (2017) 9 SCC 499

[36] *Ambica Quarry Works* v. *State of Gujarat*, (1987) 1 SCC 213

[37] *Rural Litigation and Entitlement Kendra* v. *State of U.P.*, 1989 Supp (1) SCC 504

[38] *S.N. Mohanty* v. *Union of India*, 2012 SCC OnLine Del 4000

[39] *Property Owners' Assn.* v. *State of Maharashtra*, (2013) 7 SCC 522 : (2013) 3 SCC (Civ) 603

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.400 OF 2023 (Filing No.)
WITH
MISC. CIVIL APPLICATION NO.548 OF 2023 (Filing No.)

1 Sociedade de Fomento Industrial Pvt. Ltd., a
Company incorporated under Indian Companies
Act, 1956 having registered office at Vila
Flores Da Silva, Erasmo Carvalho Street,
P.O. Box 31, Margao, Goa 403 601,
represented herein by its authorized signatory,
Mr Shankar Narayan,
aged 49 years,
resident of H.No.509,
Techno Park, Porvorim Goa.

2 Mr Francisco Lume Pereira,
son of late Jose J. Lume Pereira,
Director of Sociedade de Fomento
Industrial Pvt. Ltd.,
the Petitioner No.1 herein,
aged 74 years,
resident of Senaulim, Verna Goa. ..Petitioners

Versus

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

2 The Director,
Directorate of Mines and Geology,
Government of Goa,
Ground Floor of Institute of Menezes
Braganza, Panaji Goa 403 001.

3 Ministry of Environment,
Forest & Climate Change,
3rd Floor, Indira Paryavaran Bhawan,
Jorbagh Road, Aliganj,
New Delhi 110 003.

4 The Goa Foundation,
Through its Secretary, Dr Claude Alvares,
having registered office at
Room No.7, above Mapusa Clinic,
Mapusa Goa 403 507
PAN No.AAAAG0249C,
EMAIL ID. goafoundation@gmail.com
…Respondents

Mr S. S. Kantak, Senior Advocate with Mr Parag Rao, Mr Yashraj Deora Singh, Ms Linette Rodrigues, Mr Preetam Talaulikar, Mr Akhil Parrikar, Ms Neha Kholkar, and Ms Saicha Desai, Advocates for the Petitioners.
Mr D. J. Pangam, Advocate General, with Mr Deep Shirodkar, Additional Government Advocate for the State.
Mr P. Faldessai, Deputy Solicitor General of India, with Mr Raviraj Chodankar, Central Government Standing Counsel for Union of India.
Ms Norma Alvares with Mr Om D'Costa, Advocates for the Applicant/Intervenor in M.C.A. No.548 of 2023 (F)

CORAM: **M. S. SONAK &**
VALMIKI SA MENEZES,JJ

Reserved on : **23rd MARCH 2023**
Pronounced on: **26th APRIL 2023**

JUDGMENT

1. Heard Mr S. S. Kantak, learned Senior Advocate who appears along with Mr Parag Rao, learned counsel for the Petitioners, Mr D. J.

Pangam, learned Advocate General who appears along with Mr Deep Shirodkar, learned Additional Government Advocate for the State, Mr P. Faldessai, learned Deputy Solicitor General of India and Ms Norma Alvares along with Mr Om D'Costa, learned counsel for the Intervenor.

2. Rule. The Rule is made returnable immediately at the request and with the consent of the learned counsel for the parties.

3. The primary issue in this Petition concerns the effect of Section 8B of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) upon the environmental clearances (ECs) for mining leases that were the subject matter of the decisions of the Hon'ble Supreme Court in ***Goa Foundation Vs Union of India***[1], (GF-I) and ***Goa Foundation Vs Sesa Sterlite Limited and others***[2]**,** (GF-II).

4. The Petitioners raise the above issue in the context of a notice inviting tender (NIT) dated 25.01.2023 for the auction of mineral block described Block-VI – Cudnem- Cormolem Mineral Block. The Petitioners argue that Section 8B of the MMDR applies only to the valid ECs concerning the mining leases whose terms may have expired but not to ECs expressly cancelled by the Ministry of Environment and Forests (MoEF) based on the judicial orders in GF-I and GF-II.

1 (2014) 6 SCC 590

2 (2018) 4 SCC 218

The Petitioners argue that such specifically invalidated and cancelled ECs do not revive under Section 8B of MMDR. Therefore, the Petitioners contend that Respondent Nos.1 and 2 were not justified in representing in the NIT that Section 8B of the MMDR Act shall apply to Block VI, implying that successful auction bidders would not be required to obtain a fresh EC for commencing mining operations for this Block.

5. Based on the above arguments, the Petitioners have applied for the following substantive relief :

> "(A). *Issue a Writ of Mandamus or a Writ in the nature of mandamus or any appropriate writ order or direction, commanding the Respondent No.2 to forthwith delete the words "Section 8B of the MMDR Act shall be applicable to these block" appearing under caption List of Mineral Blocks for Auction in the NIT as well as at the appropriate places in the Tender Document pertaining to Block VI and also to delete the words "obtained by the previous lessee" in Part B of the Summary of Mineral Block provided along with the NIT under caption Details/Status, at Sr. No.3 including at the appropriate places in the Tender Document pertaining to Block VI."*

6. There are a few relevant facts in which the above issue/challenge arises, which are not seriously contested. On 22.08.2007, some leases in Block -VI were granted ECs under EIA 2006. Para 9 of EIA 2006 indicates the term of the ECs as the estimated project life or a

maximum of 30 years. However, after Justice M.B. Shah Commission Report concerning large-scale illegalities, including environmental violations by the mining industries in Goa, was tabled in Parliament on 07.09.2012, the State of Goa by order dated 10.09.2012 suspended all iron ore mining operations pending further orders. MoEF followed suit and kept in abeyance ECs of iron ore mines, including the ECs, for leases in Block VI in the State of Goa by order dated 14.09.2012.

7. The Hon'ble Supreme Court examined the legality and validity of the above orders dated 10.09.2012 and 14.09.2012 in GF-I. All challenges to the same were rejected in judgment and order dated 21.04.2014. Accordingly, the Hon'ble Supreme Court *inter alia* observed, "*the order dated 10.09.2012 of the Government of Goa and the order dated 14.09.2012 of MoEF will have to continue till decisions are taken by the State Government to grant fresh leases and* ***decisions are taken by MoEF to grant fresh environmental clearances for mining projects***". (See para 82 of the SCC report in GF-I).

8. The State then formulated the "*Goa Grant of Mining Leases Policy, 2014*" and, based upon the same, commenced granting a second renewal of mining leases from 05.11.2014 onwards. That process was completed on 12.01.2015. Accordingly, such second renewals were given to 88 mining leases. Significantly, on 12.01.2015,

the President promulgated Mines and Minerals (Development and Regulation) Amendment Ordinance 2015 (which was later enacted by the Parliament) whereby the grant of mining leases notified mineral was to be through competitive bidding or auction process.

9. Following the renewal of 88 mining leases, the State requested the MoEF by letters dated 07.01.2015 and 05.02.2015 to lift the ECs abeyance order dated 14.09.2012. As a result, by three separate orders dated 20.03.2015, the MoEF raised the abeyance on ECs regarding 88 mining leases.

10. The second renewal orders issued by the State Government and three orders dated 20.03.2015 of the MoEF raising the EC abeyances were challenged in GF-II directly before the Hon'ble Supreme Court. By judgment and order dated 07.02.2018, the Hon'ble Supreme Court struck down the State's second renewal order and MoEF's orders dated 20.03.2015.

11. Accordingly, by its order dated 23.04.2018, the MoEF cancelled the ECs granted to 88 mining leases covered by the Hon'ble Supreme Court's decision in GF-II. Neither mining lessees nor the State challenged the MoEF's order dated 23.04.2018, cancelling the ECs issued by the MoEF on 22.08.2007. Accordingly, the Petitioners and Goa Foundation (Intervenor) contend that this order of cancellation of ECs has attained finality.

12. The Parliament enacted Mineral Laws (Amendment) Act, 2020 introducing Section 8B with limited retrospective effect from 10.01.2020 (the date of the Ordinance). This provision was to apply only to the mining leases covered by Section 8A(5) and (6). This provision transfers all **valid** approvals, rights, clearances, and licenses of a previous lessee to a new lessee for a period of two years.

13. The Parliament, by MMDR (Amendment) Act 2021, which entered into force on 28.03.2021, substituted the amended Section 8B by removing the validity period of two years regarding valid approvals, rights, clearances, and licenses. The substituted Section 8B transferred and vested in the new lessee the **valid** approvals, rights, clearances and licenses. As a result, new lessees could operate mining leases based on **valid** approvals, rights, clearances, and licenses granted to former lessees.

