BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH AT PUNE
APPLICATION NO. 37/2020

IN THE MATTER OF:

MR. SAYYED MOHAMMED SABIR USMAN & ORS.

...APPLICANTS

VERSUS

UNION OF INDIA THROUGH MOEF & CC & ORS.

...RESPONDENTS

FILE-A

VOLUME-I

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1.	Objections on behalf of Original Applicant to the Joint Committee Report	
2.	**ANNEXURE-A-1** A true opy of the guidelines issued by MoEFCC in respect of declaration of Eco-Sensitive Zones around National Parks & Wildlife Sanctuaries vide dated 09.02.2011	
3.	Hon'ble Supreme Court Judgment in the case of "Deepak Kumar & Ors Vs. State of Harayana", **(2012) 4 SCC 629**	
4.	Hon'ble Supreme Court Judgment in the case of "Sterlite Industries (I) Ltd. Vs. Union Of India & Ors" **(2013) 4 SCC** 575	
5.	Hon'ble Supreme Court Judgment in the case of "Common Cause Vs. UoI & Ors." **(2017) 9 SCC 499**	

Date: 20.05.2023

APPLICANT No. 1

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH AT PUNE
ORIGINAL APPLICATION NO. 37/2020

IN THE MATTER OF:

MR. SAYYED M. SABIR USMAN & ORS. ...APPLICANTS

VERSUS

UNION OF INDIA THROUGH MOEFCC & ORS. ...RESPONDENTS

OBJECTIONS ON BEHALF OF THE APPLICANTS TO THE JOINT COMMITTEE REPORT

I, Sayyed Mohammed Sabir Usman Aged Adult, Occupation: Business, Residing at Building-"Bage Shamim", CTS 212, Jin Plot, Kodinar, Taluka-Kodinar, District-Gir Somnath-362720 (Formerly Junagadh District), presently at Pune, do hereby solemnly affirm and state on oath as follows:

1. I state that, the Joint Committee Report is causal, cursory, unscientific, and prepared under influence of the polluters lobby and Environmental Compensation imposed on the Respondent Polluters is clearly shows the compromised statement helping lobby of polluter in regale out the irreparable serious environmental violation. Therefore, the Environmental Compensation must be revised by this Hon'ble NGT to the extent of very vey exemplary to have deterrent extent to set example and to send clear message in the lobby of polluters in view to have deterrence in the polluter from doing such type of illegal mining in prohibited zone.
2. I state that, Joint Committee have suppressed huge illegal extraction of black trap mining material extracted by Respondent No. 11, 13 & 15 and disclosed very small quantity extraction as compared to the size of actual mining and also, larger quantity is sold to the Respondent No. 16-SPPL.

3. I state that, also, Joint Committee failed to suggest the total Environmental Compensation ought to be imposed on the Polluters and on imposed compensation on two mines and three crushers and failed to impose the Compensation of R-15 for illegal mining and compensation on R-11-Maruti Stone Crusher unit-1, R-13-Hajabhai Hamirbhi Mori Stone Crusher unit in the name of M/s. Saibaba Stone Crusher within the mine area. The Environmental Compensation is not imposed for illegal operation without CTO & also, for violations for Environment Protection Act, 1986 for not obtaining prior Environment Clearance under EIA Notification, 2006.
4. I state that, JC have imposed meagre compensation on the basis of "Paryavaran Suraksh Case" and there is no environmental compensation, which must be very exemplary considering the illegal mining activity of black trap in the prohibited core area of Gir Sanctuary and said area exclusively reserve for the species of "Asiatic Lions" i.e. endangered species as of now in India.
5. I state that, the Joint Committee intentionally ignored to visit the stone quarry of Respondent No. 16 to bring on record that, there was no mining at site and stone is procured for break water project from the illegal mines of R-11 & R-13 and also crushed material from R-11, 12, 13, 14 crushing units for manufacturer of concrete blocks.
6. I state that, the Joint Committee failed to apply the correct formula as the entire notified Area of Gir Sanctuary shall be considered for deciding parameters; and the environmental compensation calculation is complex method and we cannot reach exactitude and therefore, it is not mandatory to reach exactitude as we Hon'ble SC have settled the principle of exemplary damages to be imposed on polluters to have

deterrent effect and total sale price must be considered for the quantity to be calculated from the actual size of mining at site and such compensation shall not be based on the quantity of mining material disclosed with mining department;

Exemplary Parameters for illegal Mining & Crushing ought to be considered:

a) Mining of R-11 & R-13 are of Large scale mining operations, blasting, no safety measures, no permissions and coming under Red Category, therefore, pollution index must be PI=100.

b) N= Number of days, must be considered straight away for 365 days X number of years, from starting of illegal mining without CTE & CTO and for EC, Applicability of EC from 31.03.2016 and Also, for starting of crusher illegal operations without CTE, CTO from day of starting of crusher without excluding including Monsoon & holidays, as there is no contrary proved to the these days non-operation.

c) R= Factor in Rupees, Considering the large scale illegal mining in protected area, ecologically sensitive area and prohibited operation. R factor must be R=500/-

d) Factor of Scale Operation must be more than 1.5, because the lease area is less than 5 Ha, but actual mining is more than 5 Ha and these are very Deep mines: Scale of mining must be large scale, deeper than 15 Mtrs. Therefore, S=1.5.

e) Population of entire notified Area of Gir Protected area shall be considered and having more than 1 million population. Therefore, Location factor must be 1.5. "LF=1.5"

f) Therefore, all the parameters of for computation of independent calculations of CTE, CTO, and Environment Clearance must be maximum range parameters in view to impose exemplary compensation and to have deterrent effect on such careless & reckless polluters.

7. I state that, the Joint Committee failed to impose the compensation based on the Carbon Footprint of the illegal mining, crushing operations and transportation operations
8. I state that, the illegal mining in Gir Protected area of Gir sanctuary, which is prohibited zone for mining & crushing and also these illegal activity are not environmentally sustainable.
9. I state that, the as per the various orders of Hon'ble Supreme Court in "WP No. 460/2004, Writ Petition (Civil) No. 202/1995, IA No. 2609-2610/2009", till finalisation of draft notification, guidelines dated 09.02.2011 must be forced in such area.
10. Therefore, this Hon'ble NGT may kindly revise the environmental compensation for exemplary parameters to have deterrent affect.
11. I state that, these applicant crave leaves of this Hon'ble NGT to file detailed objections to the Joint Committee Report.
12. Hence these part objections to the Joint Committee Report.

Whatever stated above is true and correct to the best of my knowledge, belief and information, hence, to verify the same I have signed hereunder at Pune.

Date: 20.05.2023

APPLICANT No. 1

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH PUNE
ORIGINAL APPLICATION NO. 37 OF 2020

IN THE MATTER OF:

MR. SAYYED M. SABIR USMAN & Ors. ....APPLICANTS

VERSUS

UNION OF INDIA & ORS. ....RESPONDENTS

AFFIDAVIT IN SUPPORT OF OBJECTIONS ON BEHALF OF ORIGINAL APPLICANTS TO THE JOINT COMMITTEE REPORT

I, Mr. Sayyed Mohammed Sabir Usman, Age: Adult, Occupation: Business, Residing at Building-"Bage Shamim", CTS No. 212, Jin Plot, Kodinar, Taluka-Kodinar, District-Gir Somnath-362720, do hereby solemnly affirm and state on oath as follows:

1. I state that, I am Original Applicant No. 1 in the aforesaid matter and I am well aware with the facts and circumstances of the case and in such capacity competent to depose by way of this affidavit.
2. I have read the contents of the accompanying Objections to the Joint Committee Report, the same has been drafted by my advocate under my instruction and that the contents of the objections are true facts in my personal knowledge.
3. I state that, the annexures attached with the Rejoinder to the Respondents Reply & Objections to the Joint Committee Report are true copies of their respective and content of this affidavit are true and correct to the best of my knowledge and belief.
4. Hence this Affidavit.

AFFIANT
(MR. SAYYED MOHAMMED SABIR USMAN)

SOLEMNLY AFFIRMED BEFORE ME
20/05/2023
JAYESHKUMAR K. MER
Advocate & Notary
Govt. OF INDIA

JAYESHKUMAR K. MER
Office No. 12, ADVOCATE-NOTARY
New Municipal Shoppig Center
Rajendra Bhuvan Road,
VERAVAL-362265.-Gir Somnath
20 MAY 2023

ANNEXURE-A-1

Government of India
Ministry of Environment and Forests
(Wildlife Division)

Paryavaran Bhawan,
CGO Complex, Lodi Road,
New Delhi -110003.

F. No. 1-9/2007 WL-I(pt)
Dated: 9th February, 2011

To,
The Chief Wildlife Warden
All States/Union Territories

Sub: **Guidelines for Declaration of Eco-Sensitive Zones around National Parks and Wildlife Sanctuaries.**

Sir

In pursuance to the decision taken by the National Board for Wildlife, all the States/Union Territory, Governments were requested for forwarding site specific proposals for declaration of Eco Sensitive Zones around National Parks and Wildlife Sanctuaries. Several reminders in this connection were also sent. Hon'ble Supreme Court had also take note of this decision had directed States/ Union Territory, Governments to forward proposals this Ministry. However, only very few States have forwarded proposals in this regard.

This Ministry after careful consideration, has therefore, decided to frame guidelines to facilitate the States/Union Territory, Governments for declaration of Eco-Sensitive Zones around National Parks and Wildlife Sanctuaries. Kindly find enclosed a copy of the said Guidelines. It is requested to kindly take necessary action in this regard at the earliest

Yours faithfully,

(Prakriti Srivastava)
Deputy Inspector General (WL)
Telefax: 01-24360704
E-mail:digwl-mef@nic.in

Encl: As above

Copy to:

1. Principal Secretary (Forests), all States/Union Territories.
2. Principal Chief Conservator of Forests, all States/ Union Territories.
3. NIC Cell- with a request to upload the enclosed guidelines on the official website of MoEF.

TRUE COPY

GUIDELINES FOR DECLARATION OF ECO-SENSITIVE ZONES AROUND NATIONAL PARKS AND WILDLIFE SANCTUARIES

GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT AND FORESTS

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GUIDELINES FOR DECLARATION OF ECO-SENSITIVE ZONES AROUND NATIONAL PARKS AND WILDLIFE SANCTUARIES

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1. Background:

1.1. IBWL Decision:

1.1.1 During the XXI meeting of the Indian Board for Wildlife held on 21st January 2002, a 'Wildlife Conservation Strategy-2002' was adopted wherein point no.9 envisaged that " lands falling within 10 Kms of the boundaries of National Parks and Sanctuaries should be notified as eco-fragile zones under section 3 (v) of the Environment (Protection) Act and Rule 5 Sub rule (viii) & (x) of the Environment (Protection) Rules.".

1.1.2 The Additional Director General of Forests (WL), vide letter dated 6th February 2002, had requested all the Chief Wildlife Wardens for listing out such areas within 10 Kms of the boundaries of National Parks and Sanctuaries and furnish detailed proposals for their notification as eco-sensitive areas under the Environment (Protection) Act, 1986.

1.1.3 In response, some of the State Governments had raised concern over applicability of the 10 Kms range from the Protected Area boundary and informed that most of the human habitation and other areas including important cities in these States would come under the purview of eco-sensitive zone and will adversely affect the development.

1.2. National Wildlife Action Plan (2002-2016)

1.2.1 The National Wildlife Action Plan (NWAP) 2002-2016 indicates that *"Areas outside the protected area network are often vital ecological corridor links and must be protected to prevent isolation of fragments of biodiversity which will not survive in the long run. Land and water use policies will need to accept the imperative of strictly protecting ecologically fragile habitats and regulating use elsewhere."*

1.2.2 The Action Plan also indicates that *"All identified areas around Protected Areas and wildlife corridors to be declared as ecologically fragile under the Environment (Protection) Act, 1986."*

1.3. Decision of National Board for Wildlife:

1.3.1 Considering the constraints communicated by the states, the proposal was re-examined by the National Board for Wildlife in its 2nd meeting held on 17th March 2005 and it was decided that the '**delineation of eco-sensitive**

zones would have to be site specific and relate to regulation, rather than prohibition, of specific activities'. The decision was communicated to all the State Governments for compliance vide letter dated 27th May 2005. Thereafter, it was further communicated with subsequent reminders.

1.4. Hon'ble Supreme Court's decision:

1.4.1 A Public Interest Litigation was also filed by the Goa Foundation vide their Writ Petition No. 460/2004 before the Hon'ble Supreme Court regarding the issue of declaration of eco-sensitive zones.

1.4.2 Vide their order dated 4th December 2006, Hon'ble Supreme Court had directed the Ministry of Environment & Forests to give a final opportunity to all States/Union territories to respond to the letter dated 27.5.2005 and that the State Governments send their proposals within four weeks, to the Ministry. It was also directed that all cases where environmental clearances were granted where activities are within 10 Kms zone, be referred to Standing Committee of NBWL.

2. Statutory Provisions

2.1 Section 5 C(1) of the Wildlife (Protection)Act, 1972 states that it shall be the duty of the National Board for Wildlife to promote the conservation and development of Wildlife and forests by such measures as it thinks fit.

2.2 Section 3 of the Environment (Protection) Act 1986 (EPA) gives power to the Central Government i.e. the Union Ministry of Environment and Forests to take all measures that it feels are necessary for protecting and improving the quality of the environment and to prevent and control environmental pollution. To meet this objective, the Central Government can restrict areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards [Section 3(2)(v)]

2.3 Section 5(1) of the Environment (Protection) Rules, 1986 (EPR), states that the central government can prohibit or restrict the location of industries and carrying on certain operations or processes on the basis of considerations like the biological diversity of an area (clause v) maximum allowable limits of concentration of pollutants for an area (clause ii) environmentally compatible land use (clause vi) proximity to protected areas (clause viii).

3. Purpose for declaring Eco-Sensitive Zones:

The purpose of declaring Eco-sensitive Zones around National Parks and Sanctuaries is to create some kind of "Shock Absorber" for the Protected Areas. They would also act as a transition zone from areas of high protection to areas involving lesser protection. As has been decided by the National Board for Wildlife, the activities in the Eco-sensitive zones would be of a regulatory nature rather than prohibitive nature, unless and otherwise so required.

4. Extent of Eco-Sensitive Zones:

4.1 Many of the existing Protected Areas have already undergone tremendous development in close vicinity to their boundaries. Some of the Protected Areas actually lying in the urban setup (Eg. Guindy National Park, Tamil Nadu, Sanjay Gandhi National Park, Maharashtra, etc). Therefore, defining the extent of eco-sensitive zones around Protected Areas will have to be kept flexible and Protected Area specific. The width of the Eco-sensitive Zone and type of regulations will differ from Protected Area to Protected Area. However, as a general principle the width of the Eco-sensitive Zone could go upto 10 Kms around a Protected Area as provided in the Wildlife Conservation Strategy-2002.

4.2 In case where sensitive corridors, connectivity and ecologically important patches, crucial for landscape linkage, are even beyond 10 kms width, these should be included in the Eco-sensitive Zone.

4.3 Further, even in context of a particular Protected Area, the distribution of an area of Eco-sensitive Zone and the extent of regulation may not be uniform all around and it could be of variable width and extent.

5. Need for guidelines:

5.1 As has been indicated vide para 1.4 above, Hon'ble Supreme Court has vide their order dated 4th December 2006 directed all the State/Union Territory Governments to forward proposals for declaration of eco-sensitive zones around its Protected Areas. However, only States like Haryana, Gujarat, Mizoram, Meghalaya, Assam, Goa have forwarded proposals. However, several other States/Union Territories have not come forward, perhaps for want of guidelines in this regard.

5.2 In this context, it is pertinent to note here that Hon'ble Supreme Court vide their judgment dated 3rd December 2010 in the case relating to the construction of park at NOIDA near Okhla Bird Sanctuary filed by Shri Anand Arya & Anr vs. Union of India (I.A. Nos 2609-2610 of 2009) in Writ Petition (Civil) No. 202/1995, had noted that the State Government of Uttar Pradesh had not

declared Eco-sensitive zones around its Protected Areas as the Government of India had not issued any guidelines in this regard.

5.3 The Ministry of Environment & Forests had set up a committee under the Chairmanship of Shri Pronab Sen for identifying parameters for designating Ecologically Sensitive Areas in India. The said Committee had identified parameters for declaration of specific units of land/water etc as Ecologically Sensitive Zones based on parameters like richness of flora& fauna; slope; rarity & endemism of species in the area; origins of rivers etc. However, these parameters do not basically apply to the Eco-sensitive zones in the instant context, i.e around Protected Areas. In the instant case, the Eco-sensitive zones are meant to act as a "Shock absorbers"/ "transition zone" to the Protected Areas by regulating and managing the activities around such Protected Areas.

6. The procedure to be adopted :

6.1 As has been indicated in the forgoing paras, the basic aim is to regulate certain activities around National Park and Wildlife Sanctuary so as to minimize the negative impacts of such activities on the fragile ecosystem encompassing the Protected Area. As a first step towards achieving this goal, it is a pre-requisite that an inventory of the different land use patterns and the different types of activities, types and number of industries operating around each of the Protected Area (National Parks, Sanctuaries) as well as important Corridors be made. The inventory could be done by the concerned Range Officers, who can take a stock of activities within 10 km of his range.

6.2 For the above purpose, a small committee comprising the concerned Wildlife Warden, an Ecologist, an official from the Local Self Government and an official of the Revenue Department of the concerned area, could be formed. The said committee could suggest the:

(i) Extent of eco-sensitive zones for the Protected Area being considered.
(ii) The requirement of such a zone to act as a shock absorber
(iii) To suggest the best methods for management of the eco-sensitive zones, so suggested.
(iv) To suggest broad based thematic activities to be included in the Master Plan for the region.

6.3 Based on the above, the Chief Wildlife Warden could group the activities under the following categories (an indicative list of such activities is attached as **ANNEXURE-1)**:-

(i) *Prohibited*
(ii) *Restricted with safeguards.*
(iii) *Permissible*

6.4 Once the proposal for Eco-sensitive zones has been finalized, the same may be forwarded to the Ministry of Environment and Forests for further processing and notification. Here, it may be noted that, the State/Union Territory Forest Department could forward the proposals to the respective authority in the State Government with copy to the Ministry of Environment and Forests, as and when the proposals(even if it is for single Protected Area) are complete. An indicative list of details that need to be submitted along with the proposals is at **ANNEXURE-2.**

6.5 It is to mention here that in cases where the boundary of a Protected Area abuts the boundary of another State/Union Territory where it does not form part of any Protected Area, it shall be the endeavour of both the State/Union Territory Governments to have a mutual consultation and decide upon the width of the eco-sensitive zone around the Protected Area in question.

6.6 The State Government should endeavour to convey a very strong message to the public that ESZ are not meant to hamper their day to day activities, but instead, is meant to protect the precious forests/Protected Areas in their locality from any negative impact, and also to refine the environment around the Protected Areas. A copy of the notification of the Sultanpur Eco-sensitive Zone issued by the Ministry is attached herewith at **ANNEXURE-3** for reference and guidance.

7. These guidelines are indicative in nature and the State / Union Territory Governments may use these as basic framework to develop specific guidelines applicable in the context of their National Parks, Wildlife Sanctuaries, important corridors, etc. with a view to minimizing and preferably eliminating any negative impact on protected areas.

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ANNEXURE-1

Identification of Activities

While some of the activities could be allowed in all the eco-sensitive areas, others will need to be regulated / prohibited. However, which activity can be regulated or prohibited and to what extent, would have to be PA specific. A broad list of activities (this may need supplementation) which could be allowed, promoted, regulated or prohibited is given in the table below:

Sl. No.	Activity	Prohibited	Regulated	Permitted	Remarks
1.	Commercial Mining	Y			Regulation will not prohibit the digging of earth for construction or repair of houses and for manufacture of country tiles or bricks for housing for personal consumption
2.	Felling of trees		Y		With permission from appropriate authority
3.	Setting of saw mills	Y			
4.	Setting of industries causing pollution (Water, Air, Soil, Noise, etc.)	Y			
5.	Establishment of hotels and resorts		Y		As per approved master plan, which takes care of habitats allowing no restriction on movement of wild animals
6.	Commercial use of firewood	Y			For hotels and other business related establishment

7.	Drastic change of agriculture systems		Y		
8.	Commercial use of natural water resources including ground water harvesting		Y		As per approved master plan, which takes care of habitats allowing no restriction on movement of wild animals.
9.	Establishment of major hydroelectric projects	Y			
10.	Erection of electrical cables		Y		Promote underground cabling
11.	Ongoing agriculture and horticulture practices by local communities			Y	However, excessive expansion of some of these activities should be regulated as per the master plan
12.	Rain Water harvesting			Y	Should be actively promoted
13.	Fencing of premises of hotels and lodges		Y		
14.	Organic farming			Y	Should be actively promoted
15.	Use of polythene bags by shopkeepers		Y		
16.	Use of renewable energy sources			Y	Should be actively promoted
17.	Widening of roads		Y		This should be done with proper EIA

					and mitigation measures
18.	Movement of vehicular traffic at night		Y		For commercial purpose
19.	Introduction of exotic species		Y		
20.	Use or production of any hazardous substances	Y			
21.	Undertaking activities related to tourism like over-flying the National Park area by any aircraft, hot-air balloons	Y			
22.	Protection of hill slopes and river banks		Y		As per the master plan
23.	Discharge of effluents and solid waste in natural water bodies or terrestrial area	Y			
24.	Air and vehicular pollution		Y		
25.	Sign boards & hoardings		Y		As per the master plan
26	Adoption of green technology for all activities			Y	Should be actively promoted.

ANNEXURE-2

GENERIC INFORMATIONS TO BE INCORPORATED IN THE PROPOSALS FOR DECLARATION OF ECO-SENSITIVE ZONE AROUND PROTECTED AREAS

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(i) Delineation of the physical boundaries on a topo-sheet with precise description in geographic terms together with a description of the significant features/attributes that would potentially qualify the area as eco-sensitive zone. A description of the boundaries alongwith the list of villages with exception and exemption in the delineated buffer zone area.

(ii) An inventory of the existing legal status of rights, entitlements, privileges and obligations of the local communities.

(iii) A description of bio-diversity values including bio-geographical representatives, endemism, species richness, geo-morphological characteristics, and unique land use practices including aesthetic and cultural values.

(iv) A description of the resource base indicating the economic potential and livelihood implication for the people residing in and around the proposed eco-sensitive area.

(v) An inventory of activities to be regulated and/ or prohibited in the proposed eco-sensitive zone.

(vi) List of the protected areas for declaring eco-sensitive zone.

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रजिस्ट्री सं० डी० एल०-33004/99

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भारत का राजपत्र
The Gazette of India

असाधारण
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अधिसूचना

नई दिल्ली, 27 जनवरी, 2010

का.आ. **191(अ).**—चूंकि सुल्तानपुर राष्ट्रीय उद्यान (गुड़गांव से लगभग 15 कि.मी. और दिल्ली से लगभग 45 कि.मी. की दूरी पर स्थित) काफी महत्वपूर्ण है और जलीय पक्षी समुदाय के लिए विख्यात है, जहां शीत ऋतु के दौरान करीब 250 प्रजातियों से संबंधित लगभग 30,000 पक्षियों को इस उद्यान में सूचीबद्ध किया गया है और इस उद्यान में आने वाले महत्वपूर्ण पक्षियों में पेलिकंस, कोरमोरेंट्स, हेरोन्स, ईग्रेट्स, स्टॉर्क्स, फ्लेमिंगोस, हंस, बत्तखें आदि शामिल हैं ।

और चूंकि, भारतीय मूल के काफी संख्या में क्षेत्रीय पक्षी वर्ष भर यहां रहते हैं; इस उद्यान मे सारस, क्रोंच (क्रेन) और दुर्लभ ब्लैक नेकेड स्टॉर्क के प्रजनन को रिकार्ड किया गया है और जहां तक इस उद्यान की जैवविविधता का प्रश्न है, इस क्षेत्र की वनस्पतिजात में इसके बाहर स्थित अर्ध-शुष्क वनस्पतियां और उत्तर भारत के मैदानों में स्थित झीलों की विशेष जलीय वनस्पतियां भी आती हैं ।

और चूंकि, सुल्तानपुर राष्ट्रीय उद्यान के संरक्षित क्षेत्र की सीमा से पांच किमी. तक के क्षेत्र को पारिस्थितिकीय और पर्यावरणीय दृष्टि से पारिस्थितिक संवेदनशील जोन के रूप में संरक्षित और सुरक्षित करना आवश्यक है;

और चूंकि, पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उप-धारा (2) के खंड (v) और खंड (xiv) की उपधारा (1) के अंतर्गत एक प्रारूप अधिसूचना पर्यावरण एवं वन मंत्रालय, भारत सरकार की तारीख 29 जनवरी, 2009 की अधिसूचना का.आ. सं. 364(अ) के अधीन भारत के राजपत्र, असाधारण में

प्रकाशित की गई थी, जैसाकि पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उप नियम (3) के अंतर्गत अपेक्षित था और जिसमें इससे संभावित रूप से प्रभावित होने वाले व्यक्तियों से उस तारीख से, जिस तारीख से उक्त अधिसूचना से उक्त राजपत्र की प्रतियां जनता को उपलब्ध करा दिए जाने के पश्चात है; साठ दिन की अवधि के भीतर आपत्तियां और सुझाव आमंत्रित किए गए थे;

और चूंकि, उक्त अधिसूचना से युक्त राजपत्र की प्रतियां जनता को 29 जनवरी, 2009 को उपलब्ध करा दी गई थी;

और चूंकि, उक्त प्रारूप अधिसूचना के जवाब में प्राप्त सभी आपत्तियों और सुझावों पर केन्द्रीय सरकार द्वारा सम्यक रूप से विचार किया गया है;

अतः, अब केन्द्रीय सरकार पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उप नियम (3) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की उप धारा (1) और धारा 3 की उप धारा (2) के खंड (v) और (xiv) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हरियाणा राज्य में स्थित सुल्तानपुर राष्ट्रीय उद्यान के संरक्षित क्षेत्र की सीमाएं से पांच किमी. तक के क्षेत्र (जैसा कि अनुबंध के रूप में इस अधिसूचना के साथ संलग्न मानचित्र में दर्शाया गया है)को पारिस्थितिक संवेदनशील जोन (जिसे इसके बाद पारिस्थितिक संवेदनशील जोन कहा जाएगा), के रूप में अधिसूचित करती है, अर्थात्

2. **पारिस्थितिक संवेदनशील जोन की सीमाएं -(1)** उक्त पारिस्थितिक संवेदनशील जोन हरियाणा के गुड़गांव जिले मे स्थित सुल्तानपुर राष्ट्रीय उद्यान के संरक्षित क्षेत्र की सीमाएं से पांच किमी. तक का क्षेत्र है, जोकि 28^0 24' 00" से 29^0 32' 00" उत्तरी अक्षांश के बीच और 76^0 48' 00" से 76^0 58' 00" पूर्वी अक्षांश के बीच स्थित है ।

(2) पारिस्थितिक संवेदनशील जोन का मानचित्र उपाबध 'क' पर है और पारिस्थितिक संवेदनशील जोन में सुल्तानपुर राष्ट्रीय उद्यान की सीमाएं से पांच किमी. की दूरी के बीच आने वाले गांवों की सूची निम्नलिखित है :

मंकरौला, झांजरौला, मोहम्मदपुर, पाटली, धानावास, वजीरपुर, धानी, रामनगर, सिखावाला, गढ़ी हारसरू, तुगलकपुर, दया बिहार, कालियावास, इकबालपुर, रौदपुर, खैंतावास, हमारपुर, चांदु, ओमनगर, बिधेरा, सुल्तानपुर, हररिंहवाली, धनी मिर्चीवाली धानी, राधराना बरमरीपुर ।

(3) सुल्तानपुर राष्ट्रीय उद्यान में सभी तरह की गतिविधियों का अधिशासन वन्यजीव (संरक्षण) अधिनियम, 1972 (1972 का 53) के उपबंधों द्वारा किया जा रहा है ।

3. **पारिस्थितिक संवेदनशील जोन के लिए जोनल मास्टर प्लान -**

(1) इस अधिसूचना के राजपत्र में प्रकाशित होने तथा पर्यावरण एवं वन मंत्रालय, भारत सरकार द्वारा इसे अनुमोदित किए जाने की तारीख से एक वर्ष की अवधि के भीतर राज्य सरकार द्वारा पारिस्थितिक संवेदनशील जोन के लिए एक मास्टर प्लान तैयार किया जाएगा ।

(2) पर्यावरणीय एवं पारिस्थितिकीय निहितार्थों को इसमें शामिल करने के लिए सभी संबंधित राज्यों के राज्य पर्यावरण, वन, शहरी विकास, पर्यटन, विभागों, नगर निगम विभाग, सिंचाई और लोक निर्माण (बी एंड आर) विभाग, राजस्व विभाग तथा हरियाणा राज्य प्रदूषण नियंत्रण बोर्ड की भागीदारी के साथ जोनल मास्टर प्लान तैयार किया जाएगा ।

(3) इस जोनल मास्टर प्लान में वृक्षों से रिक्त क्षेत्रों की बहाली, मौजूदा जल निकायों का संरक्षण, कैचमेंट क्षेत्रों का प्रबंधन, वाटरशेड प्रबंधन, भूमिगत जल प्रबंधन, मृदा एवं नमी संरक्षण, स्थानीय समुदायों की आवश्यकताएं तथा पारिस्थितिकी और पर्यावरण के ऐसे अन्य पहलुओं के लिए व्यवस्था की गई है, जिनकी ओर ध्यान दिए जाने की आवश्यकता है ।

(4) जोनल मास्टर प्लान के अंतर्गत सभी मौजूदा और प्रस्तावित शहरी बस्तियों, ग्रामीण बस्तियों, वनों के स्वरूपों और किस्मों, कृषि क्षेत्रों, उर्वरक भूमियों, हरित क्षेत्रों, बागवानी क्षेत्रों, फलोद्यानों झीलों तथा अन्य जल निकायों का सीमांकन किया जाएगा ।

(5) इसमें सभी नहरों और जल निकास कार्यों को छूट दी जाएगी ।

(6) जोनल मास्टर प्लान के अंतर्गत हरित उपयोग जैसे फलोद्यानों, बागवानी क्षेत्रों, कृषि उद्यानों और इसी तरह के अन्य स्थानों के लिए इस्तेमाल की जा रही भूमि का उपयोग गैर-हरित उपयोगों के लिए करने की इजाजत नहीं होगी । सिवाय उन कार्यों के जिनमे विद्यमान स्थानीय आवासियों की आवास संबंधी आवश्यकताओं को पूरा करने के लिए अत्यंत सीमित मात्रा में कृषि भूमि का उपयोग करने की इजाजत दी गई हो और साथ ही जिससे विद्यमान स्थानीय आबादी का प्राकृतिक ढंग से विकास होता हो, सड़कों और पुलों संबंधी ढांचों मे सुधार होता हो, जन उपयोगिता वाले अथवा सामुदायिक भवनों का निर्माण होता हो। यह कार्य राज्य सरकार की पूर्व अनुमति के नहीं किया जाना चाहिए ।

(7) विकास योजनाओं में प्रस्तावित नियोजित शहरीकरण को संबंधित नियंत्रित क्षेत्रों के लिए राज्य सरकार द्वारा अनुमोदित किया जायेगा ।

(8) राज्य स्तरीय मानीटरिंग कमेटी द्वारा छूट देने पर विचार किए जाने के मामलों सहित कोई भी निर्णय लेने के लिए जोनल मास्टर प्लान एक संदर्भ दस्तावेज का काम करेगी ।

(9) जोनल मास्टर प्लान के अंतर्गत ट्रैफिक के नियंत्रण हेतु उपायों को दर्शाया जाएगा और शर्तों का विनिर्धारण किया जाएगा ।

(10) पारिस्थितिक संवेदनशील जोन के लिए जोनल मास्टर प्लान की तैयारी तथा पर्यावरण और वन मंत्रालय द्वारा इसका अनुमोदन लंबित होने के कारण सभी नए निर्माण कार्यों को पैराग्राफ 5 में उल्लिखित मॉनीटरिंग समिति द्वारा जांच और अनुमोदित करने के पश्चात ही अनुमति दी जायेगी ।

(11) वन क्षेत्र, हरित क्षेत्र और कृषि क्षेत्र में कोई पारिमाणिक कटौती नहीं की जायेगी ।

(12) उद्देश्यों को आगे बढ़ाने और इस अधिसूचना के उपबंधों को लागू करने के लिए आवश्यक होने पर राज्य सरकार अतिरिक्त उपाय निर्धारित करेगी ।

4. **पारिस्थितिक संवेदनशील जोन में विनियमित अथवा प्रतिबंधित गतिविधियां -**

(क) **औद्योगिक इकाइयां :-**

(i) सुल्तानपुर राष्ट्रीय उद्यान की सीमा से एक किलोमीटर के अंदर किसी नये काष्ठ आधारित उद्योग की स्थापना नहीं होगी ;

(ii) सुल्तानपुर राष्ट्रीय उद्यान की सीमा से एक किलोमीटर के अंदर प्रदूषण फैलाने/अत्यधिक प्रदूषण फैलाने वाले किसी उद्योग की स्थापना नहीं होगी ।

(ख) **निर्माण गतिविधियां :-**

(i) सुल्तानपुर राष्ट्रीय उद्यान की सीमा से तीन सौ मीटर की दूरी तक एक हजार क्यूबिक इंच से अधिक आकार के नलकूप चैम्बर को छोड़कर, किसी प्रकार के निर्माण कार्य की अनुमति नहीं दी जाएगी ;

(ii) सुल्तानपुर राष्ट्रीय उद्यान की सीमा से तीन सौ मीटर से पांच सौ मीटर के बीच पड़ने वाले क्षेत्र में दो मंजिल (पच्चीस फीट) से अधिक किसी भवन के निर्माण की अनुमति दी जायेगी;

(iii) सुल्तानपुर राष्ट्रीय उद्यान की सीमा से पांच सौ मीटर की दूरी तक नई हाई टेंशन ट्रांसमिशन वायर बिछाने की अनुमति नहीं दी जाएगी।

(ग) **उत्खनन और खनन :-**

(i) सुल्तानपुर राष्ट्रीय उद्यान के संरक्षित क्षेत्र की सीमा से एक किलोमीटर तक खनन की अनुमति नहीं दी जाएगी ;

(ii) सुल्तानपुर राष्ट्रीय उद्यान के संरक्षित क्षेत्र की सीमा से एक किलोमीटर तक क्रशिंग गतिविधि की अनुमति नहीं दी जाएगी ।

(घ) **वृक्ष** : वन और राजस्व भूमि में वृक्षों की कटाई, केन्द्रीय सरकार अथवा उस कार्य के लिए नामित प्राधिकरण द्वारा अनुमोदित प्रबंध योजना के अधीन होनी चाहिए ।

(ड.) **जल :**

(i) प्लाट के मालिक को वास्तविक रूप से कृषि कार्य और घरेलू उपयोग के लिए ही भूजल निकालने की अनुमति दी जाएगी ;

(ii) राज्य भूजल बोर्ड के उचित रूप से अनुमोदन के सिवाय, भूजल की बिक्री की अनुमति नहीं दी जानी चाहिए ;

(iii)कृषि कार्य रहित पानी में किसी प्रकार के संदूषण अथवा प्रदूषण को रोकने के लिए सभी उपाय किए जाने चाहिएं ।

(च) **ध्वनि प्रदूषण :** पर्यावरण विभाग जैसा भी मामला हो, हरियाणा सरकार का वन विभाग, पारिस्थितिक संवेदनशील जोन में शोर पर नियंत्रण रखने के लिए दिशानिर्देश और विनियम बनाने के लिए प्राधिकरण होगा ।

(छ) **बहि:स्रावों को बहाना :**

(i) पारिस्थितिक संवेदनशील जोन के अंदर किसी भी जलाशय में अशोधित अथवा औद्योगिक बहि:स्राव को बहाने की अनुमति नहीं दी जानी चाहिए ।

(ii)शोधित बहि:स्राव के संबंध में जल (प्रदूषण निवारण एवं नियंत्रण) अधिनियम 1974 (1974 का 6) के उपबंधो का पालन किया जाना चाहिए ।

(ज) **ठोस अपशिष्ट :**

(i) ठोस अपशिष्ट का निस्तारण केन्द्र सरकार द्वारा 25 सितंबर, 2000 को जारी की गई और समय-समय पर संशोधित अधिसूचना संख्या -का. आ. 908(अ) के नगरीय ठोस अपशिष्ट (प्रबंधन और हथालन), नियम 2000 के उपबंधों के अनुसार किया जाना चाहिए ।

(ii)स्थानीय प्राधिकरण बायोडिग्रेडेबल और नॉन-बायोडिग्रेडेबल घटकों में ठोस अपशिष्टों का पृथक्करण करने के लिए योजनाएं बनाएंगे ।

(iii)बायोडिग्रेडेबल ठोस अपशिष्टों को कम्पोस्टिंग अथवा वर्मीकल्चर के द्वारा प्राथमिकता के आधार पर पुनर्चक्रित किया जा सकता है ।

(iv)अकार्बनिक पदार्थ, पारिस्थितिक संवेदनशील जोन के बाहर पहचान किए गए स्थान पर पर्यावरणीय रूप से स्वीकार्य ढंग से निस्तारित किए जा सकते हैं । पारिस्थितिक संवेदनशील जोन में ठोस अपशिष्टों को जलाने अथवा इनसिनरेशन की अनुमति नहीं दी जाएगी ।

5. **मानीटरी समिति :-**

(1) पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उप धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार इस अधिसूचना के उपबंधों के अनुपालन की मानीटरी के लिए एतद्द्वारा एक समिति का गठन करती है, जिसे मानीटरी समिति कहा जाएगा।

(2) उप पैरा (1) में उल्लिखित मानीटरिंग समिति में दस से अधिक सदस्य नहीं होंगे । जिसमें निम्नलिखित प्रतिनिधित्व करेंगे अर्थात् :-

(क) उपायुक्त, गुड़गांव - अध्यक्ष

3(ii) GI)/20-2

(ख) पर्यावरण एवं वन मंत्रालय, भारत सरकार का एक प्रतिनिधि - सदस्य

(ग) पर्यावरण (विरासत संरक्षण सहित) क्षेत्र में काम करने वाले गैर-सरकारी संगठनों का एक प्रतिनिधि केन्द्र सरकार द्वारा नामांकित किया जाएगा - सदस्य

(घ) क्षेत्रीय अधिकारी, हरियाणा राज्य प्रदूषण नियंत्रण बोर्ड, गुड़गांव - सदस्य

(ङ) क्षेत्र का वरिष्ठ टाउन प्लानर - सदस्य

(च) जिला वन्यजीव वार्डन, गुड़गांव - सदस्य सचिव

(3) मानीटरी समिति की शक्तियां और कार्य केवल इस अधिसूचना के उपबंधों के अनुपालन के अधीन होंगे ।

(4) पूर्व अनुमतियों अथवा पर्यावरणीय मंजूरी की आवश्यकता वाले कार्यकलापों के मामले में ऐसे कार्यकलाप राज्य स्तरीय पर्यावरण प्रभाव मूल्यांकन प्राधिकरण (एसईआईएए) को भेज दिए जाएंगे जिसका गठन पर्यावरण एवं वन मंत्रालय, भारत सरकार की 14 सितंबर, 2006 अधिसूचना संख्या का.आ. 1533 (अ) के अधीन किया गया है और जो उक्त अधिसूचना के उपबंधों के अनुसार स्वीकृति देने के लिए सक्षम प्राधिकरण होगा ।

(5) मामला दर मामला आधार पर, आवश्यकताओं के आधार पर अपने विचार विमर्शों में मानीटरी समिति, संबंधित विभागों अथवा संस्थाओं के प्रतिनिधियों या विशेषज्ञों को भी आमंत्रित कर सकती है ।

(6) मानीटरी समिति का अध्यक्ष अथवा सदस्य सचिव, जैसा भी मामला हो, इस अधिसूचना के उपबंधों का अनुपालन न होने पर पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 19 के अंतर्गत शिकायतें दर्ज कराने के लिए सक्षम होगा ।

(7) मानीटरी समिति, प्रत्येक वर्ष की गई कार्रवाई की अपनी रिपोर्ट प्रत्येक वर्ष 31 मार्च को पर्यावरण एवं वन मंत्रालय को प्रस्तुत करेगी ।

(8) मानीटरी समिति के कर्तव्यों के प्रभावी ढंग से निर्वहन के लिए मंत्रालय समय-समय पर निर्देश देगा ।

[फा. सं. 30/1/2008-ईएमजेड]

डॉ. जी. वी. सुब्रामण्यम, वैज्ञानिक 'जी'

Eco-Sensitive Zone for Sultanpur National Park, Gurgaon District
Gurgaon District
Sultanpur National Park
Legend
Villages
Canals
Railway Line
Roads
National Highway
State Highway
District Road
Village Road
Tracks
Sultanpur National Park
Restriction on Activities
No Establishment of highly polluting industry upto 1000 Metres
No Establishment of any polluting industry upto 1000 Metres
No Crushing activity & Wood based industry upto 1000 Metres
No Mining activities upto 1000 Metres
No Construction of more than two storeys (25 ft) & laying of High Tension Wires upto 300-500 Metres
Any activity except Cultivation of agriculture & Construction of tubewell (300 Metres)
1 centimeter equals 600 meters
0 0.5 1 2 Kms

MINISTRY OF ENVIRONMENT AND FORESTS

NOTIFICATION

New Delhi, the 27th January, 2010

S.O. 191(E).— WHEREAS, the Sultanpur National Park (about 15 km from Gurgaon and about 45 km from Delhi) is important and known for aquatic avifauna where about 30,000 birds belonging to about 250 species have been listed in this park during winters and the important birds visiting this park are Pelicans, Cormorants, Herons, Egrets, Storks, Flamingoes, Geese, Ducks, etc.

AND WHEREAS, a number of territorial birds of Indian origin stay here the year round; breeding of Saras, Crane and the Rare Black Necked Stork have been recorded in this park and as regards biodiversity of this National Park, the flora of this area is represented by semi arid vegetation outside it, and a typical aquatic vegetation of the lakes in plains of North India;

AND WHEREAS, it is necessary to conserve and protect the area up to five kilometers from the boundary of the protected area of Sultanpur National Park as Eco-sensitive Zone from ecological and environmental point of view;

AND WHEREAS, a draft notification under sub-section (1) and clauses (v) and (xiv) of sub – section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) was published in the Gazette of India, Extraordinary, vide notification of the Government of India in the Ministry of Environment and Forests, vide number S.O. No. 364 (E), dated the 29th January 2009, as required under sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, inviting objections and suggestions from all persons likely to be affected thereby, within a period of sixty days from the date on which copies of the Gazette containing the said notification were made available to the public;

AND WHEREAS, copies of the Gazette containing the said notification were made available to the public on the 29th January 2009;

AND WHEREAS, all objections and suggestions received in response to the said draft notification have been duly considered by the Central Government;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) and clauses (v) and (xiv) of sub – section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby notifies the area up to five kilometers from the boundary of the protected area of Sultanpur National Park in the State of Haryana (as shown in the map annexed to this notification as Annexure), as the Eco-sensitive Zone (herein after called as the Eco-sensitive Zone), namely:-

2. Boundaries of Eco-sensitive Zone. – (1) The said Eco sensitive Zone is the area up to five kilometers from the boundary of the protected area of Sultanpur National Park situated in the Gurgaon District of Haryana between 28° 24' 00" to 29° 32' 00" North latitude and between 76° 48' 00" to 76° 58' 00" East longitude.

(2) The map of the Eco-sensitive Zone is at Annexure and the list of the villages falling within five kilometers distance of the boundary of Sultanpur National Park in the Eco-sensitive Zone are as follows, namely:-

Mankraula, Jhanjraula, Mohammedpur, Patli, Dhanawas, Wazirpr, Dhani, Ramnagar. Sikhawala, Ghari Harasru, Tughlakpur, Daya Bihar, Kaliawas, Iqbalpur, Saidpur, Khaintawas, Hamarpur, Chandu, Omnagar, Bidhera, Sultanpur, Harsinghwali, Dhani Mirchiwali Dhani, Sadhrana Barmripur.

(3) All activities in the Sultanpur National Park are being governed by the provisions of the Wildlife (Protection) Act, 1972 (53 of 1972).

