

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) 435 OF 2012

IN THE MATTER OF

Goa Foundation	...	Petitioner
	Versus	
Union of India & ors	...	Respondents

Affidavit on behalf of the Petitioner, Goa Foundation

I, Dr. Claude Alvares, aged 65 years, residing at Goa, Secretary, Petitioner above-named, do hereby solemnly affirm and state as under:

1. The above writ petition was filed in September 2012. I am filing this affidavit to update some critical information which would be useful in the determination of the issues raised in the petition.
2. The principal reason for this affidavit is to bring on record the recommendations of two High Level Committees set up by the MoEF, Government of India, concerning various measures to be taken in respect of protection of the ecologically fragile, biodiversity-rich Western Ghats ecosystem. As most of the mining leases in Goa are in the Western Ghat region, the recommendations of the two High Level Committees ought to be considered by this Hon'ble Court while deciding the issues raised in this petition. The first committee called the Western

Ghats Ecology Expert Panel (in short, “WGEEP”) was constituted by an order dated 4.3.2010. It was headed by the eminent ecologist, Prof. Madhav Gadgil. It submitted its report to the MOEF on 19.8.2011. One year later, the MOEF set up one more Expert Committee called the “High Level Working Group on Western Ghats” (in short, “HLWG”) headed by Dr K Kasturirangan, Member, Planning Commission.

3. Both these High Level Committees specifically considered the issue of mining leases operating in the State of Goa and evaluated the impacts of their operations on the ecology of the Western Ghats. The WGEEP uses the term ESZ (Ecologically Sensitive Zone) whereas the HLWG uses the term ESA (Ecologically Sensitive Area) for those portions of the Western Ghats which need absolute protection. In the areas in Goa demarcated as ecologically sensitive by both committees (and which mostly overlap), 36 mining leases are located. Both committees recommend in effect that the 36 leases found in these areas need to be terminated or cancelled and not renewed in order to protect the Western Ghats. In the additional areas identified as ESZ1 by the WGEEP, another 13 mines are located and are therefore recommended for closure by the WGEEP alone. So, in toto, the WGEEP’s recommendations require the closure of 49 mines. As regards the HLWG, it too has identified additional areas as ESA in which 2 mining leases are located, thus taking the HLWG’s total list of mines to be banned to 38. If both lists are added

incrementally, a total of 51 mining leases out of 90 would have to be permanently shut down on grounds of seriously affecting the ecological fragility of the Western Ghat ecosystem. Thus the mining operations of at least 50% of the Goa mines have destroyed the Western Ghats and will further destruct this world ecological hotspot if permitted to resume mining operations. This is what the Shah Commission of Inquiry has also alleged in its report. It concludes that there was widespread damage to ecology because mines were allowed to operate in areas that were ecologically sensitive despite protection afforded by existing Supreme Court orders, especially the order dated 4.12.2006 in WP No.460/2004 also filed by the present petitioner organisation.

4. The petitioner has summarised the above information for quick and easy perusal in a Table which is at **Annexure A**.
(Page _____)

5. The information provided in the table has been taken by the petitioner from both the official reports. However, the two reports themselves have not been filed in this Hon'ble Court as they are voluminous with substantial sections in colour. However, petitioner is willing to produce copies of both, if and when required, in these proceedings.

6. The order constituting the WGEEP is at **Annexure B**.
(Page _____) Its report was submitted to the MOEF on August 19, 2011. Copy of the Executive Summary of the

WGEEP Report (totaling 27 pages) is annexed to this affidavit as **Annexure C.** (Page _____)

7. Petitioner submits that the real motive for constituting the second Expert Committee (the HLWG) was to dilute the recommendations of the WGEEP which were seen by the state governments, developers and the mining lobbies as too restrictive. The order constituting the HLWG is at **Annexure D.** (Page _____) The Terms of Reference, however, state that the purpose of constituting the HLWG was to find ways and means to implement the recommendations of the WGEEP. In actual fact, the HLWG went beyond its terms of reference and instead produced an entirely new report, considerably reducing the area recommended for protection by the earlier committee (WGEEP) not just in Goa but in other areas of the Western Ghats as well. The HLWG submitted its report on 15th April 2013. The summary of recommendations and action plan submitted by the HLWG is enclosed herewith as **Annexure E.** (Page _____)