14. Based upon the amended/substituted Section 8B of the MMDR Act, the State contends that even the cancelled ECs concerning the leases in Block VI would stand revived and transferred and vested in the new lessees/successful auction bidders in terms of NIT dated 25.01.2023. The Petitioners and the intervenor/Respondent – Goa Foundation contested this position and argued that the amended/substituted Section 8B of the MMDR Act would not apply to ECs that were expressly cancelled under the decision of the Hon'ble Supreme Court in GF -II.

15. The Petitioners also contend that the State has correctly represented in NIT that new lessees/successful auction bidders for Block VII -Cudnem mineral block would require a fresh EC The Petitioners contend that there is no difference between Block -VI and Block VII so far as fresh ECs are concerned. Therefore, the State has applied unequal yardsticks violating Article 14 of the Constitution.

16. Thus, as pointed out earlier, the main issue in this Petition is whether the State, through its NIT, can waive or at least represent that the requirement of obtaining a fresh EC would not apply to new lessees/successful auction bidders given the provisions of substituted Section 8B of MMDR.

17. The above issue will have to be examined *inter alia* in the context of the Mineral Laws (Amendment) Act, 2020, the MMDR (Amendment) Act, 2021, the 2021 amendment to the EIA notification 2006 and the decisions of the Hon'ble Supreme Court in GF-I and GF – II.

18. The statement of objects and reasons (SOR) to the Mineral Laws (Amendment) Bill 2020 *inter alia* provides that the mining lease for 334 mines of iron ore, manganese ore, and chromite was expiring on 31.03.2020, out of which 46 were working non-captive mines. It was observed that some States had initiated action to auction these blocks. However, mines allotted through auction could start mining

operations only after obtaining as many as 20 different clearances from Government agencies. This process was causing an inordinate delay in commencing mining operations and subsequent production of the minerals. Therefore, to overcome these difficulties in the mining sector, it has become necessary to facilitate the seamless transfer of all valid rights, approvals, clearances, licenses and the like for a period of two years to a new lessee in case of minerals other than coal, lignite and atomic minerals.

19. Accordingly, consistent with the above objective expressed in SOR, Section 8B was introduced in the MMDR Act, 1957, which provides that notwithstanding anything contained in the Act or any other law for the time being in force, the successful bidder of the mining lease expiring under the provisions of subsection 5 and 6 of Section 8A and selected through auction as per the procedure provided under the Act and rules made thereunder acquired all valid rights, approvals, licenses and the like vested with the previous lessee for a period of two years: provided that subject to such condition as may be prescribed the new lessee shall apply and obtain all necessary rights, approvals, clearances, licenses and the like within a period of two years from the date of grant of a new lease.

20. Section 8B of the MMDR Act was further amended/substituted by the MMDR (Amendment) Act, 2021. The SOR to the 2021 Amendment Bill *inter alia* provides that in order to fully harness the

potential of the mineral sector, increase employment and investment in the mining sector, including coal, increase the revenue to the States, increase the production and time-bound operationalization of mines, maintain continuity in mining operations after the change of lessee, increase the pace of exploration and auction of mineral resources and resolve long pending issues that have slowed the growth of the sector, it is felt necessary to further amend the said Act. The SOR adds that the MMDR Amendment bill 2021 seeks to provide that all the **valid** rights, approvals, clearances, licenses, and the like granted to a lessee in respect of a mine shall **continue to be valid** even after the expiry or termination of the lease and such clearances shall be transferred and vested to the successful bidder of the mining lease. This will ensure continuity in mining operations even with the change of lessee and conservation of minerals and avoid the repetitive and redundant process of obtaining clearances again for the same mine.

21. Accordingly, amended Section 8B was substituted with a new Section 8B. Since the State Government's entire case is based on substituted Section 8B and the amendment to EIA notification, 2006, the provisions of substituted Section 8B are transcribed below for the convenience of reference.

> *"8B. (1) Notwithstanding anything contained in this Act or any other law for the time being in force, all valid rights, approvals, clearances, licences and the like granted to a lessee in respect of a mine (other than those granted under the*

provisions of the Atomic Energy Act, 1962 and the rules made thereunder) shall continue to be valid even after expiry or termination of lease and such rights, approvals, clearances, licences and the like shall be transferred to, and vested; subject to the conditions provided under such laws; in the successful bidder of the mining lease selected through auction under this Act:

Provided that where on the expiry of such lease period, mining lease has not been executed pursuant to an auction under provisions of sub-section (4) of section 8A, or lease executed pursuant to such auction has been terminated within a period of one year from such auction, the State Government may, with the previous approval of the Central Government, grant lease to a Government company or corporation for a period not exceeding ten years or till selection of new lessee through auction, whichever is earlier and such Government company or corporation shall be deemed to have acquired all valid rights, approvals, clearances, licences and the like vested with the previous lessee:

Provided further that the provisions of sub-section (1) of section 6 shall not apply where such mining lease is granted to a Government company or corporation under the first proviso:

Provided also that in case of atomic minerals having grade equal to or above the threshold value, all valid rights, approvals, clearances, licences and the like in respect of expired or terminated mining leases shall be deemed to have been transferred to, and vested in the Government company or corporation that has been subsequently granted the mining lease for the said mine.

(2) Notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the new lessee to continue mining operations on the land till expiry or

termination of mining lease granted to it, in which mining operations were being carried out by the previous lessee."

22. Thus, the 2020 and 2021 amendments seek to impart continuity to all valid rights, approvals, clearances, licenses and the like granted to a previous lessee. The 2020 amendment, however, was restricted, and the rights, approvals, clearances, licenses, etc., obtained by the earlier lessee could be used or operated by the new lessee for only two years. However, the 2021 amendment removes this two-year ceiling. There is also some difference in the language used in Section 8B, introduced by the 2020 amendment and Section 8B, as substituted by the 2021 amendment.

23. Section 8B, as introduced by the 2020 amendment, applied to leases expiring under the provisions of Section 8A(5) and 8A(6). It provided a deeming fiction for the continuance of earlier rights, approvals, clearances, licenses etc., for two years. Within that period, new lessees were expected to obtain fresh approvals, clearances, licenses etc. However, Section 8B, as substituted by the 2021 amendment, is not restricted to leases expiring under subsections (5) and (6) of Section 8A. Further, the substituted Section 8B purports to transfer and vest all valid rights, approvals, clearances, licenses and the like granted to the previous lease in new lessees/successful auction bidders.

24. But significantly, even the substituted Section 8B refers to "*all* ***valid*** *rights, approvals, clearances, licenses and the like granted to a*

lessee in respect of a mine....." The emphasis is on the word "***valid***". Nothing in Section 8B, as initially enacted or substituted by the 2021 Amendment Act, suggests that an invalid or cancelled approval or clearance would either stand revived or legalized and then be transferred or vested in a new lessee. Therefore, upon a plain reading of Section 8B substituted by the 2021 Amendment Act, it is apparent that what was intended to be transferred or vested in the new lessee were all valid rights, approvals, clearances, licenses and the like granted to the previous lessee in respect of a mine. Incidentally, even the SORs to the two Amendment Acts explicitly refer to "*valid rights, approvals, clearances, licenses and the like granted to the lessee in respect of a mine*".

25. Further, the substituted Section 8B provides that such **valid** rights, approvals, clearances, licences, etc. "*shall continue to be valid even after expiry or termination of the lease and such rights, approvals, clearances, licenses and the like shall be transferred to and vested; subject to the conditions provided under such laws; in the successful bidder of the mining lease selected through auction under this Act*. The expression "*continue to be valid*" presupposes that such approvals, clearances, licenses etc., were valid on the date of transfer and vesting.

26. Section 8B does not contemplate either revival of approvals, clearances, or licenses that may have lapsed under the provisions under

which they were issued or cancelled, withdrawn or struck down for some reasons, and such orders have been attained finality for want of challenge or failure of the challenge. Only what is transferred and vested in the new lessee are all valid approvals, clearances, licenses etc. Therefore, based upon provisions of Section 8B, the State cannot contend that ECs that were expressly cancelled by MoEF based on judicial decisions GF-I and GF-II stand revived and shall be transferred and vested in the new lessee/successful auction bidders, thereby obviating the necessity for such new lessee/successful auction bidders from obtaining fresh ECs.