3. **Zonal Master Plan for the Eco-sensitive Zone: -**

(1) A Zonal Master Plan for the Eco-sensitive Zone shall be prepared by the State Government within a period of one year from the date of publication of this notification in the Official Gazette and approved by the Ministry of Environment and Forests, Government of India.

(2) The Zonal Master Plan shall be prepared with the involvement of all concerned State Departments of Environment, Forest, Urban Development, Tourism, Municipal Department, Irrigation and PWD (Buildings &Roads) Department, Revenue Department and Haryana State Pollution Control Board for integrating environmental and ecological considerations into it.

(3) The Zonal Master plan shall provide for restoration of denuded areas, conservation of existing water bodies, management of catchment areas, watershed management, groundwater management, soil and moisture conservation, needs of local community and such other aspects of the ecology and environment that need attention.

(4) The Zonal Master Plan shall demarcate all the existing and proposed urban settlements, village settlements, types and kinds of forests, agricultural areas, fertile lands, green areas, horticultural areas, orchards, lakes and other water bodies.

(5) It shall exempt all canals and drainage works.

(6) No change of land use from green uses such as orchards, horticulture areas, agriculture parks and others like places to non green uses shall be permitted in the Zonal Master Plan, except that strictly limited conversion of agricultural lands maybe permitted to meet the residential needs of the existing local residents together with natural growth of the existing local populations, improvement of roads and bridges infrastructure, construction of public utility or community buildings without the prior approval of the State Government.

(7) The planned urbanisation proposed in the development plans shall be approved by the State Government for the respective controlled areas.

(8) The Zonal Master Plan shall be a reference document for the State Level Monitoring Committee for any decision to be taken by them including consideration for relaxation.

(9) The Zonal Master Plan shall indicate measures and lay down stipulations for regulation of traffic.

(10) Pending the preparation of the Zonal Master Plan for Eco-sensitive Zone and approval thereof by the Ministry of Environment and Forests all new constructions shall be allowed only after the proposals are scrutinized and approved by the Monitoring Committee as referred in paragraph 5.

(11) There shall be no consequential reduction in Forest area, Green area and Agricultural area.

(12) The State Government shall prescribe additional measures, if necessary, in furtherance of the objectives and for giving effect to the provisions of this notification.

4. **Regulated or restrictive activities in the Eco-sensitive Zone: -** The following activities in the Eco-sensitive Zone shall be regulated in the manner provided herein, namely:-

(a) Industrial Units

(i) No establishment of new wood based industry within one kilometer from the boundary of the Sultanpur National Park;

(ii) No establishment of any new polluting or highly polluting industry within one kilometer from the boundary of the Sultanpur National Park.

(b) Construction Activities

(i) No construction of any kind shall be allowed from the boundary of Sultanpur National Park to a distance of three hundred meters, except tube well chamber of dimension not more than one thousand cubic inches;

(ii) The construction of any building more than two storey (twenty five feet) shall not be allowed in the area falling between three hundred meters to five hundred meters from the boundary of Sultanpur National Park;

(iii) The laying of new high tension transmission wires shall not be allowed from the boundary of Sultanpur National Park to a distance of five hundred meters.

(c) Quarrying and Mining

(i) Mining up to one kilometer shall not be allowed from the boundary of the protected area of Sultanpur National Park;

(ii) Crushing activity up to one kilometer shall not be allowed from the boundary of the protected area of Sultanpur National Park.

(d) Trees:- Felling of trees on forest and revenue land shall be subject to the approved management plan by the Central Government or an authority nominated for that purpose.

(e) Water:-

(i) Extraction of ground water shall be permitted only for the bona-fide agricultural and domestic consumption of the occupier of the plot;

(ii) No sale of ground water shall be permitted except with the prior approval of the State Ground Water Board.

(iii) All steps shall be taken to prevent contamination or pollution of water including from agriculture.

(f) Noise pollution:- The Environment Department or, as the case may be, State Forest Department of the Government of Haryana shall be the authority to draw up guidelines and regulations for the control of noise in the Eco-sensitive Zone.

(g) Discharge of effluents:-

(i) No untreated or industrial effluent shall be permitted to be discharged into any water body within the Eco-sensitive Zone.

(ii) Treated effluent must meet the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974).

(h) Solid Wastes:-

(i) The solid waste disposal shall be carried out as per the provisions of the Municipal Solid Waste (Management and Handling) Rules, 2000 issued by the Central Government vide notification number S.O. No. 908 (E), dated the 25th September 2000 as amended from time to time.

(ii) The local authorities shall draw up plans for the segregation of solid wastes into biodegradable and non-biodegradable components.

(iii) The biodegradable material may be recycled preferably through composting or vermiculture.

(iv) The inorganic material may be disposed in an environmentally acceptable manner at site identified outside the Eco-sensitive Zone. No burning or incineration of solid wastes shall be permitted in the Eco-sensitive Zone.

5. Monitoring Committee :-

(1) In exercise of the powers conferred by sub-section (3) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government hereby constitutes a committee to be called the Monitoring Committee to monitor the compliance with the provisions of this notification.

(2) The Monitoring Committee referred to in sub-paragraph (1), shall consist of not more than ten members so as to represent the following, namely:-

(a) Deputy Commissioner, Gurgaon – Chairman;

(b) A representative of the Ministry of Environment and Forests, Government of India - Member

(c) One representative of Non-governmental Organizations working in the field of environment (including heritage conservation) to be nominated by the Central Government - Member

(d) Regional Officer, Haryana State Pollution Control Board, Gurgaon – Member.

(e) Senior Town Planner of the area - Member

(f) District Wildlife Warden, Gurgaon - Member Secretary.

(3) The powers and functions of the Monitoring Committee shall be restricted to the monitoring of the compliance of the provisions of this notification only.

(4) In case of activities requiring prior permission or environmental clearance, such activities shall be referred to the State Level Environment Impact Assessment Authority constituted vide notification of the Government of India in the Ministry of Environment & Forests number S. O. 1533 (E), dated September 14, 2006, which shall be the Competent Authority for grant of such clearances as per the provisions of the said notification.

(5) The Monitoring Committee may also invite representatives or experts from the concerned Departments or associations to assist in its deliberations depending on the requirements on issue to issue basis.

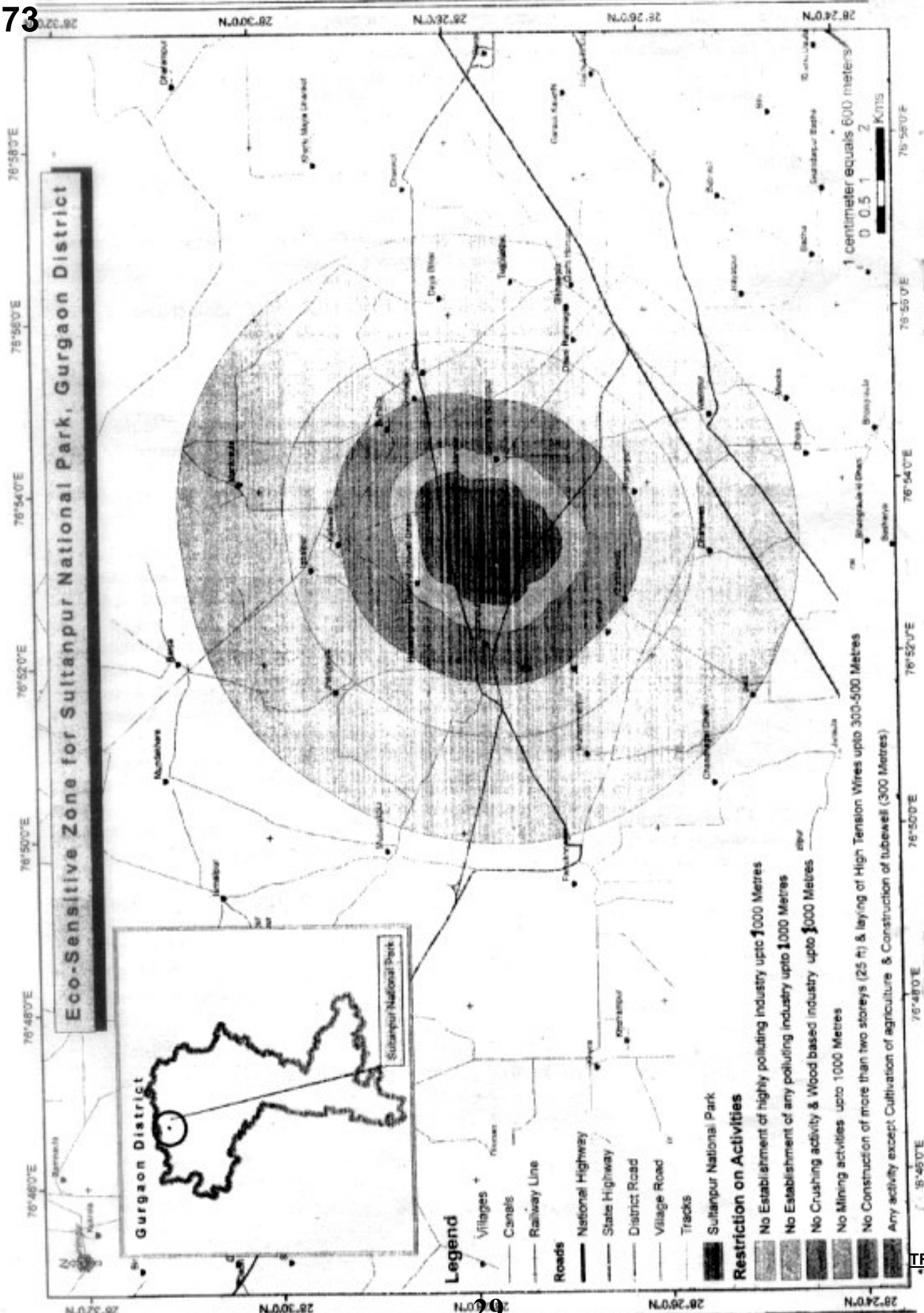
(6) The Chairman or Member-Secretary, as the case may be, of the Monitoring Committee shall be competent to file complaints under section 19 of the Environment (Protection) Act, 1986 for non-compliance of the provisions of this notification.

(7) The Monitoring Committee shall submit its annual action taken reports by the 31st March of every year to the Ministry of Environment and Forests.

(8) The Ministry of Environment & Forests shall give directions, from time to time, to the Monitoring Committee for effective discharge of the functions of the Monitoring Committee.

[F. No. 30/1/2008-ESZ]

Dr. G. V. SUBRAHMANYAM, Scientist 'G'



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(2012) 4 Supreme Court Cases 629

(BEFORE K.S.P. RADHAKRISHNAN AND C.K. PRASAD, JJ.)

DEEPAK KUMAR AND OTHERS .. Petitioners;

Versus

STATE OF HARYANA AND OTHERS .. Respondents.

IAs Nos. 12-13 of 2011 in SLPs (C) Nos. 19628-29 of 2009† with SLPs (C) Nos. 729-31 of 2011, 21833 of 2009, 12498-99 of 2010, SLPs (C) Nos. CC … 16157 and 18235 of 2011, decided on February 27, 2012

A. **Environment Protection and Pollution Control — Mining — Minor minerals — Environmental impact assessment not required for mining areas of less than 5 ha — Invalidity — Mining/quarrying of minor minerals, boulders, gravel and sand in notified areas and riverbeds — Environmental consequences of — Necessary directions issued**

— Inspection report submitted by CEC silent on serious illegal sand mining activities in rivers and prevailing degree of degradation of environment especially on riverbeds — Auction notices concerned stating that for mining leases of area less than 5 ha no environmental impact assessment clearance was required by MoEF, GoI Noti. dt. 14-9-2006 — No light thrown on question whether there has been, in fact, an attempt to flout the Noti. dt. 14-9-2006 by breaking the homogeneous area into pieces of less than 5 ha — Deep concern expressed by Supreme Court on possible adverse environmental/ecological consequences of mining leases on rivers of fragile Shivalik Hills

— Held, there are no materials to come to conclusion that removal of minor minerals, boulders, gravel and sand quarries, etc. covered by auction notices would not cause environmental degradation or threat to biodiversity — Auction notices were issued without conducting any study on possible environmental impact on/in riverbeds and elsewhere

— When faced with a situation where extraction of alluvial material within or near a riverbed has an impact on river's physical habitat characteristics it is not an answer to say that extraction is in blocks of less than 5 ha, separated by 1 km — Collective impact may be significant, therefore, necessity of a proper environmental assessment plan is not done away with — Hence, States/UTs directed that all leases of minor minerals including their renewal for an area of less than five hectares could be granted only after getting EIA (environmental impact assessment) clearance from MoEF, GoI — Recommendation issued to States to prepare "comprehensive mines plan" for contiguous stretches of mineral deposits to be suitably incorporated in Mineral Concession Rules, 1960 by Ministry of Mines, GoI — Constitution of India — Arts. 21, 48-A and 51-A(g) — Minor Minerals Conservation and Development Rules, 2010 — Mines and Minerals (Development and Regulation) Act, 1957, Ss. 3(e), 70 and 15

(Paras 3, 4, 8 to 15 and 20 to 29)

† From the Judgment and Order dated 15-5-2009 of the High Court of Punjab and Haryana at Chandigarh in CWPs Nos. 20134 of 2004 and 4758 of 2008

B. **Environment Protection and Pollution Control — Mining — Effective mining plan framework — Necessity of — Recommendations issued by MoEF, Government of India and Model Rules, 2010 framed by Ministry of Mines, GoI — Non-implementation of, by States and UTs — Directions issued — Held, all States', UTs' MoEFs and Ministries of Mines directed to give effect to recommendations of MoEF, GoI and model guidelines within a period of six months from date of this order and to submit their compliance reports — Central Government also directed to take steps to bring into force Minor Minerals Conservation and Development Rules, 2010 at the earliest — Directions issued to State Governments and UTs to take immediate steps to frame necessary rules under S. 15 of Mines and Minerals (Development and Regulation) Act, 1957 — Further directions passed — Mines and Minerals (Development and Regulation) Act, 1957, S. 15 (Paras 22 to 29)**

B-D/49566/C

Advocates who appeared in this case :

Mohan Jain, Additional Solicitor General, Narender Hooda, Senior Additional Advocate General, Dr Manish Singhvi, Additional Advocate General, P.S. Narasimha, Gopal Subramanium, Ranjit Kumar, P.S. Patwalia and Ranbir Chandra, Senior Advocates [Gaurav Agarwal, K. Parmeswar, Haris Beeran, P.K. Manohar, V. Venayagam Balan, Shish Pal Laler, N.P. Midha, Balbir Singh Gupta, D.K. Thakur, B.K. Prasad, S.N. Terdal, Shivendra Dwivedi, Tarjit Singh, Manjit Singh (for Kamal Mohan Gupta), Aseem Mehrotra, Mohd. F. Khan, Ms Shefai Jain, R.P. Singh, Shree Pal Singh, Devashish Bharuka, Radhashyam Jena, Tapesh Kr. Singh, Samir Ali Khan, Jitender Mohan Sharma, Sandeep Singh, Vibhor Verdhan, Sameer Singh, Mohit Kr. Shah, Ashutosh Singh, Devanshu K. Devesh, Irshad Ahmad, Sarvesh Singh, A. Benayagamblan, Manish Pitale, Wasi Haider, C.S. Ashri, Ms Asha G. Nair, Sanand Ramakrishnan, Ms Meena C.R., M/s Karanjawala & Co., Prakash Kr. Singh, Vijay Panjwani, Ms Anitha Shenoy, Ms Vibha Datta Makhija, D.S. Mahra, Ms H. Wahi, D.K. Sinha, Milind Kumar, Krishananand Pandey, Kamlendra Mishra, Ms Rachana Srivastava, B.S. Banthia, Gopal Singh, Anil Srivastava, M/s Corporate Law Group, T.V. George, Naresh K. Sharma, Prashant Bhushan, Shibashish Misra, Ms Prerna Mehta, S.M. Jadhav, Shiv Kr. Suri, G. Prakash, E.M.S. Anam, Subhro Sanyal, Himinder Lal, Moinuddin Ansari, L.R. Singh, C.D. Singh, Ms Lalitha Kaushik, K.S. Bhati, Neeraj Shekhar, Ms Sumita Hazarika, M/s Suresh A. Shroff & Co., S. Prasad, M/s Khaitan & Co., Ms Pragati Neekhra, Naresh K. Sharma, R. Nedumaran, K.K. Mani, Ms Srikala Gurukrishna Kumar, S. Srinivasan, Prashant Kumar, L.K. Pandey, Shiv Prakash Pandey, Ms Sangeeta Kumar, Nikhil Nayyar, V. Ramasubramanian, Pratap Venugopal, Ms Namrata Sood (for M/s K.J. John & Co.), R. Ayyam Perumal, Ms Prabha Swami, M.A. Chinnasamy, C.N. Sreekumar, Naveen R. Nath, Ms Revathy Raghavan, L.C. Agrawala and Ashwani Bhardwaj, Advocates] for the appearing parties.

The Order of the Court was delivered by

K.S.P. RADHAKRISHNAN, J.— IAs Nos. 12-13 of 2011 are allowed. SLPs (C) Nos. 12498-99 of 2010 be detagged and be listed after two weeks.

2. The Department of Mines and Geology, Government of Haryana issued an auction notice dated 3-6-2011 proposing to auction the extraction of minor minerals, boulders, gravel and sand quarries of an area not exceeding 4.5 ha in each case in the district of Panchkula, auction notices

dated 8-8-2011 in the districts of Panchkula, Ambala and Yamuna Nagar exceeding 5 ha and above, quarrying minor mineral, road metal and masonry stone mines in the district of Bhiwani, stone and sand mines in the district of Mohindergarh, slate stone mines in the district of Rewari, and also in the districts of Kurukshetra, Karnal, Faridabad and Palwal, with certain restrictions for quarrying in the riverbeds of Yamuna, Tangri, Markanda, Ghaggar, Krishnavati River basin, Dohan River basin, etc. The validity of those auction notices is under challenge before us, apart from the complaint of illegal mining going on in the States of Rajasthan and Uttar Pradesh.

3. When the matter came up for hearing on 25-11-2011, we passed an order directing the CEC to make a local inspection with intimation to MoEF, the States of U.P., Rajasthan and Haryana with regard to the alleged illegal mining going on in the States of Uttar Pradesh, Rajasthan and also with regard to the areas identified for mining in the State of Haryana and submit a report. We also directed the CEC to examine whether there has been an attempt to flout EIA Notification dated 14-9-2006 by breaking the homogeneous area into pieces of less than 5 ha. CEC was also directed to examine whether the activities going on in that area have any adverse environmental impact.

4. CEC, in response to our order, submitted a detailed report on 4-1-2012. However, the report is silent with regard to the disturbing trend of serious illegal and unrestricted upstream, instream and flood plain sand mining activities and the prevailing degree of degradation of the sites and the environment, especially on the riverbeds mentioned earlier. The report of CEC however states that the auction notice also refers to mining leases of less than 5 ha and hence no environmental clearance need be obtained as per the MoEF Notification dated 14-9-2006. No light is also thrown on the question whether there has been, in fact, an attempt to flout the Notification dated 14-9-2006 by breaking the homogeneous area into pieces of less than 5 ha and the possible environmental or ecological impact on quarrying of minor minerals.

5. Mr Patwalia, learned Senior Counsel appearing for the petitioners, submitted that the CEC report is silent about those aspects and also whether 1 km distance has been maintained between the mining blocks of less than 5 ha. The learned counsel also submitted that mining areas earmarked are at the foothills of fragile Himalayan ranges known as Shivalik Hills, which are spread over the districts of Panchkula, Ambala and Yamuna Nagar and the illegal and excessive mining has caused serious environmental degradation and ecological impact, and no environmental impact assessment has ever taken place in areas earmarked for mining especially on the riverbeds.

6. Shri Gopal Subramanium, learned Senior Counsel appearing for the State of Haryana, submitted that the State has taken adequate and effective precautions to maintain 1 km separation between mining blocks of less than 5 ha each and that the auction notice dated 3-6-2011 itself has imposed strict restrictions on quarrying in the riverbeds so also the auction notice dated

8-8-2011. Further, it was pointed out that the Notification dated 14-9-2006 would not apply for quarrying minor minerals from areas of less than 5 ha and therefore, no environmental impact assessment needs to be undertaken either at the instance of the State Government or the project proponent.

7. Shri Mohan Jain, learned Additional Solicitor General, appearing for MoEF submitted that the grant or allotment of mining licence/lease of smaller plots of less than five hectares should not be encouraged from the environmental point of view and that the applicability of EIA Notification of 2006, has to be seen in its letter and spirit so as to ensure environmental safeguards in place and implemented for sustainable mining. The learned counsel also assured, if environmental clearance is sought for covering a mining area of less than five hectares, the same shall be immediately attended to and necessary clearance would be granted in accordance with law.

8. We have no materials before us to come to the conclusion that the removal of minor minerals, boulders, gravel, sand quarries, etc. covered by the auction notices dated 3-6-2011 and 8-8-2011, in the places notified therein and also in the riverbeds of Yamuna, Ghaggar, Tangri, Markanda, Krishnavati River basin, Dohan River basin, etc. would not cause environmental degradation or threat to the biodiversity, destroy riverine vegetation, cause erosion, pollute water sources, etc. Sand mining on either side of the rivers, upstream and instream, is one of the causes for environmental degradation and also a threat to the biodiversity. Over the years, India's rivers and riparian ecology have been badly affected by the alarming rate of unrestricted sand mining which damage the ecosystem of rivers and the safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spells disaster for the conservation of many bird species, increases saline water in the rivers, etc.

9. Extraction of alluvial material from within or near a streambed has a direct impact on the stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, instream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both instream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand.

10. We are expressing our deep concern since we are faced with a situation where the auction notices dated 3-6-2011 and 8-8-2011 have permitted quarrying, mining and removal of sand from instream and upstream of several rivers, which may have serious environmental impact on

ephemeral, seasonal and perennial rivers and riverbeds and sand extraction may have an adverse effect on biodiversity as well. Further, it may also lead to bed degradation and sedimentation having a negative effect on the aquatic life. The rivers mentioned in the auction notices are on the foothills of the fragile Shivalik Hills. Shivalik Hills are the source of rivers like Ghaggar, Tangri, Markanda, etc. River Ghaggar is a seasonal river which rises up in the outer Himalayas between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes through Ambala and Hissar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal river like Ghaggar, which also originates from the lower Shivalik Hills and enters Haryana near Ambala. During monsoon, this stream swells up into a raging torrent, notorious for its devastating power, as also, River Yamuna.

11. We find that it is without conducting any study on the possible environmental impact on/in the riverbeds and elsewhere the auction notices have been issued. We are of the considered view that when we are faced with a situation where extraction of alluvial material within or near a riverbed has an impact on the river's physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that the extraction is in blocks of less than 5 ha, separated by 1 km, because their collective impact may be significant, hence the necessity of a proper environmental assessment plan.

12. Possibly this may be the reason that in the affidavit filed by MoEF on 23-11-2011 along with Annexure 2, report, the following stand has been taken:

> "The Ministry is of the opinion that where the mining area is homogenous, physically proximate and on identifiable piece of land of 5 ha or more, it should not be broken into smaller sizes to circumvent the EIA Notification, 2006 as the EIA Notification, 2006 is not applicable to the mining projects having lease area of less than 5 ha. The report of the Committee on Minor Minerals, under the Chairmanship of the Secretary (Environment & Forests) with representatives of various State Governments as members including the States of Haryana and Rajasthan recommended a minimum lease size of 5 ha for minor minerals for undertaking scientific mining for the purpose of integrating and addressing environmental concerns. Only in cases of isolated discontinued mineral deposits in less than 5 ha, such mining leases may be considered keeping in view the mineral conservation."

13. Situations referred to earlier prevail not only in the State of Haryana but also in the neighbouring and other States of the country as well and those issues had come up for serious deliberations before the Government of India, on various occasions.

14. The Government of India was receiving various reports regarding the adverse impacts on riverbeds and groundwater due to quarrying/mining of minerals. The Mines and Minerals (Development and Regulation) Act, 1957 empowers the State Governments to make rules in respect of minor minerals.

It was noticed that proposals for mining of major minerals typically undergo environmental impact assessment and environmental clearance procedure, but due attention has not been given to environmental aspects of mining of minor minerals. Environmental Impact Assessment Notification of 1994 did not apply to the mining of minor minerals, noticing that minor minerals were brought under the ambit of the Environmental Impact Assessment Notification of 2006 and as per the said notification mining of minerals with a lease area of 5 ha and above require prior environmental clearance.

15. MoEF's attention was drawn to several instances across the country regarding damage to lakes, riverbeds and groundwater leading to drying up of waterbeds and causing water scarcity on account of quarry/mining leases and mineral concessions granted under the Mineral Concession Rules framed by the State Governments under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957. MoEF noticed that less attention was given on environmental aspects of mining of minor minerals since the area was small, but it was noticed that the collective impact in a particular area over a period of time might be significant. Taking note of those aspects, MoEF constituted a Core Group under the Chairmanship of the Secretary (Environment & Forests) to look into the environmental aspects associated with mining of minor minerals, vide its Order dated 24-3-2009.

16. The terms of reference to the Core Group were as under:

(*i*) To consider the environmental aspects of mining of minor minerals (quarrying as well as riverbed mining) for their integration into the mining process.

(*ii*) Specific safeguard measures required to minimise the likely adverse impacts of mining on environment with specific reference to impact on water bodies as well as groundwater so as to ensure sustainable mining.

(*iii*) To evolve model guidelines so as to address mining as well as environmental concerns in a balanced manner for their adoption and implementation by all the mineral-producing States.

17. The Core Group held its first meeting on 7-7-2009 and discussed the impact that may be caused by quarrying/mining of minor minerals on riverbeds and groundwaters. It was noticed that individual mines of minor minerals being small in size may have insignificant impact, however, their collective impacts, taking into consideration various mines on a regional scale, is significantly adverse. It was, therefore, felt necessary to consider various aspects since appropriate guidelines have to be issued on the basis of the report of the Committee. The issues which were brought up for consideration were; (*i*) the need to relook the definition of minor mineral, (*ii*) minimum size of lease for adopting eco-friendly scientific mining practices, (*iii*) period of lease, (*iv*) cluster of mine approach for addressing and implementing EMP in case of small mines, (*v*) depth of mining to minimise adverse impact on hydrological regime, (*vi*) requirement of mine plan for minor minerals, similar to major minerals, and (*vii*) reclamation of mined out area, post mine land use, progressive mine closure plan, etc.

18. Comments and inputs from various States and experts were also invited so as to prepare a report for consideration of MoEF. Based on the discussion held and subsequent inputs received, a draft report was prepared and circulated to all members for their further inputs. The report was further discussed on 29-1-2010 for its finalisation. The observations/comments made during the meeting were incorporated in the report and it was again circulated to all members for their consideration. The report so circulated was ultimately finalised. The decision taken by MoEF affects generally the mining of minor minerals including the riverbed mining throughout the country.

19. For an easy reference, we may extract the issues and recommendations made by MoEF, which are as follows:

"**4.0.** ***Issues and recommendations***

4.1. *Definition of minor mineral*

The term 'minor mineral' is defined in clause (*e*) of Section 3 of the MMDR Act, 1957 as:

> '**3. (*e*) "minor minerals"** means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette declare to be a minor mineral;'

The term 'ordinary sand' used in clause (*e*) of Section 3 of the MMDR Act, 1957 has been further clarified in Rule 70 of the MCR, 1960 as:

> '**70.** ***Sand not be treated as minor mineral when used for certain purpose***.—Sand shall not be treated as a minor mineral when used for any of the following purposes, namely:
>
> (*i*) purpose of refractory and manufacture of ceramic;
>
> (*ii*) metallurgical purposes;
>
> (*iii*) optical purposes;
>
> (*iv*) purposes of stowing in coal mines;
>
> (*v*) for manufacture of silvicrete cement;
>
> (*vi*) manufacture of sodium silicate; and
>
> (*vii*) for manufacture of pottery and glass.'

Additionally, the Central Government has declared the following minerals as minor minerals: (*i*) boulder, (*ii*) shingle, (*iii*) chalcedony pebbles used for ball mill purposes only, (*iv*) limeshell, kankar and limestone used in kilns for manufacture of lime used as building material, (*v*) murrum, (*vi*) brick-earth, (*vii*) fuller's earth, (*viii*) bentonite, (*ix*) road metal, (*x*) reh-matti, (*xi*) slate and shale when used for building material, (*xii*) marble, (*xiii*) stone used for making household utensils, (*xiv*) quartzite and sandstone when used for purposes of building or for making road metal and household utensils, (*xv*) saltpetre and (*xvi*) ordinary earth (used for filling or levelling purposes in construction or embankments, roads, railways building).

It may thus be observed that minerals have been classified into major and minor minerals based on their end use rather than level of

production, level of mechanisation, export and import, etc. There do exist some minor mineral mines of silica sand and limestone where the scale of mechanisation and level of production is much higher than those of industrial mineral mines. Further, in terms of the economic cost and revenue, it has been estimated that the total value of minor minerals constitutes about 10% of the total value of mineral production whereas the value of non-metallic minerals comprises only 3%. It is, therefore, evident that the operation of mines of minor minerals need to be subject to some regulatory parameters as that of mines of major minerals.

Further, unlike India there does not exist any such system based on end usage in other countries for classifying minerals into major and minor categories. Thus, there is a need to relook at the definition of 'minor minerals' per se.

It is, therefore, recommended that the Ministry of Mines along with Indian Bureau of Mines, in consultation with the State Governments may re-examine the classification of minerals into major and minor categories so that the regulatory aspects and environment mitigation measures are appropriately integrated for ensuring sustainable and scientific mining with least impacts on environment.

4.2. *Size of the mine lease*

Area for grant of mine lease varies from State to State. Maximum area which can be held under one or more mine lease is 2590 ha or 25.90 sq miles in Jammu and Kashmir. Rajasthan prescribed a minimum limit of 1 ha for a lease. Maximum area prescribed for permit is 50 × 50 m. In most of the States area of permit is not specified in the Rules. It has recently been observed by the Punjab and Haryana High Court in its order dated 15-5-2009 that the State Government apparently granting short-term permits by dividing the mining area into small zones in effect avoids environmental norms.

There is, thus a need to bring uniformity in the extent of area to be granted for mine lease so as to ensure that eco-friendly scientific mining practices can be adopted. *It is recommended that the minimum size of mine lease should be 5 ha. Further, preparation of comprehensive mine plan for contiguous stretches of mineral deposits by the respective State Governments may also be encouraged. This may suitably be incorporated in the Mineral Concession Rules, 1960 by the Ministry of Mines.*

4.3. *Period of mine lease*

The period of lease varies from State to State depending on type of concessions, minerals and its end use. The minimum lease period is one year and maximum 30 years. Minerals like granite where huge investments are required, a period of 20 years is generally given with the provisions of renewal. Permits are generally granted for short periods which vary from one month to a maximum of one year. In States like Haryana, minor mineral leases are auctioned for a particular time period. Mining is considered to be capital intensive industry and considerable time is lost for developing the mine before it attains the status of fully developed mine. If the tenure of the mine lease is short, it would encourage the lessee to concentrate more on rapid exploitation of

mineral without really undertaking adequate measures for reclamation and rehabilitation of mined out area, posing thereby a serious threat to the environment and health of the workers and public at large.

There is thus, a need to bring uniformity in the period of lease. *It is recommended that a minimum period of mine lease should be 5 years, so that eco-friendly, scientific and sustainable mining practices are adopted. However, under exceptional circumstances arising due to judicial interventions, short-term mining leases/contracts could be granted to the State Agencies to meet the situation arising therefrom.*

4.4. *Cluster of mine approach for small-sized mines*

Considering the nature of occurrence of minor mineral, economic condition of the lessee and the likely difficulties to be faced by Regulatory Authorities in monitoring the environmental impacts and implementation of necessary mitigation measures, *it may be desirable to adopt cluster approach in case of smaller mine leases being operated presently. Further, these clusters need be provided with processing/ crusher zones for forward integration and minimising excessive pressure on road infrastructure. The respective State Governments/mine owners' associations may facilitate implementation of Environment Management Plans in such cluster of mines.*

4.5. *Requirement of mine plan for minor minerals*

At present, most of the State Governments have not made it mandatory for preparation of mining plan in respect of minor minerals. In some States like Rajasthan, eco-friendly mining plans are prepared, which are approved by the State Mining Department. The eco-friendly mining plans so prepared, though conceptually welcome, are observed to be deficient and need to be made comprehensive in a manner as is being done for major minerals. Besides, the aspects of reclamation and rehabilitation of mined out areas, progressive mine closure plan, as in vogue for major minerals could be introduced for minor minerals as well.

It is recommended that provision for preparation and approval of mine plan, as in the case of major minerals may appropriately be provided in the rules governing the mining of minor minerals by the respective State Governments. These should specifically include the provision for reclamation and rehabilitation of mined out area, progressive mine closure plan and post mine land use.

4.6. *Creation of separate corpus for reclamation/rehabilitation of mines of minor minerals*

Mining of minor minerals, in our country, is by and large an unorganised sector and is practised in haphazard and unscientific manner. At times, the size of the leasehold is also too small to address the issue of reclamation and rehabilitation of mined out areas. It may, therefore, be desirable that before the concept of mine closure plan for minor minerals is adopted, the existing abandoned mines may be reclaimed and rehabilitated with the involvement of the State Government. *There is thus, a need to create a separate corpus, which may be utilised for reclamation and rehabilitation of mined out areas. The respective State Governments may work out a suitable mechanism*

for creation of such corpus on the 'polluter pays' principle. An organisational structure may also need to be created for undertaking and monitoring these activities.

4.7. *Depth of mining*

Mining of minerals, whether major or minor have a direct bearing on the hydrological regime of the area. Besides affecting the availability of water as a resource, it also affects the quality of water through direct run of going into the surface water bodies and infiltration/leaching into groundwater. Further, groundwater withdrawal, dewatering of water from mine-pit and diversion of surface water may cause surface and subsurface hydrologic systems to dry up. An ideal situation would require that quarrying should be restricted to unsaturated zone only above the phreatic water table and should not intersect the groundwater table at any point of time. However, from the point of view of mineral conservation, it may not be desirable to impose blanket ban on mining operation below groundwater table.

It is, therefore, recommended that detailed hydrogeological report should be prepared in respect of any mining operation for minor minerals to be undertaken below groundwater table. Based on the findings of the study so undertaken and the comments/recommendations of the Central Groundwater Authority/State Groundwater Board, a decision regarding restriction on depth of mining for any area should be taken on case-to-case basis.

4.8. *Uniform minor mineral concession rules*

The economic value of the minor minerals excavated in the country is estimated to contribute to about 9% of the total value of the minerals whereas the non-metallic minerals contribute to about 2.8%. Keeping in view the large extent of mining of minor minerals and its significant potential to adversely affect the environment, it is *recommended that model mineral concession rules may be framed for minor minerals as well and the minor minerals may be subjected to a simpler regulatory regime, which is, however, similar to major minerals regime.*

4.9. *Riverbed mining*

4.9.1. Environment damage being caused by unregulated riverbed mining of sand, bazari and boulders is attracting considerable attention including in the courts. The following recommendations are therefore made for the riverbed mining:

(*a*) *In the case of mining leases for riverbed sand mining, specific river stretches should be identified and mining permits/lease should be granted stretchwise, so that the requisite safeguard measures are duly implemented and are effectively monitored by the respective Regulatory Authorities.*

(*b*) *The depth of mining may be restricted to 3m/water level, whichever is less.*

(*c*) *For carrying out mining in proximity to any bridge and/or embankment, appropriate safety zone should be worked out on case-to-case basis, taking into account the structural parameters, locational aspects, flow rate, etc. and no mining should be carried out in the safety zone so worked out.*

5.0. *Conclusion*

Mining of minor minerals, though individually, because of smaller size of mine leases is perceived to have lesser impact as compared to mining of major minerals. However, the activity as a whole is seen to have significant adverse impacts on environment. It is, therefore, necessary that the mining of minor minerals is subjected to simpler but strict regulatory regime and *carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of the mined out areas. Further, while granting mining leases by the respective State Governments location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked rules/notifications governing such zones and the judicial pronouncements, if any, need be duly noted.* The Union Ministry of Mines along with the Indian Bureau of Mines and respective State Governments should therefore make necessary provisions in this regard under the Mines and Minerals (Development and Regulation) Act, 1957, Mineral Concession Rules, 1960 and adopt model guidelines to be followed by all States." (emphasis supplied)

20. The Report clearly indicates that operation of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals. It was also felt necessary to have a relook to the definition of "minor minerals" per se. The necessity of the preparation of "comprehensive mines plan" for contiguous stretches of mineral deposits by the respective State Governments may also be encouraged and the same be suitably incorporated in the Mineral Concession Rules, 1960 by the Ministry of Mines.

21. Further, it was also recommended that the States, Union Territories would see that mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an *approved framework of mining plan*, which should provide for *reclamation and rehabilitation* of mined out areas. Mining plan should take note of the level of production, level of mechanisation, type of machinery used in the mining of minor minerals, quantity of diesel consumption, the number of trees uprooted, export and import of mining minerals, environmental impact, restoration of flora and host of other matters referred to in the 2010 Rules. A proper framework has also to be evolved on cluster of mining of minor minerals for which there must be a *Regional Environmental Management Plan*. Another important decision taken was that while granting of mining leases by the respective State Governments, *location of any eco-fragile zone(s)* within the *impact zone* of the proposed mining area, the linked rules/notifications governing such zones and the judicial pronouncements, if any, need to be duly noted.

22. The Minister for (Environment and Forests) wrote DO Letter dated 1-6-2010 to all the Chief Ministers of the States to examine the Report and to issue necessary instructions for incorporating the recommendations made in the Report in the Mineral Concession Rules for mining of minor minerals

under Section 15 of the Mines and Mineral (Development and Regulation) Act, 1957. Following are the key recommendations reiterated in the letter:

"(*1*) Minimum size of mine lease should be 5 ha.

(*2*) Minimum period of mine lease should be 5 years.

(*3*) A cluster approach to mines should be taken in case of smaller mine leases operating currently.

(*4*) Mine plans should be made mandatory for minor minerals as well.

(*5*) A separate corpus should be created for reclamation and rehabilitation of mined out areas.

(*6*) Hydrogeological reports should be prepared for mining proposed below groundwater table.

(*7*) For riverbed mining, leases should be granted stretchwise, depth may be restricted to 3m/water level, whichever is less, and safety zones should be worked out.

(*8*) The present classification of minerals into major and minor categories should be re-examined by the Ministry of Mines in consultation with the States."

23. The Ministry of Mines, Government of India sent Communication No. 296/7/2000/MRC dated 16-5-2011 called "Environmental Aspects of Quarrying and of Minor Minerals—Evolving of Model Guidelines" along with a draft model guidelines calling for inputs before 30-6-2011. Draft rules called Minor Minerals Conservation and Development Rules, 2010 were also put on the website. Further, it may be noted that Section 15(1-A)(*i*) of the Act specifies:

"**15. (1-A)(*i*)** the manner in which rehabilitation of flora and other vegetation such as trees, shrubs and the like destroyed by reason of any quarrying or mining operations shall be made in the same area or in any other area [once] selected by the State Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the quarrying or mining lease;"

24. We are of the view that all State Governments/Union Territories have to give due weight to the abovementioned recommendations of MoEF which are made in consultation with all the State Governments and Union Territories. The Model Rules of 2010 issued by the Ministry of Mines are very vital from the environmental, ecological and biodiversity point of view and therefore the State Governments have to frame proper rules in accordance with the recommendations, under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957.

25. Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive instream sand and gravel mining causes the degradation of rivers. Instream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the

deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics.

26. We are of the considered view that it is highly necessary to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long-term rational and sustainable use of natural resource base and also the bio-assessment protocol. Sand mining, it may be noted, may have an adverse effect on biodiversity as loss of habitat caused by sand mining will affect various species, flora and fauna and it may also destabilise the soil structure of river banks and often leaves isolated islands. We find that, taking note of those technical, scientific and environmental matters, MoEF, Government of India, issued various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of Article 48-A and Article 51-A(*g*) read with Article 21 of the Constitution.

27. The State of Haryana and various other States have not so far implemented the above recommendations of MoEF or the guidelines issued by the Ministry of Mines before issuing auction notices granting short-term permits by way of auction of minor minerals boulders, gravel, sand, etc., in the riverbeds and elsewhere of less than 5 ha. We, therefore, direct all the States, Union Territories, MoEF and the Ministry of Mines to give effect to the recommendations made by MoEF in its Report of March 2010 and the model guidelines framed by the Ministry of Mines, within a period of six months from today and submit their compliance reports.

28. The Central Government also should take steps to bring into force the Minor Minerals Conservation and Development Rules, 2010 at the earliest. The State Governments and UTs also should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MoEF in its Report of March 2010 and model guidelines framed by the Ministry of Mines, Government of India. Communicate the copy of this order to MoEF, Secretary, Ministry of Mines, New Delhi; Ministry of Water Resources, Central Government Water Authority; the Chief Secretaries of the respective States and Union Territories, who would circulate this order to the Departments concerned.

29. We, in the meanwhile, order that leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/ Union Territories only after getting environmental clearance from MoEF. Ordered accordingly.

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(2013) 4 Supreme Court Cases 575

(BEFORE A.K. PATNAIK AND H.L. GOKHALE, JJ.)

