

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO 435 OF 2012

GOA FOUNDATION

.....PETITIONER

Versus

UNION OF INDIA & ORS

.....RESPONDENTS

**AFFIDAVIT ON BEHALF OF RESPONDENT NO3 IN RESPONSE
TO THE WRIT PETITION PREFERRED BY THE PETITIONER.**

I, Ajay Kadian, aged 43 years, Indian national, working as
Under Secretary to the Government of India, in the Ministry of
Mines, the respondent No. 3 herein, do hereby solemnly verify and
state as under:-

1. Preliminary submissions/objections:- That all the averments,
insinuations and allegations made in the instant writ petition
against the answering respondent are denied unless they are
in matter of record or are specifically admitted herein.

**2. In reply to Para - 1, of the writ petition it is humbly submitted
as below that:**

(a) Article 246 of the Constitution of India provides for definition
of the subject matter of legislation by the parliament and State
legislature. The Seventh Schedule of the Constitution of India
provides for legislative powers of Central and State Government. In
case of mining, the powers Central Government are provided in
Entry 54 of List I (Union List), which states that the Central
Government has powers for 'Regulation of mines and mineral

development to the extent to which such regulation and development under the control of the Union is declared by parliament by law to be expedient in the public interest"

(b) That in exercise of the powers vested by the Constitution of India, the Parliament has enacted the Mines and Minerals (Development and Regulation) Act, 1957 (**MMDR Act.**). The MMDR Act enables all the States to exercise their powers within a uniform national framework.

(c) The MMDR Act, inter-alia, provides for procedure to grant mineral concessions, regulate mining activities and provisions for mineral development in the country. Two sets of Rules have been framed by the Ministry of Mines under the MMDR Act as Follows :

- Mineral Concession Rules, 1960 (**MCR**), which, inter-alia, lays down the procedures for grant of mineral concessions, conditions of mineral concessions, action to be taken by the State Government for notification of area and transfer of concessions.
- Mineral conservation and Development Rules, 1988 (**MCDR**), which, inter-alia, provides for regulation of mining activities of major minerals by Indian Bureau of Mines (**IBM**) through approved Mining Plan.

(D) As per the MMDR Act, legislated with approval of Parliament, the Central Government has:

- (i) Power to frame the subordinate legislation for the mineral sector with regards to grant of mineral concession [section 13 of the MMDR Act], and for mineral conservation and development [section 18 of the MMDR Act]

(ii) Powers to grant prior approval for grant of mineral concessions recommended by the State Government for a few selected minerals listed in the First Schedule of the MMDR Act, 1957 (Keeping in view the relative and strategic importance of these minerals for the development and growth of country's economy, industrial capacity and strategic needs) [section 5 (1) of the MMDR Act].

(iii) Powers, in respect of mineral concessions:

(a) For relaxation of limits on maximum area of grant [section 6 of MMDR Act].

(b) Relaxation of necessity to notify an area after it has been held earlier under a grant or if reserved for specific use [Rule 59 (2) of the MCR]

(c) Allowing priority to be given by the State Government to a later applicant "for special reasons" in case of First Schedule minerals [section 11 (5) of the MMDR Act]

(iv) Approval for reservation of a mineral bearing area for the purposes of conservation or for specific use by a PSU [section 17 A of MMDR Act]

(v) Powers to set the rates of royalty and dead rent for all major minerals except petroleum and natural gas [section 9 (3) and section 9 A (2) of MMDR Act]

(vi) Special powers to conduct exploration activities through the GSI, IBM, Atomic Minerals Directorate for Exploration and Research and the Mineral Exploration Corporation Limited [section 4 (1) of MMDR Act.]

(vii) Request the State Government to terminate prospecting licenses and mining leases for major minerals for expedient reasons in interest of regulation of mines and mineral development, preservation of environment, ecology and public safety [section 4A(1) of MMDR Act]

(viii) Inspect and regulate mining as per approved mining plan through the IBM [section 24(1) of MMDDR Act]

(ix) Confirm, modify or set aside any order made by the State Government or other authority in exercise of revisionary powers conferred under the MMDR Act with respect to any minerals other than a minor mineral [section 30 of MMDR Act].

