

**IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)**

**Writ Petition (Civil) No. of 2012
PUBLIC INTEREST LITIGATION**

IN THE MATTER OF:

GOA FOUNDATION

A society registered under the Societies' Registration Act, 1860, having its registered office at 7, Le Brag Chambers, Mapusa, Goa, through its Secretary and Authorised Representative **Dr. Claude Alvares.**

... Petitioner

Versus

UNION OF INDIA

Through Secretary,
Ministry of Environment & Forests,
Paryavaran Bhavan,
CGO Complex,
Lodhi Road, New Delhi.

STATE OF GOA

Through Chief Secretary,

Goa Legislative Assembly
Secretariat,

Porvorim, Goa.

MINISTRY OF MINES

Through Secretary,
A-Wing, 3rd Floor,
Shastri Bhavan,

New Delhi.

INDIAN BUREAU OF MINES

Through Regional Controller of Mines
Fatorda, Margao, Goa.

GOA STATE POLLUTION CONTROL BOARD

Through Member Secretary,
Dempo Towers,
EDC Patto Plaza,
Panaji, Goa.

...Respondents

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA IN THE INTEREST OF CONSERVATION OF FORESTS AND ECOLOGY AND ENVIRONMENT DUE TO DAMAGE CAUSED BY RAMPANT ILLEGAL MINING OF IRON AND MANGANESE ORE IN THE STATE OF GOA VIRTUALLY LEADING TO EXTINCTION OF LIMITED NATURAL RESOURCES AND CONTRIBUTING FRAGRANT ABUSE AND ARBITRARY EXERCISE OF ADMINISTRATIVE POWER

To,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION
JUDGES OF THE HON'BLE SUPREME COURT OF INDIA

The Humble Petition of the
Petitioners above-named

MOST RESPECTFULLY SHOWETH: -

The present Writ Petition under Article 32 of the Constitution of India, in the form prescribed for Public Interest Litigation, is being preferred before this

Hon'ble Court in the wake of the continuing illegal mining in the State of Goa in complete and flagrant violation of statutory norms, which not only raises issues of serious concerns about the adverse and irreparable damage caused to the ecology and degradation of environment in the State, but also on issues concerning transparency and accountability in the functioning of the Government.

ARRAY OF PARTIES:

That the Petitioner is a Society registered (Registration number – 23/Goa/86) in the year 1986 under the Societies Registration Act and is having its registered office at 7, Le Brag Chambers, Mapusa, Goa. Dr. Claude Alvares, Secretary of the Society has been authorized to sign and file the present petition. The aims and objects of the society are to protect the environment and to assist in the formulation of laws relating to environment and further to ensure the enforcement of such laws. The society in furtherance of its objects has filed several public interest litigations relating to protection of forests, National Parks, Sanctuaries, Coastal areas, mining violations and enforcement of the Environment Impact Assessment Notification etc. Certificate and Authority Letter are filed along with the

Vakalatnama.

That the Respondent No. 1 is the Union of India, through the Ministry of Environment and Forests which is responsible for ensuring that the provisions of the Forest (Conservation) Act, 1980 and other environment regulations including the Environment Protection Act, 1986 are implemented.

The Respondent No. 2 is the State of Goa. Its agencies, viz. the Forest Department, the Department of Mines and Geology, are concerned with the operation of mines in Goa.

The Respondent No. 3, is the Ministry of Mines which is the nodal ministry so far as Mining is concerned.

Respondent No.4 is the agency that is responsible under the mining laws to ensure that mining is carried out as per the norms and regulations in force.

Respondent No.5 is the Goa State Pollution Control Board which

grants consents to mine owners to operate their mines under the provisions of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, and the Hazardous Waste Rules.

FACTS OF THE CASE:

The subject matter of the present PIL relates to the issue of illegal mining in the State of Goa carried out in violation of the provisions of the Forest Conservation Act 1980, (FCA, 1980), the Indian Forest Act, 1927, National Forest Policy, other environment laws and the Mines and Minerals (Development & Regulation) Act, 1957 (MM(DR) Act, 1957), and Mineral Concession Rules, 1960, (MCR, 1960). When compared to the mining district of Bellary, where this Hon'ble Court has had sufficient grounds to pass stringent directions in public interest – the situation in Goa is far worse and grim in terms of the extent of illegal mining, plunder of public resources, collusion of authorities at all levels and total degeneration of the environment in terms of the impact of mining activities on forest, wildlife, depletion of ground water aquifers, contamination of public water sources and reservoirs including Selaulim Dam

and the Opa Water Works and destruction of the health of the public caused by pollution which is in excess of standards laid down by the Pollution Control Board. Surprisingly, the norms are not enforced. The illegal mining has led to an atmosphere of corruption and maladministration which threatens to destruct the ethical fabric of society. It appears as if rule of law is no longer existing as the concerned departments including the Indian Bureau of Mines, Ministry of Environment and Forests and Departments of State viz. the Forest Department, the Goa Pollution Control Board and the Department of Mines and Geology are all complicit in permitting the illegality to continue unabated. In any case, the situation till last week appeared to be out of control.