8. The Western Ghats Ecology Expert Panel (WGEEP) was headed by Prof. Madhav Gadgil, an eminent ecologist formerly with the Indian Institute of Science who has spent over three decades in research on the communities and ecosystems of the Western Ghats. All the other members of the panel were persons who were from the Western Ghats area and who had considerable expertise. These included Dr. V.S. Vijayan, Chairman of the Kerala Biodiversity Board; Dr. Ligia Noronha,

who produced the authoritative study on the environmental impacts of mining in Goa (TERI); and Supreme Court lawyer, Adv. B.J. Krishnan who was instrumental in setting up pioneering NGOs for the conservation of the environment of the Nilgiris.

9. In contrast to this, the HLWG was headed by Dr K. Kasturirangan, a space scientist. Of its ten members, eight were from Delhi, one was from Dehra Dun and only one from Bangalore. With the exception of Mr. Darshan Shankar (who is an expert on indigenous medicinal plants from Bangalore), none of the other nine has either researched or contributed to any research specific to the Western Ghats. The chairperson, though an eminent scientist, cannot therefore expect to match Dr Madhav Gadgil in terms of necessary and adequate expertise in the subject. He has made no known scientific contribution to the subject of biodiversity or plant biology or wildlife or forestry. In fact, he has never worked in these areas and therefore has no recognized expertise or background in these areas.

10. Despite these differences in the constitution of the two Committees, what is remarkable is that both the Committees have recommended a total of 36 mining leases for closure on grounds of impacts due to their location in the ecologically sensitive areas of the Western Ghats falling within the State.

11. The importance of ensuring environmentally sound development and enforcement of regulations in all the regions of the Western Ghats has now been severely underlined in the wake of the recent Uttarakhand disaster where the state government in fact fought to remove environmental restrictions from the environmentally fragile areas of Uttarakhand and now faces the devastating consequence of those completely unsound decisions. The ghastly scenarios that played out in the fragile Himalayan eco-region are widely seen to be the result of the disregard of politicians, administrators and bureaucrats of sound advice given by ecologists and other experts to protect such areas. Such mistakes ought not to be repeated in the six states of the Western Ghats which are the source of water and rivers, biodiversity, etc.

12. Several of the intervenors who have filed applications in this Hon'ble Court in WP 435/2012 have mining leases that fall in the ESZ/ESA as demarcated by both the committees.

13. I reiterate that both these official reports, sponsored by the Govt of India, need to be implemented in order to protect the environment of the Western Ghats.

14. I also wish to apprise this Hon'ble Court about the Justice Khandeparkar Committee. This Hon'ble Court was informed by the Government of Goa, vide its affidavits dated 8.2.2013 and 9.3.2013 that it had appointed a high level committee

headed by Mr Justice R.M.S. Khandeparkar, a retired judge of the Bombay High Court, to go into several aspects of mining in the State of Goa. As stated by the State of Goa in its affidavit, the Justice Khandeparkar Committee was appointed by a Cabinet decision on 3rd October 2012 and the notification issued on November 22, 2013. Names of members of the Committee and its Terms of Reference are at **Annexure F.** (Page _____) The thrust of the State Government's affidavits is that it was competent to deal with the mining scandal in Goa; that it has appointed the Khandeparkar Committee with distinguished members; that this Hon'ble Court need not go into the matter any longer as the State was quite competent to resume the matter henceforth.

15. We are now in July 2013 and the tenure of the Committee will expire this November. I have ascertained the following facts about the Committee – which are valid as of the date of filing of this affidavit:

a) The Committee is yet to have even its first meeting despite ten months having elapsed from the date of the government decision to set it up;

b) No staff has yet been appointed to help the Committee. No separate office has been created for the Committee's work. The Committee is at the moment functioning (if that word can indeed be used) from the office of Justice

Khandeparkar who is also presently occupying the post of the State Police Complaints Authority.

c) As of now, the Committee has not done any work on the terms of the reference assigned to it.