(e) As per Entry 23 of List II (State List) in Seventh Schedule of the Constitution, the State Government have powers for legislation in matters relating to *'Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union'* .

(f) That as per the MMDR Act, the State Government, inter-alia, have:

(i) Powers for premature termination of prospecting license and mining lease for minor minerals for expedient reason in interest of regulation of mines and mineral development, preservation of environment, ecology and public safety[section 4A(2) of MMDR Act].

(ii) Powers to grant mineral concessions for all major minerals without obtaining the prior approval of the Central Government, excepting coal, atomic and 10 metallic and non-metallic minerals

that are listed in the First Schedule to the MMDR Act[section 5 (1) of MMDR Act].

- (iii) Powers to frame regulations and grant mineral concessions for minor minerals (like sand, building stones, gravel, ordinary clay, ordinary sand, marble, granite etc, which are largely used for construction purposes and non-industrial use) [section 15 of MMDR Act].
- (iv) Rights to collect and retain the revenue accruing from Royalty and Dead Rent, and fees on mineral concessions [section 9 of MMDR Act].
- (v) Powers to control and curb illegal mining transportation and storage of minerals, through rules framed for the purpose [section 23C of MMDR Act].
- (vi) Powers of inspection of areas under mineral concession, i.e. RP, PL and ML [section 24 of MMDR Act].
- (vii) Powers to regulate mining as per approved mining plans for 29 major minerals for which the state Governments have been empowered [rule 22(4A) of MCR].
- (viii) Power to lapse mining leases for non-commencement or discontinuance of operations [Rule 28 of mineral concession Rules, 1960]
- (ix) To maintain records pertaining to all mineral concessions granted under the MMDR Act [section 12 of MMDR Act].
- (x) To allow renewal, transfer and amalgamation of prospecting licences and mining lease for all minerals excepting coal & lignite and atomic minerals [Rule 24A, 37 and 38 of MCR].

(g) That the contents of this para are matter of fact.

(h) That incidents of illegal mining have been pointed out to the Government by the Shri justice M.B.Shah Commission of Inquiry (henceforth called Commission) in the Report on State of Goa. State Government as the owners of minerals, have been empowered under the MMDR Act to frame rules and take necessary action for curbing illegal mining, transportation and stocking of minerals. The purported incidents of illegal mining pointed out in the Report of the Commission are stated to be arising out of alleged violations of lease boundaries by the lease holders. Since land record are held by the land revenue department in State, any purported violation of lease boundaries needs to be physically verified at the ground level by the State Government of Goa. The answering respondent i.e Ministry of Mines does not hold any legal land records.

Therefore in order to ensure ground verification of the alleged violations pointed out in the Report of the Commission, the Ministry of Mines has forwarded a copy of the Report of the Commission to the State Government for taking appropriate action in terms of the provisions of MMDR Act as deemed fit. The final outcome of the State Government action in the matter is still awaited. Till such time, the ministry of Mines cannot agree with the contentions of the Commission on illegal mining in the State of Goa. The contention of the petitioner on lack of transparency and accountability in the functioning of the Central Government to that extent is vehemently denied.

(i) It is also denied that the Indian Bureau of Mines has been Complacent in discharging its duties and responsibilities. It has

been implementing the provisions of MMDR Act and Rules framed there under to the best of its ability, despite low staff strength in Goa regional office. It is denied that Indian Bureau of Mines has permitted any illegality of Iron ore mining in Goa.

