Goa Foundation vs Union Of India & Ors on 11 November, 2013

Equivalent citations: AIRONLINE 2013 SC 623

Bench: Fakkir Mohamed Ibrahim Kalifulla, A. K. Patnaik

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) No. 435 OF 2012

Goa Foundation … Petitioner

Versus

Union of India & Ors. … Respondents

WITH

WRIT PETITION (C) No. 99 OF 2013,

WRIT PETITION (C) No. 184 OF 2013,

TRANSFERRED CASE No.136 OF 2013
(ARISING OUT OF T. P. (C) No. 8 OF 2013),

TRANSFERRED CASE No.133 OF 2013
(ARISING OUT OF T.P.(C) No. 230 OF 2013),

TRANSFERRED CASE No.131 OF 2013
(ARISING OUT OF T.P.(C) No. 1441 OF 2013),

TRANSFERRED CASE No.132 OF 2013
(ARISING OUT OF T.P.(C) No. 1186 OF 2013),

TRANSFERRED CASE No.143 OF 2013
(ARISING OUT OF T.P.(C) No. 574 OF 2013),

TRANSFERRED CASE No.140 OF 2013
(ARISING OUT OF T.P.(C) No. 766 OF 2013),

TRANSFERRED CASE No.142 of 2013
(ARISING OUT OF T.P.(C) No. 770 OF 2013),

TRANSFERRED CASE No.141 OF 2013
(ARISING OUT OF T.P.(C) No. 776 OF 2013),

TRANSFERRED CASE No.139 OF 2013
(ARISING OUT OF T.P.(C) No. 836 OF 2013),

TRANSFERRED CASE No.134 OF 2013
(ARISING OUT OF T.P.(C) No. 864 OF 2013),

TRANSFERRED CASE No.135 OF 2013
(ARISING OUT OF T.P.(C) No. 866 OF 2013),

AND

TRANSFERRED CASE No.138 OF 2013
(ARISING OUT OF T.P.(C) No. 869 OF 2013),

Judgement

A. K. PATNAIK, J.

1. This batch of Writ Petitions and Transferred Cases relate to mining in the State of Goa and as issues raised are common to the Writ Petitions and the Transferred Cases, the cases have been analogously heard and are being disposed of by this common judgment.

Facts relating to mining in Goa:

2. Prior to 19.12.1961 when Goa was a Portuguese territory, its Portuguese Government had granted mining concessions in perpetuity to concessionaires. On 19.12.1961, Goa was liberated and became part of the Indian Union and on 01.10.1963, the Mines and Minerals (Development & Regulation) Act, 1957 (for short 'the MMDR Act') was made applicable to the State of Goa. On 10.03.1975, the Controller of Mining Leases issued a notification calling upon every lessee and sub-lessee to file returns under Rule 5 of the Mining Leases (Modification of Terms) Rules, 1956 and sent copies of the notification to the concessionaires in Goa. Aggrieved, the concessionaires moved the Bombay High Court, Goa Bench, and by judgment dated 29.09.1983, in Vassudeva Madeva Salgaocar vs. Union of India [1985(1) Bom. CR 36], the Bombay High Court restrained the Union of India from treating the concessions as mining leases and from enforcing the notification against the concessionaires.

3. Parliament thereafter passed the Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987 (for short 'the Abolition Act') which received the assent of the President on 23.05.1987. Section 4 of the Abolition Act abolished the mining concessions and declared that with effect from the 20th day of December, 1961, every mining concession will be deemed to be a mining lease granted under the MMDR Act and that the provisions of the MMDR Act will apply to such mining lease. Section 5 of the Abolition Act further provided that the concession holder shall be deemed to have become a holder of the mining lease under the MMDR