27. Ministry of Environment, Forest and Climate Change (MoEF), vide Notification dated 13.07.2021, has substituted sub-para 3 of Paragraph 11 in the EIA notification, 2006, with the following, namely:

> *"(3) The prior Environmental Clearance vested with the previous lessee shall be deemed to have been transferred during its validity period in terms of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) as amended by the Mines and Minerals (Development and Regulation) Amendment Act, 2021 (16 of 2021) to the successful bidder of the mining leases, from the date of commencement of new lease for the remaining validity period (calculated from the date from which the said Environmental Clearance was initially granted), subject to the new lessee registering online on PARIVESH portal along with an undertaking to comply with all the conditions of the transferred Environmental Clearance".*

28. The above Notification dated 13.07.2021 refers to the GF-II and amendments introducing Sections 8A and 8B to MMDR Act 1957. The recitals to this Notification refer to aligning the relevant provisions of EIA notification 2006 with the amended MMDR Act, 1957. Therefore, if Section 8B of MMDR refers to *'valid'* ECs, the above Notification, while aligning, cannot be said to have referred to invalid, lapsed or cancelled ECs. Further, we cannot ignore that the MoEF's cancellation of the ECs order dated 23.04.2018 was virtually in deference to or in compliance with the Hon'ble Supreme Court's observations and directions in GF-I and GF-II decisions. Indeed, by amending a notification, the MoEF could not have intended to revive ECs cancelled based upon the observations or directions of the Hon'ble Supreme Court. Therefore, as a Constitutional Court, we cannot support such a strained construction mainly because it would have the effect of reviving ECs adversely commented upon by the Hon'ble Supreme Court In GF-I and GF-II. Besides, such a strained construction would defy the express directions in GF-I and GF-II about the 88 leases not commencing operations until the MoEF issued fresh ECs.

29. Further, even the EIA notification dated 13.07.2021 amending the EIA notification 2006 provides that prior environmental clearance *vested with the previous lessee shall be deemed to have been transferred during its validity period to the successful bidder of the mining leases, from the date of commencement of the new lease for*

the remaining validity period (calculated from the date from which the said environmental clearance was initially granted) subject to new lessee complying with certain conditions.

30. Thus only those ECs vested with the previous lessee shall be deemed to have been transferred to the new lessee. Therefore, if on the date of transfer, an EC that was earlier granted to the previous lessee was not in force either because its validity period had expired or because the same was cancelled or struck down, there is no question of such EC being vested in the earlier lessee on the date of transfer. So also, there is no question of some divested or cancelled EC being transferred or deemed to have been transferred to the new lessee or successful bidder of the mining lease.

31. The amended provisions, including SORs or recitals to the EIA notification 2021, unmistakably indicate that the amendment's object was to ensure continuity in mining operations even with the change of lessee and to avoid repetitive and redundant for obtaining clearances again for the same mine. Thus, the valid approvals, clearances, licenses, etc. granted to the lessee in respect of a mine were to inure for the benefit of the new lessee/successful auction bidder, who could then immediately continue with the mining operations based upon such approvals, clearances, licenses and the like seamlessly, provided of course such approvals, clearances, licenses and the like were valid and existing at the time of transfer and vesting.

32. The above amendments were *inter alia* necessary because even the renewal of a mining lease was invariably regarded as a grant of a fresh mining lease. Based upon this principle, upon the expiry of the term of the mining lease and at the stage of even grant of renewal, fresh ECs had to be necessarily obtained even though the earlier ECs may have been entirely valid. Similarly, getting a fresh EC was necessary if the lease was terminated and a fresh lease was to be granted. Such fresh ECs had to be obtained even though the ECs granted to the former lessee were entirely valid, both regarding their intrinsic merit and validity period. To obviate this repetitive and redundant process of obtaining the ECs again for the same mine, amendments were made to Section 8B and EIA notification, 2006 so that the transfers and operations could be seamless.

33. However, these amendments neither suggest nor can be interpreted to indicate that the ECs whose validity period had already expired or, more importantly, the ECs that were already cancelled because they were found to be infirm and illegal by the Hon'ble Supreme Court would also stand revived, transferred and vested in the new lessee/successful bidders as a consequence of the amendments. Such a construction would then amount to the Legislature, or even the Executive overturning the Hon'ble Supreme Court's judicial decision in a specific case without even bothering to remove the fundamental basis of such a decision or correcting the errors pointed out by the Court. Such a construction would even defy the doctrine of separation

of powers, which is now accepted as one of the facets of the Rule of Law. The Rule of law, in its turn, is now accepted as a constituent of Article 14 of the Constitution.

34. The plain wording of the amendments does not support the State's interpretation. Without Parliament having ever stated so, the State virtually seeks to read the amendment to Section 8B as some sort of legislative overruling of the decision in GF-I and GF-II. In GF-II, the Hon'ble Supreme Court found several faults in the ECs issued to the 88 mining leases that benefited from the second renewal order of the State Government. Not only did the Hon'ble Supreme Court strike down the second renewal order in respect of the 88 leases, but further, the Hon'ble Supreme Court pointed out several illegalities in the issue of the ECs. Therefore, an interpretation that is not supported by the text or the context and further that nullifies express directions of the Hon'ble Supreme Court cannot be accepted.

35. Based upon the State Government's request, the MoEF, which had kept in abeyance the environmental clearances by order dated 14.09.2012, lifted such abeyance order on 20.03.2015. However, the Hon'ble Supreme Court explicitly ruled that the order dated 20.03.2015 lifting the earlier order dated 14.09.2012 keeping in abeyance the ECs was void. Thus the earlier order dated 14.09.2012, keeping in abeyance the ECs dated 22.08.2007 granted to mines in Block VI, was revived. As if this was not sufficient, the MoEF, by a

specific order dated 23.04.2018, cancelled the environmental clearance dated 22.08.2007.

36. Thus as of the date of coming into force of Section 8B in MMDR Act, 1957 or, more pertinently, as of the date of publication of NIT in 2023, EC dated 22.08.2007 was no longer in force. Consequently, the said EC was no longer a valid EC that could, in terms of Section 8B of MMDR Act, 1957, have been transferred and vested to a new lessee or a successful bidder at the proposed auction through NIT. The State was obliged to state this position clearly in the NIT or at least not represent or suggest that no fresh EC was necessary for operating the mines in Block VI of the NIT.

37. In doing so, the State perhaps seeks to ignore or downplay the "*rapacious and rampant exploitation*" of Goa's natural resources "*iron ore mining sector*" coupled with a total lack of concern for the environment and the health and well-being of the denizens in the vicinity of the mines. These are the words with which the Hon'ble Supreme Court commenced its judgment in GF- II:

> "*Rapacious and rampant exploitation of our natural resources is the hallmark of our iron ore mining sector coupled with a total lack of concern for the environment and the health and well-being of the denizens in the vicinity of the mines. The sole motive of mining leaseholders seems to be to make profits (no matter how) and the attitude seems to be that if the Rule of law is required to be put on the*

backburner, so be it. Unfortunately, the State is unable to firmly stop violations of the law and other illegalities, perhaps with a view to maximize revenue, but without appreciating the long term impact of this indifference. Another excuse generally put forth by the State is that of development, conveniently forgetting that development must be sustainable and equitable development and not otherwise."

38. In GF-II, the questions which arose for consideration were set out in para 36, and the same read as follows:-

"*Questions for consideration*

39. *Broadly speaking, on the basis of the submissions and documents placed before us, the questions raised by the Goa Foundation, the State of Goa, the Union of India and the mining lease holders are threefold:*

36.1. (a) Relatable to the second renewal of the mining leases: (i) In view of the decision in Goa Foundation only fresh leases were to be granted by the State of Goa and not second renewals. (ii) For granting fresh leases, the State of Goa should have introduced competitive bidding or the auction process. (iii) Assuming the decision to grant a second renewal to the mining lease holders was valid, the second renewals were not in accordance with law and should be set aside.

36.2 (b) Relatable to the grant of environmental clearances: In view of the decision in Goa Foundation fresh environmental clearances were required to be obtained by the mining lease holders.

36.3 (c) The impugned judgment and order passed by the High Court in Lithoferro vs State of Goa, 2014 SCC OnLine Bom 997, on 13 August, 2014 was erroneous and deserves to be set aside."

40. On the first question, referred to in para 36.1 above, the Hon'ble Supreme Court held that the direction in GF-I was quite clear. Therefore, instead of considering a second renewal of the mining lease, the State of Goa was required to consider a fresh mining lease. Accordingly, the decision of the State of Goa to grant a second renewal to the 88 mining leases was held to be erroneous, contrary to the decision in GF-I and the same was quashed.

41. In the context of the second question referred to in para 36.2 above, relatable specifically to the grant of environmental clearances, the Hon'ble Supreme Court took cognizance of a report of the Vishwanath Anand Expert Appraisal Committee (EAC). In para 86, the Hon'ble Supreme Court held that "*A reading of the report of the EAC is disturbing and acutely highlights the damage to the environment and ecology by the mining lease holders. The complete indifference by all concerned is evident from a careful reading of the report."* The Hon'ble Supreme Court then referred to and quoted in extenso *"Summary of Observations"* and the "C*oncluding Remarks"* from the report of EAC since, according to the Hon'ble Supreme Court, they were self-explanatory.