3. That in reply to para 2.1, it is submitted that the Central Government is aware of increase in instances of illegal mining in the country, including State of Goa. There are violations by lease holders, which are detected by the regulatory agencies in their checks. *However, it cannot be alleged that there is abject failure of all the regulatory systems or that governance has failed.* Of the several steps taken by the Ministry of Mines to improve governance in the sector, one is setting up of Shari Justice M.B. Shah Commission of Inquiry. The terms of reference of the Commission are as follows:-

(i) To inquiry 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 resulting there from; 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 boundaries, to facilitate illegal mining and to indentify, as far as possible, the persons responsible for such tampering; and

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

The commission of Inquiry is also mandated to:

(i) recommend remedial measures to prevent such mining, trade, transport and export done illegally or without lawful authority.

(ii) submit its report to the Central Government as soon as possible but not later than eighteen months from the date of its first sitting.

(iii) submit interim report to the Central Government before the expiry of the said period on any of the matters specified in the notification and shall also recommend specific steps that may be required to be taken to urgently curb the menace of illegal mining, trade and transportation.

(iv) take the services of any investigation agency of the Central Government in order to effectively address its terms of reference.

(v) engage consultants or specialized agencies for survey, data collection and analysis.

The finding of Commission on illegal mining have been referred to the State Government of Goa and to the Ministry of Environment

and forests in the central Government, the statutory authorities in the matter, to take further action as necessary. Till such time, any broad generalization that the entire regulatory or governance machinery has failed would be premature. It is submitted that this Hon'ble Court may like to await the outcome of the action taken by the State Government of Goa and the Ministry of Environment and Forests before any final decision is taken in the matter.

4. That in reply to para 2.2 it is stated that the State Government and Ministry of environment and Forests have initiated action on verification of the records of the leases. While these actions are underway by statutory authorities, any further action may be premature.

5. That in reply to Para 2.3 and 2.4, it is stated that these are matter of record.

6. That in reply to para 2.5 it is stated that the findings of Commission on illegal mining are referred to the State Government and Ministry of Environment and forests for further investigation and taking necessary action. While these actions are underway by statutory authorities, any further action may be pre-mature.

7. That in reply to Para 2.6 it is stated as below:

(a) The subject matter pertains to Ministry of Environment and Forests.

(b) The Subject matter pertains to State Government of Goa.

(c) The subject matter pertains to State Government of Goa.

(d) The subject matter pertains to the State Government of Goa, and Ministry of Environment and Forests in the Central Government.

(e) & (f) The subject matter pertains to State Government of Goa

(g) The Commission has observed that "Iron Ore worth Rs. 35000/- crore was plundered by the mining companies, thereby committing theft of Government property," The assessment is based on the likely one extracted from the alleged encroachments by various lease holders as detailed in Commission's Second Report on Goa. There is a likelihood that this assessment of the encroachments could be arising due to incompatibility of the land measurement systems used earlier and the Geo-Positioning Systems used by the Commission for assessment of the encroachments. However, a correct assessment by the State Government of Goa, on the basis of the land revenue records would only enable identification of the encroachments for assessment of the loss.

In this regard it is submitted that the mining lease in Goa were initially granted by the Portuguese Government, which was holding Goa as its colony, on a map called Planta. The Planta has been prepared on 1:10,000 scale. This map has been referenced to one permanent ground control point, for which the geo-coordinates have been recorded. All other reference points or boundary points of the mining leases have been drawn on the map indicating its tentative direction and distance from the permanent ground control point. This direction and distance had not been surveyed with any instrument.

It is learnt by the Indian Bureau of Mines that the Commission has adopted following process to assess the loss:

- i. The lessees were asked to show the boundary points of their leases on the ground.

- ii. The Commission undertook geo-referencing of the ground co-ordinates of the lease boundary points using hand-held global Positioning System (GPS) device.
- iii. The readings taken by the Commission in the presence of representatives of the lessees were transferred on the commercial software provided by Google Earth to generate a satellite imagery of the lease area.
- iv. Thereafter a scanned image of the Planta for each lease was superimposed on the Google Earth imagery for that lease.
- v. The excavation / dumps in the imagery lying outside the superimposed Planta has been considered by the Commission as encroachments, and based on the likely ore that could be extracted, it has been estimated by the Commission that the likely loss of revenue could be to the tune of Rs. 35000/- crore.