The petitioner organization has been pursuing the environmental impacts of mining since 1992 (20 years). The list of PIL writ petitions on environmental impacts of mining which have either been admitted or are pending disposal before the Bombay High Court is annexed to this petition as **Annexure P1**. All these petitions deal with various aspects of the negative impact of mining on environment and public health. Petitioners are filing appropriate applications for leave to withdraw these petitions

from before the Bombay High Court forthwith and are giving herewith an undertaking that they will not pursue these writ petitions in that Court in view of the present comprehensive petition which is filed now before this Hon'ble Court for set of reliefs only this Hon'ble Court may be able to grant. In most cases, final reliefs sought in terms of a halt to mining activities and cancellation of leases have now been met, temporarily at least, by the suspension orders issued by the State of Goa and by the Ministry of Environment & Forests in September 2012.

As a result of these suspension orders, all mining has ceased in the State of Goa. The suspension of mining has been caused by the tabling in Parliament of the first report of the Justice Retd. M.B. Shah Commission of Inquiry into Illegal Mining. The Justice Shah Commission was appointed vide Notification dated 22nd November 2010 for inquiring into the illegal mining of iron and manganese ore in Goa and six other States in which allegations of large-scale illegal mining have been constantly reported. The terms of reference of the Commission are as under :

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;

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;

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 persons responsible for such tampering; and

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 State Governments.

The Commission was also empowered to

recommend remedial measures to prevent such mining, trade, transportation and export done illegally or without lawful authority;

submit interim reports 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 such illegal mining, trade and transportation.

The Commission had its first sitting on 17.1.2011 and its term has now been extended till 16 July 2013. Due to the representation made by the petitioner and several other civil society groups,

the Commission visited Goa, conducted a public hearing and made subsequent visits to mine sites, surveyed the sites, inspected documents, queried officials, received representations in writing including documents from the petitioner and other parties. The Commission submitted an interim report in the year 2011 on which Action Taken Report (ATR) was submitted by the Ministry of Mines. On 15.3.2012, the Commission submitted a Goa-specific report on illegal mining in two parts. The report of the Commission is hereto annexed to this petition as **Annexure P2**. The Commission is yet to complete another round of investigations and submit the third and remaining part of its investigation on mining in Goa in the coming months. The investigation is focusing on additional and equally serious violations associated with mining activities in the State of Goa.

The petitioners submit that several issues raised by the petitioners with the statutory authorities and in the several writ petitions (now being withdrawn from the Bombay High Court), have been examined at length by the Commission and the Commission has seen fit to uphold most of the contentions raised. The Commission has come to the following unequivocal principal

finding concerning mining operations in the state of Goa:

“From the inquiry conducted by this Commission, it is apparent that all modes of illegal mining, as stated in the above notification, are being committed in the State of Goa.”

The following are inter alia the major findings of the Commission on specific issues relating to the validity and operations of Goa mining leases:

In Chapter 2 of the report, the Commission has found scandalous and large scale violations of the Forest Conservation Act 1980, National Forest Policy 1988 and other laws including Wildlife Act 1972, Water (Prevention and Control of Pollution) Act 1974, Air Act 1981, Environment Protection Act 1986 and Biodiversity Act in 2002. It has found that more than 20 of the mining leases were renewed without prior approval under the Forest Conservation Act 1980. It has found that all mining leases are operating in violation of this Hon'ble Court's orders dated 4.12.2006 in Writ Petition No. 460/2004 also filed by the present petitioner. The Commission found several mining leases operating in one km safety zone in

violation of the Supreme Court order dated 4.8.2006 in the *Godavarman* matter.

The Commission has found that despite being delegated the power, the Director of Mines and Geology and his officials intentionally did not visit or inspect mining leases for the past 5-6 years thereby knowingly enabling wide-spread illegal mineral extraction and illegal trade in these publicly owned resources.

Questionable/colourable decisions were taken by the Minister of Mines (who was also Chief Minister) to renew invalid or dead leases to favour individuals. All decisions were taken with full knowledge, considering the procedure for movement of files in the State of Goa.

There are 33 mines operating within 1.5 kms of wildlife sanctuaries or national parks.

There were mines in forest areas, eco-sensitive areas and close to streams and rivers thereby causing severe air and water pollution, degradation of the environment and loss of bio-diversity.

All 90 mines operating in Goa were functioning without the

mandatory permission from the National Board of Wild Life.