42. The discussion on the ECs issue is found in Paras 86, 87 and 88 from Goa Foundation-II, transcribed below for the convenience of reference.

> "*86. A reading of the report of the EAC is disturbing and acutely highlights the damage to the environment and ecology by the mining lease holders. The complete indifference by all concerned is evident from a careful reading of the report. We propose to refer to and quote in extenso the "summary of observations" and the "concluding remarks" from the report of the EAC since they are self explanatory:*
>
> *"Summary of Observations*
>
> *I. The absence of specific conditions highlighting the mandatory requirement to obtain prior approval of the Standing Committee of the NBWL [National Board for Wild Life] in the EC [Environmental Clearance] has led to misinterpretation of the legal requirement. There has been an inordinate delay of more than 5 years before effective action against defaulting units were initiated by the Ministry for non-compliance of the Hon" ble Supreme Court order dated 04.12.2006.*
>
> *II. Out of 137 ECs, the requirement of obtaining approval of the Standing Committee of the NBWL under the WL (P) Act 1972 [Wild Life (Protection) Act] has not been complied with in 123 cases where the distances are less than 10 km from the nearest PA [Protected Area].*
>
> *III. In respect of 10 cases approval of the Standing Committee of the NBWL is not mandatory as the mine leases are located beyond 10 km from nearest PA.*

IV. Contrary to the directions of the Hon" ble Supreme Court dated 04.08.2006 in Writ Petition (Civil) No. 202/1995; ECs have been accorded to 41 mines located within 1 km from the nearest PA.

V. In respect of 20 cases mine leases were renewed under the MMDR Act, 1957 prior to grant of FCs [Forest Clearance].

VI. In 29 cases, project proponents have furnished wrong information about distance from the nearest Pas.

VII. Non-compliance of various EC conditions such as excess production/unauthorized dump mining/drawal of ground water without prior approval of CGWB/encroachment; have also been reported in respect of working mines.

Concluding Remarks

A reading of our observations and recommendations would show that without exception, every proponent to whom an environment clearance was issued has either violated its conditions or has furnished information in the application which has been distant from the truth. There are basically two types of violations; one that cannot be legally condoned and those that can be rectified with remedial measures. This is the reason why the committee has recommended that all ECs for mines located within one km from PAs should be revoked and in cases where untruthful information was furnished in the application for EC, such mines should not be allowed to reopen. In the case of those mines which have been closed for more than five years, their reopening has not been recommended without their applying de novo for a fresh environmental clearance as micro environmental conditions on the ground would have changed during the period they remained closed. However, when one looks at the manner in

which the directives dated 04.08.2006 and 04.12.2006 of the Supreme Court have been implemented one cannot help but feel that there is the absence of a bridge mechanism within the Ministry to ensure and oversee that directives of the Courts are complied with due diligence and seriousness.

There are two factors which stand out; in some ECs as mentioned in this report, the condition was inserted that the project proponent should seek approval of the CWLW [Chief Wild Life Warden], in others it was stated that approval of the Competent Authority/Standing Committee of the NBWL should be obtained and in a third category no condition at all was imposed, even though some of these ECs pertain to the same meeting and timelines between 2005 and 2007. It is strange that officials concerned in the MoEF were not aware that other than the Standing Committee of the NBWL no other person was authorized to grant the permission envisaged by the order dated 04.12.2006 of the Supreme Court. This is not to state that any discrepancy in the EC letter would absolve the project proponent from complying with the law of the land. This has resulted in creating ambiguity amongst many of the project proponents and it was not until 01.01.2009, that the MoEF issued a public notice clarifying the position.

Considering that some of the project proponents may have been misguided by the ambivalence of the MoEF in not clearly delineating the legal position, it is suggested that in the case of those project proponents who did not conceal facts in their applications but did not apply for permission to the Standing Committee of the NBWL, their applications may be considered for being placed before the Standing Committee of the NBWL. However this can in no way be construed as a justification on the part of the project proponents for not complying with the requirements of the law. It must be noted for example that in those cases where mining has intersected the ground water, approval of the CGWB [Central Ground Water Board] had not been taken by the project proponents as was

required by the EC Similarly, there are cases where mining operations have taken place without obtaining a FC.

* * *

As regards violations of the conditions of the ECs and where environmental damage has been caused, the proponents concerned should be made accountable and the MoEF should examine as to how some monetary damages can be levied through due legal process based on the Polluter Must Pay principle, the proceeds of which could be used for environmental rehabilitation.

There are concerns about the carrying capacity of the area with regard to its ability to sustain the extent and quantum of mining that has taken place there. It is recommended that a carrying capacity study should be commissioned for the area, or if another study by a nationally recognized institution is coming to fruition the result of that should be acted upon. Such a study should also take into account the impact of mining on the hydrology of the region and the extent of pollution caused to surface and ground water. This study should be compared to the earlier 10 years' baseline data to determine the impact of mining on the biodiversity and hydrology of the area in the last decade. Based on the finding of this, a specific policy for mining of iron ore in the region may be developed. Such a policy along with a proper control and monitoring mechanism is necessary in order to avoid a situation such as the one under question. It would hopefully also ensure that mining in this region is carried out in accordance with best sectoral practices using appropriately clean technologies." Emphasis supplied by us].

87. The report of the EAC reveals that there is not a single environment -related or mining -related law or legal requirement that was not violated by one or the other mining

lease holder. Quite clearly, the Rule of environmental law in Goa had gone with the wind.

88. There was one extremely important requirement relating to extraction of groundwater – that is, clearance from the Central Ground Water Board - but even that was ignored. During the course of submissions, we were informed that there is plenty of groundwater available in Goa. However, what seems to have been overlooked is that with the intersection of groundwater levels with mining operations, the groundwater would get depleted much faster than expected or the quality of the groundwater would deteriorate. It is for this reason that MoEF insisted that clearance for drawal of groundwater must be taken from the Central Ground Water Board and care taken in respect of the intersection of groundwater level with mining operations (this happened in 46 cases). Unfortunately, no heed was paid to these requirements by the State of Goa or any of the mining lease holders and not one mining lease holder has any clearance (where required) from the Central Ground Water Board, or at least none was brought to our notice".

43. The Hon'ble Supreme Court, after referring to the EAC report, proceeded to consider whether fresh ECs were required to be obtained by the 88 mining lease holders claiming the benefit of second renewal. In para 129, the Hon'ble Supreme Court noted the specific direction in para 82 of GF-I that such fresh environmental clearance had to be obtained. Further, the Hon'ble Supreme Court pointed out that some leaseholders had ECs under EIA 1994 and others under EIA 2006. Notwithstanding this, since in GF-I, it was already directed that fresh environmental clearance must be obtained, the Hon'ble Supreme

Court held that this direction had to be complied with by those who were granted a fresh mining lease.

44. In para 130 of GF-II, the Hon'ble Supreme Court observed, "*That apart, the materials before the Court while deciding the Goa Foundation included the report of the Justice Shah Commission, report of the EAC and the report of expert committee constituted by the Court by orders dated 11.11.2013 and 18.11.2013. On a combined reading of the material before it, the Court took a broad view that large-scale mining of iron ore led to several adverse impacts including those related to the environment, ecology and health of the people of Goa and that these illegalities and irregularities were committed by almost all (if not all) mining lease holders as reported by the EAC. The Court also accepted the view of the Expert Committee that the ecology of Goa was being degraded through indiscriminate mining and placed a cap on the annual excavation of iron ore. It was noted that mining by the lessees in Goa after 22 November, 2007 was illegal and that mining operations were suspended by the State of Goa on 10 September, 2012 and environmental clearances granted to the mines were kept in abeyance by the MoEF on* ***14 September, 2012. Considering all this, as well as the law laid down in Goa Foundation to the effect that there is no automatic second renewal of a mining lease but that a second renewal must be granted in accordance with the provisions of Section 8(3) of the MMDR Act, the Court used the expression***

"grant fresh environmental clearances for mining projects" in the passage referred to above.

45. Thus the Hon'ble Supreme Court in GF-II, in clear and unambiguous terms, held that fresh ECs were a must for mining leases in the State of Goa affected by the decision in GF-I and GF-II. This reiteration in GF-II was based not only upon the explicit direction in GF-I but also material in the form of the Justice Shah Commission report, report of EAC, and report of the expert committee constituted by the Court. This direction was also based upon the Hon'ble Supreme Court taking a broad view that large-scale mining of iron ore led to several adverse impacts, including those related to the environment, ecology and health of the people of Goa and that almost all committed these illegalities and irregularities (if not all) mining lease holders as reported by the EAC. All this is evident from the expression "**That apart**", with which para 130 of GF II proceeds.