However, the Indian Bureau of Mines is of the opinion that;

- (i) the hand held GPS survey is generally not accurate to precisely identify encroachments, since the GPS has an in-built error which may be few seconds off the mark. Considering that each second of GPS reading is equivalent to a horizontal error of 30 to 35 meters, the accuracy of GPS generally depends upon various factors like, the number of satellites available and cloud and weather conditions. An error in GPS readings of 3-4 seconds is common.
- (ii) The GPS data used in civilian applications, like Google map has error in respect of altitude.
- (iii) The Commission has assumed an ore body depth of 10 meter uniformly for all the alleged encroached area for the purposes of calculating the volumes of ore extracted. This may not be correct,

since the actual ore-body dips towards the core of the earth and does not occur in tabular form, as has been considered by the Commission. Further, a broad generalization on ore extraction may not be accurate since open cast mining is undertaken in bench system of mining with different height and widths. This needs to be ground checked.

(iv) The fact that ground verification is necessary has been acknowledged in the Report of the Commission (at page 11 in Chapter 5). The Commission recommends that in order to assess the loss in each mine, assessment is necessary on the basis of 3D LASER Measurement and other factors.

(v) Therefore, the Indian Bureau of Mines is of the opinion that the loss estimation of about Rs.35000/- crore by the Commission still needs verification.

At the same time, the Indian Bureau of Mines had issued a circular No. 2/2010, wherein the Differential Global Positioning system (DGPS) survey had been made mandatory for all the lease area. The DGPS is considered to be more accurate by the Indian Bureau of Mines. The DGPS survey data for leases is proposed to be superimposed on the satellite imagery from Cartosat/ Liss-IV satellite for monitoring the boundary. The entire exercise is still underway.

On its part, based on the assessment of the Indian Bureau of Mines, the commission Report has been referred by the Ministry of Mines to the State Government for necessary action.

It is submitted that till the ground verification activity is completed by the State Government, any assessment of the likely loss may be premature.

(h) The Subject matter pertains to State Government of Goa.

(i) The subject matter pertains to State Government of Goa.

(j) The subject matter pertains to State Government of Goa.

However, the Ministry of Mines had taken a note of the various concerns on removal of iron ore dumps in Goa. The Ministry of Mines had advised State Government of Goa vide letter dated 25th October 2011 to ensure proper accounting of the dumps and ensure that transit passes are issued only to persons registered with the Indian Bureau of Mines as stockists. After the Report of the Commission was received, the ministry of mines has advised the Government of Goa vide letter dated 2nd July- 2012 that:

-All the dump related operations are to invariably be a part of mining plan/scheme of mining.

-The details of operations of such dumps need to be shared with IBM along with balanced stock remaining in the dump.

-In respect of old dumps, before allowing any dump removal, the State Government should make exact quantification with grade, quantity of ore and geo-referencing of the dumps.

-Since dump handling involves impact on environment, appropriate environmental clearances and other clearances as part of clearance of mining operations of the identified owner of the dumps should be pre-requisite.

-As per the amended Rule 45 of Mineral Conservation and Development Rules, 1988 (**MCDR**), no dump removal should be permitted unless a person is registered as a stockist, and transactions are reported in compliance to Rule 45 of MCDR.

The Ministry has advised the State Government to consult the Ministry before finalizing any policy for dump removal.

(k) to (o): renewal of mining leases is delegated to the State Government. The recommendations of Commission on renewal of mining leases have been referred to the State Government of Goa to take necessary action.