STERLITE INDUSTRIES (INDIA) LIMITED AND OTHERS .. Appellants;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Civil Appeals Nos. 2776-83 of 2013†, decided on April 2, 2013

A. **Environment Protection and Pollution Control — Polluter pays principle — Closure of polluting plant or direction to pay compensation for loss suffered by citizenry due to harm caused to environment — Factors to be considered and balanced — Sustainable development — Considerations of — Remedial action to restore environmental damage caused by polluting plant concerned/improve environment — Possibility of, without closure of plant**

— Environmental impact assessment (EIA) for setting up copper smelter plant by appellant Company and environmental clearance by authorities being valid, rational and as per procedure — But plant while operating failing to maintain emission and effluent standards and operating without renewal permission and thereby causing air and water pollution which could have been averted — High Court therefore quashing environmental clearance and directing closure of plant — But when matter coming to Supreme Court, appellant removing 29 out of 30 pollution-causing deficiencies at plant pointed out by NEERI (National Environmental Engineering and Research Institute)

— Considering: (a) economic importance of plant and need of sustainable development in public interest, (b) that authorities could exercise their discretion under R. 5(1)(v), 1986 Rules at any later stage to shift the plant if they felt the need therefor without closing down plant, (c) well-settled principles and grounds for judicial review and intervention, (d) that pollution could be checked/remedied without the plant being closed down, and (e) paying capacity of plant to pay compensation — Held, the plant should not be closed down but instead appellant Company should pay compensation of Rs 100 crores to remedy environmental damage caused/ improve environment as directed — Therefore, High Court order directing closure of plant, set aside — Clarified that State Pollution Control Board (i.e. TNPCB) can issue directions to appellant Company including a direction for closure of the plant, for the protection of environment in accordance with law, if found necessary at any stage — Also clarified that award of Rs 100 crores as compensation would not bar any other claim by any person that may be available under law — Constitution of India — Arts. 21, 32, 47, 48-A, 226 and 136 — Air (Prevention and Control of Pollution) Act, 1981 — S. 21 — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 25, 3,

† Arising out of SLPs (C) Nos. 28116-23 of 2010. From the Judgment and Order dated 28-9-2010 of the High Court of Judicature of Madras in WPs Nos. 15501-502 of 1996, 5769 of 1997, 16861 of 1998, WMPs Nos. 8044-46 of 1999 and WP No. 15503 of 2006

16 and 18 — Environment (Protection) Act, 1986 — Ss. 3(1) & (2) — Environment (Protection) Rules, 1986 — Rr. 5(1)(v) & (3) — Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989, R. 19

B. **Environment Protection and Pollution Control — Pollutants/ Polluting industry — Compensation on basis of polluter pays principle — Manner of determination of amount — Paying capacity of polluter — Reckoning of — Closure of plant, when not desirable**

C. **Environment Protection and Pollution Control — Polluter pays principle — Compensation awarded under, for causing harm to environment for a particular period, held, not to affect any claim for damages for the aforesaid period or any other period that may lie in a civil court or any other forum in accordance with law**

D. **Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Judicial review/Quashment of — Grounds and scope for judicial intervention — Principles summarised**

— Held, Environmental Impact Assessment (EIA) done and environmental clearance granted by expert authorities can only be quashed on well-recognised principles of judicial review i.e. only if there is any illegality, irrationality or procedural impropriety in granting such permission (which is not the case here) — However, if after setting up of plant, the plant begins/continues to pollute environment, fundamental right under Art. 21 of Constitution can always be invoked — But as remedies were available to remedy damage caused/improve environment without closing the plant, High Court should not have directed closure of plant (and as per latest record, plant had already removed 29 out of 30 pollution-causing deficiencies pointed out by NEERI) — Environment (Protection) Act, 1986 — Ss. 3(1) & (2) — Environmental clearance granted under — Grounds and scope of judicial intervention — Evidence Act, 1872 — S. 45 — Expert opinion — EIA (Environment Impact Assessment) — Grounds for judicial review

E. **Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Ground of procedural impropriety — When can be resorted to, to quash environmental clearance — Held, ground of procedural impropriety can be resorted to, to quash environmental clearance only when a mandatory requirement is violated — As requirements of comprehensive EIA and public hearing prior to grant of environmental clearance were not mandatory (as per prevalent notification), High Court could not have quashed environmental clearance on said grounds — Environment (Protection) Act, 1986, Ss. 3(1) & (2)**

F. **Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Grant of environmental clearance/NOC for setting up of plant/industry — If valid and proper in present case**

— (a) There being no public hearing on issue of environmental effects of setting up of plant at location where it was set up (which was opposed at

three other places in India), (b) EIA being conducted speedily by taking only data of one season, (c) authorities reducing requirement of green belt around plant from 250 m to 25 m, and (d) plant being located within 25 km of ecologically sensitive area (i.e. islands of Gulf of Munnar) as notified under S. 35(1), 1972 Act — Against this Supreme Court found that requirement of public hearing and comprehensive EIA were not mandatory as per prevalent notification (EIA Noti. dt. 27-1-1994), though later notification (i.e. EIA Noti. dt. 10-4-1997) requiring mandatory public hearing and comprehensive EIA — Rapid EIA being permissible under prevalent notification, whereunder EIA could be done by taking data of only one season — All procedures regarding rapid EIA were complied with as per prevalent notification — It could not be shown as to how by reducing green belt from 250 m to 25 m around the plant area any procedure was violated or there was any irrationality — Rather plant had installed air control utilities such that it satisfied ambient air quality standards prescribed by State Pollution Control Board (i.e. TNPCB) — Therefore, held, there was no illegality, irrationality, or procedural impropriety in granting environmental clearance to the project of appellant — Regarding location, no notification prohibiting setting up of industry in said area had been issued under R. 5(1)(v), 1986 Rules — Thus as and when Central Government issues a notification under R. 5(1)(v), 1986 Rules, prohibiting or restricting location of plant, steps may be taken by all concerned for shifting of the industry subject to content of notification and subject to legal challenge by industry concerned — Air (Prevention and Control of Pollution) Act, 1981 — S. 21 — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 25, 3, 16 and 18 — Wild Life (Protection) Act, 1972 — Ss. 35(1) & (4) — Notification under S. 35(4) not having been issued — Effect — Environment (Protection) Rules, 1986, Rr. 5(1)(v) & (3)

G. **Environment Protection and Pollution Control — Sustainable development — Polluting plant — Relief of setting aside order of closure — Said relief, when can be given even if there was suppression and misrepresentation of material facts by polluting plant (appellant) — EIA Noti. dt. 27-1-1994 — Para 2(c) and Expln. Note, Para 5 — EIA Noti. dt. 10-4-1997 — Constitution of India, Arts. 226, 32 and 136**

H. **Environment Protection and Pollution Control — Non-Governmental Organisations (NGOs) and Third Sector — Appreciation expressed by Supreme Court for work done by writ petitioners and intervenor for prosecuting these proceedings in genuine public interest**

Allowing the appeal in the terms below, the Supreme Court

Held :

The environmental clearance for setting up the plant of the appellant Company was granted to the appellants under Section 3(1) of the Environment (Protection) Act, 1986 (1986 Act). The prevalent Environmental Impact Assessment (EIA) notification issued under Section 3(2)(*v*), 1986 Act, and Rule 5(3) of the Environment (Protection) Rules, 1986, by the Central Government was EIA Notification dated 27-1-1994. The language of Para 2(*c*), EIA Notification dated 27-1-1994 did not lay down that a public hearing was a must for giving environmental clearance when the appellants' case was under

consideration. In the present case the environmental clearance was thus granted by MoEF on 16-1-1995 in accordance with the procedure laid down by the EIA Notification dated 27-1-1994 well before the issuance of the EIA Notification dated 10-4-1997 providing for mandatory public hearing in accordance with the procedure laid down in Schedule IV. Therefore, the High Court could not have allowed the writ petitions challenging the environmental clearances on the ground that no public hearing was conducted before the grant of the environmental clearances. (Paras 28 to 29, 2, 7 and 22)

Para 5 of the Explanatory Note, EIA Notification dated 27-1-1994 clarified that project proponents could furnish a rapid EIA report to the Impact Assessment Agency based on one season data, for examination of the project and a comprehensive EIA report could be submitted later, if so asked for by the Impact Assessment Agency. Therefore, the High Court could not have allowed the writ petitions on the ground that environmental clearance was issued to the appellant Company on the basis of inadequate rapid EIA, particularly when the Union of India in its affidavit had clearly averred that the environmental clearance was granted after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State Pollution Control Board and risk analysis in accordance with the procedure laid down in EIA Notification dated 27-1-1994 (as amended on 4-5-1994). The High Court has noticed some decisions of the Supreme Court on sustainable development, precautionary and polluter pays principles and public trust doctrine, but has failed to appreciate that the decision of the Central Government to grant environmental clearance to the plant of the appellants could only be tested on the anvil of well-recognised principles of judicial review: for e.g. the High Court could interfere on the ground of illegality, irrationality, *Wednesbury* unreasonableness, or on the ground of procedural impropriety. However, on the ground of procedural impropriety, the High Court can quash the environmental clearance only if it is satisfied that the breach was of a mandatory requirement in the procedure. In the absence of a mandatory requirement of public hearing and a mandatory comprehensive EIA report, the High Court could not have interfered with the decision of the Central Government granting environmental clearance on the ground of procedural impropriety. No materials have been produced to take a view that the decision of the Central Government to grant the environmental clearance to the plant of the appellants was so unreasonable that no reasonable authority could ever have taken the decision or that the decision of MoEF to accord environmental clearance to the plant of the appellants at Tuticorin was wholly irrational and frustrated the very purpose of EIA.
(Paras 30 to 33, 8 and 18 to 21)

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

Vellore Citizens' Welfare Forum v. *Union of India*, (1996) 5 SCC 647; *Tirupur Dyeing Factory Owners Assn.* v. *Noyyal River Ayacutdars Protection Assn.*, (2009) 9 SCC 737; *M.C. Mehta* v. *Union of India*, (2009) 6 SCC 142; *East Coast Railway* v. *Mahadev Appa Rao*, (2010) 7 SCC 678 : (2010) 2 SCC (L&S) 483; *Belize Alliance of Conservation Non-Governmental Organisations* v. *Deptt. of the Environment*, (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC); *Northern Jamaica Conservation Assn.* v. *Natural Resources Conservation Authority*, Claim No. HCV 3022 of 2005, order dated 16-5-2006 (Jamaica SC); *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA), *referred to*

National Trust for Clean Environment v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), *cited*

It is for the authorities under the 1986 Act and Rules and the notifications issued thereunder to determine the scope of the project, the extent of the screening and the assessment of the cumulative effects and so long as the statutory process is followed and the EIA made by the authorities is not found to be irrational so as to frustrate the very purpose of EIA, the Court will not interfere with the decision of the authorities in exercise of its powers of judicial review. (Para 34)

Belize Alliance of Conservation Non-Governmental Organisations v. *Deptt. of the Environment*, (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC), *relied on*

Bow Valley Naturalists Society v. *Canada (Minister of Canadian Heritage)*, (2001) 2 FC 461 (Can), *approved*

The TNPCB (State Pollution Control Board) while granting the consent under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 added the requirement that the location of the unit should be 25 km away from ecologically sensitive area without noting that the area for plant concerned was within 25 km from ecologically sensitive area. Since, however, the consent order was granted to the appellant Company to establish its plant in the said area, and the plant has in fact been established there, the High Court could not have come to the conclusion that the appellant Company had violated the consent order and based thereon directed closure of the plant. The Gulf of Munnar is an ecologically sensitive area [having been so notified under Section 35(1) of the Wild Life (Protection) Act, 1972 on 10-9-1986] and the Central Government may in exercise of its powers under Rule 5(1)(*v*), 1986 Rules, prohibit or restrict the location of industries and carrying on processes and operations to preserve the biological diversity of the Gulf of Munnar. As and when the Central Government issues an order under Rule 5, 1986 Rules, then appropriate steps may have to be taken by all concerned for shifting the industry depending upon the content of the order or notification and subject to the legal challenge by the industries. (Paras 37, 38, 6 to 6.3, 12 and 14 to 26)

NEERI (National Environmental Engineering and Research Institute) Report of 1998, *referred to*

Various conditions have been imposed on the plant/industry of the appellants to ensure that air pollution control measures are installed for the control of emissions generated from the plant and that the emissions from the plant satisfies the ambient air quality standards prescribed by the TNPCB and development of green belt contemplated under the environmental management plan around the battery limit of the industry of the appellants was an additional condition that was imposed by the TNPCB in the no-objection certificate dated 1-8-1994. If the TNPCB after considering the representation of the appellants has reduced the requirement of width of the green belt from a minimum of 250 metres to a minimum of 25 metres around the battery limit of the industry of the appellants and it is not shown that this power which has been exercised was vitiated by procedural breach or irrationality, the High Court in exercise of its powers of judicial review could not have interfered with the exercise of such power by the TNPCB. (Paras 39.1, 9 and 13)

Sterlite Industries (I) Ltd. v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), *referred to*

It is for the administrative and statutory authorities empowered under the law to consider and grant environmental clearance and the consents to the appellants for setting up the plant and where no ground for interference with the decisions of the authorities on well-recognised principles of judicial review is made out, the High Court could not interfere with the decisions of the authorities to grant

the environmental clearance or the consents on the ground that had the authorities made a proper environmental assessment of the plant, the adverse environmental effects of the industry could have been prevented. If, however, after the grant of environmental clearance under the 1986 Act and Rules and the notifications issued thereunder and after the consents granted under the Air Act and the Water Act, the industry begins to/continues to pollute the environment so as to affect the fundamental right to life under Article 21 of the Constitution, the High Court could still direct the closure of the industry by virtue of its powers under Article 21 of the Constitution if it came to the conclusion that there were no other remedial measures to ensure that the industry maintains the standards of emission and effluent. (Paras 40 and 18)

M.C. Mehta v. *Union of India*, (1987) 4 SCC 463, *relied on*

The High Court relied on the report of NEERI (National Environmental Engineering and Research Institute) of 2005 to hold that the plant site itself is severely polluted and the ground samples level of arsenic justified classifying the whole site of the plant of the appellant as hazardous waste. The NEERI Report of 2005 did show that the emission and effluent discharged from the appellants' plant affected the environment but the report read as whole does not warrant a conclusion that the plant of the appellants could not possibly take remedial steps to remedy/improve the environment and that the only remedy to protect the environment was to direct closure of the plant of the appellants. As per the joint inspection carried out by TNPCB and CPCB as per Supreme Court, directions, out of the 30 directions issued by the TNPCB, the appellant Company has complied with 29 directions and only one more direction under the Air Act remains to be complied with. As the deficiencies in the plant of the appellants which affected the environment as pointed out by NEERI have now been removed, the impugned order of the High Court directing closure of the plant of the appellants is liable to be set aside. (Paras 41 to 44, 10, 14 and 23)

Sterlite Industries (I) Ltd. v. *Union of India*, (2011) 13 SCC 769; *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 13 SCC 773, *relied on*

Sterlite Industries (I) Ltd. v. *Union of India*, (2011) 13 SCC 772; *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 10 SCC 254; *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), *referred to*

National Trust for Clean Environment v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), *reversed*

NEERI (National Environmental Engineering and Research Institute) Reports of 2005, 1998, 1999, 2003 and 2011; Joint Inspection Report of TNPCB and CPCB, September 2012, *referred to*

There is no doubt that there has been misrepresentation and suppression of material facts made in the SLP by the appellants, but to decline relief to the appellants in this case would mean closure of the plant of the appellants. The plant of the appellants contributes substantially to the copper production in India and copper is used in defence, electricity, automobile and construction industries and infrastructure, etc. The plant of the appellants has about 1300 employees and it also provides employment to a large number of people through contractors. A number of ancillary industries are also dependent on the plant. Through its various transactions, the plant generates huge revenue to the Central and State Governments in terms of excise, custom duties, income tax and VAT. It also contributes to 10% of the total cargo volume of Tuticorin Port. For these considerations of public interest, it will not be a proper exercise of the discretion under Article 136 of the Constitution to refuse relief on the grounds of

misrepresentation and suppression of material facts in the SLP. (Paras 48, 11 and 15 to 17)

Sterlite Industries (I) Ltd. v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC); *Hari Narain* v. *Badri Das*, AIR 1963 SC 1558; *G. Narayanaswamy Reddy* v. *Govt. of Karnataka*, (1991) 3 SCC 261; *Dalip Singh* v. *State of U.P.*, (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324; *Abhyudya Sanstha* v. *Union of India*, (2011) 6 SCC 145 : (2011) 3 SCC (Civ) 241, *referred to*

The NEERI Reports of 1998, 1999, 2003 and 2005 show that the plant of the appellant did pollute the environment through emissions which did not conform to the standards laid down by the TNPCB under the Air Act and through discharge of effluent which did not conform to the standards laid down by the TNPCB under the Water Act. On account of some of these deficiencies, TNPCB also did not renew the consent to operate for some periods and yet the appellants continued to operate its plant without such renewal. For such damages caused to the environment from 1997 to 2012 and for operating the plant without a valid renewal for a fairly long period, the appellant Company obviously is liable to compensate by paying damages. (Para 45)

Considering the magnitude, capacity and prosperity of the appellant Company, the appellant Company is directed to pay compensation of Rs 100 crores. The aforesaid amount will be deposited with the Collector of Thoothukudi District who will invest it in a fixed deposit. The interest therefrom will be spent for improving the environment, including water and soil, of the vicinity of the plant after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu. (Paras 47 and 50)

M.C. Mehta v. *Union of India*, (1987) 1 SCC 395 : 1987 SCC (L&S) 37, *followed*

NEERI (National Environmental Engineering and Research Institute) reports of 1998, 1999, 2003 and 2005; Annual Report 2011 of the Sterlite Industries, at pp. 20 and 21, *referred to*

The efforts of writ petitioners before the High Court and the intervenor before the Supreme Court are appreciated for having taken up the cause of the environment both before the High Court and the Supreme Court and for having assisted the Supreme Court on all dates of hearing with utmost sincerity and hard work. Voluntary bodies deserve encouragement wherever their actions are found to be in furtherance of public interest. Very few would venture to litigate for the cause of the environment, particularly against the mighty and the resourceful, but the writ petitioners before the High Court and the intervenor before the Supreme Court not only ventured but also put in their best for the cause of the general public. (Para 49)

Indian Council for Enviro-Legal Action v. *Union of India*, (1996) 3 SCC 212, *relied on*

The impugned common judgment of the High Court is, therefore, set aside and it is made clear that the present judgment will not stand in the way of the TNPCB issuing directions to the appellant Company, including a direction for closure of the plant, for the protection of environment in accordance with law. It is also made clear that the direction for payment of compensation of Rs 100 crores by the present judgment against the appellant Company for the period from 1997 to 2012 will not stand in the way of any claim for damages for the aforesaid period or any other period in a civil court or any other forum in accordance with law. (Paras 50 and 51)

National Trust for Clean Environment v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), *reversed*

SS-D/51576/C

Advocates who appeared in this case :

P.P. Malhotra, Additional Solicitor General, S. Guru Krishna Kumar, Additional Advocate General, C.A. Sundaram, C.U. Singh, Raj Panjwani and V. Prakash, Senior Advocates (Ms Rohini Musa, Zafar Inayat, Yogesh V. Kotemath, S. Raghunathan, Mahesh Agarwal, Rishi Agarwal, E.C. Agarwala, Ms Radhika Gautam, Abhinav Agrawal, Ms Rashmi Nandakumar, Rahul Chowdhury, Ms Anitha Shenoy, Ms Vimla Sinha, Yasser Rauf, B. Krishna Prasad, Subramonium Prasad, Ms Manju Jana, Shivaji M. Jadhav, Vijay Panjwani, G. Devedoss, M.S.M. Asaithambi, G. Ananthaselvam, M. Yogesh Kanna, R. Veeramani, A. Prasanna Venkat, S. Beno Bencigar, P. Somasundaram, Abhay Kumar, V.N. Subramaniam, V. Senthila Kumar, K. Krishna Kumar and M.A. Chinnasamy, Advocates) for the appearing parties and Vaiko alias V. Gopalsamy, Respondent-in-Person.

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

1. SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), *Sterlite Industries (I) Ltd.* v. *Union of India* 588*b-c*, 603*c-d*
2. (2011) 13 SCC 773, *Sterlite Industries (I) Ltd.* v. *Union of India* 603*a-b*
3. (2011) 13 SCC 772, *Sterlite Industries (I) Ltd.* v. *Union of India* 603*a*
4. (2011) 13 SCC 769, *Sterlite Industries (I) Ltd.* v. *Union of India* 602*g-h*
5. (2011) 10 SCC 254, *Sterlite Industries (I) Ltd.* v. *Union of India* 603*b-c*, 603*c*
6. (2011) 7 SCC 338, *Lafarge Umiam Mining (P) Ltd.* v. *Union of India* 595*b*
7. (2011) 6 SCC 145 : (2011) 3 SCC (Civ) 241, *Abhyudya Sanstha* v. *Union of India* 590*a*
8. (2010) 7 SCC 678 : (2010) 2 SCC (L&S) 483, *East Coast Railway* v. *Mahadev Appa Rao* 591*c*
9. (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324, *Dalip Singh* v. *State of U.P.* 590*a*
10. SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC), *Sterlite Industries (I) Ltd.* v. *Union of India* 584*a-b*, 589*f-g*, 605*g*
11. WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), *National Trust for Clean Environment* v. *Union of India* **(reversed)** 583*f-g*, 584*a-b*, 584*b-c*, 585*f-g*, 587*a-b*, 587*b*, 587*d*, 589*f*, 593*a*, 599*c*, 600*c*, 603*f*, 606*d*, 606*f-g*
12. (2009) 9 SCC 737, *Tirupur Dyeing Factory Owners Assn.* v. *Noyyal River Ayacutdars Protection Assn.* 590*c-d*
13. (2009) 6 SCC 142, *M.C. Mehta* v. *Union of India* 590*c-d*
14. Claim No. HCV 3022 of 2005, order dated 16-5-2006 (Jamaica SC), *Northern Jamaica Conservation Assn.* v. *Natural Resources Conservation Authority* 591*e*
15. (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC), *Belize Alliance of Conservation Non-Governmental Organisations* v. *Deptt. of the Environment* 591*d*, 596*e*
16. (2001) 2 FC 461 (Can), *Bow Valley Naturalists Society* v. *Canada (Minister of Canadian Heritage)* 596*e-f*
17. (1996) 5 SCC 647, *Vellore Citizens' Welfare Forum* v. *Union of India* 590*c*
18. (1996) 3 SCC 212, *Indian Council for Enviro-Legal Action* v. *Union of India* 606*c*
19. (1991) 3 SCC 261, *G. Narayanaswamy Reddy* v. *Govt. of Karnataka* 589*g-h*
20. (1987) 4 SCC 463, *M.C. Mehta* v. *Union of India* 600*b*
21. (1987) 1 SCC 395 : 1987 SCC (L&S) 37, *M.C. Mehta* v. *Union of India* 604*g-h*
22. AIR 1963 SC 1558, *Hari Narain* v. *Badri Das* 589*g*
23. (1948) 1 KB 223 : (1947) 2 All ER 680 (CA), *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.* 595*d-e*

The Judgment of the Court was delivered by

A.K. PATNAIK, J.— Leave granted.

Facts

2. The relevant facts very briefly are that the appellant Company applied and obtained "no-objection certificate" on 1-8-1994 from the Tamil Nadu Pollution Control Board (for short "the TNPCB") for setting up a copper smelter plant (for short "the plant") in Melavittan Village, Tuticorin. On 16-1-1995, the Ministry of Environment and Forests, Government of India, granted environmental clearance to the setting up of the plant of the appellants at Tuticorin subject to certain conditions including those laid down by the TNPCB and the Government of Tamil Nadu. On 17-5-1995, the Government of Tamil Nadu granted clearance subject to certain conditions and requested the TNPCB to issue consent to the proposed plant of the appellants. Accordingly, on 22-5-1995, the TNPCB granted its consent under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (for short "the Air Act") and under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 (for short "the Water Act") to the appellants to establish the plant in the SIPCOT Industrial Complex, Melavittan Village, Tuticorin Taluk.

3. The environmental clearance granted by the Ministry of Environment and Forests, Government of India, and the consent orders under the Air Act and the Water Act granted by the TNPCB were challenged before the Madras High Court in WPs Nos. 15501-503 of 1996 by the National Trust for Clean Environment. While these writ petitions were pending, the appellants set up the plant and commenced production on 1-1-1997. Writ Petition No. 5769 of 1997 was then filed by V. Gopalsamy, General Secretary, MDMK Political Party, Thayagam, praying for, inter alia, a direction to the appellants to stop forthwith the operation of the plant. Writ Petition No. 16861 of 1998 was also filed by Shri K. Kanagaraj, Secretary, CITU District Committee, District Thoothukudi, for directions to the State of Tamil Nadu, the TNPCB and the Union of India to take suitable action against the appellant Company for its failure to take safety measures due to which there were pollution and industrial accidents in the plant.

4. A Division Bench of the High Court heard Writ Petitions Nos. 15501-503 of 1996, Writ Petition No. 5769 of 1997 and Writ Petition No. 16861 of 1998 and by the common judgment dated 28-9-2010[1], allowed and disposed of the writ petitions with the direction to the appellant Company to close down its plant at Tuticorin. By the common judgment, the High Court also declared that the employees of the appellant Company would be entitled to compensation under Section 25-FFF of the Industrial Disputes Act, 1947 and directed the District Collector, Tuticorin, to take all necessary and immediate steps for the re-employment of the workforce of the appellant Company in some other companies/factories/organisations so as to protect their livelihood

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

and to the extent possible take into consideration their educational and technical qualifications and also the experience in the field.

5. Aggrieved, the appellant has filed these appeals against the common judgment dated 28-9-2010[1] of the Division Bench of Madras High Court and on 1-10-2010, this Court passed an interim order[2] staying the impugned judgment of the High Court.

Contentions on behalf of the appellants

6. Mr C.A. Sundaram, learned Senior Counsel appearing for the appellants, submitted that one of the grounds stated in the impugned judgment[1] of the High Court for directing closure of the plant of the appellants was that the TNPCB had stipulated in the consent order dated 22-5-1995 that the appellant Company has to ensure that the location of the unit should be 25 km away from the ecologically sensitive area and as per the report of NEERI (National Environmental Engineering and Research Institute) of 1998 submitted to the High Court, the plant is situated within 25 km from four of the twenty-one islands in the Gulf of Munnar, namely, Vanthivu, Kasuwar, Karaichalli and Villanguchalli, which are at distances of 6 km, 7 km and 15 km respectively from Tuticorin where the plant is located:

6.1. He submitted that there is no notification issued by the Central Government under Rule 5(1) of the Environment (Protection) Rules, 1986 prohibiting or restricting the location of an industry in Tuticorin area. He submitted that the Government of Tamil Nadu, however, had issued a Notification dated 10-9-1986 notifying its intention under Section 35(1) of the Wild Life (Protection) Act, 1972 to declare the twenty-one islands of the Gulf of Munnar as a marine national park, but no notification has yet been issued by the Government of Tamil Nadu under Section 35(4) of the aforesaid Act declaring the twenty-one islands of the Gulf of Munnar as a national park.

6.2. He explained that prior to the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986, some environmental guidelines had been issued by the Ministry of Environment and Forests, Department of Environment, Government of India, in August 1985 and one of the guidelines therein was that industries must be located at least 25 km away from the ecologically sensitive areas and it is on account of these guidelines that the TNPCB in its consent order dated 22-5-1995 under the Water Act had stipulated that the plant of the appellants should be situated 25 km away from ecologically sensitive areas. He submitted that this stipulation was made in the consent order under the Water Act because the plant was likely to discharge effluent which could directly or indirectly affect the ecologically sensitive areas within 25 km of the industry, but in the consent

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

2 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC), wherein it was directed:

"List on 18-10-2010. Interim stay of the impugned judgment of the High Court till then."

order issued on 14-10-1996 to operate the industry, this stipulation was removed and instead it was stipulated in Clause 20 that the unit shall re-use the entire quantity of treated effluent in the process and ensure that no treated effluent is discharged into inland surface water or on land or sewer or sea as proposed by the unit.

6.3. He submitted that in any case the consent for establishment issued under the Water Act by the TNPCB would show that the appellant Company was given the consent to establish its copper smelter project in SIPCOT Industrial Complex irrespective of the distance at which the SIPCOT Industrial Complex was located from any ecologically sensitive area and in the SIPCOT Industrial Complex, many other chemical industries are located and the High Court appears to have lost sight of this aspect of the consent given by the TNPCB to establish the plant.

7. Mr Sundaram submitted that the second ground given by the High Court for directing closure of the plant of the appellants was that this being a project exceeding Rs 50 crores, environmental clearance was required to be obtained from the Ministry of Environment and Forests, Government of India, after a public hearing which was a mandatory requirement but no materials were produced before the High Court to show that there was any such public hearing conducted before the commencement of the plant of the appellant Company. He submitted that when the environmental clearance was granted to the appellant Company the Environmental Impact Assessment (for short "EIA") Notification dated 27-1-1994 was in force and this notification did not make public hearing mandatory and only stated that comments of the public may be solicited if so recommended by the Impact Assessment Agency within 30 days of the receipt of the proposal. He submitted that the High Court, therefore, was not correct in taking a view that a public hearing was mandatory during EIA before environmental clearance was given by the Ministry of Environment and Forests, Government of India. He clarified that by a subsequent Notification dated 10-4-1997, a public hearing was made compulsory but by the time this notification came into force environmental clearance had already been granted to the plant of the appellants on 16-1-1995.

8. Mr Sundaram submitted that the High Court also took the view in the impugned judgment[1] on the basis of the report of the NEERI of 1998 that there was undue haste on the part of the governmental authorities in granting permissions and consents to the appellant Company. He submitted that in an explanatory note to the EIA Notification dated 27-1-1994 the Central Government has clarified that rapid EIA could also be conducted for obtaining environment clearance for any new project/activity and therefore the State Government while granting no-objection certificate by its Letter dated 1-8-1994 asked the appellants to conduct rapid EIA based on one season data and the appellants carried out rapid EIA study based on the data collected by the M/s Tata Consultancy Service (TCS). He relied on the

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

affidavit dated 1-12-1998 filed on behalf of the Ministry of Environment and Forests, Government of India to submit that rapid EIA before granting clearance to the plant of the appellant was conducted in accordance with the guidelines.

9. Mr Sundaram submitted that the third ground on which the High Court directed closure of the plant of the appellants was that the TNPCB stipulated a condition in Clause 20 of the no-objection certificate that the appellants will develop a green belt of 250 metres width around the battery limit of the industry as contemplated under the environmental management plan but subsequently the appellant Company submitted a representation to TNPCB requesting TNPCB to reduce the requirement of green belt from 250 metres to the width of 10-15 metres as development of the green belt of 250 metres width requires a land of around 150 acres and TNPCB in its meeting held on 18-8-1994 relaxed this condition and stipulated that the appellant Company will develop a green belt of minimum width of 25 metres. He submitted that the land allocated by SIPCOT to the appellants was not sufficient to provide a green belt of 250 metres width around the plant and hence this was an impossible condition laid down in the no-objection certificate and for this reason the appellants approached the TNPCB to modify this condition and the TNPCB reduced the width of the green belt to 25 metres. He further submitted that generally, the TNPCB and the Ministry of Environment and Forests, Government of India, have been insisting on a green belt of 25% of the plant area and the appellants could not be asked to provide a green belt of more than 25% of the plant area.

10. Mr Sundaram submitted that the last ground, on which the High Court directed closure of the plant of the appellants is that the plant of the appellants has caused severe pollution in the area as has been recorded by NEERI in its report of 2005 submitted to the High Court and the groundwater samples taken from the area indicate that the copper, chrome, lead cadmium and arsenic and the chloride and fluoride content is too high when compared to the Indian drinking water standards. He referred to the reports of NEERI of 1998, 1999, 2003 and 2005 submitted to the High Court and the report of NEERI of 2011 and also the joint inspection report of TNPCB and CPCB of September 2012 submitted to this Court, to show that the finding of the High Court that the plant of the appellants had caused severe pollution in the area was not correct. He vehemently submitted that though there were no deficiencies in the plant of the appellants, the TNPCB in its affidavit has referred to its recommendations as if there were deficiencies. He submitted that the recommendations made by the TNPCB were only to provide the best of checks in the plant against environmental pollution with a view to ensure that the plant of the appellants becomes a model plant from the point of view of the environment, but that does not mean that the plant of the appellants had deficiencies which need to be corrected. He submitted that the reports of NEERI of 2005 and 2011 referred to accumulation of gypsum and phosphogypsum, which come out from the plant of the appellants as part of the slag but the opinion of CPCB in its letter dated 17-11-2003 to the TNPCB

is that such slag is non-hazardous and can be used in cement industries, for filling up lower level area and as building/road construction material, etc. and has no adverse environmental effects.

11. Mr Sundaram finally submitted that since none of the grounds given by the High Court in the impugned judgment[1] for directing closure of the plant of the appellants are well-founded, it is a fit case in which this Court should set aside the impugned judgment[1] of the High Court and allow the appeals. He submitted that the plant of the appellants produces 2,02,000 metric tonnes of copper which constitute 39% of the total of 5,14,000 metric tonnes of copper produced in India and that 50% of the copper produced by the plant of the appellants is consumed in the domestic market and the balance 50% is exported abroad. He also submitted that the plant provides direct and indirect employment to about 3000 people and yields a huge revenue to both the Central and State Governments. He submitted that closure of the plant of the appellants, therefore, would also not be in the public interest.

Contentions on behalf of the respondent-writ petitioner

12. Mr V. Gopalsamy, who was the writ petitioner in Writ Petition No. 5769 of 1997 before the High Court, appeared in person and supported the impugned judgment[1] of the High Court. He submitted that the TNPCB in its no-objection certificate dated 1-8-1994 as well as in its consent order dated 22-5-1995 under the Water Act clearly stipulated that the appellant Company shall ensure that the location of its unit should be 25 km away from the ecologically sensitive area and the Government of Tamil Nadu in their affidavit dated 27-10-2012 have stated that all the 21 islands including the four near Tuticorin in the Gulf of Munnar marine national park are ecologically sensitive areas. He submitted that NEERI in its report of 1998 has observed that four out of twenty-one islands, namely, Vanthivu, Kasuwar, Karaichalli and Villanguchalli, are at distances of 6 km, 7 km and 15 km respectively from Tuticorin. He further submitted that merely because a condition has been subsequently imposed on the appellant Company by TNPCB not to discharge any effluent to the sea, the restriction of minimum 25 km distance from the ecologically sensitive area from location of the unit of the appellants cannot be lifted particularly when the Government of Tamil Nadu as well as the Central Government are treating the Gulf of Munnar as a marine national park and extending financial assistance for the development of its ecology. He submitted that the proposal for issuance of a declaration under Section 35(4) of the Wild Life (Protection) Act, 1972 is pending for concurrence of the Central Government and, therefore, the ecological balance in the area of Gulf of Munnar would be disturbed if the plant of the appellants continues at Tuticorin and the High Court was right in directing closure of the plant of the appellants located at Tuticorin.

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

13. Mr V. Gopalsamy submitted that the High Court was similarly right in directing closure of the plant of the appellants on the ground that the appellants did not develop a green belt of 250 metres width around their plant as stipulated in the no-objection certificate dated 1-8-1994 of the TNPCB and instead represented to the TNPCB and got the green belt reduced to only 25 metres width. He submitted that considering the grave adverse impact on the environment by the plant of the appellants, a 250 metres width of green belt was absolutely a must but the TNPCB very casually reduced the green belt from 250 metres width to 25 metres. He submitted that it will be seen from the joint report of the TNPCB and CPCB filed pursuant to the order dated 27-8-2012[3] of this Court that as a condition of the renewal of the consent order, the appellant Company has been asked to develop a green belt to an extent of 25% of the total area of 172.17 ha which works out to 43.04 ha and yet the TNPCB has found development of green belt of 26 ha as sufficient compliance. He submitted that the appellants would, therefore, be required to develop a green belt of 17.04 ha more for compliance with the condition for renewal of consent stipulated by the TNPCB.

14. Mr V. Gopalsamy submitted that for their plant, the appellants have been importing copper concentrate from Australian mines which are highly radioactive and contaminated and contains high levels of arsenic, uranium, bismuth, fluorine and experts of environment like Mark Chernaik have given a report on the adverse impacts of the plant of the appellants at Tuticorin on the environment. In this context, he also submitted that an American company, namely, the Asarco producing copper had to be closed down on account of such adverse environmental effects. He submitted that the claim of the appellants that their plant has no deficiencies and that it does not have any impact on the environment is not correct and different reports of the NEERI would show that the plant of the appellants is continuing to pollute the

3 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), wherein it was directed:

"1. Mr C.A. Sundaram, learned Senior Counsel states that pursuant to the order passed by this Court on 9-5-2012, the petitioner is taking effective steps to ensure strict compliance with the various conditions attached to the consent given by the Tamil Nadu Pollution Control Board. He further submits that the entire procedure for compliance with the conditions for consent will be completed by 31-8-2012.

2. The learned counsel appearing for the Tamil Nadu Pollution Control Board submits that, in fact, the Board was ready with an affidavit to be filed in Court today. However, in case the petitioner is able to achieve satisfactorily the required standards in the conditions imposed by the Tamil Nadu Pollution Control Board by 31-8-2012, the Board shall submit a detailed status report thereafter. The learned counsel appearing for the Central Pollution Control Board, in our opinion, has rightly made a submission that the Central Pollution Control Board shall also participate in the inspection to be carried out jointly by the Tamil Nadu Pollution Control Board and Central Pollution Control Board.

3. Let the inspection be completed by 14-9-2012. The joint report be submitted to the Court in a sealed cover. The Tamil Nadu Pollution Control Board is permitted to file any additional affidavit if deemed necessary by the said Board. However, advance copy of the same shall be given to the petitioner, the learned counsel for the Central Pollution Control Board as well as to the other respondents.

4. List the matter on 1-10-2012."

air and has also affected the groundwater of the area by discharging effluent and the High Court, therefore, rightly directed the closure of the plant.

15. Mr Gopalsamy submitted that the appellants had initially proposed to establish the plant in Gujarat but this was opposed vehemently and the appellants decided to shift the establishment of the plant to Goa but because of opposition the plant could not be established in Goa. He submitted that the appellants thereafter intended to set up the plant at Ratnagiri in Maharashtra and invested Rs 200 crores in construction activities after obtaining environmental clearance but because of the opposition of the farmers of Ratnagiri, the Maharashtra Government had to revoke the licence granted to the appellants. He submitted that the appellants have been able to set up the plant at Tuticorin in Tamil Nadu by somehow obtaining environmental clearance from the Ministry of Environment and Forests, Government of India, without a public hearing and the consents under the Water Act and the Air Act from the TNPCB and the High Court rightly allowed the writ petitions and directed closure of the plant of the appellants.

16. Mr V. Prakash, learned Senior Counsel appearing for the writ petitioner, National Trust for Clean Environment, in Writ Petitions Nos. 15501-503 of 1996 before the High Court, submitted that the appellants had made a false statement in the synopsis at p. (B) of the special leave petition that it has been consistently operating for more than a decade with all necessary consents and approvals from all the statutory authorities without any complaint. He submitted that similarly in Ground IV at p. 45 of the special leave petitions the appellants have falsely stated that the High Court has erred in not appreciating that the appellants had got all the statutory approvals/consent orders from the authorities concerned as also the Central Government and the State Government. He submitted that the report of NEERI of 2011 would show that the appellants did not have valid consent during various periods including the period when it filed the special leave petitions. He submitted that the appellants did not also inform this Court that when they moved this Court on 1-10-2010 to stay the operation of the impugned order[1] of the High Court, the plant of the appellants had already stopped operation. He vehemently argued that due to misrepresentation of the material facts by the appellants in the special leave petitions as well as suppression of the material facts, this Court was persuaded to pass the stay order dated 1-10-2010[2]. He argued that on this ground alone this Court should refuse to grant relief to the appellants in exercise of its discretion under Article 136 of the Constitution.

17. Mr V. Prakash relied on the decisions of this Court in *Hari Narain* v. *Badri Das*[4], *G. Narayanaswamy Reddy* v. *Govt. of Karnataka*[5] and

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

2 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC)

4 AIR 1963 SC 1558

5 (1991) 3 SCC 261

Dalip Singh v. *State of U.P.*[6] and *Abhyudya Sanstha* v. *Union of India*[7] for the proposition that this Court can refuse relief under Article 136 of the Constitution where the appellants have not approached this Court with clean hands and have made patently false statements in the special leave petition.

18. Mr Prakash next submitted that the main ground that was taken in the writ petitions before the High Court by the National Trust for Clean Environment was that the Ministry of Environment and Forests, Government of India, and the TNPCB had not applied their mind to the nature of the industry as well as the pollution fallout of the industry of the appellants and the capacity of the unit of the appellants to handle the waste without causing adverse impact on the environment as well as on the people living in the vicinity of the plant. He submitted that this Court has already held that a right to clean environment is part of the right to life guaranteed under Article 21 of the Constitution and has explained the precautionary principle and the principle of sustainable development in *Vellore Citizens' Welfare Forum* v. *Union of India*[8], *Tirupur Dyeing Factory Owners Assn.* v. *Noyyal River Ayacutdars Protection Assn.*[9] and *M.C. Mehta* v. *Union of India*[10]. He submitted that these principles, therefore, have to be borne in mind by the authorities while granting environmental clearance and consent under the Water Act or the Air Act, but unfortunately both the Ministry of Environment and Forests, Government of India, and the TNPCB have ignored these principles and have gone ahead and hastily granted environmental clearance and the consent under the two Acts. He submitted that, in the present case, the appellants have relied on the rapid EIA done by Tata Consultancy Service, but this rapid EIA was based on the data which is less than the month's particulars and is inadequate for making a proper EIA which must address the issue of the nature of the manufacturing process, the capacity of the manufacturing facility and the quantum of production the quantum and nature of pollutants, air, liquid and solid and handling of the waste.

19. Mr Prakash referred to the report of NEERI of 1998 submitted to the High Court to show that the inspection team of NEERI collected waste water samples from the plant of the appellants and an analysis of the waste water samples indicate that the treatment plant of the appellants was operating inefficiently as the levels of arsenic, selenium and lead in the treated effluent as also the effluent stored in the surge ponds were higher than the standards stipulated by the TNPCB. He also referred to the report of NEERI of February 1999 in which NEERI has stated that the treated effluent quality did not conform to the standards stipulated by the TNPCB.

20. Mr Prakash further submitted that the counter-affidavit of the Union of India filed on 1-12-1998 before the High Court also does not disclose whether, apart from the rapid EIA of Tata Consultancy Services, there was

6 (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324
7 (2011) 6 SCC 145 : (2011) 3 SCC (Civ) 241
8 (1996) 5 SCC 647
9 (2009) 9 SCC 737
10 (2009) 6 SCC 142

any independent evaluation of the rapid EIA by the environmental impact assessment authority, namely, the Ministry of Environment and Forests. He submitted that the TNPCB in its no-objection certificate dated 1-8-1994 has stipulated in Clause 18 that the appellants have to carry out rapid EIA (for one season other than monsoon) as per the EIA Notification dated 27-1-1994 issued by the Ministry of Environment and Forests, Government of India, and furnish a copy to the TNPCB and this clause itself would show that TNPCB had not applied its mind as to whether there was a sufficient rational analysis of the nature of the industry, nature of pollutants, quantum of fallout and the plan or method for handling the waste. He submitted that since there was no application of mind by either the Ministry of Environment and Forests, Government of India, before granting the environmental clearance or by the TNPCB before granting the consents under the Water Act and the Air Act, the environmental clearance and the consent orders are liable to be quashed.

21. In support of his submissions, Mr Prakash cited *East Coast Railway* v. *Mahadev Appa Rao*[11], for the proposition that for a valid order there has to be application of mind by the authority, and in the absence of such application of mind by the authority, the order is arbitrary and is liable to be quashed. He cited the decision of the Lords of the Judicial Committee of the Privy Council in *Belize Alliance of Conservation Non-Governmental Organisations* v. *Deptt. of the Environment*[12], WIR at para 69 in which it has been observed that EIA is expected to be comprehensive in treatment of the subject, objective in its approach and must meet the requirement that it alerts the decision-maker to the effect of the activity on the environment and the consequences to the community.

22. Mr Prakash also relied on the judgment of the Supreme Court of Judicature of Jamaica in *Northern Jamaica Conservation Assn.* v. *Natural Resources Conservation Authority*[13] to argue that a public hearing was a must for grant of environmental clearance and submitted that as there was no public hearing in this case and there was inadequate EIA before the grant of the environmental clearance for the plant of the appellants, the High Court has rightly directed closure of the plant of the appellants.

23. Finally, Mr Prakash submitted that the finding of the High Court that the plant of the appellants continues to pollute the environment has been substantiated by the inspection report which has been filed in this Court by NEERI as well as the TNPCB from time to time. In particular, he referred to the joint inspection report of the TNPCB and CPCB to show that the directions issued by the TNPCB to improve solid waste disposal has not been complied with. He submitted that one of the conditions of the consent order of the TNPCB was that no slag was to be stored in the premises of the plant but huge quantity of slag has been stored in the premises of the plant and the direction to dispose at least 50% more than the monthly generation quantities of both slag and gypsum has not been complied with. He vehemently argued

11 (2010) 7 SCC 678 : (2010) 2 SCC (L&S) 483
12 (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC)
13 Claim No. HCV 3022 of 2005, order dated 16-5-2006 (Jamaica SC)

that unless the plant is shut down, the appellants will not be able to clear the huge quantity of slag and gypsum lying in the plant premises. He submitted that it is not correct as has been submitted on behalf of the appellants that the slag is not a hazardous waste containing arsenic and will certainly jeopardise the environment. He argued that there was therefore no other option for the High Court but to direct closure of the plant of the appellants to ensure clean environment in the area.

Contentions on behalf of the authorities

24. Mr S. Guru Krishna Kumar, learned counsel appearing for the TNPCB as well as the State of Tamil Nadu, relying on the affidavit filed on behalf of the State of Tamil Nadu on 29-10-2012 submitted that the Gulf of Munnar consisting of 21 islands in 4 groups was notified under Section 35(1) of the Wild Life (Protection) Act, 1972 on 10-9-1986 as this group of islands consisted of territorial waters between them and the proposal to declare Gulf of Munnar as a marine national park under Section 35(4) of the said Act was sent by the Chief Wild Life Warden to the State Government for approval on 30-4-2003 but the declaration under Section 35(4) of the said Act has not been finally made. He further submitted that all the 21 islands including the 4 islands in the Gulf of Munnar are therefore ecologically sensitive areas. He submitted that notwithstanding the fact that four of the islands were near Tuticorin, the TNPCB gave the consent under the Water Act to the appellants to set up the plant at Tuticorin because the plant has a zero effluent discharge. He also referred to the compliance affidavit of the TNPCB filed on 8-10-2012 to show that the TNPCB is monitoring the emissions from the plant of the appellants to ensure that the National Ambient Air Quality Standards are maintained.

25. Mr Vijay Panjwani, learned counsel appearing for CPCB, made a reference to Sections 3, 16 and 18 of the Water Act which relate to the CPCB and submitted that it was not for the CPCB but for the TNPCB to issue no-objection certificate and consent in respect of the plant set up in the State of Tamil Nadu. He submitted that under Rule 19 of the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989, however, improvement notices can be issued by the CPCB to any person to remedy the contravention of the Rules.