Act in relation to the mines in which the concession relates and the period of such lease was to extend upto six months from the date when the Abolition Act received President's assent, i.e. upto 22.11.1987. On 14.10.1987, sub-rules (8) and (9) were inserted in Rule 24A of the Mineral Concession Rules, 1960 (for short 'the MC Rules') which deal with renewal of mining leases in Goa, Daman and Diu. The Abolition Act was challenged by the lessees before the Bombay High Court in a writ petition. The High Court passed an interim order permitting the lessees to carry on mining operations and the mining business in the concessions for which renewal applications had been filed under Rule 24A of the MC Rules. Subsequently, the High Court held in its judgment dated 20.06.1997 that the Abolition Act was valid but Section 22(i)(a) of the Abolition Act would operate prospectively and not retrospectively. The concessionaires filed special leave petition against the judgment dated 20.06.1997 before this Court. On 02.03.1998, this Court passed an interim order permitting the concessionaires to carry on mining operations and mining business in the mining areas for which renewal applications have been made on the condition that the lessee pays to the Government dead rent from the date of commencement of the Abolition Act. Subsequently, this Court granted leave in the special leave petition and continued the aforesaid interim order.

The Justice Shah Commission and its report:

> 4. As reports were received from various State Governments of widespread mining of iron ore and manganese ore in contravention of the provisions of the MMDR Act, the Forests (Conservation) Act 1980, the Environment (Protection) Act, 1986 and other rules and guidelines issued thereunder, the Central Government appointed the Justice Shah Commission under Section 3 of the Commissions of Inquiry Act, 1952 by notification dated 22.11.2010.

Paras 2 and 3 of the notification, which are relevant, are extracted hereinbelow:

> "2. The terms of reference of the Commission shall be-
>
> (i) 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;
>
> (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 and boundaries, to facilitate illegal mining and identify, 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 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.

3. The Commission shall also recommend remedial measures to prevent such mining, trade, transportation and export done illegally or without lawful authority." The Justice Shah Commission visited Goa and issued notices under Section 4 of the Commissions of Inquiry Act, 1952 calling for information from concerned authorities and the lessees and submitted its interim report on 15.3.2012 to the Ministry of Mines, Union of India. On 7.9.2012, the Justice Shah Commission Report on Goa was tabled in Parliament along with an Action Taken Report of the Ministry of Mines and on 10.9.2012 the State Government of Goa passed an order suspending all mining operations in the State of Goa with effect from 11.9.2012.

5. Pursuant to this order of the State Government, on 11.09.2012 and 12.09.2012 the District Magistrates of the State of Goa banned transportation of iron ore in their respective districts and the Director of Mines and Geology ordered for verification of mineral ore which was already extracted. On 13.9.2012, the Director of Mines and Geology, Government of Goa issued Show Cause Notices to 40 mining leases. On 14.9.2012, the Ministry of Environment and Forests of the Union of India also directed that all Environmental Clearances granted to mines in the State of Goa be kept in abeyance.

6. On the basis of findings in the report of the Justice Shah Commission on illegal mining in the State of Goa, the Goa Foundation has filed Writ Petition (C) 435 of 2012 as Public Interest Litigation praying for directions to the Union of India and the State of Goa to take steps for termination of the mining leases of lessees involved in mining in violation of the Forest (Conservation) Act, 1980, the Mines and Minerals (Regulation and Development) Act, 1957, the Mineral Concessions Rules, 1960, the Environment (Protection) Act, 1986, the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 as well as the Wild Life (Protection) Act, 1972. The Goa Foundation has prayed that a direction be issued to the respondents to prosecute all those who have committed offences under the different laws and are involved in the pilferage of State revenue through illegal mining activities in the State of Goa including the public servants who have aided and abetted the offences. The Goa Foundation has also sought for appointment of an independent authority with full powers to take control, supervise and regulate mining operations in the State of Goa and to ensure the implementation of the laws. Besides, the aforesaid main reliefs, the Goa Foundation has also prayed for some incidental and consequential reliefs. On 5.10.2012, this Court issued notice in Writ Petition (Civil) No. 435 of 2012 to the respondents and directed the Central Empowered Committee (for short "CEC") to submit its report on the writ petition and also directed that till further orders, all mining operations in the leases identified in the report of the Justice Shah Commission and transportation of iron ore and manganese ore from those leases, whether lying at the mine-head or stockyards, shall remain suspended, as recommended in the report of the Justice Shah Commission.