Iron Ore worth Rs.35,000 crores was plundered by the mining companies, thereby committing theft of Government property.

There was lack of co-ordination between the Department of Mines and the Goa State Pollution Control Board (GSPCB), both submitting different reports on whether individual mines were working or closed. Mines stated to be closed by the Department of Mines were working as per the GSPCB and vice versa.

The Commission has found several mining leases being favored by the Goa State Pollution Control Board which allowed them to mine without consents under the Air and Water Acts for varying periods of time, sometimes extending upto 6 years.

The Commission has found that directions of the Hon'ble High Court of Bombay in its judgment dated 18.7.2003 in W.P. No. 77/2001 have been brazenly violated by most mining companies in so far as mining dumps have been erected

without the approvals necessitated by that judgement.

Further, in respect of mining law itself, the Commission has found serious violations of Rule 24(A) of the Mineral Concession Rules 1960. It has found, for example, that 97 mining leases have been renewed in violation of Section 24(A) (4 and 5) of MCR 1960.

It has provided a list of 54 mining leases which were deemed to have been rejected under Rule 24 (A) but which were allowed to operate.

The Commission has found several mining leases which did not follow the procedure for first renewal under the MCR Rules, 1960.

The Commission has found that on several mining leases where first renewal was accorded for only 10 years, the mines involved were subsequently working under deemed extension.

The Commission's report has identified 42 mining leases where delay in application for first renewal was condoned arbitrarily and without jurisdiction by Mines Ministers. The delays ranged from 7 to nearly 20 years.

It has also found 16 mining leases operating in violation of Rule 38 of MCR 1960 which requires amalgamation of leases adjacent to each other prior to working.

Several mining leases have encroached areas outside their leases including 11,000 ha of forest.

Several mining leases have mining pits outside their lease area in complete violation of the MCR Rules.

The Commission in fact has declared that illegal mining in all modes is being conducted in the State of Goa and that the excess production of iron ore has affected the environment, eco-systems as well as polluted water and air and near about area. Millions of tonnes of ore have been removed from ecologically sensitive areas causing immense damage to ecosystems and public health.

A table showing various violations in respect of mining and the recommendations of the Commission is annexed hereto as **Annexure P3**. A table showing violations by working mining leases in respect of laws relating to environment and forest and mining laws as per the Commission's report is annexed hereto as **Annexure P4**.

As stated earlier, the full investigation of the Shah Commission of Enquiry into Illegal Mining is yet to be completed but after

perusal of report, the present situation indicates widespread unacceptable illegality. Not a single mine in the State of Goa have been found to be legal or working in legal manner by the Commission which is an unprecedented situation.

The Commission's report was submitted in March 2012, but was tabled in the Parliament with an ATR on 7th September 2012. Due to public outcry over the report and its findings and the discovery that as per the report the loss to the Indian economy is to the extent of Rs.35,000 crores, the Goa Government was forced to issue a temporary suspension order dated 10th September 2012 closing down all mining activity within the State of Goa which is hereto annexed to this petition at **Annexure P5**. This suspension however strangely would not affect "trade and transportation of ore already mined and existing in the lease-hold area, in transit or stores or stocked on the jetties." The Director of Mines & Geology was also to constitute teams for inspection of the quantities of ore. Petitioner is unhappy with the proposal to permit trade in existing stocks when the Commission has unambiguously questioned the validity of every working mine. The proper course of action is to carry out panchnama and then seize the stocks. This petition seeks such a relief.

A few days later, on 14.09.2012, the Ministry of Environment and

Forests took its own independent action and revoked the environment clearances of all 139 working mines for several violations of environmental regulations. Copy of the order suspending environment clearances en masse is at **Annexure P6**.

It also simultaneously issued show cause notices to 42 mining leases which were found to be excavating ore illegally from mining dumps without approvals. Copy of one show cause notice is at **Annexure P7**.

At present, as stated earlier, the mining activity in State of Goa is suspended, and the trading and transportation of extracted ore is continuing. However, this is not sufficient in view of the large scale and grave violations reported by Shah Commission. Remedial, curative and preventive steps as narrated hereinbelow are required to be taken, albeit with the intervention and supervision of this Hon'ble Court.

The spirit of Environmental Clearance system has been substantially wounded, resulting into amass of wealth by certain individuals / companies at the cost of environmental sustainability and ecosystem. None of the provisions of the following Environmental Laws were observed. Rather steps were taken by leaseholders to obviate provisions

thereof in connivance with public officers.

There is serious lapse on the part of MOEF of granting approvals for diversion of forest land for iron ore mining without placing proposals before standing committee of National Board for Wild Life. This has caused irreversible and irretrievable damage to ecosystem and immediate action is required to be taken wherever necessary and responsibility and accountability ought to be fixed on officers concerned.