Contentions on behalf of the intervenor

26. Mr Raj Panjwani, learned counsel for the intervenor, submitted that a marine biosphere is an ecologically sensitive area and if in the consent order a condition was stipulated that the plant of the appellants has to be situated beyond 25 km from ecologically sensitive area, this condition has to be complied with. He further submitted that in any case the appellants are liable to compensate for having damaged the environment.

Findings of the Court

27. Writ Petition No. 15501 of 1996, Writ Petition No. 15503 of 1996 and Writ Petition No. 5769 of 1997 had been filed for quashing the environmental clearances dated 16-1-1995 and 17-5-1995 granted by the

Ministry of Environment and Forests, Government of India, to the appellants for setting up the plant at Tuticorin and by the impugned judgment[1], the High Court has not quashed the environmental clearance but has allowed the three writ petitions. Hence, the first question which we will have to decide is whether the High Court could have interfered with the environmental clearances granted by the Ministry of Environment and Forests, Government of India, and the Government of Tamil Nadu, Department of Environment?

28. The environmental clearance for setting up the plant was granted to the appellants under the Environment (Protection) Act, 1986:

28.1. Sub-section (1) of Section 3 of the Environment (Protection) Act, 1986 provides that:

> "**3.** ***Power of Central Government to take measures to protect and improve environment***.—(1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution."

28.2. Sub-section (2) of Section 3 further provides that in particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the matters specified therein. One such matter specified in clause (*v*) of sub-section (2) is:

> "**3. (2)(*v*)** restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards."

28.3. Rule 5(3) of the Environment (Protection) Rules, 1986 accordingly empowers the Central Government to impose prohibitions or restrictions on the location of an industry or the carrying on processes and operations in an area, by notification in the Official Gazette. In exercise of these powers under Section 3(2)(*v*) of the Environment (Protection) Act, 1986 and Rule 5(3) of the Environment (Protection) Rules, 1986, the Central Government has issued a Notification dated 27-1-1994 imposing restrictions and prohibitions on the expansion and modernisation of any activity or new projects being undertaken in any part of India unless environmental clearance has been accorded by the Central Government or the State Government in accordance with the procedure specified in the said notification.

29. Para 2 of the Notification dated 27-1-1994 lays down the requirements and procedure for seeking environmental clearance of projects, and clause (*c*) of Para 2 provides that the Impact Assessment Agency could solicit comments of the public within thirty days of receipt of proposal, in public hearings, arranged for the purpose, after giving thirty days' notice of such hearings in at least two newspapers, and after completion of public hearing, where required, convey its decision. The language of this notification did not lay down that the public hearing was a must. The impact

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

assessment was done by Tata Consultancy Services as per the requirements then existing and the Government of India has granted the environmental clearance on 16-1-1995. The Notification dated 27-1-1994, however, was amended by Notification dated 10-4-1997 and it was provided in clause (*c*) of Para 2 of the notification that the Impact Assessment Agency shall conduct a public hearing and the procedure for public hearing was detailed in Schedule IV to the notification by the amendment Notification dated 10-4-1997. Admittedly, in this case, the environmental clearance was granted by the Ministry of Environment, Government of India, on 16-1-1995 in accordance with the procedure laid down by the Notification dated 27-1-1994 well before the Notification dated 10-4-1997 providing for mandatory public hearing in accordance with the procedure laid down in Schedule IV. As there was no mandatory requirement in the procedure laid down under the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986 and the Notification dated 27-1-1994 as amended by the Notification dated 4-5-1994 that a public hearing has to be conducted before grant of environmental clearance, the High Court could not have allowed the writ petitions challenging the environmental clearances on the ground that no public hearing was conducted before grant of the environmental clearances.

30. An explanatory note regarding the EIA Notification dated 27-1-1994 was also issued by the Central Government and Para 5 of the explanatory note clarified that project proponents could furnish rapid EIA report to the Impact Assessment Agency based on one season data, for examination of the project and comprehensive EIA report may be submitted later, if so asked for by the Impact Assessment Agency and this was permitted where comprehensive EIA report would take at least one year for its preparation. In Para 5 of the affidavit filed by the Union of India before the High Court in Writ Petitions Nos. 15501-503 of 1996, the allegation of the writ petitioner that the Ministry of Environment and Forests have accorded environmental clearance without applying its mind and without making any analysis of the adverse impacts on the marine ecological system has been denied and it has been further stated that after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State Pollution Control Board and risk analysis, the project was examined as per the procedure laid down in the EIA Notification dated 27-1-1994 (as amended on 4-5-1994) and the project was accorded approval on 16-1-1995 subject to specific conditions. As the procedure laid down under the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986 and the Notification dated 27-1-1994 as amended by the Notification dated 4-5-1994 and as explained by the explanatory note issued by the Government of India permitted rapid EIA in certain circumstances, the High Court could not have allowed the writ petitions on the ground that environmental clearance was issued to the appellant Company on the basis of inadequate rapid EIA, particularly when the Union of India in its affidavit had clearly averred that the environmental clearance was granted after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State

Pollution Control Board and risk analysis in accordance with the procedure laid down in EIA Notification dated 27-1-1994 (as amended on 4-5-1994).

31. The High Court has noticed some decisions of this Court on sustainable development, precautionary and polluter pays principles and public trust doctrine, but has failed to appreciate that the decision of the Central Government to grant environmental clearance to the plant of the appellants could only be tested on the anvil of well-recognised principles of judicial review as has been held by a three-Judge Bench of this Court in *Lafarge Umiam Mining (P) Ltd.* v. *Union of India*[14], SCC at p. 380. To quote *Environmental Law* edited by David Woolley, Q.C., John Pugh-Smith, Richard Langham and William Upton, Oxford University Press:

> "The specific grounds upon which a public authority can be challenged by way of judicial review are the same for environmental law as for any other branch of judicial review, namely, on the grounds of illegality, irrationality, and procedural impropriety."

Thus, if the environmental clearance granted by the competent authority is clearly outside the powers given to it by the Environment (Protection) Act, 1986, the Environment (Protection) Rules, 1986 or the notifications issued thereunder, the High Court could quash the environmental clearance on the ground of illegality. If the environmental clearance is based on a conclusion so unreasonable that no reasonable authority could ever have come to the decision, the environmental clearance would suffer from *Wednesbury*† unreasonableness and the High Court could interfere on the ground of irrationality. And, if the environmental clearance is granted in breach of proper procedure, the High Court could review the decision of the authority on the ground of procedural impropriety.

32. Where, however, the challenge to the environmental clearance is on the ground of procedural impropriety, the High Court could quash the environmental clearance only if it is satisfied that the breach was of a mandatory requirement in the procedure. As stated in *Environmental Law* edited by David Woolley, Q.C., John Pugh-Smith, Richard Langham and William Upton, Oxford University Press:

> "It will often not be enough to show that there has been a procedural breach. Most of the procedural requirements are found in the regulations made under primary legislation. There has been much debate in the courts about whether a breach of regulations is mandatory or directory, but in the end the crucial point which has to be considered in any given case is what the particular provision was designed to achieve."

As we have noticed, when the plant of the appellant Company was granted environmental clearance, the Notification dated 27-1-1994 did not provide for mandatory public hearing. The explanatory note issued by the Central Government on the Notification dated 27-1-1994 also made it clear that the

14 (2011) 7 SCC 338

† *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)

project proponents may furnish rapid EIA report to the IAA based on one season data (other than monsoon), for examination of the project comprehensive EIA report was not a must. In the absence of a mandatory requirement in the procedure laid down under the scheme under the Environment (Protection) Act, 1986 at the relevant time requiring a mandatory public hearing and a mandatory comprehensive EIA report, the High Court could not have interfered with the decision of the Central Government granting environmental clearance on the ground of procedural impropriety.

33. Coming now to the ground of irrationality argued so vehemently by Mr V. Prakash, we find that no materials have been produced before us to take a view that the decision of the Central Government to grant the environmental clearance to the plant of the appellants was so unreasonable that no reasonable authority could ever have taken the decision. As we have already noticed, in Para 5 of the affidavit filed by the Union of India before the High Court in Writ Petitions Nos. 15501-503 of 1996, it has been stated that the Ministry of Environment and Forests have accorded environmental clearance after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State Pollution Control Board and risk analysis, and that the project was examined as per the procedure laid down in the EIA Notification dated 27-1-1994 (as amended on 4-5-1994) and only thereafter the project was accorded approval on 16-1-1995. No material has been placed before us to show that the decision of the Ministry of Environment and Forests to accord environmental clearance to the plant of the appellants at Tuticorin was wholly irrational and frustrated the very purpose of EIA.

34. In *Belize Alliance of Conservation Non-Governmental Organisations* v. *Deptt. of the Environment*[12] cited by Mr Prakash, the Lords of the Judicial Committee of the Privy Council have quoted with approval the following words of Linden, JA with reference to the Canadian legislation in *Bow Valley Naturalists Society* v. *Canada (Minister of Canadian Heritage)*[15], FC at p. 494:

> "The Court must ensure that the steps in the Act are followed, but it must defer to the responsible authorities in their substantive determinations as to the scope of the project, the extent of the screening and the assessment of the cumulative effects in the light of the mitigating factors proposed. It is not for the Judges to decide what projects are to be authorised but, as long as they follow the statutory process, it is for the responsible authorities."

The aforesaid passage will make it clear that it is for the authorities under the Environment (Protection) Act, 1986, the Environment (Protection) Rules, 1986 and the notifications issued thereunder to determine the scope of the project, the extent of the screening and the assessment of the cumulative

12 (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC)
15 (2001) 2 FC 461 (Can)

effects and so long as the statutory process is followed and the EIA made by the authorities is not found to be irrational so as to frustrate the very purpose of EIA, the Court will not interfere with the decision of the authorities in exercise of its powers of judicial review.

35. The next question that we have to decide is whether the High Court was right in directing closure of the plant of the appellants on the ground that the plant of the appellants is located at Tuticorin within 25 km of four of the twenty-one islands in the Gulf of Munnar, namely, Vanthivu, Kasuwar, Karaichalli and Villanguchalli. The reason given by the High Court in coming to this conclusion is that the TNPCB had stipulated in the consent order dated 22-5-1995 that the appellant Company has to ensure that the location of the unit should be 25 km away from ecologically sensitive area and as per the report of NEERI, the plant of the appellants was situated at a distance of 6 km of Vanthivu, 7 km of Kasuwar and 15 km of Karaichalli and Villanguchalli and these four villages are part of the twenty-one islands in the Gulf of Munnar. Hence, the High Court directed closure of the plant because the appellant Company has violated the condition of the consent order dated 22-5-1995 issued by the TNPCB under the Water Act.

36. The consent order dated 22-5-1995 issued by the TNPCB under Section 25 of the Water Act states as follows:

> "Consent to establish or take steps to establish is hereby granted under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988) (hereinafter referred to as 'the Act') and the rules and orders made thereunder to
>
> The Chief Project Manager,
> M/s Sterlite Industries (India) Limited
> (Copper Smelter Project)
> SIPCOT Industrial Complex,
> Meelavittam Village, Tuticorin Taluk,
> V.O. Chidambaraner District
>
> (hereinafter referred to as 'the applicant') authorising him/her/them to establish or take steps to establish the industry in the site mentioned below:
>
> SIPCOT Industrial Complex,
> Meelavittam Village, Tuticorin Taluk,
> V.O. Chidambaraner District."

The aforesaid extract from the consent order dated 22-5-1995 of the TNPCB issued under the Water Act makes it clear that the appellant Company was given consent to establish its plant in the SIPCOT Industrial Complex, Meelavittam Village, Tuticorin Taluk. Along with the consent order under the Water Act, special conditions were annexed and Clause 20 of the special conditions reads as follows:

> "20. (*i*) 1 km away from the water resources specified in GOMs No. 213 E&P Deptt., dt. 30-3-1989.
>
> (*ii*) 25 km away from ecological/sensitive areas.
>
> (*iii*) 500 metres away from high tide line."

37. On the one hand, therefore, the appellants were given consent to establish their plant in the SIPCOT Industrial Complex, which as per the NEERI report is within 25 km of four of the twenty-one islands in the Gulf of Munnar. On the other hand, a condition was stipulated in the consent order that the appellants have to ensure that the location of the unit is 25 km away from ecologically sensitive area. It thus appears that the TNPCB while granting the consent under the Water Act for establishment of the plant of the appellants in the SIPCOT Industrial Complex added the above requirement without noting that the SIPCOT Industrial Complex was within 25 km from ecologically sensitive area. Since, however, the consent order was granted to the appellant Company to establish its plant in the SIPCOT Industrial Complex and the plant has in fact been established in the SIPCOT Industrial Complex, the High Court could not have come to the conclusion that the appellant Company had violated the consent order and directed closure of the plant on this ground.

38. This is not to say that in case it becomes necessary for preservation of ecology of the aforesaid four islands which form part of the Gulf of Munnar, the plant of the appellants cannot be directed to be shifted in future. We find from the affidavit filed on behalf of the State of Tamil Nadu on 29-10-2012 that the Gulf of Munnar consisting of 21 islands including the aforesaid four islands have been notified under Section 35(1) of the Wild Life (Protection) Act, 1972 on 10-9-1986 and a declaration may also be made under Section 35(4) of the said Act declaring the Gulf of Munnar as a marine national park. We have, therefore, no doubt that the Gulf of Munnar is an ecologically sensitive area and the Central Government may in exercise of its powers under clause (*v*) of sub-rule (1) of Rule 5 of the Environment (Protection) Rules, 1986 prohibit or restrict the location of industries and carrying on processes and operations to preserve the biological diversity of the Gulf of Munnar. As and when the Central Government issues an order under Rule 5 of the Environment (Protection) Rules, 1986 prohibiting or restricting the location of industries within and around the Gulf of Munnar marine national park, then appropriate steps may have to be taken by all concerned for shifting the industry of the appellants from the SIPCOT Industrial Complex depending upon the content of the order or notification issued by the Central Government under the aforesaid Rule 5 of the Environment (Protection) Rules, 1986, subject to the legal challenge by the industries.

39. The next question with which we have to deal is whether the High Court could have directed the closure of the plant of the appellants on the ground that though originally the TNPCB stipulated a condition in the "no-objection certificate" that the appellant Company has to develop a green belt of 250 metres width around the battery limit of the plant, the appellants made representation to the TNPCB for reducing the width of the green belt and the TNPCB in its meeting held on 18-8-1994 relaxed this condition and required the appellants to develop the green belt with a minimum width of 25 metres:

39.1. We find on a reading of the no-objection certificate issued by the TNPCB that various conditions have been imposed on the industry of the

appellants to ensure that air pollution control measures are installed for the control of emissions generated from the plant and that the emissions from the plant satisfy the ambient air quality standards prescribed by the TNPCB and development of green belt contemplated under the environmental management plan around the battery limit of the industry of the appellants was an additional condition that was imposed by the TNPCB in the no-objection certificate. If the TNPCB after considering the representation of the appellants has reduced the width of the green belt from a minimum of 250 metres to a minimum of 25 metres around the battery limit of the industry of the appellants and it is not shown that this power which has been exercised was vitiated by procedural breach or irrationality, the High Court in exercise of its powers of judicial review could not have interfered with the exercise of such power by the State Pollution Control Board.

39.2. The High Court in the impugned judgment[1] has not recorded any finding that there has been any breach of the mandatory provisions of the Air Act or the Rules thereunder by the TNPCB by reducing the green belt to 25 metres. Nor has the High Court recorded any finding that by reducing the width of the green belt around the battery limit of the industry of the appellants from 250 metres to 25 metres, it will not be possible to mitigate the effects of fugitive emissions from the plant. The High Court has merely held that the TNPCB should not have taken such a generous attitude and should not have in a casual way dealt with the issue permitting the appellant Company to reduce the green belt particularly when there have been ugly repercussions in the area on account of the incidents which took place on 5-7-1997 onwards. It was for the TNPCB to take the decision in that behalf and considering that the appellant's plant was within a pre-existing industrial estate, the appellant could not have been singled out to require such a huge green belt.

40. This takes us to the argument of Mr Prakash that had the Ministry of Environment and Forests, Government of India, applied its mind fully before granting the environment clearance and had the TNPCB applied its mind fully to the consents under the Air Act and the Water Act and considered all possible environmental repercussions that the plant proposed to be set up by the appellants would have, the environmental problems now created by the plant of the appellants would have been prevented. As we have already held, it is for the administrative and statutory authorities empowered under the law to consider and grant environmental clearance and the consents to the appellants for setting up the plant and where no ground for interference with the decisions of the authorities on well-recognised principles of judicial review is made out, the High Court could not interfere with the decisions of the authorities to grant the environmental clearance or the consents on the ground that had the authorities made a proper environmental assessment of the plant, the adverse environmental effects of the industry could have been prevented. If, however, after the environmental clearance is granted under the Environment (Protection) Act, 1986, and the Rules and the notifications

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

issued thereunder and after the consents granted under the Air Act and the Water Act, the industry continues to pollute the environment so as to affect the fundamental right to life under Article 21 of the Constitution, the High Court could still direct the closure of the industry by virtue of its powers under Article 21 of the Constitution if it came to the conclusion that there were no other remedial measures to ensure that the industry maintains the standards of emission and effluent as laid down by law for safe environment (see *M.C. Mehta* v. *Union of India*[16] in which this Court directed closure of tanneries polluting the waters of River Ganga).

41. We have, therefore, to examine whether there were materials before the High Court to show that the plant of the appellants did not maintain the standards of emission and effluent as laid down by the TNPCB and whether there were no remedial measures other than the closure of the industry of the appellants to protect the environment. We find on a reading of the impugned judgment[1] of the High Court that it has relied on the report of NEERI of 2005 to hold that the plant site itself is severely polluted and the ground samples level of arsenic justified classifying the whole site of the plant of the appellant as hazardous waste.

42. We extract hereinbelow the relevant observations of NEERI in its report of 2005 relating to air, water and soil environment in the executive summary:

"*Air environment*

The emission factors of SO_2 from sulphuric acid plant — I (SAP-I) and sulphuric acid plant — II (SAP-II) were 0.55 kg/MT of H_2SO_4 manufactured which is well within the TNPCB stipulated limit of 2kg/MT of H_2SO_4 manufactured.

The acid mist concentration of SAP-I was 85 mg/Nm_3, which exceeds the TNPCB limit of 50 mg/Nm_3. The acid mist concentration from SAP-II was 42 mg/Nm_3, which is well within the TNPCB limit. In view of the exceeding of TNPCB limit for acid mist, it is recommended that the performance of acid mist eliminators may be intermittently checked. It is further recommended to install a tail gas treatment plant to take care of occasional upsets.

Out of the seven DG sets, one (6.3 MW) was monitored for particulate matter (PM) emissions. The level of PM was 115 mg/Nm_3 (0.84 gm/kWh) which is within the TNPCB stipulated limit of 150 mg/Nm_3 for thermal power plants of 200 MW and higher capacity (165 mg/Nm_3) but higher than that stipulated for diesel engines/gen sets up to 800 kW capacity (0.3 gm/kWh). Therefore TNPCB may decide whether the present PM emissions from the DG sets of 6.3 MW capacity is within the limit or otherwise.

The fugitive emissions were monitored at four sites to assess the status of air quality with respect of SO_2, NO_2 and SPM. The results of

16 (1987) 4 SCC 463

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

analysis at all fugitive emission monitoring sites indicate that the levels of gaseous pollutants SO_2 and NO_2, were below the respective
a NIOSH/OSHA standards for work place environment. The levels of SPM were also within the stipulated TNPCB standards for industrial areas.

Impact of stack and fugitive emissions on surrounding air quality was also assessed by monitoring SO_2, NO_2 and SPM levels at five monitoring locations. The levels of SPM, SO_2 and NO_2 at all the five sites were far below the TNPCB standards of 120 µg/Nm_3 for SO_2 as well
b as NO_2 and 500 µg/Nm_3 for SPM for industrial zone.

Water environment

Surface water samples were collected and analysed for physico-chemical, nutrient demand parameters. The physico-chemical characteristics and nutrient demand parameters i.e. with special reference to pH (7.9-8.0), TDS (120-160 mg/L), COD (11-18 mg/L) and levels of
c heavy metals viz. Cd, Cr, Cu, Pb, Fe, Mn, Zn and As in surface water, were found within the prescribed limits of drinking water standards (IS: 10500-1995).

Total eight groundwater samples were collected (seven from hand-pumps and one from dug well) to assess the groundwater quality in the study area. The analysis on physico-chemical characteristics of
d groundwater samples collected from various locations showed high mineral contents in terms of dissolved solids (395-3020mg/L), alkalinity (63-210 mg/L), total hardness (225-2434 mg/L), chloride (109-950 mg/L), sulphate (29-1124 mg/L) and sodium (57-677 mg/L) as compared to the drinking water standards (IS:10500-1995). Thus, it could be concluded that water in some of the wells investigated is unfit for
e drinking. The concentrations of nutrient demand parameters revealed that phosphate was in the range 0.1-0.3 mg/L while nitrate was in the range 1-7.5 mg/L at all sampling locations which is within the limits stipulated under drinking water standards (IS:10500-1995). The levels of chromium, copper and lead were found to be higher in comparison to the parameters stipulated under drinking water standards (IS:10500-1995),
f other heavy metal concentrations viz. iron, manganese, zinc and arsenic were found in the range 0.01-0.05 mg/L, ND-0.01 mg/L and ND-0.08 mg/L respectively which are within the drinking water standards (IS:10500-1995).

To assess the impact on groundwater quality due to secured and fill sites and other waste disposal facilities, five samples were collected from monitoring wells (shallow bore wells located around the waste disposal
g sites). The physico-chemical characteristics of well water around secured landfill site and gypsum pond showed mineral contents higher than the levels stipulated in IS: 10500-1995 in terms of dissolved solids (400-3245 mg/L), alkalinity (57-137 mg/L), hardness (290-1280 mg/L), chloride (46-1390 mg/L), sulphate (177-649 mg/L) and sodium (9-271 mg/L). The results of nutrient demand parameters showed phosphate in
h the range 0.1-0.5 mg/L while nitrate was in the range 0.8-11.7 mg/L at all sampling locations, which are within the levels stipulated in IS:10500-

1995, whereas level of arsenic was found in the range of ND-0.08 mg/L as against the stipulated limit of 0.05 mg/L under drinking water standards (IS:10500-1995). The levels of cadmium, chromium, copper and lead were also found to exceed the drinking water standards in some of the wells.

The hourly composite wastewater samples were collected at six locations. During the sample collection, flow monitoring was also carried out at the inlet and final outlet of the effluent treatment plant (ETP). The concentrations of total dissolved solid (TDS) and sulphate exceed the limit stipulated by the TNPCB for treated effluent. All the other parameters are within the consent conditions prescribed by TNPCB. The treated effluent is being recycled back in the process to achieve zero discharge.

Soil environment

Soil samples were also analysed for level of heavy metals. The soil samples at the plant site showed presence of As (132.5 to 163.0 mg/kg), Cu (8.6 to 163.5 mg/kg), Mn (283 to 521.0 mg/kg) and Fe (929.6 to 1764.6 mg/kg). Though there is no prescribed limit for heavy metal contents in soil, the occurrence of these heavy metals in the soil may be attributed to fugitive emission, solid waste dumps, etc."

It will be clear from the extracts from the Executive Summary of NEERI in its report of 2005, that while some of the emissions from the plant of the appellants were within the limits stipulated by the TNPCB, some of the emissions did not conform to the standards stipulated by TNPCB. It will also be clear from the extracts from the executive summary relating to water environment that the surface water samples were found to be within the prescribed limits of drinking water (IS:10500-1995) whereas groundwater samples showed high mineral contents in terms of dissolved solids as compared to the drinking water standards, but concentrations of nutrient demand parameters revealed that the phosphate and nitrate contents were within the limits stipulated under drinking water standards and levels of chromium, copper and lead were found to be higher in comparison to the parameters stipulated under drinking water standards, whereas the heavy metal concentrations, namely, iron, manganese, zinc and arsenic were within the drinking water standards. Soil samples also revealed heavy metals. Regarding the solid waste out of slag in the plant site, the CPCB has taken a view in its communication dated 17-11-2003 to TNPCB that the slag is non-hazardous. Thus, the NEERI report of 2005 did show that the emission and effluent discharged affected the environment but the report read as whole does not warrant a conclusion that the plant of the appellants could not possibly take remedial steps to improve the environment and that the only remedy to protect the environment was to direct closure of the plant of the appellants.

43. In fact, this Court passed orders on 25-2-2011[17] directing a joint inspection by NEERI (National Environmental Engineering Research Institute) with the officials of the Central Pollution Control Board (for short

17 *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 13 SCC 769

"the CPCB") as well as the TNPCB. Accordingly, an inspection was carried out during 6-4-2011 to 8-4-2011 and 19-4-2011 to 22-4-2011 and a report was submitted by NEERI to this Court. On 18-7-2011, this Court directed[18] the Tamil Nadu Government and the TNPCB to submit their comments with reference to the NEERI report. On 25-8-2011, this Court directed[19] TNPCB to file a synopsis specifying the deficiencies with reference to the NEERI report and suggest control measures that should be taken by the appellants so that this Court can consider the direction to be issued for remedial measures which can be monitored by the TNPCB. Accordingly, the TNPCB filed an affidavit dated 30-8-2011 along with the chart of deficiencies and measures to be implemented by the appellants and on 11-10-2011, this Court directed[20] the TNPCB to issue directions, in exercise of its powers under the Air Act and the Water Act to the appellants to carry out the measures and remove the deficiencies indicated in the chart. Pursuant to the order dated 11-10-2011[20], the TNPCB issued directions to the appellants and on 17-1-2012, the appellants claimed before the Court that they have removed the deficiencies pointed out by the TNPCB and on 27-8-2012, this Court directed[3] that a joint inspection be carried out by TNPCB and CPCB and completed by 14-9-2012 and a joint report be submitted to this Court.

44. The conclusion in the joint inspection report of CPCB and TNPCB is extracted hereinbelow:

> "Out of the 30 directions issued by the Tamil Nadu Pollution Control Board, the industry has complied with 29 directions. The remaining Direction 1(3) under the Air Act on installation of bag filter to converter is at the final stage of erection, which will require further 15 working days to fully comply as per the industry's revised schedule."

From the aforesaid conclusion of the joint inspection report, it is clear that out of the 30 directions issued by the TNPCB, the appellant Company has complied with 29 directions and only one more direction under the Air Act was to be complied with. As the deficiencies in the plant of the appellants which affected the environment as pointed out by NEERI have now been removed, the impugned order[1] of the High Court directing closure of the plant of the appellants is liable to be set aside.

45. We may now consider the contention on behalf of the intervenors that the appellants were liable to pay compensation for the damage caused by the plant to the environment. The NEERI reports of 1998, 1999, 2003 and 2005 show that the plant of the appellant did pollute the environment through emissions which did not conform to the standards laid down by the TNPCB under the Air Act and through discharge of effluent which did not conform to the standards laid down by the TNPCB under the Water Act. As pointed out by

18 *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 13 SCC 772

19 *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 13 SCC 773

20 *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 10 SCC 254

3 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC)

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

Mr V. Gopalsamy and Mr Prakash, on account of some of these deficiencies, TNPCB also did not renew the consent to operate for some periods and yet the appellants continued to operate its plant without such renewal. This is evident from the following extracts from the NEERI Report of 2011:

"Further, renewal of the consent to operate was issued vide the following proceedings numbers and validity period:

TNPCB proceeding	*Validity up to*
No. T7/TNPCB/F.22276/RL/TTN/W/2007 dated 7-5-2007 No. T7/TNPCB/F.22276/RL/TTN/A/2006 dated 7-5-2007	30-9-2007
No. T7/TNPCB/F.22276/URL/TTN/W/2008 dated 19-1-2009 No. T7/TNPCB/F.22276/URL/TTN/A/2008 dated 19-1-2009	31-3-2009
No. T7/TNPCB/F.22276/URL/TTN/W/2009 dated 14-8-2009 No. T7/TNPCB/F.22276/URL/TTN/A/2009 dated 14-8-2009	31-12-2009

Thereafter, the TNPCB did not renew the consents due to non-compliance with the following conditions:

Under the Water Act, 1974

(*i*) The unit shall take expedite action to achieve the time-bound target for disposal of slag, submitted to the Board, including BIS clearance before arriving at disposal to cement industries, marine impact study before arriving at disposal for landfill in abandoned quarries.

(*ii*) The unit shall take expedite action to dispose the entire stock of the solid waste of gypsum.

Under the Air Act, 1981

(*i*) The unit shall improve the fugitive control measure to ensure that no secondary fugitive emission is discharged at any stage, including at the points of material handling and vehicle movement area."

For such damages caused to the environment from 1997 to 2012 and for operating the plant without a valid renewal for a fairly long period, the appellant Company obviously is liable to compensate by paying damages.

46. In *M.C. Mehta* v. *Union of India*[21], a Constitution Bench of this Court held: (SCC pp. 420-21, para 31)

"*31.* … The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is

21 (1987) 1 SCC 395 : 1987 SCC (L&S) 37

engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part."

The Constitution Bench in the aforesaid case further observed that the quantum of compensation must be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect and the larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it.

47. In the Annual Report 2011 of the appellant Company, at pp. 20 and 21, the performance of its copper project is given. We extract hereinbelow the paragraph titled "Financial Performance":

> "PBDIT for the financial year 2010-2011 was Rs 1043 crores, 40% higher than PBDIT of Rs 744 crores for the financial year 2009-2010. This was primarily due to higher LME prices and lower unit costs at Copper India and with the improved by-product realisation."

Considering the magnitude, capacity and prosperity of the appellant Company, we are of the view that the appellant Company should be held liable for a compensation of Rs 100 crores for having polluted the environment in the vicinity of its plant and for having operated the plant without a renewal of the consents by the TNPCB for a fairly long period and according to us, any less amount, would not have the desired deterrent effect on the appellant Company. The aforesaid amount will be deposited with the Collector of Thoothukudi District, who will invest it in a fixed deposit with a nationalised bank for a period of five years. The interest therefrom will be spent for improving the environment, including water and soil, of the vicinity of the plant after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu.

48. We now come to the submission of Mr Prakash that we should not grant relief to the appellants because of the misrepresentation and suppression of material facts made in the special leave petition that the appellants have always been running their plant with statutory consents and approvals and misrepresentation and suppression of material facts made in the special leave petition that the plant was closed at the time the special leave petition was moved and a stay order was obtained from this Court on 1-10-2010[2]. There is no doubt that there has been misrepresentation and suppression of material facts made in the special leave petition but to decline relief to the appellants in this case would mean closure of the plant of the appellants. The plant of the appellants contributes substantially to the copper production in India and copper is used in defence, electricity, automobile, construction and infrastructure, etc. The plant of the appellants has about 1300 employees and it also provides employment to a large number of people

2 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC)

through contractors. A number of ancillary industries are also dependent on the plant. Through its various transactions, the plant generates a huge revenue to the Central and State Governments in terms of excise, custom duties, income tax and VAT. It also contributes to 10% of the total cargo volume of Tuticorin Port. For these considerations of public interest, we do not think it will be a proper exercise of our discretion under Article 136 of the Constitution to refuse relief on the grounds of misrepresentation and suppression of material facts in the special leave petition.

49. Before we part with this case, we would like to put on record our appreciation for the writ petitioners before the High Court and the intervenor before this Court for having taken up the cause of the environment both before the High Court and this Court and for having assisted this Court on all dates of hearing with utmost sincerity and hard work. In *Indian Council for Enviro-Legal Action* v. *Union of India*[22], this Court observed that voluntary bodies deserve encouragement wherever their actions are found to be in furtherance of public interest. Very few would venture to litigate for the cause of environment, particularly against the mighty and the resourceful, but the writ petitioners before the High Court and the intervenor before this Court not only ventured but also put in their best for the cause of the general public.

50. In the result, the appeals are allowed and the impugned common judgment[1] of the High Court is set aside. The appellants, however, are directed to deposit within three months from today a compensation of Rs 100 crores with the Collector of Thoothukudi District, which will be kept in a fixed deposit in a nationalised bank for a minimum of five years, renewable as and when it expires, and the interest therefrom will be spent on suitable measures for improvement of the environment, including water and soil, of the vicinity of the plant of the appellants after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu. In case the Collector of Thoothukudi District, after consultation with TNPCB, finds the interest amount inadequate, he may also utilise the principal amount or part thereof for the aforesaid purpose after approval from the Secretary, Environment, Government of Tamil Nadu. By this judgment, we have only set aside the directions of the High Court in the impugned common judgment[1] and we make it clear that this judgment will not stand in the way of the TNPCB issuing directions to the appellant Company, including a direction for closure of the plant, for the protection of environment in accordance with law.

51. We also make it clear that the award of damages of Rs 100 crores by this judgment against the appellant Company for the period from 1997 to 2012 will not stand in the way of any claim for damages for the aforesaid period or any other period in a civil court or any other forum in accordance with law.

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22 (1996) 3 SCC 212

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

(2017) 9 Supreme Court Cases 499

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

Writ Petition (C) No. 114 of 2014

COMMON CAUSE .. Petitioner;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

With

Writ Petition (C) No. 194 of 2014

PRAFULLA SAMANTRA AND ANOTHER .. Petitioners;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petitions (C) No. 114 of 2014 with No. 194 of 2014, decided on August 2, 2017

A. **Mines and Minerals — Illegal mining — Ambit of expression "illegal mining" — Held, illegal mining does not only mean mining outside lease area — Illegality can take place even inside lease area — Purpose of MMDR Act is to ensure scientific mining, balanced utilisation of natural resources and protection and preservation of environment by adhering to statutory provisions — Non-adherence would attract penalty and termination of lease — Adherence to statutory provisions necessarily implies adherence to provisions of Environment (Protection) Act, 1986, laws pertaining to air and water pollution and Forest Conservation Act, 1980 besides adherence to mining statutes — Submission against interpreting "illegal mining" with such wide ambit on ground that definition of "illegal mining" was inserted vide R. 2(ii-a), Mineral Concession Rules, 1960, by Noti. dt. 26-7-2012 and thus present case not covered, not tenable**

— Mineral Concession Rules, 1960 — Rr. 2(ii-a), 22, 22-A, 27 and 37 — Mines and Minerals (Development and Regulation) Act, 1957 — Ss. 21, 4-A, 2, 3, 4, 5, 6, 8, 10, 12, 13, 18 and 23-C — Mineral Conservation and Development Rules, 1988 — Rr. 9, 10, 13, 31, 37, 38 and 41 — Environment (Protection) Act, 1986 — S. 3 — Forest (Conservation) Act, 1980 — S. 2 — Words and Phrases — "Illegal mining" (Paras 84 and 128 to 130)

B. **Mines and Minerals — Illegal mining — Suspension of illegal mining leases in Odisha — Directions issued**

— IAs Nos. 45 (filed by Zenith Mining), 47 (filed by *K*) and IA No. 66 (filed by *J*) dismissed as they did not have forest clearance (FC) or environmental clearance (EC) or both

— *S* (IA No. 9) actually had a working lease and has wrongly been included as a non-operational lease — Thus said IA also dismissed but as infructuous — However, State Government directed to ensure about valid statutory clearances

— All other IAs disposed of in terms of present order — Clarified that only after compliance with statutory requirements and full payment of compensation and other dues, mining leaseholders can restart their mining operations —

And this should be deposited on or before 31-12-2017 — State Government directed to decide pending show-cause notices if not already decided by 31-12-2017 (Paras 16, 222 to 225, 227 and 232)

C. **Mines and Minerals — Illegal mining — Violation of S. 6, MMDR Act, that is, relating to entitlement of maximum area for each person — Thus this illegality also relating to benami holders — CEC not finding any such illegality in respect of 2 of 7 mining leases, accepted as nothing contrary shown — For other leases, matter directed to be listed after two weeks for fixing of dates of hearing — Mines and Minerals (Development and Regulation) Act, 1957, S. 6 (Paras 192, 193, 197 and 226)**

D. **Mines and Minerals — Illegal mining — Illegal mining in State of Odisha — Procedure for transfer of lease under R. 37, MCR — Alleged violation of — Fresh look by new Committee, required — Directions**

— Matter adjourned for setting up of new Committee to identify lapses and recommend preventive measures — Validity of constitution of earlier committee was disputed and resultant litigation pending in High Court — Mineral Concession Rules, 1960, R. 37 (Paras 198 to 200, 202, 205, 228 and 229)

E. **Mines and Minerals — Illegal mining — Illegal mining in State of Odisha — Judicial notice taken of rampant mining and huge sums of money involved**

— Judicial notice taken of illegal and rampant mining in State of Odisha causing untold misery to the tribals in area — Over-extraction of 2155 lakhs MT of iron ore and manganese ore — Rs 17,516 crores worth mineral ore produced without environmental clearance (EC) or in excess of EC — And the above figures do not include mining without forest clearance (Paras 1, 25, 26 and 48)

F. **Mines and Minerals — Illegal mining — Facts found by Justice M.B. Shah Commission under Commissions of Inquiry Act, 1952, held, reliable for present purpose — It cannot be said that mining leaseholders were not given opportunity of hearing before Commission or the Commission did not follow the procedure**

— Even otherwise First Report being a fact-finding report there is no question of giving any notice to leaseholders or their cross-examination — Public Accountability, Vigilance and Prevention of Corruption — Inquiries/Commission of Inquiry — Commissions of Inquiry Act, 1952 — Ss. 8-B and 8-C — Procedure of notice and cross-examination under (Paras 33, 34, 43 and 45)

G. **Mines and Minerals — Illegal mining — Illegal mining in Odisha — CEC report — Credibility and relevance**

— CEC reports highlighted gravity of situation — Contention that CEC exceeded its limit by reporting on issues other than environment and forest, not tenable — Directions of Court to CEC indicate that CEC was expected to report on all aspects of illegal mining — Credibility of CEC report

cannot be doubted, though its recommendations are subject to satisfaction of Court (Paras 51 to 58 and 60)

H. **Mines and Minerals — Rehabilitation and Regeneration — Projects for tribal welfare and area development — Special Purpose Vehicle (SPV) for affected districts of Odisha — Huge amounts already available — Large amounts to be made available due to present order — Utilisation of funds and accountability — Directions**

— Chief Secretary, Odisha (Chairman, SPV) directed to provide audited accounts and ensure that amounts are utilised for benefit of tribals in affected districts — While taking up said projects, a bottom up planning and participatory approach should be followed (Paras 215, 217, 219, 220 and 231)

The probe into illegal mining in State of Odisha had started due to an IA filed against illegal mining in the State in a pending writ petition, that is, *T.N. Godavarman*, WP (C) No. 202 of 1995. Reports of Central Empowered Committee (CEC) appointed by Court and inquiries made under the Commissions of Inquiry Act, 1952 revealed that all kinds of illegalities were committed by the mining leaseholders in the State of Odisha. The Court, therefore, suspended the illegal mining leases in the State of Odisha. The Court however, permitted them to approach appropriate authorities for necessary approvals and clearances and thereafter approach the Court for modification of interim order against them. Some of the IAs in present matter were thus filed by mining leaseholders for modification of said interim order. The present case also clarified about the grounds on which illegality can be said to have been committed by mining leaseholders under various statutes and rules made thereunder and the remedial measures.

Held :

Expression "illegal mining" — Ambit

The overall purpose and objective of the MMDR Act as well as the Rules framed thereunder is to ensure that mining operations are carried out in a scientific manner with a high degree of responsibility including responsibility in protecting and preserving the environment and the flora of the area. Through this process, the holder of a mining lease is obliged to adhere to the standards laid down under the Environment (Protection) Act, 1986 or the EPA as well as the laws pertaining to air and water pollution and also by necessary implication, the provisions of the Forest (Conservation) Act, 1980. Exploitation of the natural resources is ruled out. If the holder of a mining lease does not adhere to the provisions of the statutes or the rules or the terms and conditions of the mining lease, that person is liable to incur penalties under Section 21 of the MMDR Act. In addition thereto, Section 4-A of the MMDR Act which provides for the termination of a mining lease is applicable. This provides that where the Central Government, after consultation with the State Government is of the opinion that it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment, prevention of pollution, etc. then the Central Government may request the State Government to prematurely terminate a mining lease. (Para 84)

It was wrongly submitted that a mining operation only outside the mining lease area would constitute "illegal mining". That is because the definition of "illegal mining" in Rule 2(*ii-a*) of the MCR was inserted by a Notification dated 26-7-2012

while the present case is concerned with an earlier period. That apart, as mentioned above, the holder of a mining lease is required to adhere to the terms of the mining scheme, the mining plan and the mining lease as well as the statutes such as the EPA, the FCA, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. If any mining operation is conducted in violation of any of these requirements, then that mining operation is illegal or unlawful. Any extraction of a mineral through an illegal or unlawful mining operation would become illegally or unlawfully extracted mineral. (Paras 128 and 129)

Mining operations outside a leased area are obviously illegal or unlawful mining. Illegal mining takes within its fold excess extraction of a mineral over the permissible limit even within the mining lease area which is held under lawful authority, if that excess extraction is contrary to the mining scheme, the mining plan, the mining lease or a statutory requirement. Even otherwise, it is not possible to accept such narrow interpretation since the matter is about a natural resource which is intended for the benefit of everyone and not only for the benefit of the mining leaseholders. (Para 130)

Frightening facts and figures — Judicial notice of illegal and rampant mining in State of Odisha causing untold misery to the tribals in the area

The facts revealed during the hearing of these writ petitions filed under Article 32 of the Constitution suggest a mining scandal of enormous proportions and one involving megabucks. The lessees in the districts of Keonjhar, Sundergarh and Mayurbhanj in Odisha have rapaciously mined iron ore and manganese ore, apparently destroyed the environment and forests and perhaps caused untold misery to the tribals in the area. Steps taken by the lessees to ameliorate the hardships of the tribals, is perhaps not more than a drop in the ocean—also too little, too late. (Para 1)

There are some frightening figures mentioned by CEC in its final report. According to CEC, excess mining without environmental clearance or beyond what was authorised by the environmental clearance is 2130.988 lakhs MT of iron ore and 24.129 lakhs MT of manganese ore making a total of 2155.117 lakhs MT of iron ore and manganese ore. This does not include extraction of ore without forest clearance. These figures give an indication of the extent of excess or illegal or unlawful mining carried out. In terms of rupees, according to CEC the total notional value of minerals produced without an environmental clearance or in excess of the environmental clearance, at the weighted average price of minerals as proposed by the Indian Bureau of Mines comes to about Rs 17,091.24 crores for iron ore and about Rs 484.92 crores for manganese ore making a total of Rs 17,576.16 crores. Again, this does not include mining without forest clearance. Therefore, these can be referred to as megabucks and rapacious mining. (Paras 25 and 26)

Common Cause v. *Union of India*, IA No. 35 in IA No. 17 in WP (C) No. 114 of 2014, order dated 16-1-2015 (SC); *Common Cause* v. *Union of India*, WP (C) No. 114 of 2014, order dated 7-10-2015 (SC); *Common Cause* v. *Union of India*, (2016) 11 SCC 455, *referred to*

Significant observations of Commission about miserable condition of tribals

The Commission made certain significant observations as follows:

(*a*) The tribals in the area have been displaced or stay in pathetic and miserable conditions in same area. There is rampant air pollution with the trees having the colour of minerals making it clear that tribals are forced to breathe polluted air and drink polluted water.

(*b*) Streams and ground water is polluted and there is hardly any facility of drinking water. Women have been seen fetching water from dirty nalas.

(*c*) Mining companies and beneficiation plants are drawing water from rivers and nearby water resources are getting depleted at a fast rate. River Baitrani has been seriously affected by this activity.

(*d*) Basic facilities such as medical facilities, shelter/residence, education facilities are absent. Roads have a heavy flow of traffic and on one road of the area about 7000 trucks passed during night time.

