

# The Goa Foundation

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26 May, 2014

To:

Shri Manohar Parrikar,  
Chief Minister and Minister for Mines,  
Government of Goa,  
Secretariat, Porvorim, Goa.

Subj: Grant and Renewal of Mining Leases in the State of Goa

Dear Shri Parrikar,

I am writing this letter on behalf of the Goa Foundation, petitioner in Writ Petition (Civil) No.435/2012, and in connection with the implementation of the directions given by the Supreme Court of India in its judgement dated 21.4.2014 while allowing the said petition.

I would first like to congratulate you on having taken steps to call a halt to illegal mining that had reached menacing proportions during the previous regime in Goa. Since further steps and declarations were required, Goa Foundation had approached the Supreme Court in September 2012 via a writ petition in which the Hon' ble Court recently delivered its judgment.

The Supreme Court has said that mining in the State was illegal after 2007 and has directed the State Government to allocate fresh leases or fresh renewals in a manner that is legal and constitutional. Therefore, I would like to bring to your attention recent Supreme Court judgments that leave no room for doubt that the only Constitutional method of allocation of mining leases of iron ore and other minerals (scarce and valuable natural resources) would be by competitive auction/bidding.

This method would be fair inter-se the applicants and would give all eligible applicants a fair chance of success. Moreover, it would be fair qua the ordinary people and the interests of the revenue, and will ensure that the state & people are adequately compensated for transfer of precious natural resources from the state to private companies.

The Supreme Court has repeatedly held that natural resources are owned by the people and that the Government only acts as a trustee. As a trustee, it is the duty of the

Government to recover the full value of the resource for the people. In the Meerut Development Authority case [(2009) 6 SCC 171], the Court held:

*“It is well said that the struggle to get for the State the full value of its resources is particularly pronounced in the sale of State owned natural assets to the private sector. Whenever the Government or the authorities get less than the full value of the asset, the country is being cheated; there is a simple transfer of wealth from the citizens as a whole to whoever gets the assets `at a discount'.”*

In the 2G case (CPIIL & Ors vs UoI & Ors, (2012) 3 SCC 1), Supreme Court has held that,

*“Natural resources belong to the people but the State legally owns them on behalf of its people... The State is empowered to distribute natural resources. However, as they constitute public property/national asset, while distributing natural resources, the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest. Like any other State action, constitutionalism must be reflected at every stage of the distribution of natural resources.”*

Further, in the said case, the Supreme Court held:

*“As natural resources are public goods, the doctrine of equality, which emerges from the concepts of justice and fairness, must guide the State in determining the actual mechanism for distribution of natural resources. In this regard, the doctrine of equality has two aspects: first, it regulates the rights and obligations of the State vis-a-vis its people and demands that the people be granted equitable access to natural resources and/or its products and that they are adequately compensated for the transfer of the resource to the private domain; and second, it regulates the rights and obligations of the State vis-a-vis private parties seeking to acquire/use the resource and demands that the procedure adopted for distribution is just, non-arbitrary and transparent and that it does not discriminate between similarly placed private parties.”*

In the Presidential Reference on the issue of Alienation of Natural Resources (2012) 10 SCC 1, the Supreme Court has held that when:

*“precious and scarce natural resources are alienated for commercial pursuits of profit maximizing private entrepreneurs, adoption of means other than those that are competitive and maximize revenue may be arbitrary and face the wrath of Article 14 of the Constitution.”*

Thus, now the only legally sustainable method for grant or renewal of leases is competitive auction/bidding for allocation or renewals of iron ore leases. The MMDR Act leaves the discretion of selection on the State Government, and nothing prevents the State from adopting the method of auction, if it so desires. If there is a better process for maximizing revenue to the State, it can certainly be followed. But we cannot accept grant or renewal of leases on the old terms.

Support for the above direction - which policies on mining of natural resources should take - is to be found in the 2014 Lok Sabha Election Manifesto released by the BJP on the eve of the elections. The manifesto explicitly states: "We will implement auction of precious resources through efficient mechanisms including e-auction." The statement is made in the backdrop of undesirable mining activity which is summed up in the manifesto as follows:

"In recent years, it has been noticed that country's tangible and intangible resources have been looted with impunity. The adverse result is being felt on two sides: Firstly, the proceeds of the resources have not gone to the public exchequer. Secondly, because of this culture of usurping, the same resources are not available for public purposes. The management of natural resources is marred with either misappropriation or misallocation. This has to be set right."

Considering the above, I am confident that no mining lease in the State of Goa will be granted or renewed through a process that will not guarantee maximum revenue to the State in future. Separately, we have already submitted a proposal to you for deposit of all revenues from mining operations in the Goenchi Mati Permanent Fund (the Goan Iron Ore Permanent Fund).

Thanking you,  
Yours faithfully,

A handwritten signature in black ink, appearing to read 'Claude Alvares', with a stylized flourish at the end.

(Dr Claude Alvares)  
Director

Encl: Extract from BJP 2014 Election Manifesto

**Natural & National Resources** - Use When Required, Protect Where Necessary

Indian belief has been best encapsulated in Gandhiji's words that "there is enough for everyone's need - but not for everyone's greed." Need is not the issue. Greed is.

A country's progress depends upon its resources and how they are harnessed and protected. Those in power have to realize they are just trustees of the resources of the nation. The resources are neither meant for them nor for their masters. If we bring this basic shift in thinking of the Government, which Mahatma Gandhi also advocated, all problems will be resolved.

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- We will set in place national policies on critical natural resources like coal, minerals, spectrum, etc. - spelling out in black and white how much should be utilized at what time and pace; how this should be strategically phased out to ensure sustainability; who should be allotted what responsibility of extraction and at what cost.
- State Governments will be taken into confidence for harnessing of these resources.
- We will implement auction of precious resources through efficient mechanisms including e-auction.