46. Therefore, to now say that Section 8B of MMDR Act, 1957 or the EIA Notification of 13.07.2021 virtually does away with and nullifies all these clear and specific findings and directions of the Hon'ble Supreme Court in GF-I, and GF-II is a contention that cannot be accepted. Neither do the provisions of Section 8B support such a construction nor can it be said that Parliament intended to legislatively overrule or reverse the specific directions issued by the Hon'ble Supreme Court about obtaining fresh ECs. As noted earlier,

such express directions were first given in GF-I. Moreover, they were reiterated in GF-II when the State Government and MoEF attempted to wriggle out from such directions on the specious plea that a second renewal was granted and earlier orders, keeping in abeyance the environmental clearances lifted.

47. In GF-II, the Hon'ble Supreme Court, after referring to the EAC report, referred to the expert committee report, which Hon'ble Supreme Court observed, makes for some very depressing reading. This is the discussion in para 131 of the Goa Foundation-II, transcribed below for the convenience of reference.

> "*131. We have already adverted to the report of the EAC. As far as the Expert Committee set up by the Court is concerned, it had furnished an Interim Report dated 14 March, 2014 in which it noted large-scale degradation of the environment and recommended placing an annual cap between 20 and 27.5 million tonnes on the extraction of iron ore in Goa. The Expert Committee noted the following (which makes for some very depressing reading):*
>
> > *"The production of iron ore has jumped from 14.6 million tons in 1941 to 41.17 million tons in 2010-2011. In 1980s the production was about 10 MT/annum. The quantum jump in iron ore production in Goa was essentially due to steep rise in exports of fines and other low grade ore of 42% Fe content to China. This has led to massive negative impacts on all ecosystems leading to enhanced air, water, and soil pollution affecting quality of life across Goa. This is evident by three important reports i.e. (i) Areawise Environmental Quality Management*

(AEQM) Plan for the Mining belt of Goa by Tata Energy Research Institute, New Delhi and Goa (1997) and it was submitted to the Directorate of Planning, Statistics, and Evaluation, Government of Goa, (ii) Environmental and Social Performance Indicators and Sustainability Markers in Minerals Development Reporting Progress towards Improved Ecosystem Health and Human Well-being, Phase III by TERI and International Development Research Centre, Ottawa, Canada (2006) and (iii) the Regional Environmental Impact Study of Iron Ore Mining in Goa region sponsored by MoEF, New Delhi (2014) by Indian School of Mines. Besides the above three main reports, a number of scientific research papers on the impact of iron ore mining on the environment and ecology of diverse ecosystems were published by scientists working at Goa University and NIO.

These reports and publications substantiate that the mining, particularly the enhanced level of annual production contributed to adverse impacts on the ecological systems, socio- economics of Goa and health of people of Goa leading to loss of ecological integrity. This is due to enhanced levels of pollutants, particularly RSPM and SPM, sedimentation of materials from dumps and iron ore in rivers, estuaries and shallow depth (20 m) of sea water, agricultural fields, high concentration of Fe and Mn in surface waters and their bioaccumulation." Emphasis supplied]."

48. In para 132 of the GF -II, the Hon'ble Supreme Court held that faced with all this material evidence before it, the Court took the view in GF-I that fresh ECs must be obtained. In the context of an attempt by the State of Goa to bypass this direction, the Hon'ble Supreme Court at para 132 observed: "*Unfortunately however, the*

State of Goa was more concerned with earning revenue rather than the health of the people of Goa or enforcing the rule of law and therefore gave a complete go-bye to the directions of this Court and to the concerns of the citizens of Goa and requested the MoEF to lift the abeyance on the environmental clearances."

49. The Hon'ble Supreme Court, in para 135 of GF-II, also made scathing observations about misleading information contrary to some earlier decisions of the Hon'ble Supreme Court, resulting in the lifting of order keeping in abeyance of environmental clearances. The Hon'ble Supreme Court held that the order dated 20.03.2015 lifting abeyance was "*cryptic*" and issued "*without application of mind*". The observations in paras 137 and 140 of the Goa Foundation-II are relevant and transcribed below for the convenience of reference.

> "*137. The third order of 20 March, 2015 is extremely cryptic in the matter of lifting the abeyance order of 14 September, 2012 on environmental clearances. While dealing with 35 mining leases for which environmental clearance had been granted under EIA 1994 and 37 mining leases for which environmental clearance had been granted under EIA 2006, the following is stated:*
>
> > *"It has been decided in the Ministry that the EC issued under 1994 notification in case they are valid and subsisting would not require fresh EC at the time of renewal (OM L-11011/15/2012-IA-II (M) dated 20.3.2015. Therefore it has been decided to lift abeyance on the 72 cases of which 35 cases had been granted EC under the provisions of EIA notification 1994 and 37 cases*

had been granted EC under EIA notification 2006." Emphasis supplied].

140. What is disturbing is that notwithstanding several and various violations, the MoEF granted environmental clearance to 72 mining leases. It seems to us that the MoEF acted without any application of mind in lifting the order placing all the environmental clearances in abeyance. Since the entire exercise carried out by the MoEF on 20 March, 2015 was mechanical, at the behest of the State of Goa, without due application of mind, without considering the multiple illegalities and irregularities committed by the mining lease holders or passing on the buck to the State of Goa and without considering relevant material such as the report of the EAC and the Expert Committee appointed by this Court, the exercise of lifting the abeyance order on 20 March, 2015 by the MoEF must be held void and as directed by the Court in Goa Foundation all the mining lease holders must obtain fresh environmental clearance for their mining project."

50. The Hon'ble Supreme Court at para 142 of the GF -II emphasized that issues impacting society must be looked at holistically and not in a disaggregated manner. An overall perspective was necessary on such matters, including issues that impact the environment and the people of a community, region, or State. For this reason, it was essential to look at them broadly; otherwise, if that broader perspective was lost, everyone would be a loser, and no one would be a real beneficiary. One or two violations here and there may be wished away as inconsequential, but multiple violations by several persons can result in serious problems. The Court quoted the novelist

and philosopher Ayn Rand: **We can evade reality, but we cannot evade the consequences of evading reality.**

51. Therefore, the Hon'ble Supreme Court ruled that there was no doubt that the Mineral Policy, the Grant of Mining Leases Policy, the amendment to the MMDR Act, the report of the EAC and the report of the Expert Committee *must be considered in the larger context of constitutionalism, the Rule of law, environmental jurisprudence as well as the fundamental right of the people of Goa to have clean air and protection of the fragile ecology.* The Court ruled that *Governance cannot and should not be carried out de hors the interests of the people and some uncomfortable decisions may be inevitable for balancing the equities*.

52. Finally, in GF-II, the Hon'ble Supreme Court held that the second renewal of the mining leases granted by the State of Goa was liable to be quashed and set aside. Further, the Court reiterated that the MoEF was obliged to grant fresh environmental clearances in respect of the fresh mining leases in accordance with law and the decision in GF-I and not merely lift the abeyance order of 14.09.2012. Therefore, the mining leaseholders who had been granted the second renewal in violation of the decision and directions of this Court in GF-I were given time to continue their mining operations till 15 March 2018. However, after this date, they were directed to stop all mining operations "*until fresh mining leases (not fresh renewals or*

other renewals) are granted and fresh environmental clearances are granted." Yet the State is bent on defying this clear and unambiguous direction a second time.

53. The Hon'ble Supreme Court directed that the State of Goa should take all necessary steps to grant mining leases in accordance with the MMDR, 1957. Further, the MoEF was also directed to take all necessary steps "*to grant fresh environmental clearances to those who are successful in obtaining fresh mining leases".* Finally, this exercise was directed to be completed by the State of Goa and MoEF as reasonably practicable.

54. The learned Advocate General, however, stressed upon para 139 of the GF-II to urge that whatever may have been the directions of the Hon'ble Supreme Court in GF I and GF-II, given the Parliamentary amendment to Section 8B and the EIA Notification dated 13.07.2021, fresh ECs were no longer essential for mines holding ECs under EIA,2006. He submitted that Parliament is Sovereign and Supreme in such matters, and the command of the Parliament must be obeyed.

55. Para 139 of GF I reads as follows:-

> *"139. As regards the 37 mining leases that had obtained environmental clearance under EIA 2006, since the validity of the environmental clearance is for the estimated project life or*

a maximum of 30 years in terms of paragraph 9 of EIA 2006 therefore no violation can be found on the ground of validity for the time period. To this limited extent, no interference is necessary at this stage in respect of these 37 mining leases. We make it clear, however, that this is subject to our conclusion that fresh mining leases were required to be granted by the State of Goa. Consequently, a mining lease holder obtaining a fresh mining lease would require a fresh environmental clearance in terms of EIA 2006."