(*e*) The labour is not being paid adequate wages beyond the minimum wages even though the income of the mine owners runs into billions of rupees. (Para 48)

Facts found by Justice M.B. Shah Commission under Commissions of Inquiry Act, 1952, reliable for present purpose

The First Report of Justice M.B. Shah Commission under Commissions of Inquiry Act, 1952 is relevant for the purpose of the present judgment and order. A resume of the procedure followed will indicate that full opportunity was given to the leaseholders to have their say. [Ed.: For said resume, see paras 35 to 42.] (Paras 33 and 34)

The First Report is generally a limited fact-finding enquiry on the basis of information supplied by the mining leaseholders. Therefore, there is absolutely no question of any notice being issued to any mining leaseholder under Section 8-B or the right of cross-examination being granted to any mining leaseholder under Section 8-C, Commissions of Inquiry Act, 1952. The Commission made adequate efforts to collect the facts and this collation in the First Report was possible with the assistance of the mining leaseholders and the government authorities. Therefore, the procedure adopted by the Commission in collecting facts was neither irregular nor illegal. Any mining leaseholder who wanted to be heard was given an opportunity of being heard and was fully aware of what the Commission was attempting to achieve and if any particular mining leaseholder chose not to associate with it, it was at his or her own peril. All the mining leaseholders were fully aware of what was going on, if not personally then certainly through their list of counsel running into 18 pages or their representatives individually or their Federation. (Para 43)

There is no challenge to the reports of the Justice Shah Commission. However, the present judgment can confine itself to some limited facts adverted to by CEC in its final report. The reports of the Commission are not necessary for conclusions of the present judgment. (Para 45)

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

CEC Report — Credibility and relevance

The gravity of the situation is apparent from the report of CEC and the Commission also seems to support it. (Para 51)

The contention that in giving the Report dated 16-10-2014 CEC has exceeded its remit is not tenable. Though in *T.N. Godavarman Thirumulpad*, IA No. 3721 in 3629 in WP (C) No. 202 of 1995, order dated 13-1-2014 (SC), the Court stated that the report of CEC should not cover cases other than forest and environmental issues, subsequent orders have been completely overlooked by the respondent leaseholders inasmuch as on 21-4-2014 CEC was specifically directed to make a list of such lessees who are operating the leases in violation of the law. The various orders of the Court make it clear that the jurisdiction of CEC was not limited and it was expected to give a detailed report on all aspects of illegal mining or mining being carried out without any lawful authority in whatever manner. The initial objection raised on behalf of the leaseholders is therefore rejected. (Paras 52 to 54)

T.N. Godavarman Thirumulpad v. *Union of India*, (2014) 14 SCC 160, *relied on*

T.N. Godavarman Thirumulpad v. *Union of India*, IA No. 3721 in 3629 in WP (C) No. 202 of 1995, order dated 13-1-2014 (SC), *clarified*

CEC constituted in *T.N. Godavarman Thirumulpad (50)*, (2013) 8 SCC 198 is now an established body which renders extremely valuable advice to the Supreme Court and provides factual material on the basis of which the Court can make some recommendations and pass appropriate orders. (Para 55)

T.N. Godavarman Thirumulpad (50) v. *Union of India*, (2013) 8 SCC 198; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2013) 8 SCC 204, *relied on*

The credibility of CEC cannot be doubted though its recommendations are subject to the satisfaction of the Supreme Court. In the present cases, CEC as a fact-finding body has functioned impartially and it is only on the conclusions arrived at by CEC on the basis of the facts gathered that there can be some debate and discussion. Anyone may disagree with the views of CEC and there is no need to make heavy weather about this at all. (Para 56)

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

In its Final Report dated 16-10-2014, CEC has stated that it held meetings with the Chief Secretary and other senior officials of the State of Odisha and others on six dates. It also heard the leaseholders and others on seven dates and it held meetings with three of the leaseholders, that is, Jindal Steel and Power Ltd. (JSPL), Sarda Mines Pvt. Ltd. (SMPL) and Essel Mining and Industries Ltd. (Essel) on 10-9-2014. CEC visited the site of the mining lease of SMPL from 4-3-2014 to 7-3-2014 and had site visits of a number of other lessees from 12-7-2014 to 16-7-2014. The report of CEC dealt with leasewise and yearwise details of production of iron ore and manganese ore, permissible production and production without environmental clearance/beyond environmental clearance. Separately, CEC has dealt with the facts concerning SMPL and JSPL pursuant to a meeting held with them on 11-9-2014. (Paras 57, 58 and 60)

Projects for tribal welfare and area development — special purpose vehicle (SPV) — Directions

A scheme for setting up a special purpose vehicle (SPV) for tribal welfare and area development works has been implemented by the State of Odisha. (Para 215)

T.N. Godavarman Thirumulpad v. *Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 27-1-2014 (SC); *T.N. Godavarman Thirumulpad* v. *Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 28-4-2014 (SC), *referred to*

T.N. Godavarman Thirumulpad (104) v. *Union of India*, (2008) 2 SCC 222, *cited*

Some of the salient features of the scheme are as follows: The SPV will undertake specific tribal welfare and area development works so as to ensure inclusive growth of the mineral bearing areas. These will include works/projects related to livelihood intervention, health, water supply and sanitation, education, special programmes for development of women and children, entrepreneurial development of local people, communication and infrastructure projects and agro silvi-horticultural based livelihood projects through identified agencies/ Government Departments. While taking up such projects/works a bottom up planning and participatory approach will be followed. (Para 217)

Some of the mining leaseholders offered to deposit and in fact did deposit an amount of Rs 237.05 crores for utilisation by the SPV for carrying out welfare works and activities in the districts of Keonjhar, Sundergarh and Mayurbhanj in Odisha. There are huge amounts available with the special purpose vehicle for tribal welfare and area development works but nothing is known about the utilisation of the funds. Further, as a result of present order very large amounts will again be made available to the State of Odisha. These amounts should also be kept with the special purpose vehicle. (Para 219)

To ensure that the amounts are utilised for the benefit of tribals in the affected districts and for area development works, the Chief Secretary of Odisha, ex-officio Chairman of SPV is directed to file an affidavit stating the work done as well as provided the audited accounts of the receipt and expenditure of the SPV from its inception. The Chief Secretary of Odisha should file said affidavit within a period of six weeks and in any case on or before 30-9-2017. The Registry will list these petitions along with the affidavit immediately after its receipt for consideration. (Paras 220 and 231)

Minimum area for which mining lease may be granted — Violation of and benami holders

There have been several amendments to S. 6 relating to the maximum area for which a mining lease may be granted to a person. (Paras 189 to 192)

In this background, CEC examined the case of seven mining leaseholders. (Para 193)

As far as Bonai Industrial Company Ltd. and Feegrade & Co. Pvt. Ltd. are concerned, CEC has concluded that they have not violated Section 6 of the MMDR Act. That being the position, and nothing having been shown to the contrary, the recommendation of CEC in this regard is accepted. With regard to remaining 5 companies hearing on the matter was required, thus, postponed. (Para 197)

The Court would hear Jindal Steel and Power Ltd., Sarda Mines Private Ltd., Rungta Group of Companies and Essel Mining and Industries Ltd. on the applications filed by them. For this purpose matter to be listed again after two weeks so that a convenient date of hearing can be fixed. (Para 226)

Procedure for transfer of lease — Alleged violation of — Fresh look by new committee, required — Directions

CEC has discussed the possible violation of Rule 37 of the MCR. In this context, it was noted that there were several mining leaseholders who had entered into raising contracts which were actually a transfer of the lease as postulated by Rule 37 of the MCR. (Para 198)

On this basis the State of Odisha constituted a Committee on 8-7-2011 to carry out a study of the financial transactions between the mining leaseholders and the raising contractors to determine whether there is a prima facie violation of Rule 37 of the MCR. (Para 199)

The Committee concluded that eight mining leaseholders violated Rule 37 of the MCR. (Para 200)

The Central Government in revision under Section 30, MMDR Act and Rule 55, MCR set aside the order constituting the Committee. Writ petitions thereagainst filed by the State of Odisha are pending in the High Court. (Para 202)

It will be appropriate if in fact a fresh look is given to the matter. Thus the Court would like to hear the eight mining leaseholders concerned on the question of appointing an appropriate committee in respect of the applicability of Rule 37 of the Mineral Concession Rules to them. The Court would hear all the parties with regard to setting up of an Expert Committee presided over by a retired Judge of the Supreme Court to identify the lapses that have occurred over the years that have enabled rampant illegal and unlawful mining in Odisha and to recommend preventive measures not only to the State of Odisha but generally to all other States where mining activities are proceeding on a large scale. (Paras 205, 228 and 229)

State of Rajasthan v. *Gotan Lime Stone Khanij Udyog (P) Ltd.*, (2016) 4 SCC 469, *relied on*

Common Cause v. *Union of India*, WP (C) No. 114 of 2014, order dated 28-4-2017 (SC), *referred to*

IA pursuant to liberty granted

Pursuant to the liberty granted to move for modification of the interim order dated 16-5-2014 suspending the illegal mining leases, 17 interim applications for modification were received. (Para 16)

Common Cause v. *Union of India*, (2014) 14 SCC 155; *Goa Foundation* v. *Union of India*, (2014) 6 SCC 590, *referred to*

IAs Nos. 45 (filed by Zenith Mining) and 47 (filed by *K*) are dismissed since their lease has not been extended or has been determined and they do not have any environmental clearance or forest clearance. (Para 222)

IA No. 66 (filed by *J*) is also dismissed since there is no forest clearance available. (Para 223)

S (IA No. 9) actually had a working lease and has wrongly been included as a non-operational lease. Accordingly, IA No. 9 (filed by *S*) is also dismissed but as being infructuous. However, it is made clear that the State Government should ensure that the lessee *S* in fact has valid statutory clearances. (Para 224)

Pending show-cause notices issued by the State Government should be decided by 31-12-2017 (if not already decided) after hearing the notices concerned. (Para 225)

The amounts determined as due from all the mining leaseholders should be deposited by them on or before 31-12-2017. Subject to and only after compliance with statutory requirements and full payment of compensation and other dues, the mining leaseholders can restart their mining operations. (Para 227)

All other pending IAs are disposed of in terms of orders in present case. (Para 232)

I. **Mines and Minerals — Judicial Intervention — Illegal mining in State of Odisha — Prayer for CBI inquiry — Instead of CBI inquiry, expert committee to be set up under guidance of retired Supreme Court Judge to identify lapses and suggest measures for corrective steps that can be taken for future and for other States (Paras 47, 49, 50, 229, 213 and 214)**

Held :

Justice M.B. Shah Commission under the Commissions of Inquiry Act, 1952 suggests that Central Bureau of Investigation (CBI) may be directed to investigate into allegations of corruption made against politicians, bureaucrats and others. This however, would be considered at the appropriate stage. (Para 47)

Commission felt that the Vigilance Commission was unlikely to conduct an impartial and independent enquiry for arriving at just and proper findings because of external pressures. Accordingly, it would be more appropriate if the Central Bureau of Investigation (CBI) conducts a detailed enquiry into all cases that have been registered between 2008 and 2011. (Para 49)

It was also noted that the Railways have issued demand notices to the extent of Rs 1874 crores. The latest position with regard to these notices is not available. It was also noted that notices have been issued in 146 cases to various leaseholders for recovery of mined ore as per Section 21(5) of the MMDR Act for recovery of more than Rs 59,000 crores! (According to CEC the figure exceeds Rs 61,000 crores)!! (Paras 49 and 50)

For the present, no direction is passed with regard to any investigation by CBI. What is of immediate concern is to learn lessons from the past so that rapacious mining operations are not repeated in any other part of the country. This can be achieved through the identification of lapses and finding solutions to the problems that are faced. Undoubtedly, there have been very serious lapses that have enabled large-scale mining activities to be carried out without forest clearance or environment clearance and eventually the persons responsible for this will need to be booked but the violation of the laws and policy need to be prevented in other parts of the country. The rule of law needs to be established. Therefore, it would be appropriate if an Expert Committee is set up under the guidance of a retired Judge of the Supreme Court to identify the lapses that have occurred over the years enabling rampant illegal or unlawful mining in Odisha and measures to prevent this from happening in other parts of the country. (Paras 229 and 213)

There is no doubt that the recommendations of the Commission can form a platform for the study but it is also necessary to use technology for maintenance of registers, records and data through computers, satellite imagery, videography and other technology tools so that the natural wealth of our country is not rapaciously exploited for the benefit of a few to the detriment of a large number, many of whom are tribals inhabiting the land for several generations. (Para 114)

J. **Environment Law — Environmental Clearance/NOC/Environment Impact Assessment — EIA Notification — EIA 1994 — Applicability to mining leases — Following aspects, clarified**

— (i) statutory basis of environmental clearance (EC) for mining activities, (See para 86)

— (ii) Meaning of EC, (See para 87)

— (iii) When prior approval of EC required, (See paras 88, 89 and 96) — Requirement of environmental clearance (EC) if pollution load is to exceed due to expansion or modernisation of any activity or if new project listed in Sch. I is undertaken

— (iv) When prior EC not required, (See paras 91 and 96)

— (v) Base year for computing extent of modernisation and expansion for calculation of pollution load, that is, 1993-1994, (See paras 93, 94 and 96)

— (vi) renewal of mining leases, (See paras 100 to 108) (Paras 86 to 108)

Held :

Having regard to to object of the MMDR Act, an Environment Impact Notification dated 27-1-1994 (EIA 1994) was issued by the Central Government in exercise of powers conferred by Section 3(1) and Section 3(2)(*v*) of the EPA read with Rule 5(3)(*d*) of the Environment (Protection) Rules, 1986. It is a prohibitory Notification and directs that on and from the date of its publication in the Official Gazette:

(*i*) expansion or modernisation of any activity (if pollution load is to exceed the existing one); and

(*ii*) a new project listed in Schedule I to the notification, shall not be undertaken unless it has been accorded environmental clearance (EC) by the Central Government in accordance with the procedure specified in the Notification. (Para 86)

The Notification provides, among other things, that in case of mining operations, site clearance shall be granted for a sanctioned capacity and shall be valid for a period of five years from commencing mining operations. What this means is that on receipt of an EC a mining leaseholder can extract a mineral only from a specified site, up to the sanctioned capacity and only for a period of five years from the date of the grant of an EC. This is regardless of the quantum of extraction permissible in the mining plan or the mining lease and regardless of the duration of the mining lease. Consequently, a mining leaseholder would necessarily have to obtain a fresh EC every five years and can also apply for an increase in the sanctioned capacity. There is no concept of a retrospective EC and its validity effectively starts only from the day it is granted. Thus, the EC takes precedence over the mining lease or to put it conversely, the mining operations under a mining lease are dependent on and "subordinate" to the EC. (Para 87)

On 4-5-1994 an Explanatory Note was added to EIA 1994. As per its First Note, if any proposed expansion or modernisation activity results in an increase in the pollution load, then a prior EC is required. The project proponent should approach the State Pollution Control Board concerned (for short SPCB) for certifying whether the proposed expansion or modernisation is likely to exceed the existing pollution load or not. If the pollution load is not likely to be exceeded, the project proponent will not be required to seek an EC but a copy of such a certificate from SPCB will require to be submitted to the Impact Assessment Agency which can review the certificate. (Paras 88 and 89)

Eighth Note of Explanatory Note dated 4-5-1994 to EIA 1994, makes it clear that existing mining projects that have a no-objection certificate from SPCB before 27-1-1994 will not be required to obtain an EC from the Impact Assessment Agency. Of course, this is subject to the substantive portion of EIA 1994 and the 1st Note. However, if the existing mining project does not have a no-objection certificate from SPCB, then an EC will be required under EIA 1994. (Para 91)

A reading of EIA 1994 read with the 1st Note implies that the base year for computing extent of expansion and modernisation or increase of annual production and its impact on existing pollution load is the immediately preceding year, that is, 1993-1994. This is obvious from the opening sentence of the 1st Note, that is, a project proponent is required to seek environmental clearance for a proposed expansion/modernisation activity if the resultant pollution load is to exceed the *existing levels*. In its report, CEC also has taken 1993-1994 as the base year. (Para 93)

Circular dated 28-10-2014 cannot be interpreted to mean that production even prior to 1993-1994 could be taken as the base year. The *existing levels* mentioned in the 1st Note clearly have reference to the immediately preceding year and not to a preceding year in a comparatively remote past. Further, a very high annual production in any one year is not reflective of a consistent pattern of production — it could very well be a freak year and that freak year certainly cannot be a basic standard or the norm to measure expansion. Then if the interpretation sought to be given is accepted, there would be an absence of consistency and a lack of uniformity with different mining leaseholders having different base years. This is hardly conducive to good governance. Finally, EIA 1994 was intended to prevent the existing environmental load from increasing based on the existing data of the immediate past and not data of a few years gone by. The only exception that could be made in this regard would be if there is no production during 1993-94. In that event, the immediately preceding year would be relevant and that is the only reasonable interpretation for the use of the words "or its preceding years". (Para 94)

On a composite reading of EIA 1994, it is clear that:

(*i*) A no-objection certificate from SPCB was necessary for continuing mining operations;

(*ii*) An expansion or modernisation activity required an EC unless the pollution load was not exceeded beyond the existing levels;

(*iii*) The base year for determining the pollution load and therefore the proposed expansion would be with reference to 1993-94;

(*iv*) Whether an expansion or modernisation would lead to exceeding the existing pollution load or not would require a certificate from SPCB which could be reviewed by the IAA;

(*v*) New projects require an EC; and

(*vi*) Existing projects do not require an EC unless there is an expansion or modernisation for the duration (if any) of the validity of the certificate from SPCB. (Para 96)

Nothing more needs to be stated on this subject since CEC has proceeded to discuss the issue of mining in excess of the EC or in excess of the mining plan only

from the year 2000-01 onwards. The prior period may, therefore, be ignored and it is the period from 2000-01 onwards which is actually relevant for the present discussion. (Para 96)

Circular dated 14-5-2002 indicates that several units had come up in violation of EIA 1994. The MoEF had taken the view that such units may be permitted to apply for an EC by 31-3-1999 which was then extended to 30-6-2001 by Circulars dated 5-11-1998 and 27-12-2000, respectively. By the Circular dated 14-5-2002 the deadline for applying for an EC was extended up to 31-3-2003 as a last and final opportunity to obtain an ex post facto EC in respect of units which had commenced mining operations without obtaining a prior EC in violation of EIA 1994. (Paras 98 and 99)

M.C. Mehta v. *Union of India*, (2004) 12 SCC 118, *referred to*

As to whether EC was required particularly in respect of pre-EIA 1994 mining leases and operations it was wrongly submitted that it was not obligatory for the mining leaseholders, who did not expand their mining operations, to obtain an EC and in any event the period for obtaining an EC was extended till 31-3-2003 with ex post facto approval. (Paras 100 and 102)

With regard to EIA 1994 and Circular dated 14-5-2002, the intention of the MoEF was not to legalise the continuance of mining activity without complying with the requisite stipulations. If that were unfortunately so, then it would demonstrate a lack of sensitivity of the MoEF to the principles of sustainable development and the object behind issuing EIA 1994. EIA 1994 would apply to the renewal of a mining lease that came up for consideration post 27-1-1994. For the renewal of a mining lease, an EC was required by the mining leaseholder. EIA 1994 is mandatory. It is applicable to all mining operations—expansion of production or even increase in lease area, modernisation of the extraction process, new mining projects and renewal of mining leases. A mining leaseholder is obliged to adhere to the terms and conditions of a mining lease and the applicable laws and the mere fact that a mining plan has been approved does not entitle a mining leaseholder to commence mining operations. Although the two clarificatory Circulars issued by MoEF on 28-10-2004 and 25-4-2005 extended the date to apply for EC and although it gave the possibility of getting an ex post facto EC, that cannot be treated as a signal to the mining leaseholders that obtaining an EC was not mandatory or that if it was not obtained, the default was retrospectively condonable. Compliance with the MMDR Act and the Rules framed thereunder are important for the protection and preservation of the environment. The obligation of everyone to abide by the law cannot be overlooked. That the MoEF took a soft approach cannot be an escapist excuse for non-compliance with the law or EIA 1994. (Paras 103 to 108)

M.C. Mehta v. *Union of India*, (2004) 12 SCC 118, *relied on*

K. **Environment Law — Environmental Clearance/NOC/Environment Impact Assessment — EIA Notification — EIA 2006 and EIA 1994 — Applicability to mining leases — Concept of ex post facto environmental clearance (EC) or retrospective EC, held, completely alien to environmental jurisprudence not only under EIA 1994 but also under EIA 2006**

— No doubt EC obtained earlier would continue under certain circumstances — But a prior EC would be required (a) if there is over-extraction

beyond permissible limits or (b) if there is renewal of mining lease even if there is no over-extraction — And for this a mining plan is subordinate to EC, meaning that, mining would be illegal even if permitted by mining plan if such mining plan does not conform to conditions of EC or if a prior EC has not been obtained where required — And an EC will come into force not earlier than the date of its grant

Held :

The EIA 2006 Notification dated 14-9-2006 required prior EC for projects or activities mentioned in the Schedule to it both for major as well as minor minerals if the leased area is 5 ha or more. Several mining leaseholders, in compliance with EIA 2006, applied for and were granted an EC. (Para 109)

Circular dated 2-7-2007 clarified as follows:

(*i*) Mining leases, where no EC was required under EIA 1994 would continue to operate without an EC;

(*ii*) If there was an increase in the lease area or enhancement of production, an EC was required by the mining leaseholder;

(*iii*) All projects would require an EC at the time of renewal of the mining lease even if there was no increase in the lease area or enhancement of production. (Paras 111 and 112)

There is no confusion, vagueness or uncertainty in the application of EIA 1994 and EIA 2006 insofar as mining operations were commenced on mining leases before 27-1-1994 (or even thereafter). Post EIA 2006, every mining leaseholder having a lease area of 5 ha or more and undertaking mining operations in respect of major minerals (with which we are concerned) was obliged to get an EC in terms of EIA 2006. (Para 115)

A mining plan is subordinate to an EC. Having an approved mining plan does not imply that a mining leaseholder can commence mining operations. That being so, a modified mining plan without a revised or amended EC, is of no consequence. Allegedly, under the shield of a modified mining plan, illegal or unlawful mining in the form of mining without an EC, mining by over-reaching EIA 1994 and EIA 2006 was being carried out. (Para 117)

In a Letter dated 29-10-2010 addressed to the Controller General, Indian Bureau of Mines it was made clear that all modifications of mining plans shall be effective prospectively only and earlier instances of irregular mining shall not be regularised through a modification of the mining plan. (Para 118)

In respect of overproduction, a High Level Committee (called the Hoda Committee) on the National Mineral Policy noted in its Report dated 22-12-2006 that the permissible variation in production as per the Indian Bureau of Mines is ±10% but according to the Letter dated 12-12-2011 issued by the Ministry of Mines, the reasonable variation limit could be ±20%. The fact that in some cases the variation exceeded 20% was a cause for concern which necessitated strict and punitive action. (Paras 120 and 121)

For the purposes of renewal of the mining lease, an application is required to be made by the mining leaseholders and the deemed renewal clause under Rule 24-A of the MCR will come into operation only after an application for renewal is

made in Form J in Schedule I of the MCR. Under Rule 26 of the MCR, the State Government may refuse to renew the mining lease. In view of EIA 1994, it is quite clear that the renewal of a mining lease would require a prior EC. Circular dated 28-10-2004 issued by MoEF stated that in view of the decision in *M.C. Mehta*, (2004) 12 SCC 118 all mining projects of major minerals of more than 5 ha lease area that had not yet obtained an EC would have to do so at the time of renewal of the lease. (Paras 122 and 123)

M.C. Mehta v. *Union of India*, (2004) 12 SCC 118, *relied on*

The grant of an EC cannot be taken as a mechanical exercise. It can only be granted after due diligence and reasonable care since damage to the environment can have a long-term impact. EIA 1994 is therefore very clear that if expansion or modernisation of any mining activity exceeds the existing pollution load, a prior EC is necessary and even for the renewal of a mining lease where there is no expansion or modernisation of any activity, a prior EC is necessary. Such importance having been given to an EC, the grant of an ex post facto environmental clearance would be detrimental to the environment and could lead to irreparable degradation of the environment. The concept of an ex post facto or a retrospective EC is completely alien to environmental jurisprudence including EIA 1994 and EIA 2006. An EC will come into force not earlier than the date of its grant. (Para 125)

L. **Mines and Minerals — Encroachment — Joint survey — Directions to State of Odisha and CEC — Mining outside sanctioned mining areas, held, illegal — Directions issued for proper identification of nature and extent of encroachment of 82 leaseholders — As Joint Survey had been conducted by State of Odisha only in respect of 39 leases, authorities directed to complete survey of remaining 43 leases — CEC directed to present such report before Court on or before 31-12-2017 — Mines and Minerals (Development and Regulation) Act, 1957, S. 4**

Held :

Section 4(1) of the MMDR Act makes it clear that no person can carry out any mining operations except under and in accordance with the terms and conditions of a mining lease granted under the MMDR Act and the Rules made thereunder. Obviously therefore, any person carrying on mining operations without a mining lease, is indulging in illegal or unlawful mining. This would also necessarily imply that if a mining lease is granted to a person who carries out mining operations outside the boundaries of the mining lease, the mineral extracted would be the result of illegal or unlawful mining. (Para 131)

CEC stated that in 82 mining leases for iron ore and manganese ore there were encroachments in the form of illegal mining pits, illegal overburdened dumps, etc. (Para 132)

In respect of these 82 mining leases, the State of Odisha appointed a Committee on the suggestion of the Commission, to survey and identify the exact extent and location of the sanctioned lease area, lease area under occupation of the mining leaseholder and the area under encroachment/illegal mining. The Committee or the Joint Survey consisted of officers of the Revenue Department, Forest Department and Mining Department of the State of Odisha who carried out a field survey in respect of 39 mining leases. The findings of the field survey or the Joint

Survey were verified by a team comprising of the Director, Mines, Chief Engineer, ORSAC and the Additional Secretary, F & E Department of the Government of Odisha. (Para 133)

It is mentioned in the report of CEC that the Joint Survey for each of the 39 mining leases is technically sound and reliable. However, the fact is that a joint survey has not been conducted in respect of remaining 43 mining leases. (Para 134)

For completing the record and taking the report of CEC to its logical conclusion, it would be appropriate if a fresh Joint Survey is conducted by officers concerned of the Government of Odisha from the Revenue Department, the Forest Department, the Mining Department and any other department that may be deemed necessary. The Forest Survey of India, the MoEF, the Indian Bureau of Mines and the Geological Survey of India should also be associated in the Joint Survey. In our opinion, it would also be appropriate if CEC is also associated in the Joint Survey and the best and latest technology should be made use of including satellite imagery and thereafter a report is submitted in the Supreme Court on or before 31-12-2017 after hearing the 82 lessees identified by the Commission. (Para 135)

M. **Mines and Minerals — Illegal mining — Over extraction — Permissible limits — 20% variation in extraction over and above mining plan as per R. 22(5), MCR — Scope of, explained — Clarified that this does not permit mining leaseholder to extract entire permissible quantity for 5 years plus 20% over extraction in a single year and thereafter extract miniscule amounts over the remaining 4 years — Mining in excess of permissible limits would amount to illegal or unlawful mining or mining without lawful authority — Mineral Concession Rules, 1960, R. 22(5) (Paras 136 and 140)**

Held :

A side issue raised by the learned counsel for the mining leaseholders in this regard was the necessity (if any) of adhering to the annual plan or calendar plan of mining. It was contended that a mining leaseholder could mine in excess of the annual plan. While it is so, this submission must be tempered and appreciated in the proper context. A mining plan is valid for a period of five years but there could be a 20% variation in extraction over and above the mining plan. This is the maximum that is stated to be reasonably permissible according to the Ministry of Mines. In terms of Rule 22(5) of the MCR a mining plan shall incorporate a tentative scheme of mining and annual programme and plan for excavation from year-to-year for five years. At best, there could be a variation in extraction of 20% in each given year but this would be subject to the overall mining plan limit of a variation of 20% over five years. What this means is that a mining leaseholder cannot extract the five year quantity (with a variation of 20%) in one or two years only. The extraction has to be staggered and continued over a period of five years. If any other interpretation is given, it would lead to an absurd situation where a mining leaseholder could extract the entire permissible quantity under the mining plan plus 20% in one year and extract miniscule amounts over the remaining four years, and this could be done without any reference to the EC. The submission in this regard simply cannot be accepted. (Para 136)

While mining in excess of permissible limits under the mining plan or the EC or FC on leased area may not amount to mining on land occupied without lawful authority, it would certainly amount to illegal or unlawful mining or mining without authority of law. This is the correct interpretation of Section 21(5), MMDR Act. (Para 140)

N. **Mines and Minerals — Mines and Minerals (Development and Regulation) Act, 1957 — S. 21(5) — Compensation for illegal mining — When attracted — S. 21(5) is attracted when any person, without lawful authority extracts any mineral from any land — State Government is entitled to recover said illegally extracted mineral or price thereof — Word "any land" not confined to violations outside lease area — It includes violations within mining lease area (Para 151)**

Held :

Section 21(5) of the MMDR Act is applicable when any person raises, without any lawful authority, any mineral from *any land*. In that event, the State Government is entitled to recover from such person the mineral so raised or where the mineral has already been disposed of, the price thereof as compensation. The words "any land" are not confined to the mining lease area. As far as the mining lease area is concerned, extraction of a mineral over and above what is permissible under the mining plan or under the EC undoubtedly attracts the provisions of Section 21(5) of the MMDR Act being extraction without lawful authority. It would also attract Section 21(1) of the MMDR Act. In any event, Section 21(5) of the Act is certainly attracted and is not limited to a violation committed by a person only outside the mining lease area — it includes a violation committed even within the mining lease area. This is also because the MMDR Act is intended, among other things, to penalise illegal or unlawful mining on any land including mining lease land and also preserve and protect the environment. Action under the EPA or the MCR could be the primary action required to be taken with reference to the MCR and Rule 2(*ii-a*) thereof read with the Explanation but that cannot preclude compensation to the State under Section 21(5) of the MMDR Act. The MCR cannot be read to govern the MMDR Act. (Para 151)

Karnataka Rare Earth v. *Deptt. of Mines & Geology*, (2004) 2 SCC 783, *relied on*

Khemka & Co. (Agencies) (P) Ltd. v. *State of Maharashtra*, (1975) 2 SCC 22 : 1975 SCC (Tax) 227, *distinguished*

Director of Public Prosecutions v. *Schildkamp*, 1971 AC 1 : (1970) 2 WLR 279 : (1969) 3 All ER 1640 (HL), *referred to*

Black's Law Dictionary, 7th Edn., p. 1421; Justice Singh, G.P.: *Principles of Statutory Interpretation* (8th Edn., 2001, p. 147), *referred to*

O. **Mines and Minerals — Mines and Minerals (Development and Regulation) Act, 1957 — S. 21(5) — Compensation for illegal mining — Quantum — There can be no compromise on quantum of compensation — S. 21(5) contemplates 100% recovery — State should not forego what is its due in order to fill coffers of defaulting lessees (Paras 153 and 154)**

Held :

100% recovery should be made under the provisions of Section 21(5) of the MMDR. Submission that only 30% of the value of the illegally mined ore should be recovered cannot be accepted. (Para 153)

There can be no compromise on the quantum of compensation that should be recovered from any defaulting lessee. It simply does not stand to reason why the State should be compelled to forego what is its due from the exploitation of a natural resource and on the contrary be a party in filling the coffers of defaulting lessees in an ill-gotten manner. (Para 154)

P. **Mines and Minerals — Mines and Minerals (Development and Regulation) Act, 1957 — S. 21(5) — Compensation for illegal mining — Calculation — Base year and period of application — For said calculation, base year of 1993-1994, held, reasonable in present cases — Although some might lose and some might benefit, each leaseholder is given benefit of calculation only from year 2000-2001 and would not be penalised for period prior thereto (Paras 155 to 157)**

Held :

The issue now is with regard to the calculations made by CEC with regard to the production of iron ore and manganese ore without or in excess of the EC and/or the mining plan. The figures were not disputed (except by JSPL and SMPL). Therefore, only the application of the figures requires consideration. (Para 155)

For the said calculation, the base year of 1993-94 is most appropriate. Some lessees might lose in the process while some of them might benefit but that cannot be avoided. In any event, each mining leaseholder is being given the benefit of calculations only from 2000-2001 and is not being "penalised" for the period prior thereto. The mining leaseholders should be grateful for this since the penalty is levied from the date of EIA 1994. The cut-off from 2000-2001 (without interest) is undoubtedly reasonable and there can hardly be any grievance in this regard. The mining leaseholders cannot have their cake and eat it too, along with the icing on top. (Para 156)

Thus the compensation should be payable from 2000-2001 onwards at 100% of the price of the mineral. (Para 157)

Q. **Environment Law — Forests, Wildlife and Zoos — Mining and Industry in Forest Area — Mining in forest areas (in State of Odisha) — Permissibility of — Preconditions, stated, (a) prior approval of Central Government under S. 2, FCA, and (b) payment of net present value (NPV) as directed in *T.N. Godavarman Thirumulpad*, (2010) 15 SCC 177 considering peculiar circumstances prevailing in State of Odisha — (c) However, from 7-1-1998 any mining activity in any forest or DLC forest (forest identified by District Level Committee) is completely illegal and price of mineral extracted is recoverable under S. 21 of MMDR Act until forest clearance (FC) is obtained from Central Government, and 100% of price of iron ore or manganese ore mined without S. 2 approval should be recovered — However, clarified that a leaseholder is only liable to pay 100% price of illegally extracted ore**

for non-compliance with either FC or EC or both — For not having both FC and EC clearances, leaseholder would not be required to pay 200% — However, this has to be distinguished from NPV — Even if NPV has been paid earlier, additional NPV is neither adjustable not refundable since that falls in a different category altogether — Further, clarified that a violation of FCA is condonable on payment of penal compensatory afforestation charges, and mining leaseholders would be entitled to temporary working permit (Paras 164 to 188)

Held :

After the commencement of the FCA no fresh breaking up of forest land or no fresh clearing of the forest on any such land could be permitted by the State Government or any authority without the approval of the Central Government. However, in respect of broken up land, if the State Government permits the lessee to remove any discovered mineral, it cannot be said that there has been a violation of Section 2 of the FCA particularly since there is no breaking up of any fresh forest land. However, this does not mean that renewal of lease can be claimed as a matter of right. The primary purpose of the FCA is to prevent deforestation and ecological imbalance as a result of deforestation. Therefore, the primary duty under the FCA was to the community and the obligation to society must predominate over the obligation to the individuals. (Paras 164 and 165)

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, *relied on*

State of Bihar v. *Banshi Ram Modi*, (1985) 3 SCC 643, *distinguished*

Therefore, compliance with Section 2 of the FCA is necessary as a condition precedent even for the renewal of a mining lease. (Para 166)

The definition of the word "forest" for the purposes of the FCA came up for consideration in *T.N. Godavarman Thirumulpad*, (1997) 2 SCC 267. In this context, it was held that "forest" must be understood according to its dictionary meaning and it would cover all statutorily recognised forests, whether designated, reserved, protected or otherwise. The Supreme Court further directed each State Government to constitute within one month an Expert Committee, inter alia, to identify areas which are "forest" irrespective of whether they are so notified, recognised or classified under any law and irrespective of the ownership of the land of such forest. Pursuant to the directions given by the Supreme Court, the State of Odisha constituted District Level Committees (DLC) for identification of forest lands. After the identification process, appropriate affidavits were filed by the State of Odisha in the Supreme Court in 1997-98, the last being dated 6-1-1998. (Paras 167 to 170)

The Court in *T.N. Godavarman Thirumulpad*, (2010) 15 SCC 177 accepted the recommended by CEC that given the peculiar circumstances prevailing in the State of Odisha, mining operations in the entire DLC lands included in the mining leases may be allowed to continue on payment of the net present value (NPV) subject to the fulfilment of other statutory requirements and rules being complied with. (Para 174)

Consequently, the State of Odisha appears to have implemented the recommendations regarding recovery of NPV and realised an amount of about Rs 1750 crores as additional NPV. (Para 175)

T.N. Godavarman Thirumulpad v. *Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 6-11-2009 (SC); *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 15 SCC 177; *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 3 SCC 312, *referred to*

In addition to the above, the mining leaseholders have subsequently deposited an amount under the heading of penal compensatory afforestation which was introduced through guidelines issued by the MoEF on 3-2-1999. (Para 176)

Given the fact that the defaulting mining leaseholders have been asked to pay and have paid additional NPV as well as an amount towards penal compensatory afforestation, it must be assumed that the violation of the FCA has been condoned to a limited extent, more particularly since in its order dated 7-5-2010 the Court permitted the State of Odisha to accept such recommendations of CEC made in the report dated 26-4-2010 as are acceptable to it. (Para 179)

This still leaves open the question of violation of the order passed by the Supreme Court on 12-12-1996 followed by the order dated 4-3-1997, namely, that mining must cease forthwith in forest areas. In regard to this violation, the only benefit (at best) that can be granted to the mining leaseholders is till 6-1-1998 when the affidavit was filed in IAs Nos. 2746-48 of 2009 in *T.N. Godavarman Thirumulpad*, (2014) 6 SCC 167. With effect from 7-1-1998 any mining activity in forest and DLC lands would clearly be completely illegal and unauthorised and the benefit that the mining leaseholders have derived from this illegal mining would be subject to Section 21(5) of the MMDR Act. Therefore, the price of the iron ore and manganese ore mined by the mining leaseholders from 7-1-1998 is payable until forest clearance under Section 2 of the FC Act is obtained by the mining leaseholders. (Para 180)

T.N. Godavarman Thirumulpad v. *Union of India*, (1997) 2 SCC 267; *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 3 SCC 312; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2014) 6 SCC 167; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2014) 6 SCC 167, 172 (footnote 1), *referred to*

7-1-1998 has been fixed as the cut-off date despite the orders dated 12-12-1996 and 4-3-1997 only for the reason that it is possible that some mining leaseholders were not aware that they were inadvertently conducting mining operations on DLC lands which were identified by the State of Odisha as forest lands on the directions of the Court. For the purposes of Section 21(5) of the MMDR Act, they are entitled to the benefit of doubt along with the other mining leaseholders. (Para 183)

Therefore, the suggestion of CEC that only a part of the notional value (in this case 70%) of the iron ore and manganese ore produced by the mining leaseholders should be recovered is not acceptable. Section 21(5) of the MMDR Act should be given full effect and the recovery should be to the extent of 100%. (Para 185)

Mineral extracted either without an EC or without an FC or without both would attract the provisions of Section 21(5) of the MMDR Act and 100% of the price of the illegally or unlawfully mined mineral must be compensated by the mining leaseholder. To the extent of the overlap or the common period, obviously only one set of compensation is payable by the mining leaseholder

to the State of Odisha. However, whatever payment has already been made by the mining leaseholders towards NPV, additional NPV or penal compensatory afforestation is neither adjustable nor refundable since that falls in a different category altogether. (Para 186)

A violation of the FCA is condonable on payment of penal compensatory afforestation charges. This obviously would not apply to illegal or unlawful mining under Section 21(5) of the MMDR Act, but the mining leaseholders would be entitled to the benefit of any temporary working permission granted. (Para 187)

T.N. Godavarman Thirumulpad v. *Union of India*, (2011) 15 SCC 658; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2011) 15 SCC 681, *relied on*

To avoid any misunderstanding, confusion or ambiguity, it is clarified as follows:

(*1*) A mining project that has commenced prior to 27-1-1994 and has obtained a no-objection certificate from SPCB prior to that date is permitted to continue its mining operations without obtaining an EC from the Impact Assessment Agency. However, this is subject to any expansion (including an increase in the lease area) or modernisation activity after 27-1-1994 which would result in an increase in the pollution load. In that event, a prior EC is required. However, if the pollution load is not expected to increase despite the proposed expansion (including an increase in the lease area) or modernisation activity, a certificate to this effect is absolutely necessary from SPCB, which would be reviewed by the Impact Assessment Agency.

(*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.

(*3*) For considering the pollution load the base year would be 1993-94, which is to say that if the annual production after 27-1-1994 exceeds the annual production of 1993-94, it would be treated as an expansion requiring an EC.

(*4*) There is no doubt that a new mining project after 27-1-1994 would require a prior EC.

(*5*) Any iron ore or manganese ore extracted contrary to EIA 1994 or EIA 2006 would constitute illegal or unlawful mining (as understood and interpreted by us) and compensation at 100% of the price of the mineral should be recovered from 2000-2001 onwards in terms of Section 21(5) of the MMDR Act, if the extracted mineral has been disposed of. In addition, any rent, royalty or tax for the period that such mining activity was carried out outside the mining lease area should be recovered.

(*6*) With effect from 14-9-2006 all mining projects having a lease area of 5 ha or more are required to have an EC. The extraction of any mineral in such a case without an EC would amount to illegal or unlawful mining attracting the provisions of Section 21(5) of the MMDR Act.

(*7*) For a mining lease of iron ore or manganese ore of less than 5 ha area, the provisions of EIA 1994 will continue to apply subject to EIA 2006.

(*8*) Any mining activity carried on after 7-1-1998 without an FC amounts to illegal or unlawful mining in terms of the provisions of Section 21(5) of

MMDR Act attracting 100% recovery of the price of the extracted mineral that is disposed of.

(*9*) In the event of any overlap, that is, illegal or unlawful mining without an FC or without an EC or without both would attract only 100% compensation and not 200% compensation. In other words, only one set of compensation would be payable by the mining leaseholder.

(*10*) No mining leaseholder will be entitled to the benefit of any payments made towards NPV or additional NPV or penal compensatory afforestation. (Para 188)

R. **Environment Law — General Principles of Environmental Law — Precautionary Principle/Sustainable Development/Inter-Generational Equity Principle — Instances re Areas/Industries — Mining policy — Judicial interference — Scope of — Held, Court cannot interfere with mining policy or lay down limits on extent of mining activity that should be permitted by the State Government or Central Government — Therefore, prayers on basis of principles of intergenerational equity, not tenable — But considering that National Mineral Policy, 2008 is only in pen and paper and also obsolete (that is, 10 years old), Central Government directed to revisit said policy and announce a fresh, more effective, meaningful and implementable policy (Paras 207 to 211 and 230)**

Held :

The petitioner sought to impress the need to consider intergenerational equity and if possible to place a limit on the extent of mining in the State of Odisha by referring to an article titled: "Intergenerational equity: a legal framework for global environment change" by Edith Brown Weiss. He laid emphasis on three principles that form the basis of intergenerational equity, that is, the principle of "conservation of options", the principle of "conservation of quality" and the principle of "conservation of access". (Paras 207 to 210)

The Court cannot lay down limits on the extent of mining activities that should be permitted by the State of Odisha or by the Union of India. Nevertheless, it does appear that there is no effective check on mining operations nor is there any effective mining policy. The National Mineral Policy, 2008 (effective from March 2008) seems to be only on paper and is not being enforced perhaps due to the involvement of very powerful vested interests or a failure of nerve. The National Mineral Policy, 2008 is almost a decade old and a variety of changes have taken place since then, including (unfortunately) the advent of rapacious mining in several parts of the country. Therefore, it is high time that the Union of India revisits the National Mineral Policy, 2008 and announces a fresh and more effective, meaningful and implementable policy. The Union of India is directed to have a fresh look at the National Mineral Policy, 2008 which is almost a decade old, particularly with regard to conservation and mineral development. The exercise should be completed by 31-12-2017. (Paras 211 and 230)

SS-D/58937/C

Advocates who appeared in this case :

Ashok Desai, Rakesh Dwivedi and Gopal Subramanium, Senior Advocates ([Prashant Bhushan, Advocate) for the appearing parties.