(p) It is submitted that since the ore deposits in contiguous leases is not limited by the lease boundaries, for optimum extraction of mineral, mineral beneath the boundary area between lease areas, a combined scheme of mining facilitates scientific mining. This system is in practice throughout the country, and internal circular of Indian Bureau of Mines issued vide letter no. N-11013/1/MP/89-CCOM Vol.II dated, 9/12.10.1992 allows preparation of combined mining schemes in respect of two or more contiguous mining lease belonging to the same lessee, even though there are two separate Mining Plans further under rule 111 (1) and (3) of Metalliferous Mines Regulations, 1961, working in common boundary area is permitted by Director General of Mines Safety.

(q) This matter pertains to State Government of Goa. and the Ministry of Environment and Forests.

(r) It is submitted that the verification of land records pertains to the State Government.

(s)The impact to the eco-system has to be assessed by the Ministry of environment and Forests

8. That in reply to Para 2.6, it is submitted that the Report of the Commission has been referred to the concerned statutory authorities for taking necessary action. At this stage any further intervention or investigation might be premature.

9. That in reply to para 2.7, it is submitted that issue of permits for movement of minerals is regulated by the State Governments.

10. That in reply to para 2.8 and 2.9, it is submitted that the subject matter pertains to Ministry of Environment and Forests.

11. That in reply to par 2.10, it is submitted that the subject matter pertains to Ministry of Environment and Forests. The Report has been referred to the Ministry of Environment and Forests for taking necessary action. Therefore any other action would be premature.

In respect of charges on increase in production in the mining plan by the Indian Bureau of mines on commercial grounds, it is submitted that modification of mining plan is permitted under the mineral conservation and Development Rules, 1988 Rule 10 of the mineral Conservation and Development rules, 1988 provides that:

"10. Modification of mining plan

(1) A holder of a mining lease desirous of seeking modifications in the approved mining plan as are considered expedient, in the interest of safe and scientific mining, conservation of minerals, or for the protection of environment, shall apply to the Controller General, [or the officer authorized in this behalf by the State

Government, as the case may be,] setting forth the intended modifications and explaining the reasons for such modifications.

(2) The controller General or the authorized officer [or the officer authorized in this behalf by the State Government , as the case may be, may approve the modifications under sub-rule (1) or approve with such alterations as he may consider expedient with a period of ninety days”.

It is submitted that due process has been followed by the Indian Bureau of Mines in approving any production of ore. It is submitted that as per para 2.7 of the NMP-2008, Conservation of minerals shall be construed not in the restrictive sense of abstinence from consumption or preservation for use in the distant future but as a positive concept leading to augmentation of reserve base through improvement in mining methods, beneficiation and utilization of low grade ore and rejects and recovery of associated minerals.

In the perspective of above, the rule 10 (1) of MCDR'88 does not restrict increase in the production in modified mining Plan / Scheme of mining which is approved on the basis of information on geology/ reserve available at that time taking into consideration of environmental aspect, need of consuming industry, market demand etc. taking environmental concerns into consideration on a broader perspective.

Production planning in the mining plan is done on the basis of reserve estimation by an applicant for mining plan, before a fresh lease is executed, or by a lessee, where lease is already granted, or by a technical person (Registered Qualified Person) on behalf of the applicant or the lessee. The inspecting officers of IBM who are

qualified Mining engineers or Geologist verify the reserve estimation in the plan document submitted by the applicant or lessee or RQP on the basis of different documents submitted along with the Mining Plan application, and also undertake inspection of the lease area. As per Rule 22(5)(V) of the Mineral Concession Rules, 1960 (here in after referred as MCR, 1960), 'a tentative scheme of mining and annual programmed, and plan for excavation from year to year for five years' are indicated in the Mining Plan.