7. Different mining lessees of the State of Goa and the Goa Mining Association also filed Writ Petitions in the Bombay High Court, Goa Bench for a declaration that the report of the Shah Commission is illegal and for quashing the findings in the report of the Justice Shah Commission and also for quashing the order dated 10.9.2012 of the Government of Goa suspending mining operations in the State of Goa and the order dated 14.9.2012 of the Ministry of Environment and Forests, Government of India, directing that the Environmental Clearances granted to the mines in the State of Goa be kept in abeyance. These Writ Petitions have been transferred to this Court for hearing along with the hearing of Writ Petition (Civil) No. 435 of 2012 filed by the Goa Foundation.

8. The Writ Petitions and the Transferred Cases were heard during September, October and November, 2013. On 11th November, 2013, an order was passed by this Court directing that the inventory of the excavated mineral ores lying in different mines/stockyards/jetties/ports in the State of Goa made by the Department of Mines and Geology of the Government of Goa be verified and thereafter the whole of the inventorised mineral ores be sold by e-auction and the sale proceeds (less taxes and royalty) be retained in separate fixed deposits (lease-wise) by the State of Goa till the Court delivers the judgment in these matters on the legality of the leases from which the mineral ores were extracted. The Court has also directed that this entire process of verification of the inventory, e- auction and deposit of sale proceeds be monitored by a Monitoring Committee appointed by the Court. By the said order dated 11.11.2013, this Court also constituted an Expert Committee to conduct a macro EIA Study on what should be the ceiling of annual excavation of iron ore from the State of Goa considering its iron ore resources and its carrying capacity, keeping in mind the principles of sustainable development and inter-generational equity and all other relevant factors. On 11.11.2013 the case was also reserved for judgment.

Challenge to the Report of the Justice Shah Commission:

9. As we have already noticed, in the cases transferred from the Bombay High Court to this Court, the mining lessees have prayed for quashing the report of the Justice Shah Commission. Mr. K.K. Vengupal, learned senior counsel appearing for the mining lessees, submitted that the Justice Shah Commission did not issue any notice under Section 8B of the Commissions of Inquiry Act, 1952 to the mining lessees giving a reasonable opportunity of being heard in the inquiry and to produce evidence in their defence. He further submitted that the Justice Shah Commission also did not permit the mining lessees to cross examine the witnesses, to address the Commission and to be represented by legal practitioners before the Commission contrary to the provisions of Section 8C of the Commissions of Inquiry Act, 1952. He submitted that even otherwise there is gross breach of the principles of natural justice and fair play by the Justice Shah Commission and, therefore, the report of the Commission was violative of Article 14 of the Constitution. He submitted that the report of the Justice Shah Commission should, therefore, be quashed. In support of this submission, he relied on the decisions of this Court in Kiran Bedi v. Committee of Inquiry and another [(1989) 1 SCC 494], State of Bihar v. L.K. Advani [(2003) 8 SCC 361] and Union of India v. Tulsiram Patel [1985(3) SCC 398].

10. Mr. Mohan Prasaran, learned Solicitor General for the Union of India, on the other hand, submitted that as the notification dated 22.11.2010 of the Central Government appointing the

Justice Shah Commission under Section 3 of the Commissions of Inquiry Act, 1952 would show, reports were received from various State Governments of widespread mining of iron ore and manganese ore in contravention of the MMDR Act, the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 or other Rules and Licenses issued thereunder and for this reason, the Central Government appointed the Justice Shah Commission for the purpose of making inquiry into these matters of public importance. He submitted that after the Justice Shah Commission submitted the report pointing out various illegalities, the Union Government has kept the environment clearances in abeyance and it will take legal action on the basis of its own assessment of the facts and not on the basis of the facts as found in the Justice Shah Commission's report. Similarly, Mr. Atmaram N.S. Nadkarni, the Advocate General appearing for the State of Goa, submitted that after going through the report of the Justice Shah Commission, the State Government has suspended all mining and transportation of ores and no legal action will be taken against the mining lessees on the basis of the findings in the Justice Shah Commission's report unless due opportunity is given to the mining lessees to place their defence against the findings of the Justice Shah Commission.