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

1. WP (C) No. 114 of 2014, order dated 28-4-2017 (SC), *Common Cause* v. *Union of India* 572*c-d*
2. (2016) 11 SCC 455, *Common Cause* v. *Union of India* 529*c-d*
3. (2016) 4 SCC 469, *State of Rajasthan* v. *Gotan Lime Stone Khanij Udyog (P) Ltd.* 573*a*
4. WP (C) No. 114 of 2014, order dated 7-10-2015 (SC), *Common Cause* v. *Union of India* 529*a*
5. IA No. 35 in IA No. 17 in WP (C) No. 114 of 2014, order dated 16-1-2015 (SC), *Common Cause* v. *Union of India* 528*d-e*
6. (2014) 14 SCC 160, *T.N. Godavarman Thirumulpad* v. *Union of India* 525*d-e*, 537*g-h*
7. (2014) 14 SCC 155, *Common Cause* v. *Union of India* 526*a-b*, 526*d*, 527*c*, 527*d-e*
8. (2014) 6 SCC 590, *Goa Foundation* v. *Union of India* 527*b*, 535*g*, 536*b*
9. (2014) 6 SCC 167, *T.N. Godavarman Thirumulpad* v. *Union of India* 523*g*, 524*d*, 567*b*
10. (2014) 6 SCC 167, 172 (footnote 1), *T.N. Godavarman Thirumulpad* v. *Union of India* 523*e-f*, 523*f-g*, 523*g-h*
11. IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 28-4-2014 (SC), *T.N. Godavarman Thirumulpad* v. *Union of India* 575*b*, 575*c*
12. IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 27-1-2014 (SC), *T.N. Godavarman Thirumulpad* v. *Union of India* 574*g*, 575*c*
13. IA No. 3721 in 3629 in WP (C) No. 202 of 1995, order dated 13-1-2014 (SC), *T.N. Godavarman Thirumulpad* v. *Union of India* 524*b-c*, 527*g*, 537*f-g*
14. (2013) 8 SCC 204, *T.N. Godavarman Thirumulpad* v. *Union of India* 538*c-d*
15. (2013) 8 SCC 198, *T.N. Godavarman Thirumulpad (50)* v. *Union of India* 538*b-c*, 538*c-d*
16. (2013) 8 SCC 154, *Samaj Parivartana Samudaya* v. *State of Karnataka* 538*d*
17. (2011) 15 SCC 681, *T.N. Godavarman Thirumulpad* v. *Union of India* 568*f-g*
18. (2011) 15 SCC 658, *T.N. Godavarman Thirumulpad* v. *Union of India* 568*f-g*
19. (2010) 15 SCC 177, *T.N. Godavarman Thirumulpad* v. *Union of India* 523*d*, 565*c*, 566*c-d*
20. IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 6-11-2009 (SC), *T.N. Godavarman Thirumulpad* v. *Union of India* 521*f-g*, 565*b*
21. (2008) 2 SCC 222, *T.N. Godavarman Thirumulpad (104)* v. *Union of India* 575*b*
22. (2004) 12 SCC 118, *M.C. Mehta* v. *Union of India* 547*b*, 547*f*, 547*f-g*, 547*g*, 548*c*, 548*f-g*, 549*b-c*, 549*c*, 549*c-d*, 549*e*, 550*b-c*, 551*c-d*, 552*g-h*, 553*a*, 553*e*
23. (2004) 2 SCC 783, *Karnataka Rare Earth* v. *Deptt. of Mines & Geology* 558*g*, 559*a*, 559*g-h*
24. (1997) 3 SCC 312, *T.N. Godavarman Thirumulpad* v. *Union of India* 564*d-e*, 567*a*, 567*f-g*
25. (1997) 2 SCC 267, *T.N. Godavarman Thirumulpad* v. *Union of India* 522*f*, 563*g-h*, 563*g-h*, 564*g-h*, 566*f*, 567*a*, 567*f-g*, 568*a-b*
26. WP (C) No. 202 of 1995, *T.N. Godavarman* v. *Union of India* 521*d*

27. 1989 Supp (1) SCC 504, *Rural Litigation and Entitlement Kendra* v. *State of U.P.* 563*e-f*
28. (1987) 1 SCC 213, *Ambica Quarry Works* v. *State of Gujarat* 563*b*, 563*e-f*
29. (1985) 3 SCC 643, *State of Bihar* v. *Banshi Ram Modi* 562*e*, 563*d*
30. (1975) 2 SCC 22 : 1975 SCC (Tax) 227, *Khemka & Co. (Agencies) (P) Ltd.* v. *State of Maharashtra* 558*a*, 559*g-h*
31. 1971 AC 1 : (1970) 2 WLR 279 : (1969) 3 All ER 1640 (HL), *Director of Public Prosecutions* v. *Schildkamp* 559*d-e*

The Judgment of the Court was delivered by

MADAN B. LOKUR, J.— The facts revealed during the hearing of these writ petitions filed under Article 32 of the Constitution suggest a mining scandal of enormous proportions and one involving megabucks. The lessees in the districts of Keonjhar, Sundergarh and Mayurbhanj in Odisha have rapaciously mined iron ore and manganese ore, apparently destroyed the environment and forests and perhaps caused untold misery to the tribals in the area. However, to be fair to the lessees, they did the detail steps taken to ameliorate the hardships of the tribals, but it appears to us that their contribution is perhaps not more than a drop in the ocean — also too little, too late.

Facts leading up to the report of the Central Empowered Committee

2. Rabi Das, the editor of a daily newspaper called *Ama Rajdhani* filed IAs Nos. 2746-48 of 2009 in a pending writ petition being *T.N. Godavarman* v. *Union of India*[1]. He prayed, inter alia, for the following directions from this Court:

> "(*a*) Issue a direction to the Central Empowered Committee to conduct an exhaustive fact-finding study of the illegal mining in Keonjhar, Sundargarh and other districts of Orissa;
>
> (*b*) Direct appointment of a "Commission" to investigate and study the modalities of the illegal machinations, fix responsibility on individuals (in Government and outside it) and recommend remedial measures to be immediately implemented by the Government of India and the Government of Orissa;
>
> (*c*) Direct the respondents to take effective and appropriate action to ensure closure/stoppage of all the illegal mining activities in the areas concerned and direct prosecution and punish all those found guilty of this illegal mining in violation of the Mines and Minerals (Development and Regulation) Act, 1957; the Forest (Conservation) Act, 1980 and other relevant laws."

3. The applications were taken up for consideration on 6-11-2009[2] when notice was issued to the Central Empowered Committee (for short "CEC") to file its report/response within six weeks.

1 WP (C) No. 202 of 1995

2 *T.N. Godavarman Thirumulpad* v. *Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 6-11-2009 (SC), wherein it was directed:

"Taken on board. Issue notice to CEC to file its report/response within six weeks."

4. On 26-4-2010 CEC submitted an interim report which was noted by this Court and taken on record. The report was of a general nature but contained quite a few recommendations. Some of the recommendations presently relevant are as follows:

> "(*b*) Even otherwise Rule 24-A(6), MCR, 1960 does not authorise the lessee to operate a mine without the statutory clearances/approvals. Therefore, in respect of a mine covered under the "deemed extension" clause, the mining operations should be permitted to be undertaken in the non-forest area of the mining lease only if (*i*) it has the requisite environmental clearance; (*ii*) it has the consent to operate from the State Pollution Control Board under the Air and Water Acts; (*iii*) Mining Plan is duly approved by the competent authority; and (*iv*) the NPV for the entire forest falling within the mining lease is deposited in the Compensatory Afforestation Fund.
>
> The mining in the forest land included in the mining lease should be permissible only if, in addition to the above, the approval under the FC Act/ TWP has been obtained;
>
> (*c*) No forest land can be leased/assigned without first obtaining the approval under the FC Act. Therefore, the forest area approved under the FC Act should not be lesser than the total forest area included in the mining leases approved under the MMDR Act, 1957. Both necessarily have to be the same. In view of the above, this Hon'ble Court while permitting grant of Temporary Working Permission to the mines in Orissa and Goa has made it one of the preconditions that the NPV will be paid for the entire forest area included in the mining leases. Similarly, all the mining leaseholders in Orissa should be directed to pay the NPV for the entire forest area, included in the mining lease;
>
> (*d*) In Orissa, substantial areas included in the mining leases as non-forest land have subsequently been identified as DLC forest (deemed forest/forest like areas) by the Expert Committee constituted by the State Government pursuant to this Hon'ble Court's order dated 12-12-1996[3]. While processing and/or approving the proposals under the FC Act in many cases such areas have been treated as non-forest land. It is recommended that (*i*) the NPV for the entire DLC area included in the mining lease, after deducting the NPV already paid, should be deposited by the leaseholder concerned, and (*ii*) the mining operations in the unbroken DLC land (virgin land) should be permissible only if the permission under the FC Act has been obtained/is obtained for such area. Keeping in view the peculiar circumstances as were existing in Orissa and subject to the above, the mining operations in the broken DLC land may be allowed to be continued provided the other statutory requirements and Rules are otherwise being complied with."

3 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267

The report concluded by recording as follows:

> "(*a*) an attempt has been made for the first time by CEC to comply and analyse the status of all the mining leases in a State and to suggest effective and remedial measures—something made possible because of the unstinted cooperation extended by the senior functionaries of the Forest and Mines Departments of the State Government; and
>
> (*b*) the above recommendations if accepted and implemented will, besides ensuring that mining is done in compliance with the statutory provisions, result in recovery of additional amount towards the NPV, etc. running into hundreds of crores of rupees. It would be appropriate that a part of this additional amount, say 50% is used through an SPV for undertaking specific tribal welfare and area development works so as to ensure inclusive growth of the mineral bearing areas. CEC proposes to file detailed schemes in this regard for seeking permission of this Hon'ble Court provided the State of Orissa as well as the MoEF endorse the course of action proposed above."

The significance of the second conclusion will be discussed by us a little later.

5. Notice was issued on the report returnable on 7-5-2010. On the adjourned date[4], the following order was passed by this Court: (*T.N. Godavarman case*[4], SCC p. 179, paras 14-15)

> "*14*. CEC has filed its report. The State would like to file its response.
>
> *15*. Six weeks' time is granted for the same. The recommendations of CEC which are acceptable to the State Government can be complied with."

It may be mentioned that some of the recommendations made by CEC have been accepted and implemented by the State of Odisha.

6. The issue of mining in Odisha again came up for consideration on 16-9-2013[5] and this Court passed the following order:

> "We call for a report from the Central Empowered Committee within a period of six weeks. We direct that the parties of the State Government of Odisha and the Central Government will cooperate with the Central Empowered Committee to enquire into the matter and furnish a report.
>
> The matter be listed on a Monday after six weeks."

7. With reference to the order passed on 16-9-2013[5] CEC conducted an inquiry and some information was sought from M/s Sarda Mines (P) Ltd. (for short "SMPL"). This was objected to by SMPL who filed an application which was taken up for consideration on 9-12-2013. The following order[6] was passed on that day: (*T.N. Godavarman case*[6], SCC p. 172, paras 23-25)

> "*23*. By our order dated 16-9-2013[5], we had called for a report from the Central Empowered Committee within a period of six weeks. It is stated

4 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 15 SCC 177
5 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2014) 6 SCC 167, 172 (footnote 1)
6 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2014) 6 SCC 167

on behalf of the Central Empowered Committee that the report could not be ready as part of the information called for has not been furnished by the State Government.

24. Mr Venugopal, learned Senior Counsel for the applicant M/s Sarda Mines (P) Ltd. in IA No. 3721 submits that since some of the matters are pending before the High Court, a prayer has been made for not furnishing the required information to the Central Empowered Committee.

25. List this matter in the second week of January 2014. In the meantime, the Central Empowered Committee may not submit its final report."

8. The matter was again taken up on 13-1-2014[7] and this Court passed the following order:

"We have heard the learned counsel for the parties.

We have also perused the letter dated 17-10-2013 of the Member Secretary, Central Empowered Committee sent to the Chief Secretary, Government of Odisha along with its annexures and in particular, the statement of details of information and documents sought by the Central Empowered Committee for the meeting convened on 30-10-2013, which cover forest and environmental issues.

We, accordingly, modify the order dated 9-12-2013[6] and direct the Central Empowered Committee to submit its final report on the queries made by the State Government with regard to the details of the documents sought for in the letter dated 17-10-2013 within a period of six weeks.

The report will not cover cases other than forest and environmental issues.

The lessees and others from whom information is sought for will cooperate, if they do not cooperate the Central Empowered Committee will give its report.

A copy of the interim report of 26-4-2010 will be furnished to the learned counsel appearing for the State of Odisha.

This matter be listed on 20-1-2014 for consideration of the recommendations made by the Central Empowered Committee in the said report dated 26-4-2010."

Thereafter and partly based on reports given by Justice M.B. Shah, a retired Judge of this Court, holding a commission under the Commissions of Inquiry Act, 1952 a writ petition being WP (C) No. 114 of 2014 was filed by Common Cause. Several prayers were made in the writ petition, and some of the more significant prayers read as follows:

"(*a*) Issue a writ of mandamus or any other appropriate writ directing the Union of India and the Government of Odisha to immediately stop

7 *T.N. Godavarman Thirumulpad* v. *Union of India*, IA No. 3721 in 3629 in WP (C) No. 202 of 1995, order dated 13-1-2014 (SC)

6 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2014) 6 SCC 167

forthwith all illegal mining in the State of Odisha and to terminate all leases that are found to be involved in illegal mining and mining in violation of the provisions of the Forest (Conservation) Act, 1980, the environment laws and other laws.

(*b*) Issue a writ of mandamus or any other appropriate writ directing the Union of India and the Government of Odisha to take action against all the violators involved either directly or indirectly in illegal mining including those named in the report of Justice Shah Commission.

(*c*) Issue a writ of mandamus or any other appropriate writ directing a thorough investigation by SIT or CBI under the supervision of this Hon'ble Court, as is recommended by the Justice Shah Commission into illegal mining in Odisha and collusion between private companies/individuals and public officials of the State/Central Governments.

* * *

(*e*) Issue a writ of mandamus or any other appropriate writ directing the respondents to recover the illegally accumulated wealth through illegal mining and related activity, as per Section 21(5) of the MMDR Act, 1957 [Mines and Minerals (Development and Regulation) Act, 1957] and launch prosecutions under Section 21(1) of the MMDR Act, 1957, and direct that the money recovered would be used for the welfare of local communities, tribals and villagers."

9. The writ petition was taken up for consideration on 21-4-2014[8] when the following order was passed: (*T.N. Godavarman case*[8], SCC p. 161, paras 1-4)

"*1*. We have heard the preliminary objections with regard to the writ petition and we are not convinced that the writ petition is not maintainable. Issue notice.

2. As the State of Odisha, Union of India and CEC have already been served with the notices, no further notices be issued to them. Notice, however, be issued to Respondents 4 and 5 returnable within four weeks.

3. It appears from the averments in para 14 of the writ petition that several lessees are operating without clearances under the Environment (Protection) Act, 1986 and the Forest (Conservation) Act, 1980, and without renewal by the Government. Hence, an interim order needs to be passed in respect of these lessees who are operating the leases in violation of the law.

4. For consideration of the interim order that should be passed, only this writ petition be listed on next Monday, 28-4-2014, as first item. It will be open for all parties and intervenors/proposed intervenors to file their respective affidavits. CEC, in the meanwhile, will make out a list of such lessees who are operating the leases in violation of the law. This list be prepared by CEC without reference to the Shah Commission's Report. Liberty is given to the parties to produce their papers before CEC. The

8 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2014) 14 SCC 160

State of Odisha and the Union of India will cooperate with CEC to prepare the list."

Report of the Central Empowered Committee

10. CEC gave its final report on 25-4-2014 which was considered by this Court and a detailed interim order was passed on 16-5-2014[9]. The sum and substance of the final report dated 25-4-2014 and the interim order is that in the districts of Odisha that we are concerned with, namely, Keonjhar, Sundergarh and Mayurbhanj, the total number of leases granted for mining iron and manganese ore are 187. Of these, 102 leaseholders did not have requisite environmental clearance [under the Environment (Protection) Act, 1986] or approval under the Forest (Conservation) Act, 1980 or approved mining plan and/or consent to operate under the provisions of the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974. This Court directed that mining operations in these 102 mining leases shall remain suspended but it will be open to such leaseholders to move the authorities concerned for necessary clearances, approvals or consents and

> "as and when the mining lessees are able to obtain all the clearances/approval/consent they may move this Court for modification of this interim order in relation to their cases". (*Common Cause case*[9], SCC p. 157, para 4)

11. This Court also found that 29 out of 187 mining leases had been determined or rejected or had lapsed. It was directed that mining operations in these 29 mining leases will also remain suspended but it would be open to all these lessees concerned to move the authorities for necessary relief and as and when they get the appropriate relief, they could move this Court for modification of the interim order.

12. This Court also found that 53 iron ore/manganese ore mining leases were operational and that they had necessary approvals under the Forest (Conservation) Act, 1980, consent to operate granted by the Odisha State Pollution Control Board and also approved mining plans. (There is no specific mention about environmental clearance.) In addition 3 mining leases were located in forest as well as non-forest land, but mining operations were being conducted in non-forest areas of the mining lease as the leaseholders did not have approvals under the Forest (Conservation) Act, 1980. Therefore a total of 56 iron ore/manganese ore mining leases were operating in the State of Odisha.

13. As far as the break-up of the 56 operational mining leases is concerned, it was found that 14 mining leases were operating on first renewal basis in accordance with the deeming provisions of Section 8(2) of the Mines and Minerals (Development and Regulation) Act, 1957 (for short "the MMDR Act") read with Rule 24-A(6) of the Mineral Concession Rules, 1960 (for short "the MCR") and 16 mining leases were operating since lease deeds for grant of renewal had been executed in their favour. The remaining 26 mining

9 *Common Cause* v. *Union of India*, (2014) 14 SCC 155

leases were operating on second and subsequent renewal basis with the renewal applications pending a final decision with the State Government.

14. In respect of the 14 first renewal mining leases, this Court permitted them to continue their operations for the time being in view of the deemed renewal provisions. This Court also permitted 16 mining leases to continue to operate since they had lease deeds executed in their favour. With regard to the remaining 26 mining leases operating on second and subsequent renewal applications, this Court drew attention to the decision rendered on 21-4-2014 in *Goa Foundation* v. *Union of India*[10] wherein it was held that the provision for a second or subsequent deemed renewal was not available in view of Section 8(3) of the MMDR Act. Consequently, these 26 leaseholders were restrained from operating until express orders were passed by the State Government under Section 8(3) of the MMDR Act. Six months' time was granted to the State Government to take a final decision on the renewal applications. This Court left it open to the mining leaseholders to apply for modification of the interim order dated 16-5-2014[9] on obtaining necessary clearances.

15. During the hearing of these petitions, we were informed that the balance 26 mining leases are now operational in view of the amendment to Section 8(3) of the MMDR Act with effect from 12-1-2015. However, we are not aware whether these 26 mining leases have the necessary statutory clearances.

16. We may also mention that pursuant to the liberty granted to move for modification of the interim order of 16-5-2014[9] we have received 17 interim applications for modification. Through a chart handed over to us in Court on 3-5-2017 we have been informed that in respect of two of the 17 applications, that is, Zenith Mining (IA No. 45) and Kavita Agrawal (IA No. 47), the lease has not been extended or has been determined and they do not have any environmental clearance or forest clearance. In respect of J.N. Pattnaik (IA No. 66), there is no forest clearance available. We were also informed that S.A. Karim (IA No. 9) actually had a working lease and had wrongly been included as a non-operational lease.

17. Be that as it may, the learned counsel for the leaseholders drew our attention to the record of proceedings of 16-5-2014 and particularly the following paragraph appearing therein:

> "We have passed interim order in a separate sheet. The Central Empowered Committee will give a final report on the writ petition by the end of July 2014 and the matter will be listed in the first week of August 2014 before the Green Bench."

We are mentioning this in the context of the order passed on 13-1-2014[7] adverted to above to the effect that "The Report will not cover cases other than forest and environmental issues."

10 (2014) 6 SCC 590
9 *Common Cause* v. *Union of India*, (2014) 14 SCC 155
7 *T.N. Godavarman Thirumulpad* v. *Union of India*, IA No. 3721 in 3629 in WP (C) No. 202 of 1995, order dated 13-1-2014 (SC)

18. In its final report, CEC has dealt with the following ten topics:

In this final report CEC dealt with the following ten topics:

"*I*. Production of iron ore and manganese ore without/in excess of the environmental clearance/Mining Plan/consent to operate.

II. Mining leases operated in violation of the Forest (Conservation) Act, 1980.

III. Illegal mining outside the sanctioned mining lease areas.

IV. Mining leases acquired in violation of Section 6 of the MMDR Act, 1957.

V. Violation of Rule 37 of the Mineral Concession Rules, 1960 by the lessees.

VI. Illegalities involved in the mining leases of Essel Mining & Industries Ltd.

VII. Illegalities involved in the mining lease of Sharda Mines (P) Ltd.

VIII. Massive illegal mining in Uliburu Forest land.

IX. Inordinate delays in taking decisions by the State Government regarding renewal of the mining leases.

X. Other issues."

19. By an order dated 16-1-2015[11] objections to the final report were permitted and we have since received quite a few objections. When the matter was taken up for consideration by this Court on 7-10-2015 and pursuant

11 *Common Cause* v. *Union of India*, IA No. 35 in IA No. 17 in WP (C) No. 114 of 2014, order dated 16-1-2015 (SC), wherein it was directed:

"*IA No. 35 in IA No. 17 of 2014 in WP (C) No. 114 of 2014*

1. Dr Rajeev Dhavan, learned Senior Counsel for the applicant Orissa Mining Corporation Ltd. (Respondent 4), on instructions, seeks permission of this Court to withdraw the application for directions (IA No. 17 of 2014) with liberty to approach the High Court. Permission sought for is granted. The application for directions (IA No. 17 of 2014) is disposed of as withdrawn with liberty to the applicant to approach the High Court. Accordingly, IA No. 35 of 2014 in IA No. 17 of 2014 is allowed. We clarify that we have not expressed any opinion on the prayers made in IA No. 17 of 2014.

IAs Nos. 31-32 of 2014 in WP (C) No. 114 of 2014

2. Issue notice. Shri Prashant Bhushan, learned counsel for the petitioner and Shri A.D.N. Rao, learned Amicus Curiae on behalf of the Central Empowered Committee, accept notice. Objections, if any, may be filed within six weeks' time from today. Whosoever wants to file objections to the report of the Central Empowered Committee filed in Writ Petition (C) No. 114 of 2014, he/they may do so within eight weeks' time from today. List the matter after eight weeks."

to the order[12] passed on that date, the learned Amicus filed a statement dated 30-10-2015 in a tabular form dealing with each IA filed in respect of the observations and recommendations made by CEC. Thereafter, when the matter was again taken up for consideration the learned Amicus filed a note dated 15-3-2016 wherein the following four issues were flagged:

> "(*i*) Leases lapsed under Section 4-A(4) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the MMDR Act, 1957) (11 leases);
>
> (*ii*) Violation of Rule 24 of the Minerals (Other than Atomic and Hydrocarbons Energy Minerals) Concession Rules, 2016 (hereinafter referred to as MCR, 2016) and Rule 37 of the Mineral Concession Rules, 1960 (hereinafter referred to as the MCR, 1960) (9 leases);
>
> (*iii*) Illegal mining in forest lands (20 leases); and
>
> (*iv*) Iron ore produced without/in excess of the environmental clearance (each of the operating leases involved)."

20. Insofar as the first issue is concerned, it is common ground that that issue has been fully, conclusively and exhaustively dealt with by this Court by a judgment and order dated 4-4-2016 (*Common Cause* v. *Union of India*[13]). Therefore, the first issue does not survive for consideration by us.

21. As far as the remaining three issues are concerned, these overlap with Topics I, II and V dealt with by CEC. Detailed submissions were made before us by the learned counsel for all the appearing parties on these issues as well as by the learned Amicus and the learned Attorney General. We propose to deal with them in this judgment and order.

22. We may mention that submissions were also made on Topics III and IV identified by CEC, that is, illegal mining outside the sanctioned mining lease areas and mining leases acquired in violation of Section 6 of the MMDR Act. We will consider these issues as well.

23. As far as Topics VI and VII identified by CEC are concerned, we would like to hear the parties in detail in respect of these issues.

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12 *Common Cause* v. *Union of India*, WP (C) No. 114 of 2014, order dated 7-10-2015 (SC), wherein it was directed:

"*Order in all the applications except IAs Nos. 57 and 59*

For disposal of all the applications that are listed before us today, we need the assistance of Mr A.D.N. Rao, learned Amicus Curiae, in preparing a tabular form, inter alia indicating the number of application(s), the nature of relief(s) sought in the application(s) and the remarks of the Central Empowered Committee (for short "the Committee"), if any, on those reliefs. Since there are a large number of applications pending before us for urgent orders, we request the Committee to devote its time and prepare the tabular form as desired by us and submit the same before us within three weeks' time from today. After preparing the said table, Shri Rao, learned Amicus Curiae would supply a copy of the same to all the learned counsel, who have filed the applications before this Court. List the matter on 5-11-2015."

13 (2016) 11 SCC 455

24. No challenges or submissions were made on Topics VIII, IX and X and therefore we accept the report of CEC on these topics.

25. At this stage, we may mention some rather frightening figures mentioned by CEC in its final report. According to CEC, excess mining without environmental clearance or beyond what was authorised by the environmental clearance is 2130.988 lakhs MT of iron ore and 24.129 lakhs MT of manganese ore making a total of 2155.117 lakhs MT of iron and manganese ore. This does not include extraction of ore without forest clearance. These figures give an indication of the extent of excess or illegal or unlawful mining carried out.

26. In terms of rupees, according to CEC the total notional value of minerals produced without an environmental clearance or in excess of the environmental clearance, at the weighted average price of minerals as proposed by the Indian Bureau of Mines comes to about Rs 17,091.24 crores for iron ore and about Rs 484.92 crores for manganese ore making a total of Rs 17,576.16 crores. Again, this does not include mining without forest clearance. It is for this reason that we have referred to the megabucks and rapacious mining.

Justice M.B. Shah Commission of Inquiry

27. Apparently, and it appears quite independently of all these developments, the Central Government issued a Notification on 22-11-2010 under the Commissions of Inquiry Act, 1952 whereby it appointed Justice M.B. Shah, a retired judge of this Court to conduct an inquiry on the following Terms of Reference:

> "**2.** (*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 person 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 the State Governments.
>
> **3.** The Commission shall also recommend remedial measures to prevent such mining, trade, transportation and export done illegally or without lawful authority."

28. In the Preamble to the notification appointing the Commission, it was noted that there were reports that mining, raising, transportation and export of iron ore and manganese ore illegally or without lawful authority was being carried on in various States in one or more of the following forms:

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

It is in the above context that the Terms of Reference were framed.

29. On 1-7-2013 the Commission gave the First Report on Illegal Mining of Iron and Manganese Ores in the State of Odisha. The report contains an executive summary and very briefly the Commission stated that:

> (*i*) All modes of illegal mining, as stated in the Notification dated 22-11-2010 of the Central Government are being committed in the State of Odisha;
>
> (*ii*) There is a complete disregard and contempt for law and lawful authorities on the part of many of the emerging breed of entrepreneurs;
>
> (*iii*) It appears that the law has been made helpless because of its systematic non-implementation. The executive summary states that the following are discussed in the report:
>
> > "(A) Information regarding mining leases should be placed on website to make mining operations more transparent and to display the information for each lease on the departmental/State website with various conditions which are required to be adhered to by the lessee.
> >
> > (B) Misuse of Rule 24-A(6) of the MCR, 1960 [Mineral Concession Rules, 1960] which provides for deemed extension of lease. Application for renewal of mining lease is not decided for one or other pretexts, may be, there is lack of coordination among various departments which are required to decide renewal application. There is gross misuse of deemed refusal and deemed extension of both the

provisions of renewal of leases (before 27-9-1994 and after) under Rule 24-A of the MCR, 1960. This casual and negative approach has caused dearly to the State exchequer in the form of hundred crores of stamp duty and others.

* * *

(C) Violation of the provisions of the Forest (Conservation) Act, 1980, Rules and guidelines and directions issued by the Hon'ble Supreme Court of India.

* * *

(D) Violation of the provisions of the Environment (Protection) Act, 1986.

* * *

(E) Misuse of Rules 10 and 12 of the MCDR, 1988 [Mineral Conservation and Development Rules, 1988] which provides for modification and review of mining plan only for a specific purpose, namely,

(*i*) safe and scientific mining;

(*ii*) conservation of minerals;

(*iii*) the protection of environment; and

(*iv*) in case of modification, explanation for the same.

* * *

(F) *Encroachment*:

On the basis of Google Image, the survey report prepared by the State Government by DGPS method, it was found that in 82 mining leases, there was encroachment. Out of the said leases, re-survey was ordered for 37 leases."

30. Soon thereafter, the Commission gave its Second Report on Illegal Mining of Iron and Manganese Ores in the State of Odisha, sometime in October 2013. This report dealt with specific leaseholders and violations committed by them. It is not necessary for us to delve into those specific details.

31. It was submitted before us by the learned counsel for the mining leaseholders that the reports given by the Commission were not acceptable on the ground that a notice had not been given to the leaseholders under Section 8-B or Section 8-C of the Commissions of Inquiry Act, 1952. It was submitted that under these circumstances the reports given by the Commission were vitiated and therefore the foundation of the writ petition filed by Common Cause was taken away. We are not in agreement with the learned counsel for the mining leaseholders.

32. The First Report given by the Commission was a general, overall perspective on the subject while the Second Report went into specific details of several mining leaseholders — but we are not concerned with those specifics. Therefore, whether notices were or were not issued to the leaseholders who were the subject-matter of discussion in the Second Report is of no consequence.

33. What we are really perturbed about is the facts stated by the Commission in the First Report. So far as this is concerned, we are of the view that no irregularity or illegality has been committed so as to vitiate the First Report. Notwithstanding this, we are not relying upon any of the facts determined by the Commission for the purposes of our judgment and order.

34. The procedure followed by the Commission has been mentioned in Volume I Part II of the First Report, but it is not necessary for us to recount each and every detail. Suffice it to say that a resume of the procedure followed will indicate that full opportunity was given to the leaseholders to have their say.

Resume of the procedure followed by the Commission

35. In March 2011 the Commission sent the first questionnaire to the Secretary concerned of the Government of Odisha seeking the following information regarding each leaseholder:

"(*i*) the name of the lessee;

(*ii*) area of the lease;

(*iii*) date of the execution of the lease deed;

(*iv*) present status (renewal, mining plan, mining scheme) approval date;

(*v*) production and export particulars from the year 2008-09 up to January 2011; etc."

36. On 20-4-2011 the Commission sent the second questionnaire to the said Secretary concerned seeking further information in a form consisting of 14 questions and 4 tables.

37. Thereafter, between 24-8-2011 and 26-8-2011 the Commission issued the first notice to various mining lessees in Odisha seeking information on affidavit as per Pro formas A and B enclosed with the notice. In Pro forma A the leaseholder was asked to submit details which included the details of environmental clearance, forest clearance and renewal of lease and whether the leased mine was in operation or not. In Pro forma B the leaseholder was asked to submit details which included the details of dispatch, domestic consumption and export in million tonnes of iron ore and manganese ore from 2006-07 to 2010-11.

38. The Commission visited Odisha from 7-12-2011 to 14-12-2011, from 3-10-2012 to 11-10-2012 and from 31-10-2010 to 8-11-2012. The purpose of the visits was to collect information and seek explanations and gather facts from the Departments concerned of the Government of India and the Government of Odisha. During the visits, the Commission received as many as 140 complaints alleging illegal mining. Accordingly, a public hearing was held in Keonjhar and Bhubaneshwar on 11-12-2011 and 12-12-2011.

39. On 21-12-2012 and 12-1-2013 several Senior Counsel were given a personal hearing by the Commission including a personal hearing to the Federation of Indian Mining Industries (for short "FIMI"). Following the submissions made, a fresh notice was issued to the leaseholders from 28-1-2013

seeking information in Pro formas A to H. In terms of the fresh notice, the leaseholder was required to verify the facts stated therein (which were collected by the Commission) and if found incorrect then to state the correct facts. The fresh notice specifically mentioned that:

"(*i*) The lessee shall come fully prepared to answer, related to this matter and submit all related records.

(*ii*) Explain the production from the leased area without having approval under the FC Act, 1980.

(*iii*) Explain the production during the deemed extension period without having approval under EIA Notification dated 27-1-1994 and amendments thereon.

(*iv*) Explain the excess production in violation of EIA Notification dated 27-1-1994 and amendments thereon under the EP Act, 1986."

40. The report mentions the various dates of hearing given to the learned counsel for the leaseholders, the State of Odisha, FIMI, Federation of Indian Chambers of Commerce and Industry (FICCI) and the Ministry of Environment and Forests of the Government of India (for short "MoEF") which are as follows:

"Hearing No.	*Date*	*Place*
1.	21-12-2012	Office of the Commission, Ahmedabad.
2.	12-1-2013	–do–
3.	18-2-2013	–do–
4.	27-2-2013	Circuit House, Bhubaneshwar (Odisha).
5.	28-2-2013	–do–
6.	1-3-2013	–do–
7.	2-3-2013	–do–
8.	4-3-2013	–do–
9.	16-3-2013	Circuit House, Annexe, Ahmedabad.
10.	20-3-2013	–do–
11.	23-3-2013	Office of the Commission, Ahmedabad.
12.	2-4-2013	Circuit House, Annexe, Ahmedabad.
13.	3-4-2013	–do–
14.	4-4-2013	–do–
15.	12-4-2013	Office of the Commission, Ahmedabad.
16.	13-4-2013	–do–
17.	21-4-2013	Gujarat University Convention Centre, Nr. Helmet Cross Road, 132 ft. Ring Road, Ahmedabad.
18.	24-5-2013	Office of the Commission, Ahmedabad.
19.	25-5-2013	–do–"

41. The number of learned counsel and representatives who were heard by the Commission and with whom interactions took place are mentioned in Annexure A to Vol. I of the First Report. The list of learned counsel runs into 18 pp. — from p. 33 to p. 50 of Vol. I of the First Report. Some individual lawyers

appeared for several leaseholders but the fact of the matter is that everybody who wanted to be heard was given a hearing.

42. The function of the Commission as stated in the First Report, at the present stage, is best described in the words of the Commission itself. It is stated as follows:

> "*9*. The function of the Commission, at this stage, is only to inquire, assess the data collected and to submit the report on the said basis. On that basis, some remedial measures are suggested by the Commission for controlling illegal mining and violation of the Acts and/or Rules. For that, there is no question of issuing notices to the lessees.
>
> For collecting the data and assessing it, the principles of natural justice are fully complied with, as stated above. On the basis of the data submitted by the lessees and the submissions made by the learned counsel for them, the report is submitted."

It is further clarified on p. 198 of Vol. I of the First Report that with regard to individual mining leases in which there is a violation of the provisions of the Forest (Conservation) Act, 1980 and/or conditions of environmental clearance, etc. a report would be submitted later on.

43. It is therefore abundantly clear that the First Report is generally a limited fact-finding enquiry on the basis of information supplied by the mining leaseholders. Therefore, there is absolutely no question of any notice being issued to any mining leaseholder under Section 8-B or the right of cross-examination being granted to any mining leaseholder under Section 8-C of the Commissions of Inquiry Act, 1952. We are satisfied that the Commission made adequate efforts to collect the facts and this collation in the First Report was possible with the assistance of the mining leaseholders and their learned counsel and representatives as well as the government authorities and FIMI and FICCI. Under these circumstances, no leaseholder can seriously contend that the procedure adopted by the Commission in collecting facts was either irregular or not in accordance with law. As mentioned above, any mining leaseholder who wanted to be heard was given an opportunity of being heard and was fully aware of what the Commission was attempting to achieve and if any particular mining leaseholder chose not to associate with it, it was at his or her own peril. Lack of knowledge of the proceedings before the Commission cannot be appreciated and we are quite satisfied that all the mining leaseholders were fully aware of what was going on, if not personally then certainly through their list of learned counsel running into 18 pages or their representatives individually or their Federation.

44. In *Goa Foundation*[10] there was a challenge to the report of the Justice Shah Commission in respect of its conclusions pertaining to the State of Goa. This was dealt with by this Court in paras 11 to 14 of its decision. This Court declined to quash the report in view of the statement made by the learned

10 *Goa Foundation* v. *Union of India*, (2014) 6 SCC 590

Advocate General of Goa. But, this Court took the view that: (SCC p. 601, para 14)

> "*14.* … 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."

45. In the present petitions before us, there is no challenge to the reports of the Justice Shah Commission. However, we propose (as in *Goa Foundation*[10]) to confine ourselves to some limited facts adverted to by CEC in its final report. We do not propose to base any of our conclusions on the reports of the Commission.

46. The learned counsel for the petitioners insisted that the illegal or unlawful mining activity carried on in the State of Odisha as noted by the Commission deserves to be investigated by the Central Bureau of Investigation. Reference in this regard was made to the passage in Part III of Vol. I of the First Report of the Commission to the following effect:

> "Since this is one of the biggest illegal mining ever observed by the Commission, it is strongly felt that this is a fit case to handover to Central Bureau of Investigation, for further investigation and follow-up action."

47. Similarly, on p. 125 of Chapter II of Vol. I of the Report, it is stated as follows:

> "8. Terms of Reference No. 8 provides that 'The Commission may take the services of any investigating agency of the Central Government in order to effectively address its terms of reference.'
>
> The Commission, therefore, suggests that Central Bureau of Investigation (CBI) may be directed to investigate into allegations of corruption made against politicians, bureaucrats and others."

We will consider this at the appropriate stage.

48. Suffice it to say for the time being that the Commission made certain significant observations in Chapter II of the Report to the effect that:

> (*a*) That the tribals in the area have been displaced or stay in pathetic and miserable conditions in same area. There is rampant air pollution with the trees having the colour of minerals making it clear that tribals are forced to breathe polluted air and drink polluted water.
>
> (*b*) Streams and ground water is polluted and there is hardly any facility of drinking water. Women have been seen fetching water from dirty nalas.
>
> (*c*) Mining companies and beneficiation plants are drawing water from rivers and nearby water resources are getting depleted at a fast rate. River Baitrani has been seriously affected by this activity.

10 *Goa Foundation* v. *Union of India*, (2014) 6 SCC 590

(*d*) Basic facilities such as medical facilities, shelter/residence, education facilities are absent. Roads have a heavy flow of traffic and on one road of the area about 7000 trucks passed during night time.

(*e*) The labour is not being paid adequate wages beyond the minimum wages even though the income of the mine owners runs into billions of rupees.

49. Adverting to corruption in the area due to illegal mining activities, the Commission felt that the Vigilance Commission was unlikely to conduct an impartial and independent enquiry for arriving at just and proper findings because of external pressures. Accordingly, it would be more appropriate if the Central Bureau of Investigation (CBI) conducts a detailed enquiry into all cases that have been registered between 2008 and 2011. It was also noted that the Railways have issued demand notices to the extent of Rs 1874 crores. The latest position with regard to these notices is not available.

50. It was also noted that notices have been issued in 146 cases to various leaseholders for recovery of mined ore as per Section 21(5) of the MMDR Act. In the Koira circle, notices have been issued to 55 lessees for more than Rs 13,000 crores; in Joda circle, notices have been issued to 72 lessees for recovery of more than Rs 44,000 crores; in Keonjhar circle, notices have been issued to 4 lessees for recovery of about Rs 1065 crores; in Koraput circle, notices have been issued to three lessees for the recovery of about Rs 44 lakhs; and in Bolangir circle, notice has been issued to 1 lessee for the recovery of about Rs 29.5 crores. In Baripada circle, notices have been issued to 11 lessees for recovery of more than Rs 467 crores. In other words notices have been issued to the lessees for recovery of more than Rs 59,000 crores! (According to CEC the figure exceeds Rs 61,000 crores)!!

51. We have adverted to the reports of the Commission, without relying on them, only to highlight the gravity of the situation and nothing more. The gravity of the situation is also apparent from the report of CEC and the Commission seems to support it.

Initial contention

52. The initial contention urged on behalf of the respondent leaseholders was that in giving the Report dated 16-10-2014 CEC has exceeded its remit. In this context, reference was made to the order of 13-1-2014[7] in which it is stated that "The Report will not cover cases other than forest and environmental issues".

53. We are of the opinion that this objection deserves immediate rejection. The subsequent orders passed by this Court have been completely overlooked by the learned counsel inasmuch as on 21-4-2014[8] it was specifically noted by this Court that "CEC, in the meanwhile, will make out a list of such lessees who are operating the leases in violation of the law". Similarly, in the

7 *T.N. Godavarman Thirumulpad* v. *Union of India*, IA No. 3721 in 3629 in WP (C) No. 202 of 1995, order dated 13-1-2014 (SC)

8 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2014) 14 SCC 160

record of proceedings of 16-5-2014 it was noted that "The Central Empowered Committee will give a final report on the writ petition by the end of July 2014. ..."

54. From a reading of the orders and the proceedings that have been held in this regard from time to time, it is quite obvious to us that the jurisdiction of CEC was not limited and it was expected to give a detailed report on all aspects of illegal mining or mining being carried out without any lawful authority in whatever manner. The initial objection raised on behalf of the leaseholders is therefore rejected.

Central Empowered Committee

55. The Central Empowered Committee or CEC was first constituted by this Court by an order dated 9-5-2002 [*T.N. Godavarman Thirumulpad (50)* v. *Union of India*[14]] as an interim body. Thereafter, it was constituted by a Notification dated 17-9-2002 issued under Section 3(3) of the Environment (Protection) Act, 1986 (for short "the EPA"). It has continued functioning and assisting this Court for more than a decade and even though it has been criticised on a couple of occasions, it is now an established body which renders extremely valuable advice to this Court and provides factual material on the basis of which this Court can make some recommendations and pass appropriate orders.[14, 15]

56. The details of the functioning of CEC have been discussed by this Court in *Samaj Parivartana Samudaya* v. *State of Karnataka*[16]. In that decision, questions were raised about the credibility of CEC and while rejecting the submissions, it was made clear that the recommendations made by CEC are subject to the satisfaction of this Court. We need say nothing more except that during the course of hearing of the present petitions, some of the conclusions arrived at by CEC were disputed by the petitioners and even by the learned Amicus and some were supported by the learned counsel for the mining leaseholders, the learned Attorney General and the learned counsel for the State of Odisha. It is therefore quite clear that in the present cases, CEC as a fact-finding body has functioned impartially and it is only on the conclusions arrived at by CEC on the basis of the facts gathered that there can be some debate and discussion. Anyone may disagree with the views of CEC and there is no need to make heavy weather about this at all.

57. Insofar as the Report given by CEC on 16-10-2014 (the final report) is concerned, before going into the details thereof, we may mention that CEC has stated that it held meetings with the Chief Secretary and other senior officials of the State of Odisha and others on six dates. It also heard the leaseholders and others on seven dates and it held meetings with three of the leaseholders, that is, Jindal Steel and Power Ltd. (JSPL), Sarda Mines Pvt. Ltd. (SMPL) and Essel Mining and Industries Ltd. (Essel) on 10-9-2014. CEC visited the site of the mining lease of SMPL from 4-3-2014 to 7-3-2014 and had site visits of a number of other lessees from 12-7-2014 to 16-7-2014.

14 (2013) 8 SCC 198
15 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2013) 8 SCC 204
16 (2013) 8 SCC 154

58. As far as the facts collected by CEC are concerned, there is no dispute with regard to their correctness. CEC has recorded that there are 187 iron ore and manganese ore mining leases in the State of Odisha. On the basis of the material and information collected, a statement was prepared showing leasewise and yearwise details of production of iron ore and manganese ore, permissible production and production without environmental clearance/ beyond environmental clearance. The details in this regard have been given as Annexure R-14 to the final report.

59. Regarding the correctness of the information, CEC has this to say:

> "24. A copy of the abovesaid statement prepared by CEC was made available, through the Director, Mines and Geology, Government of Odisha and also through the Federation of Indian Mining Industries (FIMI), to the lessees of each of the mining leases to enable them to verify the production and other details as given in the statement. During the hearings held before CEC between 5-8-2014 and 12-8-2014 and also in the representations filed before CEC a large number of lessees stated that the yearwise production details are not correctly reflected in the statement. Some of them also stated that the environmental clearance details are not properly reflected in the statement. Therefore, it was decided that (*a*) the State Government will reconcile the annual production and other details with the respective lessees, and (*b*) the copies of the environmental clearances may also be filed before CEC by those lessees who are disputing the environmental clearances details provided by the State. Accordingly a meeting was convened by the Director, Mines & Geology (DMG) with the lessees on 14-8-2014 and during which the annual production and other details were reconciled. The reconciled leasewise and yearwise production and other details provided to CEC by the State of Odisha may be seen in the statement enclosed at Annexure R-11 to this Report. The figures modified in the said statement, after reconciliations, are shown in bold print."

60. CEC noted that the Director, Mines and Geology of the Government of Odisha had informed CEC that each leaseholder with the exception of SMPL and JSPL agreed with the reconciled production details. On facts, therefore, there is no dispute with regard to the contents of the report of CEC, although the conclusions might be disputed. Separately, CEC has dealt with the facts concerning SMPL and JSPL pursuant to a meeting held with them on 11-9-2014.

Statutory provisions

61. The grant of a mining lease is governed by the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (or the MMDR Act), the Mineral Concession Rules, 1960 (or the MCR) and the Mineral Conservation and Development Rules, 1988 (or the MCDR).

62. Section 4(1) of the MMDR Act provides that no person shall undertake any mining operation in any area except under and in accordance with the terms and conditions of a mining lease granted under the MMDR Act and the

Rules made thereunder. A "mining operation" is defined in Section 3(*d*) of the MMDR Act as meaning any operation undertaken for the purpose of winning any mineral. Section 4(2) of the MMDR Act provides that no mining lease shall be granted otherwise than in accordance with the provisions of the said Act and the Rules made thereunder.

