

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

WRIT PETITION (C) NO. 435 OF 2012

In the matter off:

GOA FOUNDATION

... PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

SUR-REJOINDER ON BEHALF OF THE STATE OF GOA
TO THE REJOINDER AFFIDAVIT FILED BY THE PETITIONER

PAPER BOOK

(FOR INDEX: KINDLY SEE INSIDE)

ADVOCATE FOR THE RESPONDENT; T. MAHIPAL

INDEX

<u>Sr. No.</u>	<u>Particulars</u>	<u>Page No.</u>
1.	Sur-Rejoinder on behalf of the state of Goa to the Rejoinder affidavit filed by the petitioner	1-13

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I, Shri Rajni Kant Verma, aged about 53 years, son of Shri N.P.Verma, residing at Altinho, Panaji Goa, presently in Delhi, working as Principal Secretary (Mines), Government of Goa, do hereby solemnly affirm and state on oath as under:-



1. That I am authorized and competent to swear the present Affidavit in Sur Rejoinder.
2. I have been served with an unsigned and unaffirmed copy of an Affidavit purported to be filed by Dr. Claude Alvares, Secretary of the Petitioner on 26.02.2013. In reply thereto, I am filing the present short Affidavit.

3. I state that I am not dealing with each and every paragraph or the averments in the Affidavit in Rejoinder. However, I shall deal with certain averments, which, in the considered opinion of the State Government, are required to be dealt with and answered on account of a completely distorted version of the State's stand taken in the Reply Affidavit.

4. I state that the State Government has correctly stated in its Affidavit that the Hon'ble Mr Justice R.M.S. Khandeparkar (Retd.) Committee was decided to be set up by the State Government on 03.10.2012, much prior to filing of the present Petition. This is a factually correct statement, and irresponsible allegations made by the Petitioner in this regard are vehemently denied. The Petitioner is expected to know that under an administration, in matters of governance decision making and publication of the decision are two different things. Appointment of the said High Powered Committee was in exercise of the administrative and constitutional powers of the State Government. The date of decision being 03.10.2012 is material. I crave leave to refer to and rely upon the original files of the State Government reflecting the said decision for perusal of this Hon'ble Court at the time of hearing.



5. I state that in paragraph No.5, the Petitioner (more particularly the Secretary of the Petitioner) has made another irresponsible statement. It is stated that the Goa Government has now attacked the CEC in its Affidavit in Reply. This amounts to not only distorting the stand of the State Government, but deliberately suggesting

3

falsity and attributing it to the State Government, crossing all canons of decorum which a party in a Court of law is required to follow.

6. I respectfully state that the State Government in its Affidavit has not attacked the CEC in any manner whatsoever. I state that the CEC is a body set up by this Hon'ble Court, which has been performing tasks, as required of them. The State Government has not, nor has the slightest intention, in any way or manner to attack the CEC. I further state that the State Government has no qualms about either the integrity, standing or reputation of CEC or any its Members. I state that the CEC comprises of persons who have their own standing and have been doing the task assigned to them by the Hon'ble Supreme Court. I further state that mentioning in an Affidavit that the CEC has not considered certain aspects of the matter or that the CEC has been misled and misguided by the Petitioner herein does not amount to casting any aspersions on the CEC or attacking the CEC in any manner whatsoever. Indeed, the Chief Secretary on behalf of the Goa Government in his letter dated 27.11.2012 had commended the Mr. Justice Shah Commission as well as CEC for their valuable inputs, advice and suggestions. I further state that the State Government does not hold anything adverse against CEC or any of its Members.



7. I further respectfully state before this Hon'ble Court, that the State Government shall ensure, through the High Powered Committee that each and every matter, as pointed out by the CEC in their report/recommendations shall certainly be examined and

4

corrective steps taken as required in law. The State Government has already decided to refer the Mr. Justice Shah Commission's Interim Report, as well as the CEC Report to the High Powered Committee for compliance and necessary action. In the face of the statement of the Goa Government in the letter dated 27.11.2012, for the Petitioners to now mention that the State Government has attacked the CEC is not only unfair and dishonest but is also highly irresponsible and needs to be approbated accordingly.

8. I respectfully state that the State Government and its officers have the highest respect for this Hon'ble Court as well as all Committees and Bodies, including the CEC and its members. I further state that when the Members of the CEC visited Goa, they were accorded the due status and protocol and all arrangements were made for facilitating their work.



9. I further state that the State Government does not have anything against the CEC or its members. On the contrary, the State has appreciated the CEC for role as well as functions in Environmental matters. Be that as it may, the aforesaid does not mean that the State Government has to meekly accept everything suggested by the CEC, without any application of independent and proper mind. As pointed out by the State Government in the Affidavit in Reply, the Petitioner in the Rejoinder has raised several matters, but is conspicuously silent on the matters which have been reflected in the PAC Report and the State's Affidavit which includes illegal mining carried out by certain persons including politicians amongst

5

others. The State Government in this regard respectfully submits that these aspects were not mentioned by the CEC, though they were readily available in the PAC Report.