11. We find that Section 8B of the Commissions of Inquiry Act, 1952 provides that if a person is likely to be prejudicially affected by the inquiry, the Commission shall give to that person a reasonable opportunity of being heard and to produce evidence in his defence and Section 8C of the Commissions of Inquiry Act, 1952 provides that every such person will have a right to cross-examine and the right to be represented by a legal practitioner before the Commission. As the State Government of Goa has taken a stand before us that no action will be taken against the mining lessees only on the basis of the findings in the report of the Justice Shah Commission without making its own assessment of facts and without first giving the mining lessees the opportunity of hearing and the opportunity to produce evidence in their defence, we are not inclined to quash the report of the Justice Shah Commission on the ground that the provisions of Sections 8B and 8C of the Commissions of Inquiry Act, 1952 and the principles of natural justice have not been complied with. At the same time, we cannot also direct prosecution of the mining lessees on the basis of the findings in the report of the Justice Shah Commission, if they have not been given the opportunity of being heard and to produce evidence in their defence and not allowed the right to cross-examine and the right to be represented by a legal practitioner before the Commission as provided in Sections 8B and 8C respectively of the Commissions of Inquiry Act, 1952. We will, however, examine the legal and environmental issues raised in the report of the Justice Shah Commission and on the basis of our findings on these issues consider granting the reliefs prayed for in the writ petition filed by Goa Foundation and the reliefs prayed for in the writ petitions filed by the mining lessees, which have been transferred to this Court.

Whether the leases held by the mining lessees have expired:

12. According to the Justice Shah Commission report, prior to 7th January, 1993, sub-rule (4) of Rule 24A of the MC Rules provided that the renewal application of the lessee is required to be disposed of within six months from the date of its receipt and sub rule (5) of Rule 24A provided that if the application is not disposed of within stipulated time, the same shall be deemed to have been refused. The Justice Shah Commission has found that the applications of several mining leases for

renewal were not disposed of within the stipulated time and there was no provision in the MC Rules to condone the delay and, therefore, these leases are in contravention of the MC Rules and are void and have no effect as provided in Section 19 of the MMDR Act.

13. The CEC in its report has stated that under Section 4 of the Abolition Act, the concessions were abolished from 23rd May, 1987 and treated as deemed leases under the MMDR Act and the period of deemed leases under Section 5 of the Abolition Act was extended upto six months with effect from the date of assent to the Abolition Act (23rd May, 1987) i.e. upto 22nd November, 1987. The CEC has further stated that by notifications dated 20th November, 1987 and 20th May, 1988, however, the Government of Goa allowed extension of six months each (totaling one year) for making applications for the first renewal of deemed mining leases and this one year period expired on 22nd November, 1988. The CEC has further stated that as per the information provided to the CEC, out of 595 mining concessions abolished and converted into deemed mining leases under Section 4 of the Abolition Act, as many as 379 deemed mining lease holders have filed applications for the first renewal of the mining leases before 22nd November, 1988 and 59 such leases have filed applications for the first renewal of the deemed mining leases after 22nd November, 1988, i.e., beyond the time limit permitted under Rule, 24A(8) of the MC Rules.

14. In reply, learned counsel for the lessees and Mr. Arvind Datar, learned senior counsel appearing for the State of Goa, submitted that sub- rules (4) and (5) of Rule 24A of the MC Rules did not apply to the State of Goa. They submitted that sub-rules (8) and (9) of Rule 24A of the MC Rules apply specifically to the State of Goa and sub-rule (8) of Rule 24A of the MC Rules provides that an application for the first renewal of the deemed mining lease referred to in Section 4 of the Abolition Act shall be made to the State Government in Form 'J' before the period of six months of the mining lease as provided in Section 5(1) of the Abolition Act. They submitted that the proviso to sub-rule (8) of Rule 24A of the MC Rules conferred power on the State Government to extend time for making such application upto a total period not extending one year. They submitted that, by two notifications, the State Government extended time for a period of one year upto 22.11.1988 and within this period most of the lessees have applied for the first renewal of the deemed mining lease. Learned counsel for the lessees and learned counsel for the State of Goa submitted that sub- rule (9) of Rule 24A of the MC Rules makes it clear that if an application for first renewal is made within the time referred to in sub-rule (8) of Rule 24A of the MC Rules or within the time allowed by the State Government under the proviso to sub-rule (8) of Rule 24A of the MC Rules, the period of that lease shall be deemed to have been extended by a further period till the State Government passes orders thereon.