63. Section 5(2) of the MMDR Act provides for certain restrictions on the grant of a mining lease. It provides that the State Government shall not grant a mining lease unless it is satisfied that the applicant has a mining plan duly approved by the Central Government or the State Government in respect of the mine concerned and for the development of mineral deposits in the area concerned.

64. Section 10 of the MMDR Act provides for the procedure for obtaining a mining lease and sub-section (1) thereof provides that an application is required to be made for a mining lease in respect of any land in which the mineral vests in the Government and the application shall be made to the State Government in the prescribed form and along with the prescribed fee.

65. Section 12 of the MMDR Act requires the State Government to maintain a set of registers. Among the registers that the State Government is required to maintain are a register of applications for mining leases and a register of mining leases. Every such register shall be open to inspection by any person on payment of such fee as the State Government may fix.

66. Section 13 of the MMDR Act provides for the rule-making power of the Central Government in respect of minerals. The MCR are framed in exercise of power conferred by Section 13 of the MMDR Act.

67. Section 18 of the MMDR Act makes it the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of the environment by preventing or controlling any pollution which may be caused by mining operations. The MCDR are framed in exercise of power conferred by Section 18 of the MMDR Act.

68. The distinction between the MCR and the MCDR is that the MCR deal, inter alia, with the grant of a mining lease and not commencement of mining operations. However, the MCDR deal, inter alia, with the commencement of mining operations and protection of the environment by preventing and controlling pollution which might be caused by mining operations.

69. Section 21 of the MMDR Act deals with penalties and sub-section (1) thereof provides that whoever contravenes the provisions of sub-section (1) or sub-section (1-A) of Section 4 shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to Rs 25,000 or with both. Sub-section (5) of Section 21 of the MMDR Act provides that whenever any person raises without any lawful authority, any mineral from any land, the State Government may recover from such person the minerals so raised or where such mineral has been disposed of the price thereof. In addition thereto the State Government may also recover from such person rent, royalty

or tax, as the case may be for the period during which the land was occupied by such person without any lawful authority.

Mineral Concession Rules, 1960

70. As far as the MCR are concerned, Rule 22 is of some importance and this provides for an application to be made for the grant of a mining lease in respect of land in which the mineral vests in the Government. An application for the grant of a mining lease is required to be made by an applicant to the State Government in Form I to the MCR. Sub-rule (5) of Rule 22 deals with a mining plan and it requires that a mining plan shall incorporate, amongst other things, a tentative scheme of mining and annual programme and plan for excavation for year-to-year for five years.

71. Rule 22-A of the MCR makes it clear that mining operations shall be undertaken only in accordance with the duly approved mining plan. Therefore, a mining plan is of considerable importance for a mining leaseholder and is in essence sacrosanct. A mining scheme and a mining plan are a sine qua non for the grant of a mining lease.

72. Rule 27 of the MCR deals with the conditions that every mining lease is subject to. One of the conditions is that the lessee shall comply with the MCDR.

73. The format of a mining lease is given in Form K to the MCR and this is relatable to Rule 31 of the MCR which provides that on an application for the grant of a mining lease, if an order has been made for the grant of such lease, a lease deed in Form K or in a form as near thereto as circumstances of each case may require, shall be executed within six weeks of the order, or within such extended period as the State Government may allow.

74. Part VII of Form K deals with the covenants of the lessee/lessees. Clause 10 thereof requires the lessee to keep records and accounts regarding production and employees, etc. The lessee is required, inter alia, to maintain a record of the quantity and quality of the mineral released from the leased land, the prices and all other particulars of all sales of the mineral and such other facts, particulars and circumstances, as the Central Government or the State Government may require.

75. Clause 11-C is of some importance and it requires that the lessee shall take measures for the protection of the environment like planting of trees, reclamation of land, use of pollution control devices and such other measures as may be prescribed by the Central Government or the State Government from time to time at the expense of the lessee.

76. Rule 37 of the MCR deals with the transfer of a lease and provides, inter alia, that a mining lessee shall not without the previous consent in writing of the State Government or the Central Government, as the case may be, assign, sublet, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein. The lessee shall not enter into or make any bona fide arrangement, contract or understanding whereby the lessee will or may directly or indirectly be financed to a substantial extent in respect of its operations or undertakings or be substantially controlled by any person or body of persons.

Sub-rule (3) of Rule 37 of the MCR enables a State Government to determine any lease if the mining lessee has committed a breach of Rule 37 of the MCR or has transferred any lease or any right, title or interest therein otherwise than in accordance with sub-rule (2) of Rule 37 of the MCR.

Mineral Conservation and Development Rules, 1988

77. The MCDR promulgated under Section 18 of the MMDR Act and referred to in Rule 27 of the MCR are also of some significance. Rule 9 of the MCDR prescribes that no person shall commence mining operations in any area except in accordance with a mining plan approved under Clause (*b*) of sub-section (2) of Section 5 of the MMDR Act.

78. The mining plan may be modified in terms of Rule 10 of the MCDR in the interest of safe and scientific mining, conservation of minerals or for protection of the environment. However, the application for modifications shall set forth the intended modifications and explain the reasons for such modifications. The mining plan cannot be modified just for the asking.

79. Rule 13 of the MCDR provides that mining operations are required to be carried out by every holder of a mining lease in accordance with the approved mining plan. If the mining operations are not so carried out, the mining operations may be suspended by the Regional Controller of Mines in the Indian Bureau of Mines or another authorised officer.

80. From our point of view, Chapter V of the MCDR dealing with "Environment" is of significance. In this Chapter, Rule 31 of the MCDR provides that every holder of a mining lease shall take all possible precautions for the protection of the environment and control of pollution while conducting any mining operations in the area.

81. Rule 37 of the MCDR requires certain precautions to be taken against air pollution and obliges the mining leaseholder to keep air pollution under control and within permissible limits specified under various environmental laws including the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986.

82. Rule 38 of the MCDR requires the holder of a mining lease to take all possible precautions to prevent or reduce the passage of toxic and objectionable liquid effluents from the mine into surface water bodies, ground water aquifer and usable lands to a minimum. It also mandates effluents to be suitably treated, if required, to conform to the standards laid down in this regard. In other words, the provisions of the Water (Prevention and Control of Pollution) Act, 1974 are required to be adhered to by the mining leaseholder.

83. Rule 41 of the MCDR requires every holder of a mining lease to carry out mining operations in such a manner as to cause least damage to the flora of the area and the nearby areas. Every holder of a mining lease is required to take immediate measures for planting not less than twice the number of trees destroyed by reason of any mining operations and to look after them during the subsistence of the lease after which these trees shall be handed over to the State Forest Department or any other appropriate authority. The holder of a mining

lease is also required to restore, to the extent possible, other flora destroyed by the mining operations.

84. Briefly therefore, the overall purpose and objective of the MMDR Act as well as the Rules framed thereunder is to ensure that mining operations are carried out in a scientific manner with a high degree of responsibility including responsibility in protecting and preserving the environment and the flora of the area. Through this process, the holder of a mining lease is obliged to adhere to the standards laid down under the Environment (Protection) Act, 1986 or the EPA as well as the laws pertaining to air and water pollution and also by necessary implication, the provisions of the Forest (Conservation) Act, 1980 (for short "the FC Act"). Exploitation of the natural resources is ruled out. If the holder of a mining lease does not adhere to the provisions of the statutes or the rules or the terms and conditions of the mining lease, that person is liable to incur penalties under Section 21 of the MMDR Act. In addition thereto, Section 4-A of the MMDR Act which provides for the termination of a mining lease is applicable. This provides that where the Central Government, after consultation with the State Government is of the opinion that it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment, prevention of pollution, etc. then the Central Government may request the State Government to prematurely terminate a mining lease.

Environment Impact Assessment Notification of 27-1-1994

85. As can be seen from the statutory scheme adverted to above, protection and preservation of the environment is a significant and integral component of a mining plan, a mining lease and mining operations — and rightly so.

86. Keeping this in mind, an Environment Impact Assessment Notification dated 27-1-1994 was issued by the Central Government in exercise of powers conferred by Section 3(1) and Section 3(2)(*v*) of the EPA read with Rule 5(3)(*d*) of the Environment (Protection) Rules, 1986. The Environment Impact Assessment Notification dated 27-1-1994 (for short "EIA 1994") is a prohibitory notification and directs that on and from the date of its publication in the Official Gazette:

> (*i*) expansion or modernisation of any activity (if pollution load is to exceed the existing one); and
>
> (*ii*) a new project listed in Schedule I to the notification;

shall not be undertaken unless it has been accorded environmental clearance (for short EC) by the Central Government in accordance with the procedure specified in the Notification.

87. The Notification provides, among other things, that in case of mining operations, site clearance shall be granted for a sanctioned capacity and shall be valid for a period of five years from commencing mining operations. What this means is that on receipt of an EC a mining leaseholder can extract a mineral only from a specified site, up to the sanctioned capacity and only for a period of five years from the date of the grant of an EC. This is regardless of the quantum of extraction permissible in the mining plan or the mining lease and regardless

of the duration of the mining lease. Consequently, a mining leaseholder would necessarily have to obtain a fresh EC every five years and can also apply for an increase in the sanctioned capacity. There is no concept of a retrospective EC and its validity effectively starts only from the day it is granted. Thus, the EC takes precedence over the mining lease or to put it conversely, the mining operations under a mining lease are dependent on and "subordinate" to the EC.

88. On 4-5-1994 an Explanatory Note was added to EIA 1994. We are concerned with the 1st Note which deals with the expansion and modernisation of existing projects. This reads as follows:

> "**1.** ***Expansion and modernisation of existing projects***.—A project proponent is required to seek environmental clearance for a proposed expansion/modernisation activity if the resultant pollution load is to exceed the existing levels. The words "pollution load" will in this context cover emissions, liquid effluents and solid or semi-solid wastes generated. A project proponent may approach the State Pollution Control Board (SPCB) concerned for certifying whether the proposed modernisation/expansion activity as listed in Schedule I to the notification is likely to exceed the existing pollution load or not. If it is certified that no increase is likely to occur in the existing pollution load due to the proposed expansion or modernisation, the project proponent will not be required to seek environmental clearance, but a copy of such certificate issued by the SPCB will have to be submitted to the Impact Assessment Agency (IAA) for information. The IAA will however, reserve the right to review such cases in the public interest if material facts justifying the need for such review come to light."

89. The Note is significant and from its bare reading it is clear that if any proposed expansion or modernisation activity results in an increase in the pollution load, then a prior EC is required. The project proponent should approach the State Pollution Control Board concerned (for short "SPCB") for certifying whether the proposed expansion or modernisation is likely to exceed the existing pollution load or not. If the pollution load is not likely to be exceeded, the project proponent will not be required to seek an EC but a copy of such a certificate from SPCB will require to be submitted to the Impact Assessment Agency which can review the certificate.

90. What is the requirement, if any, under EIA 1994 with regard to an existing mining lease where there is no proposal for expansion or modernisation? Does such a mining leaseholder require an EC to continue mining operations? This is answered in the 8th Note which is also of some importance and this reads as follows:

> "**8.** ***Exemption for projects already initiated***.—For projects listed in Schedule I to the notification in respect of which required land has been acquired and all relevant clearances of the State Government including NOC from the respective State Pollution Control Boards have been obtained before 27-1-1994, a project proponent will not be required to seek environmental clearance from the IAA. However those units who have not as yet commenced production will inform the IAA."

91. The above Note makes it clear that existing mining projects that have a no-objection certificate from SPCB before 27-1-1994 will not be required to obtain an EC from the Impact Assessment Agency. Of course, this is subject to the substantive portion of EIA 1994 and the 1st Note. However, if the existing mining project does not have a no-objection certificate from SPCB, then an EC will be required under EIA 1994.

92. Two questions immediately arise from a reading of the 1st and the 8th Note. The first question is: What is the base year for considering the pollution load while proposing any expansion activity? The second question is: What is the duration for which an EC is not necessary for an ongoing project which does not propose any expansion, or to put it differently, what is the validity period for a no-objection certificate from SPCB?

93. In our opinion, as far as the first question is concerned, a reading of EIA 1994 read with the 1st Note implies that the base year would need to be the immediately preceding year, that is, 1993-94. This is obvious from the opening sentence of the 1st Note, that is,

> "A project proponent is required to seek environmental clearance for a proposed expansion/modernisation activity if the resultant pollution load is to exceed the *existing levels*." (emphasis supplied)

In its report, CEC has taken 1993-94 as the base year and we see no error in this. Even the MoEF in its Circular dated 28-10-2004 stated with regard to the expansion in production:

> "If the annual production of any year from 1994-95 onwards exceeds the annual production of 1993-94 or its preceding years (even if approved by IBM), it would constitute expansion."

If that expansion results in an increase in the pollution load over the existing levels, then an EC is mandated.

94. It was contended on behalf of the mining leaseholders that in terms of the Circular of 28-10-2004 the annual production even prior to 1993-94 could be considered for ascertaining if there was an expansion or not. We cannot accept this submission for a variety of reasons. For one, the *existing levels* mentioned in the 1st Note clearly have reference to the immediately preceding year and not to a preceding year in a comparatively remote past. Secondly, a very high annual production in any one year is not reflective of a consistent pattern of production — it could very well be a freak year and that freak year certainly cannot be a basic standard or the norm to measure expansion. Then if the interpretation sought to be given is accepted, there would be an absence of consistency and a lack of uniformity with different mining leaseholders having different base years. This is hardly conducive to good governance. Finally, EIA 1994 was intended to prevent the existing environmental load from increasing based on the existing data of the immediate past and not data of a few years gone by. We may add that the only exception that could be made in this regard would be if there is no production during 1993-94. In that event, the immediately

preceding year would be relevant and that is the only reasonable interpretation that we see for the use of the words "or its preceding years".

95. On the question of the duration or exemption period from an EC in respect of a project that has commenced prior to 27-1-1994 the substantive portion of EIA 1994 and the 8th Note grant an exemption from the requirement of obtaining an EC if there is no expansion and the existing pollution load is not exceeded. In any event, a no-objection certificate from SPCB is necessary for continuing the mining operations. Consequently, even if any mining leaseholder does not have an EC or does not require an EC for continuing mining operations (but has a no-objection certificate from SPCB), the absence of an EC would not have an adverse impact on the mining leaseholder unless of course, there was an expansion in the mining operations without any certificate from SPCB. In addition to this, the validity period (if any) of the certificate from SPCB is important — we have not been made aware whether there is such a validity period or not.

96. The contention of the learned counsel for the mining leaseholders that EIA 1994 was rather vague, uncertain and ambiguous cannot be accepted. In our opinion, on a composite reading of EIA 1994, it is clear that:

(*i*) A no-objection certificate from SPCB was necessary for continuing mining operations;

(*ii*) An expansion or modernisation activity required an EC unless the pollution load was not exceeded beyond the existing levels;

(*iii*) The base year for determining the pollution load and therefore the proposed expansion would be with reference to 1993-94;

(*iv*) Whether an expansion or modernisation would lead to exceeding the existing pollution load or not would require a certificate from SPCB which could be reviewed by the IAA;

(*v*) New projects require an EC; and

(*vi*) Existing projects do not require an EC unless there is an expansion or modernisation for the duration (if any) of the validity of the certificate from SPCB.

We need not say anything more on this subject since CEC has proceeded to discuss the issue of mining in excess of the EC or in excess of the mining plan only from the year 2000-01 onwards. The prior period may, therefore, be ignored and it is the period from 2000-01 onwards which is actually relevant for the present discussion.

97. It was submitted by the learned counsel for the mining leaseholders that the MoEF had caused some confusion with regard to the requirement of an EC at the time of renewal of a mining lease. In this connection, reference was made to a Press Note of July 1994 and a Letter dated 19-6-1997 of the MoEF to the Chief Conservator of Forests in the MoEF.

98. The learned counsel for the mining leaseholders sought to buttress their submission that EIA 1994 was vague and ambiguous by mentioning two Circulars issued by the MoEF on 5-11-1998 and 27-12-2000 extending

the period for obtaining an EC for new units. However, these circulars are apparently not on our record (which goes into 148 volumes) and therefore we cannot make any comment about them. These circulars were mentioned to also contend that even for new units the absence of an EC would not have an adverse impact on them, since the period for obtaining an EC was extended from time to time. A reference was also made to a Circular dated 14-5-2002 which later on became the subject of consideration by this Court in *M.C. Mehta* v. *Union of India*[17]. A reading of the Circular of 14-5-2002 indicates that several units had come up in violation of EIA 1994. The MoEF had taken the view that such units may be permitted to apply for an EC by 31-3-1999 which was then extended to 30-6-2001 by Circulars dated 5-11-1998 and 27-12-2000, respectively.

99. By the Circular dated 14-5-2002 the deadline for applying for an EC was extended up to 31-3-2003 as a last and final opportunity to obtain an ex post facto EC in respect of units which had commenced mining operations without obtaining a prior EC in violation of EIA 1994. The Circular also stated that:

> "... Suitable directions shall be issued by all States/UTs under the Environment (Protection) Act to units to stop construction activities/operations of all such units that fail to apply for environmental clearance by 31-3-2003. Units which fail to comply with these directions shall be proceeded against forthwith under the relevant provisions of the Environment (Protection) Act, 1986 without making reference to this Ministry."

100. It was submitted that in view of these ambiguous and unclear signals emanating from the MoEF which resulted in confusion being worse confounded, the mining leaseholders were not clear whether or not they were required to obtain an EC particularly in respect of pre-EIA 1994 mining leases and operations.

101. As mentioned above, these dates and the text of the circulars were emphasised by the learned counsel for the leaseholders to contend that it was not obligatory for the mining leaseholders, who did not expand their mining operations, to obtain an EC and in any event the period for obtaining an EC was extended till 31-3-2003 with ex post facto approval. In this context, reliance was placed on *M.C. Mehta*[17] referred to above.

102. We are not in agreement with the contention of the learned counsel for the mining leaseholders on the interpretation given to the various circulars for the reasons given above and must also correctly appreciate the decision of this Court in *M.C. Mehta*[17].

103. In *M.C. Mehta*[17] the issue that arose for consideration was whether mining activity in the Aravalli Hills causes environmental degradation and what directions are required to be issued. While considering this issue, this Court also considered EIA 1994 and the Circular dated 14-5-2002. In doing so, this Court categorically held in para 37 of the Report that the intention of the MoEF was not to legalise the continuance of mining activity without complying with the requisite stipulations. If that were unfortunately so, then it would demonstrate

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a lack of sensitivity of the MoEF to the principles of sustainable development and the object behind issuing EIA 1994. This Court said: (SCC p. 161)

> "*37.* ... It does not appear that MoEF intended to legalise the commencement or continuance of mining activity without compliance of stipulations of the notification. In any case, a statutory notification cannot be notified [modified] by issue of circular. Further, if MoEF intended to apply this circular also to mining activity commenced and continued in violation of this notification, it would also show total non-sensitivity of MoEF to the principles of sustainable development and the object behind the issue of notification. The circular has no applicability to the mining activity."

104. Adverting to the MMDR Act, this Court expressed the view in para 52 of the Report that the approval of a mining plan does not imply that a mining leaseholder can commence mining operations. The mining leaseholder is nevertheless obliged to comply with statutory provisions including the EPA and other laws. It was said: (*M.C. Mehta case*[17], SCC p. 169)

> "*52.* The grant of permission for mining and approving mining plans and the scheme by the Ministry of Mines, Government of India by itself does not mean that mining operation can commence. It cannot be accepted that by approving mining plan and scheme by the Ministry of Mines, the Central Government is deemed to have approved mining and it can commence forthwith on such approval. ... A mining leaseholder is also required to comply with other statutory provisions such as the Environment (Protection) Act, 1986; the Air (Prevention and Control of Pollution) Act, 1981; the Water (Prevention and Control of Pollution) Act, 1974 and the Forest (Conservation) Act, 1980. Mere approval of the mining plan by the Government of India, Ministry of Mines would not absolve the leaseholder from complying with the other provisions."

105. This Court also considered the question of the applicability of EIA 1994 to the renewal of an existing mining lease. It was held that the said notification would apply to the renewal of a mining lease that came up for consideration post 27-1-1994. In other words, for the renewal of a mining lease, an EC was required by the mining leaseholder. It was held in para 77 of the Report: (*M.C. Mehta case*[17], 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

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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."

106. It is clear from the decision rendered by this Court that EIA 1994 is mandatory in character; that it is applicable to all mining operations—expansion of production or even increase in lease area, modernisation of the extraction process, new mining projects and renewal of mining leases. A mining leaseholder is obliged to adhere to the terms and conditions of a mining lease and the applicable laws and the mere fact that a mining plan has been approved does not entitle a mining leaseholder to commence mining operations. In *M.C. Mehta*[17] this Court concluded that EIA 1994 is clearly applicable to the renewal of a mining lease.

107. Subsequent to the decision in *M.C. Mehta*[17] two clarificatory Circulars were issued by MoEF on 28-10-2004 and 25-4-2005. These were adverted to by the learned counsel for the mining leaseholders but in our opinion they are not relevant except to the extent that they make it explicit that following the decision of this Court in *M.C. Mehta*[17], an EC is required to be obtained before the renewal of a mining lease and that the term "expansion" would include an increase in production or the lease area or both.

108. It was submitted on behalf of the mining leaseholders that the possibility of getting an ex post facto EC was a signal to the mining leaseholders that obtaining an EC was not mandatory or that if it was not obtained, the default was retrospectively condonable. We do not agree. We have referred to various provisions of the MMDR Act and the Rules framed thereunder to indicate the statutory importance given to the protection and preservation of the environment. This was also emphasised in *M.C. Mehta*[17] in which it was also stated that: (SCC p. 161, para 37)

> "*37.* ... It does not appear that MoEF intended to legalise the commencement or continuance of mining activity without compliance of stipulations of the notification."

It appears to us that the MoEF was, in a sense, cajoling the mining leaseholders to comply with the law and EIA 1994 rather than use the stick. That the mining leaseholders chose to misconstrue the soft implementation as a licence to not abide by the requirements of the law is unfortunate and was an act of omission or commission by them at their own peril. We cannot attribute insensitivity to the MoEF or even to the mining leaseholders to environment protection and preservation, but at the same time we cannot overlook the obligation of everyone to abide by the law. That the MoEF took a soft approach cannot be an escapist excuse for non-compliance with the law or EIA 1994.

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Environment Impact Assessment Notification of 14-9-2006

109. On 14-9-2006 another EIA Notification was issued by the MoEF. This notification (for short EIA 2006) required prior EC for projects or activities mentioned in the Schedule to it both for major as well as minor minerals if the leased area is 5 ha or more. We were informed that several mining leaseholders, in compliance with EIA 2006, applied for and were granted an EC.

110. It was submitted by the learned counsel for the mining leaseholders that the confusion, vagueness and uncertainty caused by EIA 1994 and subsequent circulars and other communications did not end with the issuance of EIA 2006. Reference was made to a Circular dated 13-10-2006 which deals with interim operational guidelines till 13-9-2007 in respect of applications made under EIA 1994. We do not see the relevance of this circular (which really dealt with transitional issues) not only for the reason given in *M.C. Mehta*[17] that circulars cannot override statutory notifications but also because it deals with the procedure for considering applications made under EIA 1994.

111. Reference was also made to a Circular dated 2-7-2007. The passage relied upon reads as follows:

> "It is clarified that all such mining projects which did not require environmental clearance under the EIA Notification, 1994 would continue to operate without obtaining environmental clearance till the mining lease falls due for renewal, if there is no increase in lease area and/or there is no enhancement of production. In the event of any increase in lease area and or production, such projects would need to obtain prior environmental clearance. Further, all such projects which have been operating without any environmental clearance would obtain environmental clearance at the time of their lease renewal even if there is no increase either in terms of lease area or production."

112. The aforesaid Circular relates to three categories that is:

(*i*) Mining leases, where no EC was required under EIA 1994 would continue to operate without an EC;

(*ii*) If there was an increase in the lease area or enhancement of production, an EC was required by the mining leaseholder;

(*iii*) All projects would require an EC at the time of renewal of the mining lease even if there was no increase in the lease area or enhancement of production.

113. Reference was also made to an Office Memorandum dated 19-8-2010. However a reading of this document brings out that it basically relates to construction at site but makes it clear that no activity relating to any project covered under EIA 2006 including civil construction could be undertaken without obtaining a prior EC except fencing of the site to protect it from getting encroached and construction of temporary sheds for the guards.

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114. Reference was also made to Office Memorandums dated 16-11-2010 and 12-12-2012 but having gone through them we find them of little relevance as they deal with procedural issues only.

115. All that we need to say on this subject is that there is no confusion, vagueness or uncertainty in the application of EIA 1994 and EIA 2006 insofar as mining operations were commenced on mining leases before 27-1-1994 (or even thereafter). Post EIA 2006, every mining leaseholder having a lease area of 5 ha or more and undertaking mining operations in respect of major minerals (with which we are concerned) was obliged to get an EC in terms of EIA 2006.

116. An attempt was then made by the learned counsel for the mining leaseholders to get out of the rigours of EIA 1994 and EIA 2006 by contending that some of them had modified the mining plan (with approval) and that therefore they had extracted iron ore or manganese ore, as the case may be, in terms of the mining plan but not necessarily in terms of the EC that had been obtained, if at all.

117. We have already held that a mining plan is subordinate to the EC and in *M.C. Mehta*[17] it was held by this Court that having an approved mining plan does not imply that a mining leaseholder can commence mining operations. That being so, a modified mining plan without a revised or amended EC, is of no consequence. What the contention of the learned counsel suggests to us is that under the shield of a modified mining plan, illegal or unlawful mining in the form of mining without an EC, mining by over-reaching EIA 1994 and EIA 2006 was being carried out.

118. The contention apart, the subterfuge of obtaining a modified mining plan to get over the adverse effects of excess and illegal or unlawful production of iron ore or manganese ore was deprecated by the Ministry of Mines of the Government of India. In a Letter dated 29-10-2010 addressed to the Controller General, Indian Bureau of Mines it was pointed out that the State Governments had expressed a concern that the Indian Bureau of Mines (IBM) had been modifying mining plans for allowing an increase in production of ore without adequate intimation to the State Governments. A concern was raised that such a revision was often being used to increase production of ore, which is sometimes not accounted for in mining operations in the mining lease concerned. It was made clear that all modifications of mining plans shall be effective prospectively only and earlier instances of irregular mining shall not be regularised through a modification of the mining plan.

119. In a subsequent Letter dated 12-12-2011 addressed to the Chief Secretary in the Government of Orissa the said Ministry of Mines noted that there were violations of the actual production limit laid down in the mining plan and that the State Government had finally taken steps to curb illegal mining in respect of overproduction of minerals. There was a reference to suggest (and we take it to be so) that 20% deviation from the mining plan (in terms of overproduction) would be reasonable and permissible. However, it appears from a reading of the communication that illegal mining was going on

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beyond the 20% deviation limit and that appropriate steps were needed to curb these violations. The learned counsel for the petitioners submitted that such egregious violations must be firmly dealt with by cancellation or termination of the mining lease and a soft approach is not called for.

120. In this context, it is worth noting that a High Level Committee (called the Hoda Committee) on the National Mineral Policy noted in its Report dated 22-12-2006 in para 3.47 as follows:

> "3.47 An EMP [Environment Management Plan] has to be prepared under the MCDR and got approved by IBM. However, this EMP is not acceptable to the MoEF. The miner has to prepare two EMPs separately —one for IBM and another for MoEF. The Committee suggests that IBM and MoEF should prepare guidelines for a composite EMP so that IBM can approve the same in consultation with MoEF's field offices. This will eliminate anomalous situations where increase of even a few tonnes in production requires project authorities to get a fresh EMP approved from the MoEF although the IBM allows a grace of ±10%, keeping in view the fluctuations in the market situation and process complexities. If a single EMP is accepted in principle such anomalies can be resolved in advance. The Committee feels the MoEF should also have a cushion of ±10% in production while giving EIA clearance."

121. The above passage indicates that the permissible variation in production as per the Indian Bureau of Mines is ±10% but according to the Letter dated 12-12-2011 issued by the Ministry of Mines, the reasonable variation limit could be ±20%. It is not clear why there was a shift in the variation, but as rightly pointed out by the learned counsel for the petitioners, the fact that in some cases the variation exceeded 20% was a cause for concern which necessitated strict and punitive action.

122. A submission was made by the learned counsel for the mining leaseholders to the effect that since many of them had been granted the first deemed statutory renewal of the mining lease under Rule 24-A of the MCR, the requirements of EIA 1994 would not be applicable. We were shown various amendments made to Rule 24-A of the MCR from time to time particularly the amendments made on 10-2-1987, 7-1-1993, 27-9-1994, 17-1-2000, 18-7-2014 and 8-10-2014. In our opinion, none of these are of any consequence, the reason being that for the purposes of renewal of the mining lease, an application is required to be made by the mining leaseholders and the deemed renewal clause under Rule 24-A of the MCR will come into operation only after an application for renewal is made in Form J in Schedule I of the MCR. Under Rule 26 of the MCR, the State Government may refuse to renew the mining lease. That apart, the position in environmental jurisprudence with regard to the renewal of a mining lease has been made explicit by this Court in *M.C. Mehta*[17]. Even otherwise, in view of EIA 1994, it is quite clear that the renewal of a mining lease would require a prior EC.

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123. We may also draw attention in this regard to a Circular dated 28-10-2004 issued by the MoEF wherein it was stated that in view of the decision in *M.C. Mehta*[17] all mining projects of major minerals of more than 5 ha lease area that had not yet obtained an EC would have to do so at the time of renewal of the lease.

124. Finally, it was submitted that whenever an EC is granted, it would have retrospective effect from the date of the application for grant of an EC. In this context, it was pointed out that there were enormous delays in granting an EC and that the Hoda Committee had noted with reference to EIA 2006 that if all goes well, the grant of an EC takes about 232 days whereas the international norm is that an EC is granted within six months or 180 days. According to the additional affidavit filed by some mining leaseholders, the period of 232 days mentioned by the Hoda Committee was actually a conservative estimate and that in fact it takes anything up to 390 days for the grant of an EC. It was submitted that the position was even worse under EIA 1994 since the MoEF rarely showed any urgency in the grant of an EC. Examples were cited before us to show that in some instances the grant of an EC took more than two years. Taking all this into consideration it was submitted that it would be more appropriate that the EC is given retrospective effect from the date of the application.

125. We are not in agreement with the learned counsel for the mining leaseholders. There is no doubt that the grant of an EC cannot be taken as a mechanical exercise. It can only be granted after due diligence and reasonable care since damage to the environment can have a long-term impact. EIA 1994 is therefore very clear that if expansion or modernisation of any mining activity exceeds the existing pollution load, a prior EC is necessary and as already held by this Court in *M.C. Mehta*[17] even for the renewal of a mining lease where there is no expansion or modernisation of any activity, a prior EC is necessary. Such importance having been given to an EC, the grant of an ex post facto environmental clearance would be detrimental to the environment and could lead to irreparable degradation of the environment. The concept of an ex post facto or a retrospective EC is completely alien to environmental jurisprudence including EIA 1994 and EIA 2006. We make it clear that an EC will come into force not earlier than the date of its grant.

Illegal mining

126. A question raised by the learned counsel for the mining leaseholders concerned is the interpretation of the expression "illegal mining". Reliance was placed on the report of CEC which refers to Rule 2(*ii-a*) of the MCR to conclude that the violation of any rule within the mining lease area would not come within the definition of "illegal mining" except where there has been a violation of the Rules framed under Section 23-C of the MMDR Act. According to CEC:

> "*17*. Illegal mining has been defined as mining operations undertaken by any person in any area without holding a mining lease. It does not

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include violation of any rules within the mining lease area except the Rules made under Section 23-C of the MMDR Act, 1957. The mining lease area shall be considered as an area held with lawful authority by the lessee [refer Rule 2(*ii-a*), MCR, 1960]."

127. As can be seen from the above, there is a difference of opinion between CEC and the Commission on what is illegal mining or mining without lawful authority and we will give our views on the subject.

128. According to the lessees a mining operation only outside the mining lease area would constitute "illegal mining" making illegal mining lease centric. We are unable to accept this narrow interpretation given by CEC and relied upon by the learned counsel for the mining leaseholders.

129. The simple reason for not accepting this interpretation is that Rule 2(*ii-a*) of the MCR was inserted by a Notification dated 26-7-2012 while we are concerned with an earlier period. That apart, as mentioned above, the holder of a mining lease is required to adhere to the terms of the mining scheme, the mining plan and the mining lease as well as the statutes such as the EPA, the FCA, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. If any mining operation is conducted in violation of any of these requirements, then that mining operation is illegal or unlawful. Any extraction of a mineral through an illegal or unlawful mining operation would become illegally or unlawfully extracted mineral.

130. It is not, as suggested by the learned counsel, that illegal mining is confined only to mining operations outside a leased area. Such an activity is obviously illegal or unlawful mining. Illegal mining takes within its fold excess extraction of a mineral over the permissible limit even within the mining lease area which is held under lawful authority, if that excess extraction is contrary to the mining scheme, the mining plan, the mining lease or a statutory requirement. Even otherwise, it is not possible for us to accept the narrow interpretation sought to be canvassed by the learned counsel for the mining leaseholders particularly since we are dealing with a natural resource which is intended for the benefit of everyone and not only for the benefit of the mining leaseholders.

Encroachments

131. Section 4(1) of the MMDR Act makes it clear that no person can carry out any mining operations except under and in accordance with the terms and conditions of a mining lease granted under the MMDR Act and the Rules made thereunder. Obviously therefore, any person carrying on mining operations without a mining lease, is indulging in illegal or unlawful mining. This would also necessarily imply that if a mining lease is granted to a person who carries out mining operations outside the boundaries of the mining lease, the mineral extracted would be the result of illegal or unlawful mining.

132. In its report, CEC has dealt with illegal mining outside the sanctioned mining areas. It is stated that 82 mining leases for iron ore and manganese

ore were identified by the Commission where there were encroachments in the form of illegal mining pits, illegal overburdened dumps, etc.

133. In respect of these 82 mining leases, the State of Odisha appointed a Committee on the suggestion of the Commission, to survey and identify the exact extent and location of the sanctioned lease area, lease area under occupation of the mining leaseholder and the area under encroachment/illegal mining. The Committee or the Joint Survey consisted of officers of the Revenue Department, Forest Department and Mining Department of the State of Odisha who carried out a field survey in respect of 39 mining leases. The findings of the field survey or the Joint Survey were verified by a team comprising of the Director, Mines, Chief Engineer, ORSAC and the Additional Secretary, F & E Department of the Government of Odisha.

134. It is mentioned in the report of CEC that the Joint Survey for each of the 39 mining leases is technically sound and reliable. However, in respect of some of the leases, it would be desirable for the State Government to take another look at the results of the field survey. Unfortunately, CEC has not identified these mining leases that require another look. Be that as it may, the fact is that a joint survey has not been conducted in respect of 43 mining leases.

135. We are of the view that for completing the record and taking the report of CEC to its logical conclusion, it would be appropriate if a fresh Joint Survey is conducted by officers concerned of the Government of Odisha from the Revenue Department, the Forest Department, the Mining Department and any other department that may be deemed necessary. The Forest Survey of India, the MoEF, the Indian Bureau of Mines and the Geological Survey of India should also be associated in the Joint Survey. In our opinion, it would also be appropriate if CEC is also associated in the Joint Survey and the best and latest technology should be made use of including satellite imagery and thereafter a report is submitted in this Court on or before 31-12-2017 after hearing the 82 lessees identified by the Commission.

Adherence to the mining plan

136. A side issue raised by the learned counsel for the mining leaseholders in this regard was the necessity (if any) of adhering to the annual plan or calendar plan of mining. It was contended that a mining leaseholder could mine in excess of the annual plan. While it is so, this submission must be tempered and appreciated in the proper context. A mining plan is valid for a period of five years but there could be a 20% variation in extraction over and above the mining plan. This is the maximum that is stated to be reasonably permissible according to the Ministry of Mines. In terms of Rule 22(5) of the MCR a mining plan shall incorporate a tentative scheme of mining and annual programme and plan for excavation from year-to-year for five years. At best, there could be a variation in extraction of 20% in each given year but this would be subject to the overall mining plan limit of a variation of 20% over five years. What this means is that a mining leaseholder cannot extract the five year quantity (with a variation of 20%) in one or two years only. The extraction has to be staggered and continued over a period of five years. If any other interpretation is given,

it would lead to an absurd situation where a mining leaseholder could extract the entire permissible quantity under the mining plan plus 20% in one year and extract miniscule amounts over the remaining four years, and this could be done without any reference to the EC. The submission of the learned counsel in this regard simply cannot be accepted.

137. In the Letter dated 12-12-2011 sent by the Secretary in the Ministry of Mines of the Government of India to the Chief Secretary of the Government of Odisha (adverted to above) concerning violation of annual production limit laid down in the approved mining plan, it was stated, inter alia, that an analysis of production and violations in 104 mining leases for bulk minerals in the last ten years was undertaken by the Indian Bureau of Mines. It was noted that in 71 cases there was excess ore produced beyond the reasonable variation limit of 20%. It was noted that this was partly due to the failure of the State machinery to restrict the movement of minerals.

138. In a further Letter dated 5-9-2012 it was reiterated that any violation of the mining plan or the mining scheme noticed by the State Government should be immediately brought to the notice of the Indian Bureau of Mines to initiate suitable action. It was reiterated that transit passes to such mines should not be issued by the State Government so as to stop any additional outgo. It was added:

> "Needless to say any revision on the limits of production is subjected to statutory clearances under Environment and Forest laws. Having said that, the State Mining and Geology officials should not also lose focus on taking stringent action against any instances of illegal mining, undertaken outside the leased area, and passed off as excess production."

It is quite clear from the correspondence placed before us that as far as the Union of India is concerned, any violation of the requirements of the law has to be firmly dealt with.

139. With reference to the interpretation of Section 21(5) of the MMDR Act (which we shall soon consider) it was stated as follows:

> "Section 21(5) of the MMDR Act is clearly applicable on such land which is occupied without lawful authority. It is clarified that in the context of the MMDR Act, 1957, violations pertaining to mining operations within the mining lease area are to be dealt with only in terms of the provisions of the Mineral Conservation and Development Rules, 1988. The State Governments have clear powers to tackle any offences related to mining outside the mining lease area in terms of Section 23-C of the MMDR Act, 1957. However, the interpretation that a land granted under a mining lease by the State Government can be held to be occupied without lawful authority on the grounds of violation of provisions of any other law of the land is not appropriate and such interpretation may not stand in the court of law. Such Act or Rules, including the Environment (Protection) Act, 1986, or the Forest (Conservation) Act, 1980, etc. clearly provide penalties for violations under those laws. This aspect may be clarified to the State Accountant General also."

140. All that we need say for the present is that the interpretation given in the aforesaid Letter to Section 21(5) of the MMDR Act is not fully correct. While mining in excess of permissible limits under the mining plan or the EC or FC on leased area may not amount to mining on land occupied without lawful authority, it would certainly amount to illegal or unlawful mining or mining without authority of law.

Section 21 of the MMDR Act

141. The discussion on illegal or unlawful mining takes us to the question of the consequence of illegal or unlawful mining and the interpretation of Section 21(1) and Section 21(5) of the MMDR Act.

142. Section 21(1) of the MMDR Act is clearly relatable to a penal offence and applies if any one contravenes the provisions of Section 4(1) of the MMDR Act. Section 4(1) of the MMDR Act prohibits the undertaking of any mining operation in any area except under and in accordance with the terms and conditions of a mining lease and the Rules made thereunder. Therefore, when a person carries out a mining operation in any area other than a leased area or violates the terms of a mining lease, which incorporates the mining plan and which requires adherence to the law of the land, that person becomes liable for prosecution under Section 21(1) of the MMDR Act. In the event of a conviction, he or she shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to Rs 5 lakhs per hectare of the area.

143. As far as Section 21(5) of the MMDR Act is concerned, according to CEC the provision is applicable only if a person indulges in illegal mining outside the mining lease area. Consequently, Section 21(5) of the MMDR Act is not attracted even if the mineral raised within the mining lease area is without an EC or beyond the quantity prescribed by the EC or beyond the quantity permitted in the mining plan. In such a situation, the provisions of the EPA or the MCR come into play. This interpretation is supported by the learned counsel for the mining leaseholders who affirm that Section 21(5) of the MMDR Act is mining lease area centric. In other words, according to CEC and the learned counsel, for the purposes of Section 21(5) of the MMDR Act illegal mining is mining outside the mining lease area and Section 21(5) of the MMDR Act has to be understood in that light.

144. Reference was also made to the Explanation to Rule 2(*ii-a*) of the MCR where it is stated that for the purposes of this clause, the violation of any rules, other than the Rules made under Section 23-C of the MMDR Act, within the mining lease area by a holder of a mining lease shall not include illegal mining. In other words, it was submitted that Section 21(5) of the MMDR Act is required to be understood in the context of Rule 2(*ii-a*) of the MCR.

145. It was submitted by Shri Ashok Desai learned Senior Counsel for one of the intervenors, that the penalty postulated by Section 21(5) of the MMDR Act though an imposition of a pecuniary liability, is punishment for the commission of an offence. By referring to *Khemka & Co. (Agencies) (P)*

Ltd. v. *State of Maharashtra*[18] it was contended that the liability sought to be imposed by Section 21(5) of the MMDR Act is not a liability that is created by a clear, unambiguous and express enactment.

146. As far as the Union of India is concerned, in its affidavit filed on 20-1-2017 by Shri Sudhakar Shukla, Economic Advisor in the Government of India, Ministry of Mines, it is submitted (and this submission is supported by the learned Attorney General in his oral submissions) that Section 21(5) of the MMDR Act is in two parts. The first part refers to the raising of minerals without any lawful authority from *any land*. The second part is in addition to what is recoverable under the first part. The addition is to the effect that when a person raises a mineral from any area not in his or her lawful authority, that person is also liable to pay the rent, royalty or tax for the period during which the land was occupied without lawful authority.

147. It is further submitted that "illegal mining" as defined in Rule 2(*ii-a*) of the MCR is also required to be read in the context of Rule 26(4) and Rule 27(4-A) of the MCR which deal with the refusal to renew a mining lease if the mining leaseholder is convicted of illegal mining and the determination of a mining lease in the event the mining leaseholder is convicted of illegal mining. It is submitted that the definition of "illegal mining" in the MCR must be strictly construed and limited to the provisions of the MCR and cannot apply to the provisions of Section 21(5) of the MMDR Act.

148. In conclusion, it is reiterated by the Union of India on affidavit as follows:

> "*55*. That considering all the above, the Ministry would like to submit that the provisions of sub-section (5) of Section 21 would apply to all minerals raised without any lawful authority, be it forest clearances or environment clearances or any other such legal requirements.
>
> *56*. That penalties would arise under Section 21(5) of the MMDR Act, 1957, in respect of any form of mining activity without lawful authority. Mining outside lease area would on the face of it amount to mining without lawful authority and would attract the provisions of Section 21(5); and, in addition, *all forms of mining without lawful authority including that in breach of the limits imposed by the environmental clearance carried out within the lease area would also invite penalties under Section 21(5).*" (emphasis supplied)

149. On behalf of the State of Odisha, it was submitted by Shri Rakesh Dwivedi learned Senior Counsel by relying upon *Karnataka Rare Earth* v. *Deptt. of Mines & Geology*[19] that what is sought to be achieved by Section 21(5) of the MMDR Act is to recover the price of the mineral that has been illegally or unlawfully or unauthorisedly raised with an intention to compensate the State for the loss of the mineral owned by it, the loss having been caused by a person who is not authorised by law to raise that mineral. There is no element of penalty

18 (1975) 2 SCC 22 : 1975 SCC (Tax) 227
19 (2004) 2 SCC 783

involved in this and the recovery of the mineral or its price is not a penal action but is merely compensatory. This is what this Court had to say in *Karnataka Rare Earth*[19]: (SCC pp. 791-92, paras 12-15)

> "*12*. Is sub-section (5) of Section 21 a penal enactment? Can the demand of mineral or its price thereunder be called a penal action or levy of penalty?
>
> *13*. A penal statute or penal law is a law that defines an offence and prescribes its corresponding fine, penalty or punishment. (*Black's Law Dictionary*, 7th Edn., p. 1421.) Penalty is a liability composed (sic imposed) as a punishment on the party committing the breach. The very use of the term "penal" is suggestive of punishment and may also include any extraordinary liability to which the law subjects a wrongdoer in favour of the person wronged, not limited to the damages suffered. (*See* Aiyar, P. Ramanatha: *The Law Lexicon*, 2nd Edn., p. 1431.)
>
> *14*. In support of the submission that the demand for the price of mineral raised and exported is in the nature of penalty, the learned counsel for the appellants has relied on the marginal note of Section 21. According to Justice Singh, G.P.: *Principles of Statutory Interpretation* (8th Edn., 2001, at p. 147), though the opinion is not uniform but the weight of authority is in favour of the view that the marginal note appended to a section cannot be used for construing the section. There is no justification for restricting the section by the marginal note nor does the marginal note control the meaning of the body of the section if the language employed therein is clear and spells out its own meaning. In *Director of Public Prosecutions* v. *Schildkamp*[20] Lord Reid opined that a sidenote is a poor guide to the scope of a section for it can do no more than indicate the main subject with which the section deals and Lord Upjohn opined that a sidenote being a brief précis of the section forms a most unsure guide to the construction of the enacting section and very rarely it might throw some light on the intentions of Parliament just as a punctuation mark.
>
> *15*. We are clearly of the opinion that the marginal note "penalties" cannot be pressed into service for giving such colour to the meaning of sub-section (5) as it cannot have in law. The recovery of price of the mineral is intended to compensate the State for the loss of the mineral owned by it and caused by a person who has been held to be not entitled in law to raise the same. There is no element of penalty involved and the recovery of price is not a penal action. It is just compensatory."