The mining scheme is required to be reviewed by the lessee every five years and submitted to the IBM for approval under Rule 12(2) of the Mineral Conservation and Development Rules, 1988 (herein after referred as MCDR, 1988). The relevant extract of these rules are as below:

Rule 12(2) of MCDR 1988: 'The owner, against mining engineer or manager of every mine shall review the mining for the next five years of the lease to the Regional Controller [or the officer authorized in this behalf by the State Government, as the case may be,] for approval'

A mining Plan is, therefore, a comprehensive and documented plan for the entire lease tenure with schemes of mining giving total production for periods of five years interval, and indicating tentative annual production targets for the said five years periods. Considering the fact that sale of minerals is determined by market demand, the total production target provided for in the Mining Plan or the mining Scheme for five year periods is the essential criteria for determining performance of the lessee, rather than the annual production targets within the five year periods for the reason that

certain flexibility is imperative on the basis of demand conditions for any mineral.

As it is already sated above, the production planned in the Mining Plan or Mining scheme by an applicant for mining plan or by a lessee or an RQP on behalf of the applicant or lessee, is tentative in nature. The Plan or the Schemes of mining gives total production for period of five years, and indicates tentative annual production targets for the said five years periods.

The approval of the Mining plan, in turn, is a process based internal guidelines of IBM. This guideline issued by CCOM Circular No. 2/92vide file no. N-11013/8/MP/Conf/91-CCOMand 26.06.1992 allows five years of proved and probable reserve with the program of exploration in the same period to further prove the deposit. The extract from the circular is as below:-

"It has been the practice invariably so far that a mining plan is built around concept of proved reserves for a period of five years. This is causing practical difficulties particularly in the case of applications for fresh mining leases. It has now been decided that in such cases mineable reserves can be a combination of proved + probable categories=demonstrated reserve with the condition that sufficient detailed exploration in the designated mining block shall be undertaken immediately on commencement of mining operations in order to firm up the detailed area-wise mining plan for the five year period at least with reliable estimate of the Grade expected. The up dated reserves position with the related development and production plans shall be submitted to IBM within a prescribed time limit".

This is particularly relevant in many cases of grant of mining leases where it is observed that without input of formal prospecting, the State is satisfied on mineral existence, established on the basis of surface exposures or otherwise. In a mining plan for such lease, where Plan is prepared on available geological information, there is further scope for increasing the sufficiency of geological information. As the decision of a State Government to grant a mining lease precedes the requirement of approved mining plan, a modality has been developed as conventional practice to allow approval of such mining plans with five years of proved and probable reserve with a programme of exploration in the five year period to further prove the deposits.

It is a fact that while undertaking mining operations, possibility of exposure of new geological features is likely, and in such cases further geological information generally emerges or becomes evident. All these geological information, when corroborated with the actual field condition, reveal the actual potential of the area. In such a case, the original mining plan and the premises on the basis of which the mining lease was initially granted are likely to undergo changes dynamically. With the area's potential becoming clear as the geological information becomes more reliable, the lessee is able to invest more in mining operations, linked simultaneously to enhanced production depending on market forces.

Considering the dynamic nature of mining operations, suitable provisions have been made in rule 22(6) of MCR 1960, and in rule 9(2) and rule 10(1) of MCDR, 1988 to enable modification of mining plans to ensure that a miner extracts complete grade of ore including lower grade and sub-grade ore as they occur.

In so far as dump mining referred to in sub-para xi is concerned, it is submitted that the Ministry of Mines had advised State Government of Goa vide letter dated 25th October 2011 to ensure proper accounting of the dumps and ensure that transit passes are issued only to persons registered with the Indian Bureau of mines as stockiest.

After the Report of the Commission was received, the ministry of Mines has advised the Government of Goa vide letter dated 2nd July, 2012 that:

- All the dump related operations are to invariably be a part of mining plan/scheme of mining.
- The details of operations of such dumps need to be shared with the IBM along with balanced stock remaining in the dump.
- In respect of old dumps, before allowing any dump removal, the State Government should make exact quantification with grade, quantify of ore and geo-referencing of the dumps.
- Since dump handling involves impact on environment, appropriate environmental clearances and other clearances as part of the clearance of mining operations of the identified owner of the dumps should be pre-requisite.
- As per the amended Rule 45 of mineral conservation and Development Rules, 1988 (**MCDR**), on dump removal should be permitted unless a person is registered as a stockiest, and transactions are reported in compliance to Rule 45 of MCDR.