15. For easy reference, Chapter II containing Sections 4 and 5 of the Abolition Act is extracted hereinbelow:

> "CHAPTER II ABOLITION OF MINING CONCESSIONS AND DECLARATION AS MINING LEASES UNDER THE MINES AND MINERALS ACT
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> 4. (1) Every mining concession specified in the First Schedule shall, on and from the appointed day, be deemed to have been abolished, and shall, with effect from that

> day, be deemed to be a mining lease granted under the Mines and Minerals Act, and the provisions of that Act shall, save as otherwise provided in this Act, apply to such mining lease.

(2) Every mining concession specified in the Second Schedule shall, on and from the day next after the date of grant of the said concession and specified in the corresponding entry in the eighth column of the said Schedule, be deemed to have been abolished, and shall, with effect from that day, be deemed to be a mining lease granted under the Mines and Minerals Act, and the provisions of that Act shall, save as otherwise provided in this Act, apply to such mining lease.

(3) If, after the date of assent, the Central Government is satisfied,. whether from any information received by it or otherwise, that there has been any error, omission or misdescription in relation to the particulars of any mining concession or the name and residence of any concession holder specified in the First or the Second Schedule, it may, by notification, correct such error, omission or misdescription, and on the issue of such notification, the First or the Second Schedule, as the case may be, shall be deemed to have been amended accordingly.

5. (1) Where a mining concession has been deemed to be a mining lease under section 4, the concession holder shall, on and from the day mentioned in that section, be deemed to have become the holder of such mining lease under the Mines and Minerals Act in relation to the mine to which the mining concession relates, subject to the condition that the period of such lease shall, notwithstanding anything contained in that Act, extend up to a period of six months from the date of assent.

(2) On the expiry of the period of any mining lease under sub- section (1), it may, if so desired by the holder of such lease and on an application being made by him in accordance with the provisions of the Mines and Minerals Act and the rules made thereunder, be renewed on such terms and conditions, and up to the maximum period for which, such lease can be renewed under the provisions of that Act and the rules made thereunder."

16. For easy reference, Rule 24A of the MC Rules is also extracted hereinbelow:

> "24A. Renewal of mining lease. – (1) An application for the renewal of a mining lease shall be made to the State Government in Form J, at least twelve months before the date on which the lease is due to expire, through such officer or authority as the State Government may specify in this behalf.
>
> (2) The renewal or renewals of a mining lease granted in respect of a mineral specified in Part 'A' and Part 'B' of the First Schedule to the Act may be granted by the State Government with the previous approval of the Central Government.;
>
> (3) The renewal or renewals of a mining lease granted in respect of a mineral not specified in Part 'A' and Part 'B' of the First Schedule to the Act may be granted by the State Government.;

Provided that before granting approval for second or subsequent renewal of a mining lease, the State Government shall seek a report from the Controller General, Indian Bureau of Mines, as to whether it would be in the interest of mineral development to grant the renewal of the mining lease.

Provided further that in case a report is not received from Controller General, Indian Bureau of Mines in a period of three months of receipt of the communication from the State Government, it would be deemed that the Indian Bureau of Mines has no adverse comments to offer regarding the grant of the renewal of mining lease.

(4) An application for the renewal of a mining lease shall be disposed of within a period of six months from the date of its receipt. (Omitted) (5) If an application is not disposed of within the period specified in sub-rule (4) it shall be deemed to have been refused. (Omitted) (6) If an application for the renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of the lease shall be deemed to have been extended by a further period till the State Government passes order thereon.