150. We are in agreement with the view expressed by the learned Attorney General and Shri Dwivedi as also the view expressed in *Karnataka Rare Earth*[19]. The decision in *Khemka & Co.*[18] is not at all apposite. There is no ambiguity in Section 21(5) of the MMDR Act or in its application. We are also

19 *Karnataka Rare Earth* v. *Deptt. of Mines & Geology*, (2004) 2 SCC 783
20 1971 AC 1 : (1970) 2 WLR 279 : (1969) 3 All ER 1640 (HL)
18 *Khemka & Co. (Agencies) (P) Ltd.* v. *State of Maharashtra*, (1975) 2 SCC 22 : 1975 SCC (Tax) 227

of the opinion that though Section 21(1) of the MMDR Act might be in the realm of criminal liability, Section 21(5) of the MMDR Act is certainly not within that realm.

151. In our opinion, Section 21(5) of the MMDR Act is applicable when any person raises, without any lawful authority, any mineral from *any land*. In that event, the State Government is entitled to recover from such person the mineral so raised or where the mineral has already been disposed of, the price thereof as compensation. The words "any land" are not confined to the mining lease area. As far as the mining lease area is concerned, extraction of a mineral over and above what is permissible under the mining plan or under the EC undoubtedly attracts the provisions of Section 21(5) of the MMDR Act being extraction without lawful authority. It would also attract Section 21(1) of the MMDR Act. In any event, Section 21(5) of the Act is certainly attracted and is not limited to a violation committed by a person only outside the mining lease area — it includes a violation committed even within the mining lease area. This is also because the MMDR Act is intended, among other things, to penalise illegal or unlawful mining on any land including mining lease land and also preserve and protect the environment. Action under the EPA or the MCR could be the primary action required to be taken with reference to the MCR and Rule 2(*ii-a*) thereof read with the Explanation but that cannot preclude compensation to the State under Section 21(5) of the MMDR Act. The MCR cannot be read to govern the MMDR Act.

152. What is the significance of this discussion? It was submitted that CEC has taken the following view:

> "... it may be appropriate that 30% of the notional value of the iron and manganese produced by each of the lessees without/in excess of the environmental clearances may be directed to be recovered from the lessees concerned and with the explicit understanding the lessees as well as the officers concerned will continue to be liable for action under the provisions of the respective Acts."

153. The learned counsel for the petitioners and the learned Amicus were of the opinion that the provisions of Section 21(5) of the MMDR Act require that the entire price of the illegally mined ore should be recovered from each defaulting lessee. Similarly, in its affidavit, the Union of India differs with the recommendation of CEC. According to the affidavit of the Union of India this would be contrary to the statutory scheme and in fact 100% recovery should be made under the provisions of Section 21(5) of the MMDR. We may note that only to this extent, the learned Attorney General differed with the view expressed by the Union of India and submitted that the recommendation of CEC to recover only 30% of the value of the illegally mined ore should be accepted.

154. In our opinion, there can be no compromise on the quantum of compensation that should be recovered from any defaulting lessee — it should be 100%. If there has been illegal mining, the defaulting lessee must bear the consequences of the illegality and not be benefited by pocketing 70% of the illegally mined ore. It simply does not stand to reason why the State should be

compelled to forego what is its due from the exploitation of a natural resource and on the contrary be a party in filling the coffers of defaulting lessees in an ill-gotten manner.

Calculations on merits

155. The issue now is with regard to the calculations made by CEC with regard to the production of iron ore and manganese ore without or in excess of the EC and/or the mining plan. As already mentioned above, the figures were not disputed (except by JSPL and SMPL). Therefore, only the application of the figures requires consideration and so we do not need to examine each individual case. However, to understand and appreciate the manner in which CEC has arrived at its figures, we may state that this has been specifically mentioned by CEC in its report. The basis of the calculations is as follows:

> "(*a*) the production during the year 1993-94 has been considered as the permissible production during each year till the mining lease did not have the environmental clearance;
>
> (*b*) the permissible production for the year in which the environmental clearance was obtained for the first time has been considered on pro rata basis of (*a*) the prescribed annual production, and (*b*) the date of the grant of the environmental clearance. For this purpose the environmental clearance granted on or before 15th of a month has been considered valid for the entire month. Where the environmental clearance has been granted after 15th of a month it has been considered valid from the subsequent month. For example if the environmental clearance for a mining lease has been granted say on 10-10-2008 for an annual production of say 12 lakhs MT then in that case the permissible production for the mining lease for the year 2008-09 would be taken as 6 lakhs MT (12 × 6/12 lakh MT) and 12 lakhs MT per annum in the subsequent year; and
>
> (*c*) wherever a mining lease having environmental clearance has been granted revised environmental clearance for a higher production the permissible annual production for the year, during which the revised environmental clearance has been granted, has been considered on pro rata basis of the quantities prescribed in the earlier environmental clearance and the revised environmental clearance. For example if the mining lease was having environmental clearance for annual production of 12 lakhs MT and say on 28-9-2009 it has been granted revised environmental clearance for annual production of say 24 lakhs MT then in that case the permissible production for the year 2009-10 would be taken as 18 lakhs MT (12 × 6/12 + 24 × 6/12) and 24 lakhs MT per annum in subsequent years."

156. A submission made by the mining leaseholders was that the maximum production in any year up to 1993-94 should be considered as the base for making the calculations. Such a contention was also urged before CEC and was rejected. We have examined this contention independently and are of the view that the base year of 1993-94 is most appropriate — we have already given our reasons for this. Some lessees might lose in the process while some of them

might benefit but that cannot be avoided. In any event, each mining leaseholder is being given the benefit of calculations only from 2000-01 and is not being "penalised" for the period prior thereto. We think the mining leaseholders should be grateful for this since it was submitted by the learned counsel for the petitioners and the learned Amicus that the penalty should be levied from the date of EIA 1994. In our opinion, the cut-off from 2000-2001 (without interest) is undoubtedly reasonable and there can hardly be any grievance in this regard. The mining leaseholders cannot have their cake and eat it too, along with the icing on top.

157. Since the recommendation made by CEC in this regard is not totally unreasonable, we accept that the compensation should be payable from 2000-2001 onwards at 100% of the price of the mineral, as rationalised by CEC.

Violation of the Forest (Conservation) Act, 1980

158. Before dealing with the violations of Section 2 of the Forest (Conservation) Act, 1980 (for short "the FCA"), it is necessary to give a brief background.

159. The FCA came into operation initially through the Forest (Conservation) Ordinance, 1980 with effect from 25-10-1980. The said Ordinance was repealed and subsequently the FCA came into effect on 25-12-1980.

160. Section 2 of the FCA provides that no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing, inter alia, that any forest land or any portion thereof may be used for non-forest purposes.

161. The interpretation of Section 2 of the FCA first came up for consideration in *State of Bihar* v. *Banshi Ram Modi*[21]. In that case, Banshi Ram Modi was granted a mining lease for mining and winning mica. During the course of mining operations, feldspar and quartz were discovered. Modi then applied to the Central Government to include these minerals in the lease. The State Government agreed to do so but did not obtain the previous approval of the Central Government for the inclusion of the two minerals in the original lease.

162. The Central Government took the view that since its previous approval had not been obtained for inclusion of feldspar and quartz in the mining lease, Modi could not be permitted to mine these two minerals. This led Modi to approach the High Court with the contention that he was not breaking up or clearing any forest land other than the land on which mining operations were already being carried on. The High Court allowed the writ petition but feeling aggrieved, the State of Bihar preferred an appeal in this Court.

163. The question before this Court was a narrow one, namely, whether prior approval of the Central Government is necessary in respect of a mining lease, granted for winning a certain mineral prior to the coming into force of the FCA, if the lessee applies to the State Government after the FCA came into force for permission to win and carry any new mineral from the broken up area?

21 (1985) 3 SCC 643

164. While answering this question in the negative, it was held that after the commencement of the FCA no fresh breaking up of forest land or no fresh clearing of the forest on any such land could be permitted by the State Government or any authority without the approval of the Central Government. However, in respect of broken up land, it was held that if the State Government permits the lessee to remove any discovered mineral, it cannot be said that there has been a violation of Section 2 of the FCA particularly since there is no breaking up of any fresh forest land.

165. Subsequently in *Ambica Quarry Works* v. *State of Gujarat*[22] when the lease of the mining holder came up for renewal, the FCA had already come into force. Since the Forest Department of the State of Gujarat refused to give a no-objection certificate, the application for renewal of the lease was rejected. The question that arose for consideration was whether, after coming into force of the FCA, the mining leaseholder was entitled to renewal of the mining lease. While answering the question in the negative this Court held that the renewal of a lease cannot be claimed as a matter of right. The primary purpose of the FCA was to prevent deforestation and ecological imbalance as a result of deforestation. Therefore, the primary duty under the FCA was to the community and the obligation to society must predominate over the obligation to the individuals. While distinguishing *Banshi Ram Modi*[21] this Court held that renewal of the lease would lead to further deforestation or at least it would not help in reclaiming the area where deforestation had already taken place. The primary purpose of the FCA is to prevent further deforestation and any interpretation must subserve that purpose and implement the FCA. Under the circumstances, it was held, considering the scheme of the FCA that refusal to renew the lease without prior approval of the Central Government was not unjustified.

166. This view was reiterated in *Rural Litigation and Entitlement Kendra* v. *State of U.P.*[23] It was held that the FCA does not permit mining in a forest area. Reiterating the view expressed in *Ambica Quarry Works*[22], it was observed that compliance with Section 2 of the FCA is necessary as a condition precedent even for the renewal of a mining lease. This Court went so far as to hold that if any decree or order has already been obtained by any of the mining leaseholders, from any court relating to renewal of their lease, the same shall stand vacated and similarly, any appeal or other proceeding taken to obtain a renewal or against any order or decree granting renewal shall also become non est.

167. The definition of the word "forest" for the purposes of the FCA came up for consideration in *T.N. Godavarman Thirumulpad* v. *Union of India*[3]. In its decision of 12-12-1996[3] this Court observed that during the course of hearing

22 (1987) 1 SCC 213
21 *State of Bihar* v. *Banshi Ram Modi*, (1985) 3 SCC 643
23 1989 Supp (1) SCC 504
3 (1997) 2 SCC 267

it appeared that there is a misconception about the true scope of the FCA and the meaning of the word "forest" used therein. Consequently, there is also a misconception about the need for prior approval of the Central Government as mandated by Section 2 of the FCA in respect of certain activities in a forest area, which activities are more often of a commercial nature.

168. In this context, it was held that "forest" must be understood according to its dictionary meaning and it would cover all statutorily recognised forests, whether designated, reserved, protected or otherwise. It was further held that "forest" would also include any area recorded as a forest in the government records irrespective of the ownership. With this in mind, this Court directed that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the FCA all ongoing activity within any forest in any State throughout the country, without prior approval of the Central Government must cease forthwith. This particular direction given by this Court is of immense significance.

169. This Court further directed each State Government to constitute within one month an Expert Committee, inter alia, to identify areas which are "forest" irrespective of whether they are so notified, recognised or classified under any law and irrespective of the ownership of the land of such forest.

170. Pursuant to the directions given by this Court, the State of Odisha constituted District Level Committees (for short "DLC") for identification of forest lands. After the identification process, appropriate affidavits were filed by the State of Odisha in this Court in 1997-98, the last being dated 6-1-1998.

171. In the meanwhile, in *T.N. Godavarman Thirumulpad* v. *Union of India*[24] this Court passed certain directions on 4-3-1997 with regard to what was categorised as mining matters. The directions given by this Court are as follows: (SCC p. 315, para 9)

> "*9*. We direct that—
>
> (*1*) where the lessee has not forwarded the particulars for seeking permission under the FCA, he may do so immediately;
>
> (*2*) the State Government shall forward all complete pending applications within a period of 2 weeks from today to the Central Government for requisite decisions;
>
> (*3*) applications received (or completed) hereafter would be forwarded within two weeks of their being so made.
>
> (*4*) the Central Government shall dispose of all such applications within six weeks of their being received. Where the grant of final clearance is delayed, the Central Government may consider the grant of working permissions as per existing practice."

172. It was also made clear that the order passed by this Court including the earlier order dated 12-12-1996[3] shall be obeyed and carried out by the Central

24 (1997) 3 SCC 312
3 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267

Government and the State Governments notwithstanding any order or direction passed by a court including a High Court or Tribunal to the contrary.

173. From the above, it is explicit that in terms of the orders passed by this Court, there was a complete ban on non-forest activity on forest lands with effect from 12-12-1996. The only issue that remained was identification of all such lands by the District Level Committees and as mentioned above this exercise was completed by the State of Odisha on or about 6-1-1998. The lands identified by DLC are compendiously referred to as DLC lands.

174. In this background in IAs Nos. 2746-48 of 2009 in *T.N. Godavarman Thirumulpad*[2] CEC was directed to submit a report which it did on 26-4-2010. It was recommended by CEC that given the peculiar circumstances prevailing in the State of Odisha, mining operations in the entire DLC lands included in the mining leases, may be allowed to continue on payment of the net present value (NPV) subject to the fulfilment of other statutory requirements and rules being complied with.

175. By an order dated 7-5-2010[4] this Court directed that the recommendation of CEC acceptable to the State Government could be complied with. Consequently, the State of Odisha appears to have implemented the recommendations regarding recovery of NPV and realised an amount of about Rs 1750 crores as additional NPV.

176. We have been informed that in addition to the above, the mining leaseholders have subsequently deposited an amount under the heading of penal compensatory afforestation which was introduced through guidelines issued by the MoEF on 3-2-1999. The guidelines in this regard were communicated by the Assistant Inspector General of Forest to the Chief Secretary of all the States and Union Territories and the relevant portion thereof reads as follows:

> "4.3.1 Cases have come to the notice of the Central Government in which permission for diversion of forest land was accorded by the State Government concerned in anticipation of approval of the Central Government under the Act and/or where work has been carried out in forest area without proper authority. Such anticipatory action is neither proper nor permissible under the Act which clearly provides for prior approval of the Central Government in all cases. Proposals seeking ex post facto approval of the Central Government under the Act are normally not entertained. The Central Government will not accord approval under the Act unless exceptional circumstances justify condonation. However, penal compensatory afforestation would be insisted upon by the MoEF on all such cases of condonation.
>
> 4.3.2 The penal compensatory afforestation will be imposed over the area worked/used in violation. However, where the entire area has been

2 *T.N. Godavarman Thirumulpad* v. *Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 6-11-2009 (SC)

4 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 15 SCC 177

deforested due to anticipatory action of the State Government, the penal compensatory afforestation will be imposed over the total lease area."

177. It was submitted by the learned counsel for the lessees that since additional NPV as well as an amount towards penal compensatory afforestation has been paid by the defaulting mining leaseholders, the violation of Section 2 of the FCA stands condoned or in any event the illegal or unlawful mining in forest lands stands regularised.

178. CEC did not accept this submission made on behalf of the mining leaseholders on the ground that no retrospective forest clearance has been granted and even otherwise there is no provision to condone or regularise the violation of Section 2 of the FCA.

179. We are of the opinion that the view expressed by CEC in this regard is partially correct. Given the fact that the defaulting mining leaseholders have been asked to pay and have paid additional NPV as well as an amount towards penal compensatory afforestation, it must be assumed that the violation of the FCA has been condoned to a limited extent, more particularly since in its order dated 7-5-2010[4] this Court permitted the State of Odisha to accept such recommendations of CEC made in the report dated 26-4-2010 as are acceptable to it. The relevant recommendations made by CEC read as follows:

"(*c*) No forest land can be leased/assigned without first obtaining the approval under the FC Act. Therefore, the forest area approved under the FC Act should not be lesser than the total forest area included in the mining leases approved under the MMDR Act, 1957. Both necessarily have to be the same. In view of the above, this Hon'ble Court while permitting grant of temporary working permission to the mines in Orissa and Goa has made it one of the preconditions that the NPV will be paid for the entire forest area included in the mining leases. Similarly, all the mining leaseholders in Orissa should be directed to pay the NPV for the entire forest area, included in the mining leases;

(*d*) In Orissa, substantial areas included in the mining leases as non-forest land have subsequently been identified as DLC forest (deemed forest/forest-like areas) by the Expert Committee constituted by the State Government pursuant to this Hon'ble Court's order dated 12-12-1996[3]. While processing and/or approving the proposals under the FC Act in many cases such areas have been treated as non-forest land. It is recommended that (*i*) the NPV for the entire DLC area included in the mining lease, after deducting the NPV already paid, should be deposited by the leaseholder concerned, and (*ii*) the mining operations in the unbroken DLC land (virgin land) should be permissible only if the permission under the FC Act has been obtained/is obtained for such area. Keeping in view the peculiar circumstances as were existing in Orissa and subject to the above, the mining operations in the broken DLC land may be allowed to be continued

4 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 15 SCC 177
3 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267

provided the other statutory requirements and rules are otherwise being complied with."

180. This still leaves open the question of violation of the order passed by this Court on 12-12-1996[3] followed by the order dated 4-3-1997[24], namely, that mining must cease forthwith in forest areas. In regard to this violation, the only benefit (at best) that can be granted to the mining leaseholders that we are concerned with, is till 6-1-1998 when the affidavit was filed in this Court in IAs Nos. 2746-48 of 2009 in *T.N. Godavarman*[6]. With effect from 7-1-1998 any mining activity in forest and DLC lands would clearly be completely illegal and unauthorised and the benefit that the mining leaseholders have derived from this illegal mining would be subject to Section 21(5) of the MMDR Act. Therefore, the price of the iron ore and manganese ore mined by the mining leaseholders from 7-1-1998 is payable until forest clearance under Section 2 of the FC Act is obtained by the mining leaseholders.

181. The report of CEC dated 16-10-2014 deals with 51 mining leases. It has been recorded by CEC that of them 15 mining leases have been found not involved in undertaking mining operations in violation of the FCA. There are 16 mining leases that have violated the provisions of the FCA between 25-10-1980 and 1999-2000 and the State Government in some of the cases has already issued a show-cause notice to the mining leaseholders. It is further stated that most of the violations pertain to the period prior to 12-12-1996. CEC has not made any particular recommendation in regard to these 16 mining leases nor do we, except to direct the State Government to promptly take a decision on the show-cause notice preferably within a period of four months and in any case before 31-12-2017.

182. CEC has also dealt with 18 other mining leaseholders (other than M/s Essel Mining and Industries Ltd. relating to the Kasia Iron Ore Mines and Jilling-Langlotta Iron & Manganese Ore Mines). With regard to these 18 mining leaseholders, the view taken by us above would hold good and clearly they are liable to compensate the State for the entire price of the iron ore and manganese ore illegally mined with effect from 7-1-1998 until the forest clearance was obtained by the mining leaseholder concerned.

183. We have fixed 7-1-1998 as the cut-off date despite the orders dated 12-12-1996[3] and 4-3-1997[24] only for the reason that it is possible that some mining leaseholders (we do not know how many) were not aware that they were inadvertently conducting mining operations on DLC lands which were identified by the State of Odisha as forest lands on the directions of this Court. For the purposes of Section 21(5) of the MMDR Act, they are entitled to the benefit of doubt and along with them, the other mining leaseholders before us.

3 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267
24 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 3 SCC 312
6 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2014) 6 SCC 167

184. CEC in this regard has observed as follows:

> "It will be seen that in the above cases the mining operations have been done in the forest land in violation of the Forest (Conservation) Act, 1980 and consequently also in violation of this Hon'ble Court order dated 12-12-1996[3]. CEC recommends that 70% of the notional value of the iron ore and manganese produced by the lessees by undertaking mining operations in the forest land in violation of the Forest (Conservation) Act, 1980 may be directed to be recovered from the respective lessees. Wherever the mineral production is both from the forest land as well as non-forest land then in such cases the notional value of the production from the forest land may be calculated on pro rata basis of the extent of the forest land and non-forest land involved. The notional value of the mineral, time-limit for payment of the compensation, use of the amount received as compensation and other conditions as decided by this Hon'ble Court in respect of the production without/in excess of the environmental clearance may be directed to be followed on pari-passu basis."

185. For the reasons that we have already expressed above, we are not in agreement with CEC that only a part of the notional value (in this case 70%) of the iron ore and manganese ore produced by the mining leaseholders should be recovered. We are of the view that Section 21(5) of the MMDR Act should be given full effect and so we reiterate that the recovery should be to the extent of 100%.

186. There may be some overlap in the period when mining operations were conducted by the mining leaseholders without an EC and/or an FC. We make it clear that mineral extracted either without an EC or without an FC or without both would attract the provisions of Section 21(5) of the MMDR Act and 100% of the price of the illegally or unlawfully mined mineral must be compensated by the mining leaseholder. To the extent of the overlap or the common period, obviously only one set of compensation is payable by the mining leaseholder to the State of Odisha. We order accordingly. However, we make it clear that whatever payment has already been made by the mining leaseholders towards NPV, additional NPV or penal compensatory afforestation is neither adjustable nor refundable since that falls in a different category altogether.

187. We may note that this Court has held in *T.N. Godavarman Thirumulpad* v. *Union of India*[25, 26] that a violation of the FCA is condonable on payment of penal compensatory afforestation charges. This obviously would not apply to illegal or unlawful mining under Section 21(5) of the MMDR Act, but we make it clear that the mining leaseholders would be entitled to the benefit of any temporary working permission granted.

3 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267
25 (2011) 15 SCC 658
26 (2011) 15 SCC 681

Conclusions on the issues of mining without an EC or FC or both

188. To avoid any misunderstanding, confusion or ambiguity, we make the following very clear:

(*1*) A mining project that has commenced prior to 27-1-1994 and has obtained a no-objection certificate from SPCB prior to that date is permitted to continue its mining operations without obtaining an EC from the Impact Assessment Agency. However, this is subject to any expansion (including an increase in the lease area) or modernisation activity after 27-1-1994 which would result in an increase in the pollution load. In that event, a prior EC is required. However, if the pollution load is not expected to increase despite the proposed expansion (including an increase in the lease area) or modernisation activity, a certificate to this effect is absolutely necessary from SPCB, which would be reviewed by the Impact Assessment Agency.

(*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.

(*3*) For considering the pollution load the base year would be 1993-94, which is to say that if the annual production after 27-1-1994 exceeds the annual production of 1993-94, it would be treated as an expansion requiring an EC.

(*4*) There is no doubt that a new mining project after 27-1-1994 would require a prior EC.

(*5*) Any iron ore or manganese ore extracted contrary to EIA 1994 or EIA 2006 would constitute illegal or unlawful mining (as understood and interpreted by us) and compensation at 100% of the price of the mineral should be recovered from 2000-2001 onwards in terms of Section 21(5) of the MMDR Act, if the extracted mineral has been disposed of. In addition, any rent, royalty or tax for the period that such mining activity was carried out outside the mining lease area should be recovered.

(*6*) With effect from 14-9-2006 all mining projects having a lease area of 5 ha or more are required to have an EC. The extraction of any mineral in such a case without an EC would amount to illegal or unlawful mining attracting the provisions of Section 21(5) of the MMDR Act.

(*7*) For a mining lease of iron ore or manganese ore of less than 5 ha area, the provisions of EIA 1994 will continue to apply subject to EIA 2006.

(*8*) Any mining activity carried on after 7-1-1998 without an FC amounts to illegal or unlawful mining in terms of the provisions of Section 21(5) of the MMDR Act attracting 100% recovery of the price of the extracted mineral that is disposed of.

(*9*) In the event of any overlap, that is, illegal or unlawful mining without an FC or without an EC or without both would attract only 100% compensation and not 200% compensation. In other words, only one set of compensation would be payable by the mining leaseholder.

(*10*) No mining leaseholder will be entitled to the benefit of any payments made towards NPV or additional NPV or penal compensatory afforestation.

Violation of Section 6 of the MMDR Act

189. We have examined the report of CEC with regard to the alleged violation of Section 6 of the MMDR Act and find that there have been several amendments to Section 6 relating to the maximum area for which a mining lease may be granted to a person. The following is the result of the amendments:

1. From 1-6-1958 to 11-9-1972—maximum lease area 10 sq miles.

2. From 12-9-1972 to 9-2-1987—maximum lease area 10 sq km or 1000 ha in any one State.

3. From 10-2-1987 to 17-12-1999—maximum lease area 10 sq km or 1000 ha in any part of the country.

4. From 18-12-1999 till date—maximum lease area 10 sq km or 1000 ha in one State.

190. While the word "person" has not been defined in the MMDR Act, a reading of Section 5 thereof indicates that the State Government shall not grant a mining lease to any person unless such person is an Indian national or a company as defined in the Companies Act, 1956 and subsequently in the Companies Act of 2013.

191. Sub-section (2) of Section 6 of the MMDR Act provides that a person acquiring by, or in the name of, another person a mining lease which is intended for him/her shall be deemed to be acquiring it himself/herself.

192. For the purposes of determining the total area that can be acquired for mining operations, Section 6(3) of the MMDR Act provides that the area held under a mining lease by a person as a member of a cooperative society, company or other corporation or a Hindu Undivided Family or a partner of a firm shall be deducted from the area referred to so that the sum total of the area held by such person under a mining lease only as such member or partner or individually may not in any case exceed the total area specified.

193. In this background, CEC examined the case of seven mining leaseholders. They are:

1. Essel Mining and Industries Limited
2. Rungta Mines Limited
3. Rungta Sons Pvt. Limited
4. Bonai Industrial Company Limited
5. Feegrade & Co. Pvt. Limited
6. M/s Mangilal Rungta
7. Jindal Steel & Power Limited

194. As far as Essel Mining and Industries Ltd. is concerned we propose to deal with this mining leaseholder on another occasion since even CEC has placed this mining leaseholder in a special category.

195. Similarly, so far as Rungta Mines Ltd., Rungta Sons Pvt. Ltd. and M/s Mangilal Rungta are concerned, although CEC has come to the conclusion that these persons have not acquired mining leases in violation of Section 6 of the MMDR Act, there are some critical observations made by the Commission with regard to the "Rungta Group". The learned counsel for the petitioner submitted that the view of CEC in this regard needs reconsideration. Since the "Rungta Group" was not heard by us, we propose to hear the above Rungta companies to ascertain, inter alia, whether there has been any violation of the provisions of Section 6 of the MMDR Act.

196. As far as Jindal Steel & Power Ltd. is concerned, we propose to hear this company on another occasion since the suggestion of CEC is that it is the benami holder of Sarda Mines Pvt. Ltd. If it is so held to be a benami holder of Sarda Mines Pvt. Ltd. then there is a violation of Section 6 of the MMDR Act. However, CEC has refrained from making any observations or recommendation in this regard. Accordingly, we propose to hear Jindal Steel & Power Ltd. on a later occasion on this limited issue.

197. As far as Bonai Industrial Company Ltd. and Feegrade & Co. Pvt. Ltd. are concerned, CEC has concluded that they have not violated Section 6 of the MMDR Act. That being the position, and nothing having been shown to the contrary, we accept the recommendation of CEC in this regard.

Violation of Rule 37 of the Mineral Concession Rules, 1960

198. CEC has discussed the possible violation of Rule 37 of the MCR. In this context, it was noted that there were several mining leaseholders who had entered into raising contracts which were actually a transfer of the lease as postulated by Rule 37 of the MCR.

199. On this basis the State of Odisha constituted a Committee on 8-7-2011 to carry out a study of the financial transactions between the mining leaseholders and the raising contractors to determine whether there is a prima facie violation of Rule 37 of the MCR.

200. On an examination of the material before it the Committee concluded that eight mining leaseholders violated Rule 37 of the MCR. These mining leaseholders are as under:

(*i*) R.P. Sao, Guali Iron Ore Mines, Keonjhar

(*ii*) Indrani Patnaik, Unchabali Iron Ore Mines, Keonjhar

(*iii*) M/s K.J.S. Ahluwalia, Nuagaon Iron Ore Mines, Keonjhar

(*iv*) M/s Aryan Mining & Trading Corporation Pvt. Ltd., Narayanposhi Iron Ore Mines, Sundergarh

(*v*) M/s Mideast Integrated Steel Ltd., Roida, Sidhamatha Iron Ore Mines, Keonjhar

(*vi*) Kavita Agrawal, Kusumdihi Manganese Mines, Sundergarh

(*vii*) Mala Roy & Others, Jalabari Iron Ore Mines, Keonjhar

(*viii*) M/s Sharda Mines (P) Ltd., Thakurani Iron Ores Mines, Keonjhar

201. Pursuant to the report of the Committee, a show-cause notice was issued to these mining leaseholders by the State of Odisha. Six of the mining leaseholders (other than M/s Aryan Mining & Trading Corporation Pvt. Ltd. (for short Aryan) and Kavita Agrawal (Kusumdihi Manganese Mines) challenged the show-cause notice and the decision of the Committee by filing revision petitions under Section 30 of the MMDR Act read with Rule 55 of the MCR before the Central Government. The challenge to the show-cause notice was on the ground that persons who were not government servants could not have been included in the Committee and also that the Committee was not notified in the Official Gazette as required by Section 26(2) of the MMDR Act.

202. The Central Government set aside the order constituting the Committee and the State of Odisha has challenged the orders of the Central Government before the Orissa High Court through writ petitions. We are told that the writ petitions filed by the State of Odisha are pending in the High Court.

203. As far as Aryan is concerned, we were informed that the matter was pending with the State of Odisha and a request was made to us to permit the State of Odisha to pass a final order on the submissions made by Aryan. On 28-4-2017[27] we had permitted the State of Odisha to pass final orders but we are not aware whether any orders have since been passed.

204. As far as Kavita Agrawal is concerned, her lease was terminated by the State of Odisha and the Central Government also dismissed her revision petition on 28-4-2014. The said mining leaseholder has since filed a writ petition which is pending in the Orissa High Court.

205. During the course of hearing it was proposed by the learned counsel appearing for some of the mining leaseholders that it might be appropriate if the raising contracts between these eight mining leaseholders and the raising contractors are given a fresh look. This suggestion was not acceptable to one of the mining leaseholders. However, we are of the opinion that the suggestion is reasonable and it will be appropriate if in fact a fresh look is given to the raising contracts entered into by the mining leaseholders and the raising contractors. We are also of the opinion that such an order ought to be passed with the consent of the mining leaseholders since any delay in disposal of the issue would not really subserve the interests of anybody including the mining leaseholders.

206. Accordingly, for considering the appointment of an appropriate committee in respect of the eight mining leaseholders mentioned above, we

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27 *Common Cause* v. *Union of India*, WP (C) No. 114 of 2014, order dated 28-4-2017 (SC), wherein it was directed:

> "It has been pointed out by Mr Rakesh Dwivedi, learned Senior Counsel appearing for the State of Odisha and Mr Arvind Datar, learned Senior Counsel appearing for Aryan Mining and Trading Corporation that the proceedings pursuant to the show-cause notice under Rule 37 of the Mineral Concession Rules are complete and both of them say that a final order may be passed pursuant to the show-cause notice. We permit the authorities to pass the order. Arguments heard in part. List the matters on 2-5-2017 as part-heard matters."

would like to hear the learned counsel for the parties. We make it clear that the proposed committee will be entitled to lift the corporate veil, the importance of which in cases such as the present, has been emphasised in *State of Rajasthan* v. *Gotan Lime Stone Khanij Udyog (P) Ltd.*[28]

Intergenerational equity

207. Mr Prashant Bhushan, learned counsel for the petitioner sought to impress upon us the need to consider intergenerational equity and if possible to place a limit on the extent of mining in the State of Odisha by referring to an article titled: "Intergenerational equity: a legal framework for global environment change" by Edith Brown Weiss. He laid emphasis on three principles that form the basis of intergenerational equity.

208. The first principle relied on is called the principle of "conservation of options". This requires each generation to conserve the diversity of the natural and cultural resource base in such a manner that the options available to future generations are not restricted. It was submitted that the extent of mining activities being carried on in Odisha indicate that the entire iron ore will perhaps be fully extracted within a period of 30 years and nothing would be available for future generations. Therefore some sort of a limit would have to be placed on the mining operations.

209. The second principle relied on is the principle of "conservation of quality". This was with reference to the submission that future generations should not be subjected to a quality of the planet worse than what it is today. In other words, future generations are also entitled to quality enjoyment of the diversity in the natural and cultural resource base.

210. The third principle relied upon was the principle of "conservation of access" which is to say that future generations have an equitable right to access the diversity of the natural and cultural resource base as is available to the present generation.

211. There is no doubt considerable substance in the submission particularly if this is considered in the light of intergenerational rights and obligations which have been dealt with in the said article. However, it is really not for this Court to lay down limits on the extent of mining activities that should be permitted by the State of Odisha or by the Union of India. Nevertheless, this is an aspect that needs serious consideration by the policy and decision-makers in our country in the governance structure. At present, keeping in mind the indiscriminate mining operations in Odisha, it does appear that there is no effective check on mining operations nor is there any effective mining policy. The National Mineral Policy, 2008 (effective from March 2008) seems to be only on paper and is not being enforced perhaps due to the involvement of very powerful vested interests or a failure of nerve. We are of the opinion that the National Mineral Policy, 2008 is almost a decade old and a variety of changes have taken place since then, including (unfortunately) the advent of rapacious mining in several parts of the country. Therefore, it is

28 (2016) 4 SCC 469

high time that the Union of India revisits the National Mineral Policy, 2008 and announces a fresh and more effective, meaningful and implementable policy within the next few months and in any event before 31-12-2017. We are constrained to pass this direction in view of the facts disclosed in these petitions and in judgments delivered by this Court with regard to mining in Goa and Karnataka.

Inquiry by the Central Bureau of Investigation

212. It was emphasised by Shri Prashant Bhushan that because of the rampant illegal or unlawful mining being carried out in Odisha, there should be an enquiry by the Central Bureau of Investigation (for short "CBI") to ascertain and determine the persons involved either in turning a Nelson's eye to rampant illegal or unlawful mining or being conspirators in the activity and the extent of the illegal or unlawful mining. It was submitted that the Justice Shah Commission had very strongly recommended an inquiry conducted by CBI and criminal elements being brought to book for the despoliation of the land.

213. For the present, we do not propose to direct an investigation or inquiry by CBI for the reason that what is of immediate concern is to learn lessons from the past so that rapacious mining operations are not repeated in any other part of the country. This can be achieved through the identification of lapses and finding solutions to the problems that are faced. Undoubtedly, there have been very serious lapses that have enabled large-scale mining activities to be carried out without forest clearance or environment clearance and eventually the persons responsible for this will need to be booked but as mentioned above, the violation of the laws and policy need to be prevented in other parts of the country. The rule of law needs to be established. We are therefore of the view that it would be appropriate if an Expert Committee is set up under the guidance of a retired Judge of this Court to identify the lapses that have occurred over the years enabling rampant illegal or unlawful mining in Odisha and measures to prevent this from happening in other parts of the country.

214. There is no doubt that the recommendations of the Commission can form a platform for the study but it is also necessary to use technology for maintenance of registers, records and data through computers, satellite imagery, videography and other technology tools so that the natural wealth of our country is not rapaciously exploited for the benefit of a few to the detriment of a large number, many of whom are tribals inhabiting the land for several generations.

Utilisation of funds by the special purpose vehicle

215. In IAs Nos. 2746-48 of 2009 filed by Rabi Das, an order was passed on 27-1-2014[29] relating to the preparation of a scheme by CEC for setting up a special purpose vehicle (SPV) for tribal welfare and area development works. The relevant extract of the order reads thus:

> "50% of the additional amounts of net present value (NPV) recovered by the State of Odisha from the mining lessees will be used by the

29 *T.N. Godavarman Thirumulpad* v. *Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 27-1-2014 (SC)

State of Odisha through a special purpose vehicle (SPV) for undertaking specific tribal welfare and area development works so as to ensure inclusive growth of the mineral bearing areas. The State of Odisha will accordingly file within four weeks from today, a comprehensive plan for the development of tribals out of the aforesaid funds, taking into consideration their requirements of health, education, communication, recreation, livelihood and cultural lifestyle as indicated in this Court's judgment in *T.N. Godavarman Thirumulpad (104)* v. *Union of India*[30]."

216. Subsequently on 28-4-2014[31] this Court accepted the scheme prepared by the Government of Odisha in consultation with the Central Empowered Committee. The scheme was captioned "Setting up of special purpose vehicle (SPV) for undertaking specific tribal welfare and area development works so as to ensure inclusive growth of mineral bearing areas in the State of Odisha". This Court then passed the following order on 28-4-2014[31]:

"Pursuant to orders passed by this Court on 27-1-2014[29], the Government of Odisha in consultation with the Central Empowered Committee has prepared a scheme captioned "Setting up of special purpose vehicle (SPV) for undertaking specific tribal welfare and area development works so as to ensure inclusive growth of mineral bearing areas in the State of Odisha.

The Central Empowered Committee has submitted a report dated 9-4-2014 and has recommended that the scheme prepared by the Government of Odisha may be approved by this Court and the ad hoc CAMPA may be directed to transfer to the SPV 50% of the additional amount of the NPV recovered from the mining leaseholders by the State of Odisha for undertaking tribal welfare and development works.

We have perused the scheme prepared by the State Government of Odisha and the recommendation of the Central Empowered Committee and we approve the scheme and direct ad hoc CAMPA to transfer to the SPV 50% of the additional amount of the NPV within a month for undertaking tribal welfare development works.

The interlocutory applications be listed in the month of July 2014."

217. Some of the salient features of the scheme are as follows:

5. The SPV will undertake specific tribal welfare and area development works so as to ensure inclusive growth of the mineral bearing areas. These will include works/projects related to livelihood intervention, health, water supply and sanitation, education, special programmes for development of women and children, entrepreneurial development of local people, communication and infrastructure projects and agro

30 (2008) 2 SCC 222

31 *T.N. Godavarman Thirumulpad* v. *Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 28-4-2014 (SC)

29 *T.N. Godavarman Thirumulpad* v. *Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 27-1-2014 (SC)

silvi-horticultural based livelihood projects through identified agencies/ Government Departments. While taking up such projects/works a bottom up planning and participatory approach will be followed.

* * *

9. The general superintendence of the affairs will be vested in its Board of Directors including (*a*) to receive grants/funds and have custody of the same; (*b*) to approve Annual Budget estimates and sanction the expenditure within the limits of the budget; (*c*) to enter into any agreement for and on behalf of the SPV; (*d*) institute and defend legal proceedings; (*e*) to consider and approve the annual report, audit report, annual accounts and the financial estimates of the SPV; (*f*) to prescribe procedure to be followed for implementation of the projects/works and for maintenance of accounts; and (*g*) to undertake any other ancillary activities/works for the furtherance of the objective of the SPV.

(*a*) The funds made available to the SPV will be utilised only for the purpose for which the SPV has been set up and will not be used for any other purpose or transferred to any other authority; and

(*b*) The composition of the Board of Directors of the SPV, as provided in the present scheme, will be modified only after obtaining permission from the Hon'ble Supreme Court.

10. The accounts of the SPV will be internally audited annually by the Chartered Accountant firms empanelled with the CAG/Principal Accountant General, Odisha. The audit of the accounts of the SPV, receipts as well as expenditure, will be done annually by the office of the Principal Accountant General, Odisha.

11. The State Government has, earlier, registered a society, namely, Society for Inclusive Development of Mineral Bearing Areas of Odisha, which has been registered vide Registration No. 23354/74 of 2011-12 under the Societies Registration Act, 1860 to act as SPV for the purpose. It is now proposed to wind up the said Society and to replace it with "Odisha Mineral Bearing Areas Development Corporation" to be set up under Section 25 of the Companies Act.

218. It appears that the scheme has been implemented with the Chief Secretary of Odisha as the ex-officio Chairman of the SPV. There are several other members and directors of the SPV. There is no further information available with this Court with regard to the implementation of the scheme.

219. During the course of hearing, some of the mining leaseholders represented by Shri Gopal Subramanium, Senior Advocate offered to deposit and in fact did deposit an amount of Rs 237.05 crores for utilisation by the SPV for carrying out welfare works and activities in the districts of Keonjhar, Sundergarh and Mayurbhanj in Odisha. The deposit was made by way of a cheque on 6-4-2017 and was without prejudice to the rights and contentions of the lessees. In terms of our directions, the Registry has encashed the cheque and

kept the amount in a short-term fixed deposit. We have mentioned this only to point out that there are huge amounts available with the special purpose vehicle for tribal welfare and area development works and we have absolutely no idea about the utilisation of the funds or whether they are in fact being used for tribal welfare and area development works. We also expect that as a result of the orders that we are passing today, very large amounts will again be made available to the State of Odisha. These amounts should also be kept with the special purpose vehicle.

220. To ensure that the amounts are utilised for the benefit of tribals in the affected districts and for area development works, we would like the Chief Secretary of Odisha to file an affidavit stating the work done as well as providing the audited accounts of the receipt and expenditure of the SPV from its inception.

Conclusion

221. In view of the findings above, we dispose of the writ petitions to the extent of the directions that we have already given.

222. IAs Nos. 45 (filed by Zenith Mining) and 47 (filed by Kavita Agrawal) are dismissed since their lease has not been extended or has been determined and they do not have any environmental clearance or forest clearance.

223. IA No. 66 (filed by J.N. Pattnaik) is also dismissed since there is no forest clearance available.

224. We have been informed that S.A. Karim (IA No. 9) actually had a working lease and has wrongly been included as a non-operational lease. Accordingly, IA No. 9 (filed by S.A. Karim) is also dismissed but as being infructuous. However, it is made clear that the State Government should ensure that the lessee S.A. Karim in fact has valid statutory clearances.

225. Pending show-cause notices issued by the State Government should be decided by 31-12-2017 (if not already decided) after hearing the noticees concerned.

226. We would like to hear Jindal Steel and Power Ltd., Sarda Mines Private Ltd., Rungta Group of Companies and Essel Mining and Industries Ltd. on the applications filed by them. For this purpose list the matter again after two weeks so that a convenient date of hearing can be fixed.

227. The amounts determined as due from all the mining leaseholders should be deposited by them on or before 31-12-2017. Subject to and only after compliance with statutory requirements and full payment of compensation and other dues, the mining leaseholders can restart their mining operations.

228. We would also like to hear the eight mining leaseholders concerned on the question of appointing an appropriate committee in respect of the applicability of Rule 37 of the Mineral Concession Rules to them.

229. We would also like to hear the learned counsel for all the parties with regard to setting up of an Expert Committee presided over by a retired Judge of this Court to identify the lapses that have occurred over the years that have enabled rampant illegal and unlawful mining in Odisha and to recommend preventive measures not only to the State of Odisha but generally to all other States where mining activities are proceeding on a large scale. For the present, we pass no direction with regard to any investigation by CBI.

230. We direct the Union of India to have a fresh look at the National Mineral Policy, 2008 which is almost a decade old, particularly with regard to conservation and mineral development. The exercise should be completed by 31-12-2017.

231. The Chief Secretary of Odisha should file an affidavit as indicated by us within a period of six weeks and in any case on or before 30-9-2017. The Registry will list these petitions along with the affidavit immediately after its receipt for our consideration.

232. All other pending IAs are disposed of in terms of our orders.

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