The Chief Wild Life Warden (CWLW) has over stepped and extended undue favour to lessees by approving mining in the eco-sensitive zones wherein he has not been authorized by the MoEF. Even in such purported approvals the conditions stipulated, have never been complied and monitored.

MoEF has stipulated a condition to take prior approvals of CWLW whilst according Environmental Clearances, which was an undue favour extended to the lessees by choosing a soft non-competent authority. Action is required to be initiated by identifying such officers/officials for stipulating such conditions.

The transportation for all mining leases where there is no

approval or Clearance of the Standing Committee of the NBWL ought to be stopped forthwith.

All officers of the Forest Department including secretaries and ministers who have given approval for mining without being authorized and competent to do so are required to be identified. Similar exercise is to be done for the Officers, Board Members and Chairman of the Pollution Control Board who had granted consent for operation under the Water & Air Acts.

There is total lack of coordination among the three wings of the MoEF i.e. Environmental Clearance Section, Forest Conservation Section and Wild Life Section which has resulted into environmental and ecological damage.

The Director of Mines & Geology as well as Goa State Pollution Control Board has acted arbitrarily and discriminatory and shown undue favour to some of the lessees.

There should be further inquiry/investigation on certain specific violation committed by lessees and involvement of officers/politicians in the subject matter by a competent agency.

There is large scaled mining and over exploitation of

minerals resulting in changing of the natural eco-system of the area. The IBM and MoEF have increased production without any justification and purely on commercial grounds ignoring the impact of the same on the eco-system.

There is no action taken in the claims of waste dump mining in the eco-sensitive zone. This is a major illegality taking place in the State of Goa causing huge loss to the Government Exchequer and Environment.

There have been gross violations of the Section 21 of the Air Act and Section 25 of the Water Act during the entire period of mining operations since the enactment of these Acts. Unreasonable delays and non-compliance has caused substantial damage to the environment.

Since many years, a number of persons are continuing mining activities and are in possession of government land without executing any lease deed agreement for extraction of minerals. This is almost like a gifted property of thousands of crores in the hands of private companies/individuals.

Without any authority and power and provisions in law, delay in renewal applications was condoned and

the applications were entertained whilst at the same time having the same yardsticks, in some cases, delay was not condoned.

All the rules in respect of working of mines viz. Rule 24A(2), (4), (5) and (6) and Rule 38 of the MCR, 1960 were violated and mines were allowed to operate. This makes mining leases void and of no effect in view of the provisions of Section 19 of the MM (DR) Act, 1957. However, the mines were allowed to operate. Therefore, action ought to be taken against the officers concerned.

That there is estimated loss of Rs. 35,00,00,000 (Rupees thirty-five thousand crores) due to excavation and removal of mining ore above the mining limits. The iron ore is extracted/removed from outside the lease area and also from the forest areas which amount to theft of iron ore and warrants investigations and prosecution of offenders.

The Report of the Shah Commission inter alia observes that there is immediate requirement of taking steps for planning and conservation of iron ore for atleast 50 years. Whereas, if the permission as recommended by IBM and MoEF is taken into consideration then the reserve would last only for 9

years.

The state government has declared that it has set up a committee headed by Secretary (Mines), Goa Government, to examine the validity of the various mining leases impugned by Shah Commission with a view to their resuming mining operations. The Committee is headed by Secretary who is himself indicted in the Shah Commission Report. It appears that the committee is an eye-wash to restart mining in the state under any circumstances since the mine owners have got a control over the government, whatever the hue.

Though there has been action by the Ministry of Environment, no such steps are being taken by Ministry of Mines.

The Ministry has done rightly in suspending the environment clearances of all 139 mines, including 91 working mines. However, it did not do so for several years despite repeated reminders and protests not just from the petitioner but from the Goa government as well. Petitioner therefore does not feel assured that in these circumstances the action of the Ministry of Environment will be

maintained.

The Shah Commission has also indicted several officials located in the Ministry of Environment and Forests (both Delhi and Bangalore offices), officials of the State Pollution Control Board, Goa Government, Indian Bureau of Mines, etc., to be proceeded against not just for dereliction of duties but for active collusion with the mining lease holders to violate the law. It is doubtful that the State of Goa will file the necessary criminal complaints and thereafter prosecute them.

Vast environmental damage wreaked on the natural environment of beautiful Goa has to be halted and the areas rehabilitated. Without rehabilitation of existing devastated areas, no mining lease should be enabled to re-start mining operations.

The Justice Shah Commission has also directed recovery of all offending mining leases by the government and recovery of loss of Rs.35,000 crores from the parties concerned.