(7) Omitted.

(8) Notwithstanding anything contained in sub-rule (1) and sub-rule (6), an application for the first renewal of a mining lease, so declared under the provisions of section 4 of the Goa, Daman and Diu Mining Concession (Abolition and Declaration as Mining Lease) Act,1987, shall be made to the State Government in Form J before the expiry of the period of mining lease in terms of sub-section (1) of section 5 of the said Act, through such office or authority as the State Government may specify in this behalf:

> Provided that the State Government may, for reasons to be recorded in writing and subject to such conditions as it may think fit, allow extension of time for making of such application up to a total period not exceeding one year.
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> (9) If an application for first renewal made within the time referred to in sub-rule (8) or within the time allowed by the State Government under the proviso to sub-rule (8), the period of that lease shall be deemed to have been extended by a further period till the State Government passes orders thereon.
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> (10) The State Government may condone delay in an application for renewal of mining lease made after the time limit prescribed in sub-

rule (1) provided the application has been made before the expiry of the lease."

17. Sub-rule (8) of Rule 24A of the MC Rules has been inserted by G.S.R. 855(E), dated 14th October, 1987 and this sub-rule (8) of Rule 24A of the MC Rules provides that notwithstanding anything contained in sub-rule (1) and sub-rule (6), an application for the first renewal of a deemed mining lease, referred to in Section 4 of the Abolition Act, shall be made to the State Government in

Form J before the expiry of the six months period of deemed mining lease as provided in Section 5 (1) of the Abolition Act. The proviso to sub-rule (8) of Rule 24A of the MC Rules, however, empowers the State Government to extend the time for making such application upto a total period not extending one year. In exercise of these powers in the proviso to sub-rule (8) of Rule 24A of the MC Rules, the State Government of Goa has, in fact, extended time for making applications for first renewal upto 22.11.1988, by two notifications dated 20.11.1987 and 20.05.1988. Sub-rule (9) of Rule 24A of the MC Rules, which was also inserted by G.S.R. 855(E), dated 14th October, 1987, reads as follows:

> "In an application for first renewal made within the time referred to in sub-rule (8) or within the time allowed by the State Government under the proviso to sub-rule (8), the period of that lease shall be deemed to have been extended by a period of one year from the date of expiry of lease or date of receipt of application, whichever is later, provided that the period of deemed extension of lease shall end with the date of receipt of the orders of the State Government thereon, if such orders are made earlier." Sub-rule (9) was substituted by G.S.R. 724(E) dated 27th September, 1994 by the existing sub-rule (9) (extracted above) to provide that if an application for first renewal is made within the time referred to in sub- rule (8) or within the time allowed by the State Government under the proviso to sub-rule (8), the period of that lease shall be deemed to have been extended by a further period till the State Government passes orders thereon. In our considered opinion, the intention of rule-making authorities is very clear from sub-rule (9) as was originally inserted by G.S.R. 855(E), dated 14th October, 1987 and sub-rule (9) as was substituted by G.S.R. 724(E), dated 27th September, 1994, that until orders were passed by the State Government on an application for first renewal of a lease filed by a lessee within the time allowed, the lease was deemed to have been extended.
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> 18. The lessees have contended that they had filed their applications by 22.11.1988, i.e. the date up to which the State Government had allowed time under the proviso to sub-rule (8) of Rule 24A of the MC Rules. The State Government has also taken the stand that most of the applications for first renewal were filed within the time allowed by the State Government and this stand is also supported by the facts found by the CEC. The result is that most of the mining leases in which the State Government has not passed orders are deemed to have been extended under sub-rule (9) of Rule 24A of the MC Rules. Hence, the finding in the Justice Shah Commission report that the applications for renewal were not disposed of within the stipulated time and the leases are in contravention of the MC Rules is, thus, not correct. This opinion of the Justice Shah Commission, as we have noticed, was based on sub-rules (4) and (5) of Rule 24A of the MC Rules, which were applicable generally to an application for renewal of mining leases, stood excluded to the extent specific provisions have been subsequently made by the rule-making authorities in sub-rules (8) and (9) of Rule 24A of the MC Rules in respect of the deemed leases in Goa.