The Ministry has advised the State Government to consult the ministry before finalizing any policy for dump removal.

12. That in reply to para 2.11, it is submitted that the subject matter pertains to ministry of Environment and Forests.

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13. That in reply to para 2.12 and 2. 13 it is submitted that the Report of the Commission has been referred to the concerned statutory authorities for taking necessary action. For these reason any action for assessment of damages and recovery of damages or for setting up of an independent committee for investigation would be premature at this stage.

14. That para 2.14 pertains to State Government of Goa and Ministry of Environment and Forests.

15. That Para 2.15 and 2.16 are matter of record.

16. That in reply to Para 2.17, it is submitted that officers of Indian Bureau of Mines have been authorized to enter and inspect for ascertaining the position of the working, actual or prospective, of mine or abandoned mine or for any other purpose connected with the MMDR Act or Rules framed there under. Accordingly, the officers are assigned an annual target of inspection of mines for major minerals for ensuring implementation of provisions of MCDR. Indian Bureau and Mines has advised all its Regional offices to place details of all inspections including violation letter, show cause notices, orders for suspension of mining operations, inspection reports in the website of Indian Bureau of Mines for transparency.

In respect of the allegation that the Task Force, formed in the Indian Bureau of Mines, did not obtain any records or details from the owners of the mines or ascertain the survey numbers where the illegal activities were being carried out, is not correct.

As per the terms of reference of the Task force is to take immediate action including suspension of mining operation against the lessees predominantly for not working in accordance with the approved

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Mining plan/ Scheme of mining. Besides it was also the duty of the task Force to bring any notice of illegal mining outside the lease area to the State Government Officer who was also a part of the Task Force for appropriate action. As on December 2011, out of 454 Task force inspection carried out by Indian Bureau of Mines in the entire country, in 155 cases i.e., 34% mining operations have been suspended and in 9 cases termination of Mining Lease has been recommended to the State Government. The inspection reports of Task Force,

Violations pointed out etc by the Task force are placed on the website of Indian Bureau of Mines. The Task Force has been actively helping curbing any activities in mines leading to illegal mining,

Reply to Grounds :-

17. That in reply to para 3, it is submitted that:

(I) no mining operations, including mining of minerals, is permissible under the MMDR Act without are reconnaissance license or a prospecting license or a mining Lease granted under the State Government under the said Act. The observations of the Commission on illegal mining on 578.42 hectares agricultural/ horticultural land, and mining on encroached area of 502.21 hectares are required to be verified on ground by the State Government of Goa, who hold the land records. The report of the Commission has been referred to the State Government of Goa. Till the State Government completes this action , it might be premature to hold that mining operations have been undertaken in

violation of MMDR Act, and are liable for prosecution under section 21 of the MMDR Act.

(II) The Indian Bureau of Mines has been approving mining plan in Goa which includes details of dump removal activities. This action of the Indian Bureau of Mines complies with the High court of Bombay (Panaji bench) judgment dated **18.7.2001 in WP No.77 of 2001, (2004 Goa L.R. 121)**, where it was directed that "no new place for dumping overburden, waste, rejects, etc. will be commenced, worked or started without the permission and approval as required under Chapter III of the mineral Conservation and Development rules, 1988". However, taking into account the fact that state of Goa has a history of mining, there are several mineral dumps of past that are not included in the Mining Plan. In this context, the Ministry of Mines had taken a note of the various concerns on removal of iron ore dumps in Goa. The Ministry of Mines had accordingly, advised State Government of Goa vide letter dated 25th October 2011 to ensure proper accounting of the dumps and ensure that transit passes are issued only to persons registered with the Indian Bureau of Mines as stockists. After the Report of the Commission was received, the Ministry of mines has suitably advised the Government of Goa vide letter dated 2nd July, 2012 to consult the Ministry before finalizing any policy for dump removal.