16. The Goa administration has, however, moved quite rapidly to initiate and complete the process of getting the boundaries of the various operating mining leases marked using the Digital Global Positioning Survey (DGPS). This is obviously done to pre-empt any action from this Hon'ble Court or any Committee appointed by this Court. However, instead of appointing an independent agency to carry out this exercise, the Goa government has permitted the mining companies themselves – indicted by both the Shah Commission and the CEC – to demarcate their own lease boundaries so that they can protect themselves from charges of having gone beyond their boundaries in their drive to excavate ores. Petitioner expresses completely lack of faith and trust in this process, as this is equivalent to having the thief put in custody of the stolen goods. Petitioner submits this exercise should have awaited a proper demarcation under supervision of this Hon'ble Court or the CEC, as was done in Bellary, Karnataka. It is in bad taste that the exercise has been carried out without the approval and consent of this Hon'ble Court.

17. There has been no progress whatsoever with regard to prosecutions of politicians, bureaucrats and mining companies that were involved in illegal mining and excess production. No

FIR has been lodged till date, despite the present government being firmly in charge for more than one year. However, recently there have been orders of the High Court and this Hon'ble Court in this regard. By its order dated 22.3.2013, the Bombay High Court directed filing of FIRs against all persons named in the Justice Shah Commission report within a period of six weeks of the order. However, the order dated 22.3.2013 was stayed by a bench of this Hon'ble Court headed by the CJI by order dated 30.4.2013. Similar stay has been granted on 8.7.2003 in the SLPs subsequently filed by other mining companies for identical reliefs. This petitioner has not been heard in that matter nor given notice by the appellants. Copies of the order of the Bombay High Court dated 22.3.2013, and of the two Supreme Court orders are annexed to this affidavit at **Annexure G.** (Page _____)

18. Similarly, no actions have been initiated as yet by the Goa government to recover the revenues lost due to excess mining and illegal mining even as per even the state government's own reduced estimates.

19. In the meanwhile, two important authorities have recently rebuffed the Goa government on its inability or unwillingness to send information required by them for their investigations into legal and illegal mining. Mr Justice M.B. Shah, former judge of the Supreme Court, and Chairperson of the Shah Commission of Enquiry, told the media in a quoted interview published on July 13, 2013 that: "Three months won't be

enough to submit the report. Government is not ready to provide details. Several reminders have been sent. What we have received so far are not accurate and correct figures.” The media interview is at **Annexure H**. (Page _____)

Subsequently, the PMO has also written to the Chief Minister, Goa, informing him that information solicited by the Expert Appraisal Committee reviewing Environment Clearances given to mining leases in Goa has not been supplied till date. The news item dated 16 July 2013 is at **Annexure I**. (Page _____)

20. The filing of writ petition No.435/2012 has also led to some undesirable consequences for the petitioner and other citizens seeking information on mining under the RTI Act. The Director of Mines & Geology has rejected all requests for information from his Department filed under the RTI Act on the specious ground that the matter is now pending in the Supreme Court. As the State Government is yet to appoint, for reasons best known to it, either information commissioners or a state information commissioner for several months now, no appeals can be filed against such rejection orders either, bringing to a complete halt, flow of information relating to mining to the citizens of the State and also to the petitioner.

21. There is therefore compelling need for this Hon'ble Court to direct its own independent enquiries into these issues as proposed by the CEC in its report, since the State government

obviously lacks the capacity, and apparently equally the will and desire, to carry out such enquiries on its own.

DEPONENT

VERIFICATION:

I, the above named Deponent, do hereby verify that the contents of the above affidavit are true and correct to my knowledge, that no part of it is false and that nothing material has been concealed.

Verified at Mapusa, Goa on this the 18th day of July 2013.

DEPONENT