In such circumstances, petitioners feel that the Hon'ble Supreme Court would be the only appropriate forum for dealing with these widespread issues of public corruption and environment destruction since it has already done so in the case of Bellary District and Petitioner would welcome similar principles and

directions may be applied in the present context. Petitioners therefore seek setting up of an independent committee which will go into the issues raised by the Shah Commission. In the alternative, and as violations of FCA, 1980 are involved, this Hon'ble Court may be pleased to direct the Central Empowered Committee (CEC) to undertake this function and petitioner will cooperate. Till such time as the validity of each individual mining lease is examined by the committee, as also its harmony with environment protection laws is established, none should be allowed to restart mining activities without the express permission of this Hon'ble Court.

The Petitioner states that in view of the magnitude of the violations, the large scale illegal and rampant mining and complete failure of the Respondents, the so called steps taken by State of Goa and Ministry of Environment are not enough to curb the menace and the Petitioner does not feel assured that in these circumstances, the present so called action taken will be maintained by the Respondents. In any event, the Respondents themselves are guilty of violations and had participated in permitting the illegalities to continue. Therefore any steps taken by them are merely eyewash and of no consequence.

This Hon'ble Court has already in the year 2003/04 closed down several iron and manganese mines in the State of Goa. Upon

intervention by the CEC, it has issued an order for the closure of mines operating within Goa's Madei and Netravali Wildlife Sanctuaries. Madei has 2 operational ore mines and Netravali has 11 working iron ore mines and 17 other manganese ore mines. All mines operating within the Sanctuary limits and all persons connected with them were stopped from mining in the year 2003 and have remained shut ever since. The Hon'ble Bombay High Court, on a petition filed by the petitioner, directed the rehabilitation of the mined areas in the sanctuary.

This Hon'ble Court, in another petition filed by the Petitioner herein, viz., Writ Petition No. 460 of 2004, vide an Order dated 4th December 2006, directed that all Environmental Clearances granted to mine owners shall be referred to the Standing Committee of the National Board of Wild Life. The Order was communicated to all the States in India. However, the Ministry of Environment and Forests has not complied with the order. The Government of Goa has claimed that the Chief Wild Life Warden is competent to issue wildlife NOCs after due assessment without referring the case to the National Board of Wild Life. Therefore, the Environmental Clearances issued to the mines operational in Goa are all in contravention of the Order passed by the Supreme Court on 4th December 2006. Unless the persons granted the ECs are able to obtain NOC from the NBWL, the EC has no value.

Attempts were made by the Indian Bureau of Mines (IBM) and the Ministry of Mines, Government of India to carry out inspection of, and inquiries into the working of the mines in Goa. A Task Force was formed for the purpose, however due to inefficiency of the officers, no records or details were obtained of the owners of the mines or the survey numbers where the illegal activities were being carried out. There has been a complete breakdown of the functioning of the IBM. None of what has transpired would have come to pass if the IBM had followed the law. It colluded instead with powerful parties and enabled and oversaw illegal mining on a vast scale. Its officers need to be punished.

GROUNDS:

The Petitioner is seeking reliefs mentioned in the Petition on following amongst other grounds before this Hon'ble Court:-

It is submitted that no mining activities can be undertaken without having valid lease under the MM(DR) Act, 1957 and on the agriculture/ horticulture lands which are not converted to non-agricultural use. No such activities can be conducted on forest lands. Justice Shah Commission in its Report

observes that the total encroachment i.e. mining without proper lease and on agricultural/horticultural lands is about 2796.24 ha. and about 578.42 ha out of the same is illegally used for illegal extraction or removal of iron ore. The Commission observed that the total encroachment by way of excavation/ removal of iron ore from outside leased area was to the extent of 502.21 ha. This is in violation of Section 4(1) and 4(1-A) and 21(5) of MM(DR) Act, 1957 and are therefore liable for prosecution under Section 21 of MM(DR) Act, 1957 and also for theft of iron ore under the Indian Penal Code. They are also liable for recovery of cost of iron ore with exemplary penalty under Section 21(5) of the MM(DR) Act, 1957.

That as early as on 18.07.2003 the Hon'ble Bombay High Court at Goa in the judgement in ***Shri Laxman Venkatesh Savoikar and ors. V. State of Goa*** in **Writ Petition No. 77 of 2001** had inter alia issued directions in respect of mining activities to be undertaken in the State of Goa. It is submitted that the said direction are not observed till date. There have been complaints of active rejection dumps, removing old stable dumps and destruction of seasonal nallah/rainwater course by putting rejection. Also large number of trees are cut and destroyed with the help of earth moving machineries. The aforesaid act constitutes an offence under the Water (Prevention and Control of Pollution) Act, 1974, and attracts punishment

and penalty are provided under Section 45A of the said Water Act. Similarly these acts constitute an offence under the Air (Prevention and Control of Pollution) Act, 1981 and penalty and punishment is prescribed under Section 37 and 39 of the said Act for the non-compliance with the provisions of the same.