56. The learned Advocate General submitted that the Hon'ble Supreme Court had expressly held that the ECs under EIA 2006 for the estimated project life or a maximum of 30 years in terms of Para 9 of EIA 2006 were valid in the above para. He submitted that the Hon'ble Supreme Court also found it unnecessary to interfere with the ECs for 37 mining leases that had obtained environmental clearances under EIA 2006. Therefore, based upon such reading of Para 139, the learned Advocate General submitted that ECs granted under EIA 2006 were valid and in terms of amended Section 8B of the MMDR, 1957, such valid ECs would continue to remain valid and stand transferred and vested to the new lessee/successful auction bidder. Therefore, he submitted that there was no longer any requirement for obtaining a fresh environmental clearance. He submitted that even specific directions in GF-I and GF-II would no longer apply, given the legislative introduction and amendment to Section 8B of the MMDR. The Advocate General submitted that Parliament is "*sovereign*" and "*supreme*" in such matters and, therefore, notwithstanding any judicial decision, the command of the Parliament will have to be

abided by. He submitted that the State of Goa was not some island to which the Parliamentary legislation was inapplicable.

57. With respect, we cannot agree with the learned Advocate General's broad-based contention. Firstly Para 139 has to be read in its entirety. Secondly, Para 139 has to be read along with the other Paras commencing from 129 to 142 of the decision in Goa Foundation-II. Thirdly, the last four lines of 139 also cannot be ignored where the Hon'ble Supreme Court has clarified that its observations in the preceding lines of Para 139 are subject to the Court's consideration that fresh mining leases were required to be granted by the State of Goa and consequently, the mining leaseholders obtaining a fresh mining lease would require a fresh environmental clearance in terms of EIA 2006. Therefore, it almost appears that the Hon'ble Supreme Court was conscious of potential attempts at misinterpretation and clarified that the lines now quoted by the learned Advocate General were subject to the specific direction for obtaining fresh ECs.

58. Under our Constitutional scheme, it is the Constitution itself that is supreme. Therefore, the argument based upon the sovereignty that the Parliament undoubtedly has cannot persuade us to hold that explicit judicial directions in GF-I, equally explicitly reiterated in GF-II, can now be ignored by the State Government relying upon amendment to Section 8B or amendment to EIA notification 2006. Moreover, even the argument of Supremacy of the Parliament

overlooks the doctrine of separation of powers, acknowledged as an essential facet of the Rule of Law. The Rule of law, in turn, is a crucial constituent of Article 14 of the Constitution. But, as noted earlier, even the text of Section 8B or the Notification dated 13.07.2021 does not support such a broad construction. Even otherwise, it is well settled that legislative or executive powers cannot be employed to overrule or reverse judicial orders without bothering to cure the defects or remove the fundamental basis of judicial decisions.

59. In ***Government of Kerala, Irrigation Department and Ors, vs James Varghese and Ors[3].*** and ***State of Tamil Nadu vs State of Kerala[4],*** the Hon'ble Supreme Court has explained that even without the express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India. This doctrine informs the Indian Constitutional structure and is essential to the Rule of law. In other words, the doctrine of separation of powers though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of the Indian Constitution.

60. The two decisions hold that the independence of Courts from the Executive and Legislature is fundamental to the Rule of law and one of the basic tenets of the Indian Constitution. Separation of judicial power is a significant principle under the Constitution of

3 (2022) 9 SCC 593

4 (2014) 12 SCC 696

India. Accordingly, breaching the separation of judicial power may negate equality under Article 14. Separation of powers between three organs – the Legislature, Executive and Judiciary, is also nothing but the consequence of principles of equality enshrined in Article 14 of the Constitution of India. The Court held that legislation could be invalidated based on a breach of the separation of powers since such a breach negates equality under Article 14 of the Constitution.

61. In GF-I and GF-II, the Hon'ble Supreme Court pointed out several reasons based upon which the direction was issued for fresh mining leases to obtain fresh ECs. In particular, the GF-II gives several reasons supporting this direction, including but not limited to materials like the Justice Shah Commission report, EAC report, and expert committee report. The Hon'ble Supreme Court refers to accepting the broad view in such matters. Based upon a combined reading of material before it, the Hon'ble Supreme Court took into consideration several impacts, including those related to environment ecology and the health of the people of Goa, and these illegalities and irregularities were committed by almost all (if not all) mining leaseholders as reported by the EAC.

62. Therefore, the direction for obtaining fresh ECs was not connected solely with the direction to obtain fresh mining leases (and not fresh renewal or other renewal). Still, this direction was based upon all such material referred to in great detail by the Hon'ble

Supreme Court in GF-I and GF-II. Therefore, merely because the law may have been amended by the introduction of Section 8B, explicit direction for obtaining fresh environmental clearance cannot be said to have been nullified by such amendment. Besides, upon properly construing the amended clause, it is clear that only valid ECs could be continued, transferred, and vested in the new lessee. Accordingly, even Section 8B as it now stands does not contemplate either validation or continuance of ECs which, upon adjudication, were found to be legally infirm or all ECs that were explicitly cancelled by the MoEF based upon observations of the Hon'ble Supreme Court in GF -I and GF-II. This also substantially answers the learned Advocate General's argument about the State of Goa being converted into an island where the provisions of Section 8B of the MMDR Act would not apply. Section 8B would undoubtedly apply to the State of Goa. But the provision applies only to transferring and vesting valid ECs to the new lessees/successful bidders, not where ECs are cancelled or struck down by judicial orders. By the proposed construction, the State wishes to read into the provision something the Parliament did not say or intend to say.

63. Mr Kantak pointed out that in the context of amendment to the MMDR Act by which Section 8A was introduced, the State Government, by communication dated 19.11.2019, agreed that some of the mining lessees would be entitled to the benefit of the extended lease term i.e. from 1987 to 2037 (for 50 years) in terms of Section

(A)(3) of the MMDR Act, 1957. However, by pointing out the specific directions in GF-I and GF-II decisions, the State Government declined to extend the benefit of Section 8A to such mining lessees.

64. Therefore, when applying provisions of Section 8A of the MMDR Act, 1957, the State Government did not consider itself bound by the amended provisions but chose to follow explicit directions issued by the Hon'ble Supreme Court in GF-I and GF-II judgments. These explicit directions required the State Government to consider cases of mining leases in the State of Goa for the grant of fresh leases and not renewal or extension of their term. However, when it comes to the application of Section 8B of the MMDR, at least in the context of Block VI mines, the State Government wants to rely upon its peculiar interpretation of Section 8B, notwithstanding the explicit directions in GF-I and GF-II judgments that such mines cannot operate without obtaining fresh ECs.

65. Incidentally, the State Government's order dated 19.11.2019 in the context of Section 8A was challenged in Writ Petition No.1005 of 2019 (Vedanta Limited and Another Vs Director of Mines & Geology and others). The Petitioners raised contentions almost similar to what are now raised by the State in this matter. There, the State defended its order by raising arguments similar to what are now raised by the present Petitioners and Intervenors. Accordingly, this Petition was dismissed by the Division Bench by order dated 25.11.2019.

66. The learned Advocate General's contention in defence of the State Government's order dated 19.11.2019 refusing to apply provisions of Section 8A of the MMDR is set out in Para 5 of this Court's order dated 25.11.2019 and reads as follows:-

> "*Shri Pangam, however, points out that the decision of the Hon'ble Apex Court in Goa Foundation – II judgment is quite clear inasmuch as all mining operations in the State of Goa ordered to be stopped with effect from 16/03/2018 until fresh mining leases or other renewals and* ***fresh environmental clearances are granted."***

67. The Division Bench, in its order dated 25.11.2019, while dismissing the Writ Petition No.1005 of 2019, also observed the following in Para 9 as follows:-

> "*9. Secondly, we note that the directions of the Hon'ble Supreme Court in Goa Foundation-II are quite clear in that the State of Goa has been directed to take all necessary steps to grant the "fresh mining leases" in accordance with the provisions of MMDR, 1957. The Ministry of Environment and Forests is also directed to take all necessary steps to grant "fresh environmental clearances" to those who are successful in obtaining "fresh mining leases". The Hon'ble Supreme Court, in the same judgment has also directed the State of Goa to stop all mining operations with effect from 16 March, 2018 until "fresh mining leases (not fresh renewals or other renewals)" are granted and "fresh environmental clearances are granted". Faced with such clear and categorical directions, we agree with the learned Advocate General that the State of Goa had no option but to reject the representation*

made by the Petitioner, for the present. There is accordingly, no case is made out to interfere with the impugned communication."

68. Vedanta Limited and Another instituted the Petition (s) for Special Leave to Appeal (C) No(s).29211/2019 to challenge this Court's order dated 25.11.2019 in Writ Petition No. 1005 of 2019. However, the same was dismissed by the Hon'ble Supreme Court by order dated 07.09.2021. Similarly, the Review Petition (C) Diary No.41515 of 2019 in SLP (C) No.32138 of 2015 instituted by the State of Goa to challenge the decision in GF-II was also dismissed by the Hon'ble Supreme Court as barred by limitation and also on merits. Again, this is clear from the Hon'ble Supreme Court's order dated 09.07.2021.