10. I further state that the objection raised by the State Government to a body like CEC, in paragraph XVII of the Affidavit in Reply, is on a matter of principle in view of the State having already appointed a High Power Committee headed by a Senior most Retired High Court Judge. In the respectful submission of State, this is the correct approach given the terms of reference appointing the High Powered Committee.

11. In the light of the aforesaid, I respectfully state that the attempts on the part of the Petitioner to paint a picture that the State Government has attacked the CEC is completely misplaced, wrong, incorrect and irresponsible.



12. I further state that in paragraph No.8, the Petitioner has stated that the State Government, in all fairness, should have mentioned about a large section of the population of Goa which are "mining affected people". I respectfully state that the Petitioner does not seem to have understood the stand of the State Government. The State Government's Affidavit, in fact, talks of the PAC Report and speaks of the large scale violations, illegalities and irregularities undertaken and carried out by mining companies. The State Government is aware of the position in the State, which includes all the mining affected persons as also "mining dependent people"

6

those persons which are affected by a complete ban on mining (which was initially imposed by the State Government and thereafter continued by Order dated 05.10.2012 passed by this Hon'ble Court) and the adverse effect on the Economy of Goa and the larger section of the population which depends upon mining activities. Unlike the Petitioners, the State has a Constitutional duty to balance all interests including mining affected people, mining dependent people, Economic interest, interest of Public Exchequer and with all this achievesustainable development.

13. I respectfully state that ever since the liberation of Goa, from 19.12.1963, it is for the first time that any popularly elected Government has shown the courage to stop mining, and take on the Mining Companies. Instead of appreciating the same, the Petitioners, with their characteristic unfairness, have only criticized the Government even by entering the political thicket.



14. The Petitioner in its Affidavit has also relied upon several reports of Scientific studies (Pages 65 – 98), some of which have been carried out pursuant to their appointment by the Goa Government itself. I state that the Petitioner does not seem to understand that what is accepted in our country is principle of "sustainable development" and "Polluter pays", which in other words, means that there has to be a complete balance between Development and the Environment.

7

15. I respectfully state that it is surprising to see as to how the Petitioner seeks to give a colour in the Affidavit in Rejoinder, to certain averments (which are not admitted) by the State Government. I further state that there is a complete somersault by the Petitioner in the Affidavit in Rejoinder from fundamental environmental concerns to economic and capitalist concerns which are not environmental issues. I state that the Affidavit contains irrelevant and completely distorted facts. These shall be dealt with at the time of hearing of the matter by the Learned Counsel appearing for the State.

16. I state since the State Government has mentioned that the Petitioner has not fully understood the stand of the State Government, the State Government deems it appropriate and proper to highlight the same as and by way of some salient features :-

(a) The State Government has accepted the Public Accounts Committee (PAC) Report in toto and has, therefore, decided to proceed and cancel 42 mining leases wherein the delay was illegally condoned. The Show-Cause Notices to this effect have been already issued.

(b) The State Government has also accepted other irregularities mentioned in the PAC Report, including the recommendation of the PAC that the so-called irregularities are nothing else but illegalities and will be acted upon accordingly. There is no change in the State Governments stand on these matters.



8

(c) The State Government also has no serious disagreements with the recommendations of Mr. Justice Shah Commission's Interim Report as also the CEC Report and recommendations. However, the same are required to be addressed after giving an opportunity to the mining lessees, as otherwise it was claimed that there would be violation of legal and constitutional rights of the lessees as mentioned in paragraph 14 of the Affidavit in Reply of the State. Several judgments of this Hon'ble Court have held that the principles of natural justice are part of Article 14 of the Constitution of India and, therefore, hearing the lessees before taking action is a must. This apart, several Writ Petitions are filed by the Mining Companies, challenging the violation of Natural Justice by the Mr Justice Shah Commission's interim Report, based on judgments of this Hon'ble Court.

(d) I state that in the State Government's Affidavit, it is clearly mentioned that mining concessions came to be converted to mining leases and brought under the Mines and Minerals (Development and Regulation) Act, 1957 with a view to regulation of the mines by abolishing the mining concessions in operation in the then Union Territory of Goa, Daman and Diu. The said mining concessions were granted in perpetuity under the former Portuguese Colonial Mining Laws (Decree of 20th September, 1906) in the territories included (as it then was) the Union Territory of Goa, Daman and Diu. The Government of India found that it was in public interest to abolish such mining concessions and declare them as mining leases and,



9

hence, enacted the Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987.

(e) I state that in terms of the said Act certain protections were granted by virtue of Chapter-V therein, as also other provisions, to the mining leases/ mining concessions in force in Goa, Daman and Diu immediately before the commencement of the said Act.

(f) I further state that the Goa, Daman and Diu (Laws) Regulation, 1962 also continued the pre-liberation laws continuing then and recognising certain rights under the erstwhile law, which included rights of mine owners under the Portuguese Decree. I crave leave to refer to and rely upon the Judgments of this Hon'ble Court in this regard.