It is submitted that in the case of ***Rural Litigation & Entitlement Kendra v. State of U.P.*** reported in **1989 Supp(1) SCC 504**, this Hon'ble Court observed that compliance of Section 2 of the Forest Conservation Act is necessary. In the State of Goa, most of the leases are in the "forest area", as per the definition of forest given by the Hon'ble Supreme Court, in its order dated 12.12.1996 in Writ Petition No.202 of 1995. It was incumbent upon the lessees to approach the competent authority under the FCA for diversion of forest land before renewal of lease hold interest. Justice Shah Commission in his Report had observed that no such permission was obtained in many cases prior to renewal of leases. At the other hand, forest land has been diverted for non valid leases. It is therefore submitted that the continuation of mining operation is/was illegal and void since their first renewal application filed in (1987-88) onwards in all such cases, till the diversion of forest land obtained from Government of India. In the similar manner, the diversion of forest land for non-valid leases is also illegal. This is apparently in violation of Section 2 of the Forest (Conservation) Act, 1980. Therefore, in all

such cases where approval is accorded for diversion of forest land, the leases should be revoked/cancelled.

It is submitted that the Commission has found that several mining leases did not follow the procedure for first renewal under the MCR, 1960 and that application beyond the statutory period were entertained without jurisdiction by arbitrarily condoning the delay. The State Government could not have condoned delay in respect of mining leases outside the scope and ambit of Rule 24-A Sub-Rule (10) of the Mineral Concession Rules, 1960. In absence of any condoning power being vested in the Respondent No. 1 and 3, no condonation of delay could have been permitted in respect of renewals pertaining to mining leases that had already expired by efflux of time. The delay condonation and renewal granted in these cases are in violation of Rule 37 of MCR, 1960. The lessees are liable for action under Section 19 of the MM(DR) Act, 1957 and other consequential actions. This is also observed in the Shah Commission Report.

It is submitted that large scale mining, over exploitation of minerals has resulted in the change of the natural eco-system in the state of Goa. This has in turn affected the tourism industry of the state. The impact of mining including illegal mining has been felt. The Indian Bureau of Mines and Respondent No.1 have increased production without a proper justification

purely on commercial grounds ignoring the impact of mining on protected areas, environment and eco-system. This Hon'ble Court in **Rural Litigation & Entitlement Kendra, Dehradun and Ors. V. State of U.P. and Ors.** reported in **AIR 1985 SC 652** ordered closure of all limestone quarries in the Doon Valley taking notice of the fact that limestone quarries and excavation in the area had adversely affected water springs and environmental ecology. It said that whether the mines are within the reserved forests or in other forest area, the provisions of the Forest Conservation Act, 1980 apply. While commenting on the closure of the limestone quarries, the court stated that this would undoubtedly cause hardship to owners of the limestone quarries, but it is the price that has to be paid for protecting and safeguarding the right of the people to live in a healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, home, and agricultural land and undue affectation of air, water and environment.

It is submitted that approval of increased production by IBM is also in violation of the spirit of Rule 10(1) of Mineral Conservation (Development and Regulation) Act 1988. It is submitted that large scale violations have been allowed to continue and there exists complete inaction on part of the officials and authorities in absolute connivance. It is submitted that it is in the interests of the larger section of the society as also the environment

and the eco-system which has been pushed to the brink of destruction, that this industry having lost the characteristic of being a sustainable industry deserves to be stopped to prevent any further damage to the eco-system.

It is submitted that the iron and manganese ore are natural resources. It is therefore necessary their extraction is regularised so as not to deprive the future generations of the benefits of the non-renewal resources. The State of Goa is therefore ought to on priority basis undertake planning and conservation of iron ore. Justice Shah Commission in his report has observed that this can be achieved only by lowering the permission that is capping of production of iron ore by the concerned authorities. It is further observed that considering the permission granted for extraction of 66 million tonnes by IBM and MoEF, the reserve would last only for 9 years. It is therefore submitted that there is immediate need for intervention of this Hon'ble Court for issuing appropriate directions in this regard and till then to regulate and restrict the mining activities in the State of Goa.

That the environmental clearances were granted by the Respondent No. 1 without referring for approval to the standing committee of the National Board of Wild Life even though many leases fell within the buffer zone of 10 kms. This was inspite of direction of this Hon'ble Court in order dated 4

December 2006 in Writ Petition No. 460 of 2004. It is submitted that it has been observed in the Shah Commission Report that such approvals are in violation of law and arbitrary from which it can be concluded that undue favours have been shown. The exercise of these powers by the Chief Wild Life Warden was illegal, unjust and arbitrary. It is submitted that the mining activity undertaken in the State of Goa being in complete and blatant contravention of the requirements of the stipulations of the Wild Life Protection Act, 1972, the Petitioners are entitled to a direction against the Respondent Nos. 1, 2 and 3 to cancel/ revoke all such permissions granted in contravention of the stipulations of the Wild Life Protection Act, 1972.