69. The Hon'ble Supreme Court's order dated 09.07.2021 dismissing the Review Petition against the Goa Foundation-II judgment is transcribed below for the convenience of reference:-

"*The Judgment of the Court was delivered by :*

Dr D. Y. Chandrachud, J *- The review petitions have been preferred by the State of Goa (Diary No 41515 of 2019 and Diary No 41517 of 2019, both with a delay of 650 days and Diary No 41453 of 2019 and Diary No 41545 of 2019, both with a delay of 651 days) and by Vedanta Limited (formerly known as M/s Sesa Sterlite Limited) (Diary No 18430 of 2020, Diary No 18435 of 2020, Diary No 18438 of 2020 and Diary No 18447 of 2020, all four with a delay of 907 days) against the judgment of a two-Judge Bench of this Court in* ***Goa***

Foundation vs Sesa Sterlite Limited & Ors[5], *[hereinafter referred to as "Goa Foundation (2)"], pronounced on 7 February 2018.*

2. In accordance with Rule 2 of Order XLVII of the Supreme Court Rules, 2013, an application for review of a judgment has to be filed within thirty days of the date of the judgment or order that is sought to be reviewed. No cogent grounds have been furnished for the delay between 20 and 26 months by the two parties in filing their applications for review. The Judges comprising the two-Judge Bench in Goa Foundation (2), Madan B. Lokur and Deepak Gupta, JJ., retired from this Court on 30 December 2018 and 6 May 2020, respectively. The State of Goa preferred its four review petitions in the month of November 2019, after Justice Madan B. Lokur, J's retirement, while Vedanta Limited preferred its four review petitions in the month of August 2020, right after Deepak Gupta, J's retirement. Such practice must be firmly disapproved to preserve the institutional sanctity of the decision-making of this Court. The review petitioners were aware of the decision of this Court.

3. ***Keeping in mind the above, we are inclined to dismiss these review petitions on the ground of limitation alone. However, in any event, we also find that no legitimate grounds for review of the judgment in Goa Foundation (2) have been made out, and dismiss these review petitions on merits as well.***

4. Pending application(s), if any, are disposed of."

70. Some of the erstwhile mining lessees made yet another attempt to bypass the explicit directions in GF-I and GF-II once again by relying upon Sections 8 and 8A of the MMDR Act, 1957 and the

5 (2018) 4 SCC 218

decision of the Hon'ble Supreme Court in ***Common Cause Vs Union of India,*** 2016(11) SCC 455. The erstwhile lessees contended that irrespective of the directions in GF-II and by virtue of the provisions in Sections 8 and 8A of the MMDR Act, as interpreted in *Common Cause* (supra), they were eligible and entitled to treat the original lease period as being of 50 years to be reckoned from 1987 and up to 2037. After the State Government did not accept such contentions, erstwhile mining lessees instituted several petitions, including Writ Petition No.255 of 2022 (*Lithoferro Vs Director of Mines and Geology) others*). This batch of petitions was disposed of by the Division Bench of this Court vide judgment and order dated 07.10.2022 (See 2022 SCC OnLine Bom 3420).

71. Before the Court, the Petitioners, by relying upon Sections 8 and 8A of the MMDR Act, 1957, urged that notwithstanding the specific directions in GF-I and GF-II, under Sections 8 and 8A of the MMDR Act, 1957, their lease terms stood extended up to 2037. Additionally, the Petitioners placed strong reliance on Common Cause (Supra).

72. In the above batch of petitions, the submissions on behalf of the Goa Foundation (Intervenor) and the State of Goa are recorded in Para 21 of the judgment and order dated 07.10.2022. One of the contentions on behalf of the Goa Foundation and the State of Goa was that the declaration in Para 87.1 of the Goa Foundation-I

judgment was conclusive. The Goa Foundation and the State of Goa also contended that the directions for grant of "*fresh lease" i*n the GF-I judgment *"was deliberate and conscious decision distinct and different, from granting of second renewal of expired leases in other States and, therefore, Goa has not been discriminated."*

73. The Division Bench of this Court, in its judgment and order dated 07.10.2022, after considering the several arguments which were advanced before it dismissed all the writ petitions by erstwhile mining lessees. The Division Bench in Para 38 specifically concurred with the order dated 25.11.2019 passed by the coordinate Bench of this Court in Writ Petition No.1005 of 2019 filed by M/s Vedanta Ltd. and another. The Division Bench squarely rejected the erstwhile lessees' contentions about specific directions in GF-I and GF-II judgments being watered down by the 2015 amendment to the MMDR Act, 1957. The Division Bench noted that the GF-II judgment not only reinforced the directions issued in GF-I but, in Para 154.6, held and directed the mining leaseholders to stop all mining operations until fresh mining and environmental clearances are granted.

74. The Special Leave Petition against the above judgment and order dated 07.10.2022 passed by the Division Bench in *Lithoferro* (supra) and other batch petitions was dismissed by the Hon'ble Supreme Court on 21.11.2022 (*Sociedade Zarapkar and Parkar*

Limitada Vs The State of Goa and others, Petition for Special Leave to Appeal (C) No(s). 19694/2022).

75. Thus, in the context of amended provisions of Sections 8 and 8A of the MMDR Act, 1957, even the State Government supported the Goa Foundation's contention that specific directions in GF-I and GF-II judgments would prevail and that such directions were not watered down by the amended provisions. However, in the context of amended provisions of Section 8B of the MMDR Act, 1957, the State of Goa contends that this provision would prevail over the express directions in the GF-I and the GF-II judgments that fresh ECs must be obtained before the commencement of any mining operations. This is notwithstanding the position that Section 8B of the MMDR Act, 1957 contemplates only the transfer and vesting of "*valid*" ECs and not ECs already cancelled by the MoEF based upon scathing observations made by the Hon'ble Supreme Court in the GF-II judgment. Therefore, Mr Kantak and Ms Alvares are justified in pointing out the contradictions in the stance of the State Government.

76. Mr Kantak also pointed out that regarding Block VII (Cudnem Mineral Block), two lessees had obtained ECs under the EIA 2006. However, regarding Block VII, the State had not applied Section 8B, and the interpretation now put forth. The State was quite clear that fresh EC would be necessary for Block -VII even though it had EC under EIA, 2006. But when it comes to Block -VI, the State contends

that no fresh EC was necessary. Mr Kantak submitted that this amounts to arbitrariness violating Article 14 of the Constitution.

77. The learned Advocate General acknowledged that fresh EC would be necessary for leases included in Block-VII even though such leases had been environmental clearance under EIA 2006. However, he submitted that this was because some of the areas in this Block were affected by the provisions of the Forest (Conservation) Act 1980. Incidentally, this was not the stance of the Director & ex-officio Joint Secretary (Mines and Geology), Government of Goa, in his affidavit dated 06.03.2023. In para 25 of his affidavit, the Director has pleaded that in relation to clearances granted under 2006 notification, Section 8B applies and such clearances were transferred and vested in the successful bidder.

78. Thus, on affidavit, the Director & ex-officio Joint Secretary (Mines) states that the directions of the Hon'ble Supreme Court regarding obtaining fresh ECs would not apply to ECs granted under EIA notification 2006 because, to such ECs provisions of Section 8B of the MMDR,1957 would apply. This was perhaps the State Government's understanding of the position. However, the learned Advocate General, during the course of his arguments, did not endorse the Director's line (as he was undoubtedly entitled to) but submitted across the Bar that the provisions of Section 8B were not applied to Block -VII (Cudnem) even though ECs had been issued the EIA

notification 2006 because of some forest issues. All that we think is that such contradictions would be minimized if Section 8B is construed to apply to the continuance of valid ECs and not ECs that are cancelled based upon the scathing observations of the Hon'ble Supreme Court. That we believe is the proper and lain construction of Section 8B of the MMDR Act.

79. The learned Advocate General argued that the Petitioners had no locus standi to maintain this Petition or, in any case, this Petition was premature. He submitted that even after the auction if the Petitioners were indeed successful, the Petitioners might have to obtain a fresh EC. However, the learned Advocate General submitted that there was no cause of action or good reason to interfere with the impugned endorsement made in the NIT at this stage or for this reason.

80. The Petitioners have evinced interest in participating in the tender/auction process. The decision on the bid to be offered would, to some extent, depend upon whether fresh EC is required or not. Apart from the fact that obtaining a fresh EC would involve greater expenses that would have to be factored in, getting a fresh EC would imply the application of different time schedules and timelines for payment of bid amounts and the commencement of mining operations.