(III) It is submitted that the recommendations of the Commission on mining operations without Forest clearances have been referred to the Ministry of Environment and Forests, which is the statutory authority in the matter. It is submitted that any decision to revoke

or cancel any mining leases which are observed to be in violation of forest laws would be premature.

(IV) The powers for renewal of mining leases are delegated to the State Governments. Accordingly, the recommendations of Commission on renewal of mining leases beyond the statutory powers in the MMDR Act have been referred to the State Government of Goa to take necessary action. It is submitted that any decision to take action under section 19 of the MMDR Act against the lease holders would be premature.

(V & VI) In respect of observation on increase in the mining plan by the Indian bureau of the Mines on commercial grounds, it is submitted that modification of mining plan is permitted under Rule 10 of the mineral Conservation and Development rules, 1988. Due process has been followed by the Indian Bureau of Mines in approving production of ore in the Mining plans.

(VII) It is submitted that as per available information, in year 1971, the total iron ore resources in Goa were estimated at 396 Million Tonnes. However, as per the National Mineral Inventory, as on 1st April 2010, after 29 years of extracting more than five hundred million tones, the total Iron Ore (Haematite) resources in State of Goa was estimated at 927 Million tones. After including magnetite, the total iron ore resources were estimated at 1150 million tones. Now, after extracting 100 million tonnes of iron ore in the years 2010-11 and 2011-12, the likely available total iron ore resources as on 1st April 2012, is estimated at 1050 Million tones. The likely reason for this increasing in ore is that in earlier days, the exploration was hardly up to 50-60 meter deep, whereas, the Goa Ore is primarily of vein type and is deep rooted. Therefore,

exploration with mining is an ongoing process, which is likely to augment further resources.

The apprehension that iron ore in Goa would last for a limited period is not correct, and should not be a reason for cessation or curtailing of ore production in Goa.

(VIII) It is submitted that the recommendations of the Commission on mining operations without appropriate Wildlife clearances have been referred to the Ministry of Environment and Forests, which is the statutory authority in matter. It is submitted that any decision to revoke or cancel any mining lease which are observed to be in violation of Wildlife laws would premature.

(IX & X) The Report of the Commission on violations of the statutory provision has been referred to concerned statutory authorities, i.e. the state Government of Goa and Ministry of Environment and Forests. Any decision in the matter would be premature.

(XI to XIV) It is submitted that the recommendations of the Commission on mining operation without appropriate clearances under Forest laws have been referred to the Ministry of Environment and Forests, which is the statutory authority in the matter. It is submitted that any decision to revoke or cancel any mining lease which are observed to be in violation of Forest laws would be premature.

(XV) The Ministry of Mines acknowledges the necessity for increased coordination among the various statutory regulators in the mining sector through sharing of information and close

18. That Para 4 of the writ petition is a matter of record.

PRAYER

19. In view of the submissions given above, especially the fact that Report of the Commission on violations of the statutory provisions has been referred to concerned statutory authorities, i.e. the State Government of Goa and Ministry of Environment and Forests, any decision on mining in State of Goa would be premature. However, the Ministry would abide by any directions of the Court in the matter. It is therefore most respectfully prayed that instant Writ Petition is Pre-Mature. Therefore, instant Writ petition is devoid of merit and deserves to be dismissed.

VERIFICATION:-

I, the above named deponent do hereby verify that the facts stated in the above affidavit are true to my knowledge. No part of the same is false and nothing material has been concealed there from.

Verified at New Delhi on this..... Day of _____ 2013.

AND FOR THIS ACT OF KINDNESS THE RESPONDENT
DUTY BOUND SHALL EVER PRAY.


Drafted by

Filed by:-

SATISH KUMAR

(Advocate)

MR. D.S. MAHRA
Central Agency Secy
Advocate for Respondent No.
23386256


DEPONENT
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अवर सचिव / Under Secretary
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