That it is apparent that such renewals / clearances were granted by the public authorities in complete violation of provisions of law and therefore, the connivance of these public authorities with the private individuals and companies is also apparent. The case therefore warrants investigations into the irregularities by the specially appointed independent investigation agency.

That under the Environment (Protection) Act, 1987; Government of India issued Notification dated 27.10.1994 and Notification dated 14.9.2006 and amendments from time to time. It is mandatory on the part of lessees to

prepare and submit EIA under these Notifications and to take Environmental Clearance for the mining projects. Almost all mines worked till the year 2005-06 without having the approval under the 1994 Notification. Subsequently, they have taken delayed Environmental Clearances. In some cases, it is observed that Environmental Clearances were taken under the 1994 Notification but was not renewed under the 2006 Notification which was mandatorily required. In the Environmental Clearances granted for these leases, there were specific conditions stipulated for taking approval under the provisions of Wild Life (Protection) Act, 1972. It is submitted that unless all of aforesaid conditions were met no lease could be permitted to operate.

It is submitted that it has been held by this Hon'ble Court in the case of ***Rural Litigation & Entitlement Kendra, Dehradun and Ors. V. State of U.P. and Ors.*** reported in **AIR 1985 SC 652** that whether it is a case of first grant or renewal following exercise of option by the lessee, the compliance of Section 2 of the Forest Conservation Act is necessary as a condition precedent. It has also been held by the Andhra Pradesh High Court in the case of ***G. Raghava Das v. Govt. of A.P. and Ors.***, reported in **AIR 1987 AP 166** that the application for renewal of lease has to be treated as an application for a fresh lease for the purpose of Section 2 of the Act and the approval of the Central Government has to be necessarily obtained. In the

said case, the Deputy Director of Mines and Geology rejected the application on the ground that reserved areas should not be put to a non-forest use. Section 2 of the Forest (Conservation) Act, 1980 prohibits the grant of leases of any land situated in a reserve forest area. The Statement of Objects and Reasons indicates that the Act was passed with a view to check deforestation which had been taking place in the country on a large scale causing ecological imbalance leading to environmental deterioration. Respondent No. 3 having failed to adhere to this norm, the renewals granted in respect of mining leases existing in the 10 kms buffer zone of reserve forest area stand vitiated. The Petitioners are consequently entitled for a declaration/ direction against the Respondent No. 3 for revocation/ cancellation of renewals granted in favour of mining leases in violation of the stipulations of the Forest (Conservation) Act, 1980.

It is submitted that despite the provisions of the Indian Forest Act, 1927, and the fact that more than half the leases are in operation in forest land, all ore in the State of Goa continues to be transported out of the lease without a transit pass as required under the Act. This practice of not implementing the provisions of the Indian Forest Act in the State of Goa has been in force since the first government of Goa was installed after the departure of the colonial regime. Justice Shah Commission in his report had observed that all the ore extracted is exported to

foreign countries and there is unrestricted, unchecked and unregulated export of iron ore to China. Therefore there is urgent need to urgently supervise trading and transportation of ore.

It is submitted that the Respondent No. 1 devised what was known as “The National Forest Policy, 1988” to be followed in the management of State Forests in the country. It is submitted that in the preamble of the said policy, it is inter alia observed that forests in the country have suffered serious depletion due to inadequacy of protection measures; diversion of forest lands to non-forest uses without ensuring compensatory afforestation and essential environmental safeguards; and the tendency to look upon forests as revenue earning resource. The need to review the situation and to evolve, for the future, a new strategy of forest conservation has become imperative. Conservation includes preservation, maintenance, sustainable utilisation, restoration, and enhancement of the natural environment. It is submitted that in terms of the “Strategy” contemplated in terms of the said Policy the national goal should be to have a minimum of one-third of the total land area of the country under forest or tree cover. In the hills and in mountainous regions, the aim should be to maintain two-third of the area under such cover in order to prevent erosion and land degradation and to ensure the stability of the fragile eco-system. It is submitted that the National Forest Policy contemplated elaborate arrangements for the purpose of reversing the effects of denudation of forests and wild life and therefore it has become necessary to

repair, restore and re-vegetate the areas in accordance with established forestry practices in terms of the National Forest Policy, 1988 at the cost of all mining lessees / occupants operating in forest land and in land covered by trees.