81. Mr Kantak has pointed out how different timelines and schedules would apply to cases where fresh ECs must be obtained. Mr Kantak also pointed out how an Applicant stands to forfeit a substantial amount if mining operations are not commenced within the timeline indicated. Finally, Mr Kantak pointed out that if, after being declared a successful bidder, the Petitioners cannot begin the mining operations for want of fresh EC, the Petitioners would stand to forfeit the substantial amount or be involved in unnecessary and avoidable litigation.

82. According to us, the Petitioners cannot be non-suited for want of locus standi. The Petitioners have a real and substantial interest in the subject matter of this Petition and the issues raised therein. The Goa Foundation that has intervened in this Petition has also contended that fresh EC is a must in such matters. Considering the zeal with which the Goa Foundation has pursued the mining issue, the Petitioners are justified in anticipating that the Goa Foundation would move the Courts to ensure that the successful bidder obtains a fresh EC before any mining operations are commenced. Therefore, this Petition cannot be rejected on the ground that the Petitioner lacks locus standi or that this Petition was premature.

83. The learned Advocate General also pointed out that this Petition is malafide because the Petitioners have restricted the relief to Block VI of NIT and not other Blocks. Mr Kantak submitted that the

Petitioners were interested in bidding for Block VI, not other Blocks. Therefore, the relief was claimed only in respect of Block VI. Mr Kantak, however, submitted that there was no malafide involved, and once the Court declares the law, the same would apply in respect of other Blocks if similarly placed.

84. No malafide could be inferred because the Petitioners restrict the relief to the Block in which the Petitioners have evinced interest. However, if fresh ECs are required for other Blocks, then obviously, the law will also apply to such blocks. Even without any legal intervention, the State has not exempted the Block VII mines from the requirement of obtaining fresh EC.

85. As noted earlier, MoEF, based upon the observations of the Hon'ble Supreme Court in GF-I and GF-II, cancelled the ECs vide order dated 23.04.2018. Earlier, the MoEF had, by order dated 14.09.2012, kept in abeyance such ECs. This order was effectively withdrawn, or abeyance was lifted vide order dated 20.03.2015. However, this order dated 20.03.2015 was declared void and vitiated by non-application of mind by the Hon'ble Supreme Court in GF-II.

86. Thus, even as of date, the MoEF order dated 23.04.2018 stands. Even if it is assumed that this order does not stand, the MoEF order dated 14.09.2012 stands after the order dated 20.03.2015 rejecting this order was declared void by the Hon'ble Supreme Court.

Accordingly, there was no valid EC that could have been continued or which could have been transferred and vested in the new lessee. Mr Kantak relied on ***Pune Municipal Corporation Vs State of Maharashtra and others***[6] to submit that executive orders do not carry any brand of invalidity on their forehead. Therefore, if any executive order aggrieves the party, such party must challenge the same and get the same declared void or otherwise struck down.

87. The learned Advocate General, however, contended that the MoEF order dated 23.04.2018 was only an executive or statutory order that would fall in line with Section 8B of the MMDR Act, 1957. Accordingly, he contended that the MoEF order dated 23.04.2018 would not override or affect Parliamentary Legislation in Section 8B, which contains a non-obstante clause.

88. As noted earlier, nothing in Section 8B of the MMDR Act, 1957 revives ECs that are already cancelled. Section 8B refers only to valid rights, approvals, clearances, licences, etc. Further, Section 8B provides that such valid clearances shall continue to be valid after the expiry or termination of the mining lease. The expression "*continue to be valid"* presupposes that EC was valid on the date of transfer and vesting. Therefore, this is not a case of an executive or statutory order overriding the Parliamentary Legislation. Instead, this is a case where proper construction of Section 8B of the MMDR Act, 1957 would

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6 (2007) 5 SCC 211

result in the harmonious implementation of the directions of the Hon'ble Supreme Court in GF-I and GF-II judgments, the MoEF's Executive or Statutory orders and the provisions of the Parliamentary Legislation.

89. In GF-I and GF-II judgments, the Hon'ble Supreme Court relied upon the Justice Shah Commission's report, the Committee experts comprising Dr. C.R. Babu (Ecologist), Dr S.C. Dhiman (Geologist/Hydrogeologist), Prof. B.K. Mishra (Mineralogist), Prof. S. Parameswarappa (Forestry), Shri Parimal Rai (nominee of the Ministry of Environment and Forests, Government of India), NEERI report for macro level EIA study in the State of Goa, data submitted by various agencies including Goa State Pollution Control Board etc. based upon all this material directly concerned with the degradation of the environment in Goa due to rampant illegal mining, the Court concluded that the entire State of Goa and its people were victims of rapacious and rampant exploitation of our natural resources was the hallmark of iron ore mining sector coupled with a total lack of concern for the environment and the health and well-being of the denizens in the vicinity of the mines. The Court referred to the report of EAC, which reveals that there was not a single environment-related or mining-related law or legal requirement that was not violated by one or the other mining lease holder.

90. The Hon'ble Supreme Court noted that "*quite clearly, the rule of environmental law in Goa had gone with the wind.*" The Court noted that no clearance was obtained from the Central Ground Water Board for groundwater extraction. In the context of the submission that there is plenty of groundwater available in Goa, the Court observed that what seems to have been overlooked was that with the intersection of groundwater levels with mining operations, the groundwater would get depleted much faster than expected or the quality of the groundwater would deteriorate. The Court noted that, unfortunately, no heed was paid to these requirements by the State of Goa or any of the mining lease holders, and no one mining leaseholder has any clearance (where required) from the Central Ground Water Board.

91. The Hon'ble Supreme Court noted that even the State of Goa was alive to the fact that many (if not all) mining lease holders had violated the terms of the mining lease or some statutory obligation. The offences ranged, amongst others, from illegal sale of ore, sale of royalty challan without ore, encroachment of adjoining areas outside the lease, overproduction in excess of the limit specified in the environmental clearance, unscientific mining operations, violations concerning payment of royalty amount, re-use of old royalty challans for defrauding, illegal mining activities etc. etc.

92. The Hon'ble Supreme Court also noted that iron ore production in the State of Goa jumped from 14.6 million tons in 1941 to 41.17 million tons in 2010-2011. The Court noted that in the 1980s, the production was about 10 MT/per annum. This has led to massive negative impacts on all ecosystems leading to enhanced air, water, and soil pollution, affecting the quality of life across Goa. The Court quoted expert committees' notings that various reports and publications substantiate that the mining, particularly the enhanced annual production contributed to adverse impacts on the ecological systems, socio-economics of Goa and health of the people of Goa, leading to loss of ecological integrity. This is due to enhanced levels of pollutants, particularly RSPM and SPM, sedimentation of materials from dumps and iron ore in rivers, estuaries and shallow depths (20 m) of seawater, agricultural fields, high concentration of Fe and Mn in surface waters and their bio-accumulation. Faced with this material evidence before it, the Court took the view in GF-I that fresh environmental clearance must be obtained.

93. This conscious decision of the Hon'ble Supreme Court in GF-I judgment which was reiterated in GF-II judgment, cannot be bypassed by regarding the ECs which were explicitly cancelled by the MoEF order dated 23.04.2018 as valid only to grant new lessees/successful auction bidders the benefit of Section 8B of the MMDR Act, 1957. As noted earlier, the proper construction of Section 8B of the MMDR Act, 1957 indicates that only valid ECs

were to stand transferred and vested in the new lessees/successful auction purchasers. If the State Government's interpretation is to be accepted, then the ECs issued in 2007, based upon which the mining industry in the State of Goa virtually caused havoc by rapacious and rampant exploitation regardless of any concern for environment, health and well-being of the citizens, would have to be revived and transferred to the new lessees/successful bidders. The impact of rapacious and rampant exploitation, including several severe environmental violations by the mining industry between 2007 and 2012, would have to be ignored. This, according to us, would not be a proper mode of construing provisions of Section 8B of the MMDR Act, 1957. In any case, based upon strained construction suggested by the State of Goa, express directions of the Hon'ble Supreme Court in GF-I and GF-II judgments cannot be nullified or ignored.

94. For all the above reasons, we allow this Petition and make the Rule absolute in terms of prayer clause (A) quoted in paragraph 5 of this judgment and order. However, we clarify that fresh ECs will have to be obtained even by the successful bidders to Block -VII or other Blocks to which the decisions of the Hon'ble Supreme Court in GF-I and GF-II apply or to mining blocks in respect of which the ECs were cancelled by the MoEF by order dated 23.04.2018.

95. The Petition is accordingly disposed of. The Misc. Civil Application is also allowed and disposed of accordingly. No costs.

96. All concerned can act on the authenticated copy of this order.

VALMIKI SA MENEZES, J **M. S. SONAK, J**