(g) I further state that the Goa, Daman and Diu Reorganisation Act, 1987 in terms, continued (by virtue of Part-IX thereof), the existing rights and laws.

(h) I state that the provisions of the said Acts were material to be considered by both the Mr. Justice Shah Commission as well as the CEC as regards the contention of the mining companies that their arrangements were being continued for decades altogether and law permitted such arrangements to be continued. These are factual as well as legal points, which require issuance of notice, hearing, proper application of mind and a complete and comprehensive finding. This aspect of the matter not having been dealt with in the



10

aforesaid reports, the State Government felt it was desirable and also in accordance with the Constitutional Principle that the rights of all affected persons including mining affected people, to hear them before taking any further decision.

(i) Simultaneously, the State Government is regulating the operations of mines as well as the activities under the said subject and the version of the Department of Mines has also been stated in the State Government's Affidavit in reply including as to how the mining companies may have certain justification in their stand. Whether the stand of the mining companies right or wrong, is required to be decided by the State Government after the report of a judicial/quasi-judicial authority.

(j) I state that the Affidavit in reply of the State Government clearly states that there has been a large scale illegal mining operations undertaken and carried out from the year 2005 till March, 2012. It is obvious that these operations were carried out by persons operating, trading, extracting, raising and transporting, which includes the mining companies also. However, there cannot be a general accusations and allegations. In law, the entire due process must be gone through before proceeding to take a final decision against such persons.

(k) The State Government further assures this Hon'ble Court that every person, however, high he may be (or any mining company), which is found of having indulged in any kind of irregularity



11

depending upon the scale of such wrongs and irregularities would be severely punished. Appropriate penal action would also be taken against such persons, including the mining companies. In appropriate cases, action for cancellation and revocation of the mining leases would also be initiated.

(1) As a first measure, the State Government has, apart from various other measures, commenced collecting stamp duty which is rightfully due and payable by the mining owners on and from 2007. The earlier Government had allowed the mining companies to operate on the basis of a deemed extension clause. This recovery and payment of stamp duty and on renewal has been made without prejudice to the actions which may be initiated and taken pursuant to PAC Report, Mr. Justice Shah Commission Report and CEC Report. Leave is craved to refer to and rely on letters issued by the State Government which indicate that the PAC Report findings, Mr. Justice Shah Commission Report and the CEC Report and findings are being given total credence and have been viewed with utmost seriousness by the State Government.



17. I respectfully state that there is one other issue now raised by the Petitioner. The Petitioner in his Affidavit has stated that a competitive auction should be followed, as recommended by the Mr. Justice Shah Commission. I state that, in principle, the State Government is not at all averse or opposed to this mode of going for a competitive auction of all the mining leases in Goa, subject to law permitting the same. I state that on a matter of principle the State

Government is of the opinion that natural resources and any kind of state largesse (unless dictated by matter of dire urgency) must always be by way of auction / tender which can earn the highest revenue for the State. However, in all fairness it must be stated that the matter as regards challenge to the Abolition Act of 1987 is pending before this Hon'ble Court as mentioned in the earlier Affidavit of the State.

18. I further state that the Petitioner has also stated and given a comparison of Bellary and Goa and has stated that Goa is worse than Bellary. I respectfully state that the allegations in this regard are wrong and irresponsible. The Petitioner ought to realise that Bellary comprises one district of Karnataka whereas mining in Goa is in both the districts as well as 5 talukas out of 12, which means that nearly 45% of the area concerns mining at the specified locations in those respective talukas. Further, in case of the State of Goa, a large amount of revenue in the budget of the State is dependent on mining.



19. I further state that apart from the fact that the number of Gram Sabhashave passed Resolutions and filed Petitions, Panchayats have filed Interlocutory Applications, as a large number of people are affected by a ban in mining. The Petitioner does not represent either the mining affected people or the mining dependent people and the Petitioner which claims to have ecological concerns as their

13

main objective, seems now to be entering into the political thicket, raising issues and making incorrect statements.

20. I, hence, respectfully state that the Petition filed by the Petitioner be dismissed by this Hon'ble Court.


DEPONENT

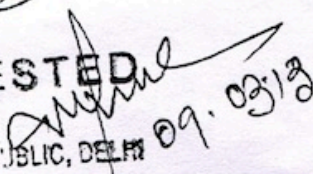
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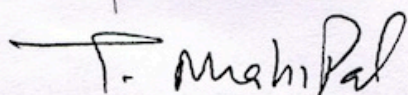
Verified at New Delhi on this the 09th day of March, 2013 that the contents of the above Sur Rejoinder are true and correct to my knowledge and belief and are based on the official record. Nothing material has been concealed therefrom.



ATTESTED

NOTARY PUBLIC, DELHI


09.03.13



I IDENTIFY THE EXECUTANT/DEPONENT WHO HAS SIGNED IN MY PRESENCE CG/375


DEPONENT