It is submitted that this Hon'ble Court in the case of ***T.N. Godavarman Thirumalpad v. Union of India and Ors.*** Case reported in **(2002)10 SCC 606**, has held that "Environment" is a difficult word to define. It was further observed that environmental pollution was not an affair limited to an individual or individuals but the society as a whole accepted its duty to protect the environment. It was further observed that to protect and improve the environment is a Constitutional mandate. It is submitted that Part III of the Constitution of India guarantees unto all its citizens the Right to Life in form of Article 21. This Hon'ble Court in umpteen number of its judgments has declared that Right to Life impliedly includes within itself the Right to live in a healthy environment. It is submitted that Justice Shah Commission in its Report dated 7th September 2012 observed:-

“...In the years of 2008-09, 2009-10 and 2010-11, there is large quantity of difference between production (despatch) under permitted quantum and actuals. This excess

difference has been conveniently shown as “ore retrieved” from old dumps. On careful examination, it is noticed that such excess production claimed to be from old dumps is actually the ore extracted on proxy from the running mines. Actual minerals were removed from mining pits of regular mines but shown as dump handling. This could not have happened had the State Government, Director of Mines were vigilant enough to monitor and regulate through frequent field inspection. Actual loss in this regard would be submitted in Second Report...”

It is submitted that this Hon’ble Court in **Elizabeth Jacob Vs. District Collector, Idukki &Ors.** in **Civil Appeal No.8032 of 2001** has held that all departments should function in the interest of the public and for public good. Merely because a particular department or an authority functions under a particular statute, it does not follow that they should or could ignore the provisions of other statutes. Inter-departmental co-operation and coordination is vital for the smooth and successful functioning of the Government. But unfortunately there is thriving inter-departmental rivalries and a mutual non-caring attitude towards the functioning of other departments and enforcement of other statutes. Non-cooperation between

Revenue department and Forest department, Revenue department and Mines & Minerals department, Forest department and Mines & Mineral department, are too well known. Unless immediate and serious steps are taken for improving the co-ordination, cooperation and understanding among various departments, offenders will escape, violators will walk away, national resources will be swindled, and public interest will suffer. In view of these circumstances, and due to a complete lapse of system, there is urgent need of a committee which will go into the issues raised by the Justice Shah Commission and also control, supervise and regulate mining operations in the State of Goa.

4. AVERMENTS:

That the present petitioner has not filed any other petition in any High Court or the Supreme Court of India on the subject matter of the present petition. Petitions filed before the Bombay High Court are being withdrawn and are not being further prosecuted in view of this petition.

PRAYER

In view of the above facts and circumstances, it is most

respectfully prayed that this Hon'ble Court may be pleased:-

To issue a writ of mandamus or any other appropriate writ, order or direction, directing immediate steps to be initiated by the Respondents 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.

To issue writ of mandamus or any other appropriate writ order or direction, directing that no mining operation including trading and transportation in respect of the mining leases shall take place unless all the statutory sanctions, permissions and approvals are subsisting;

To issue writ of mandamus or any other appropriate writ order or direction, directing action against all the violators involved either directly or indirectly in illegal mining including those named in the report of Justice Shah Commission including, but not limited to under section 21 r/w section 4 (1) and 4 (1A) and 21 (5) of MM (DR) Act 1957 r/w Rule 24-A of mineral concession Rules 1960; section 45 (A) of water (prevention and control of pollution) Act 1974 ad section 37 and 39 of the AIR (prevention and Control of pollution) Act 1981, provisions of Indian Penal Code 1960;

To issue writ of mandamus or any other appropriate writ order or direction,

directing the recovery of the illegal wealth accumulated through illegal mining and related activity;

To issue a writ of mandamus or any other appropriate writ, order or direction, directing as null and void retrospectively all renewals, leases, sub-leases granted/ renewed in contravention of Rule 24 A of the Mineral Concession Rules, 1960.

To issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondent No. 1 to 5 to repair, restore and re-vegetate the area in accordance with established forestry practices in terms of the National Forest Policy, 1988 and to require all mining lessees / occupants operating in forest land and in land covered by trees to pay a fine and compensate for such repairs, restoration and revegetation;

To issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondent No. 1, 2 and 3 to prohibit any mining activity or transportation of already extracted ore or dump/ rejection without following provisions of the Indian Forest Act, 1927.

To issue a writ of mandamus or any other appropriate writ, order or direction for the appointment of an independent authority vested with full powers to take control, supervise and regulate mining operations in State

of Goa and to implement the provisions of law.

To issue a writ of mandamus or any other appropriate writ, order or direction for the prosecution of offenders / violators involved in loss / pilferage of state revenue, offences and illegalities committed in the mining activities in State of Goa and connivance of public servants in abetting and aiding the offences and illegalities in the mining activities in the State of Goa

To grant such other reliefs as this Hon'ble Court may deem fit and proper in light of the facts and circumstances of the case.

(PETITIONER)