19. Mr. Prashant Bhushan, learned counsel for the Goa Foundation, however, submitted that sub-section (2) of Section 8 of the MMDR Act prior to its amendment provided that a mining lease may be renewed for only ten years and, therefore, if the deemed mining leases of the lessees expired on 22.11.1987, even if the lease was renewed on the application of first renewal made by the lessees in Goa, the period of lease under the first renewal would expire on 21.11.1997 and after 21.11.1997, there can be no deemed extension. Alternatively, he submitted that sub-section (2) of Section 8 of the MMDR Act as amended by Act 25 of 1994 provided that the mining lease may be renewed for a maximum period not exceeding twenty years. He submitted that as the deemed mining leases expired on 22.11.1987, the lessees would be entitled to a renewal for a maximum period of twenty years upto 21.11.2007 and after 21.11.2007, the lessees would not be entitled to any renewal and hence the lessees were not entitled to operate the lease beyond 21.11.2007.

20. Learned counsel for the lessees, on the other hand, submitted that sub-section (3) of Section 8 of the MMDR Act makes it clear that notwithstanding anything contained in sub-section (2) of Section 8 of the MMDR Act, the State Government can authorise renewal of a mining lease in respect of minerals not specified in Part A and Part B of the First Schedule for a further period or periods not exceeding twenty years in each case. They submitted that iron ore is specified in Part C in the First Schedule and hence the State Government can authorise renewal of the mining lease in respect of iron ore for a period or periods not exceeding twenty years in each case. They also referred to sub-rule (3) of Rule 24A which provided that renewal or renewals of a mining lease granted in respect of a mineral not specified in Part A and Part B of the First Schedule to the MMDR Act may be granted by the State Government provided that before granting approval for second or subsequent renewal of a mining lease, the State Government shall seek a report from the Controller General, Indian Bureau of Mines, as to whether it would be in the interest of mineral development to grant the renewal of the mining lease. Learned counsel for the lessees submitted that as the application of the lessees for renewal of mining leases have not been disposed of by the State Government before the date of expiry of lease, the period of lease shall be deemed to have been extended by a further period till the State Government passes orders thereon as provided in sub-rule (6) of Rule 24A of the MC Rules. They submitted that it will be clear from sub-rule (6) of Rule 24A of the MC Rules that the intention of rule-making authorities is that there may not be any hiatus in mining, and mineral development in the country may continue without break, without any loss to the economy and loss of revenue to the Government. They cited the judgment of this Court in State of U.P. & Ors. v. Lalji Tandon (dead) through LRs. [(2004) 1 SCC 1], in which this Court has held that there is a difference between an extension of lease and renewal of lease and whereas in the case of extension of lease it is not necessary to have a fresh deed of lease executed, in case of renewal of lease, a fresh deed of lease shall have to be executed between the parties.

They also cited Tata Iron and Steel Company Ltd. v. Union of India & Anr. [(1996) 9 SCC 709] in support of their argument that under sub-section (3) of Section 8 of the MMDR Act, the Government can renew the mining lease for a further period if it was in the interest of mineral development.

21. Mr. Nadkarni, learned Advocate General for the State of Goa, submitted that the then State Government of Goa allowed the working of the mines from 2007 till 2012 based on deemed extension status but it has been decided by the State Government now in the Goa Mining Policy of 2013 that no mine can be allowed on deemed extension basis. The clear stand of the State Government of Goa in the resume of arguments filed by the learned Advocate General Mr. Nadkarni is that the deemed extension status would not mean that a mine can be allowed to run indefinitely without a decision on the renewal application.

22. Section 8 of the MMDR Act is extracted hereinbelow:

> "8. Periods for which mining leases may be granted or renewed (1) The maximum period for which a mining lease may be granted shall not exceed thirty years:
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> Provided that the minimum period for which any such mining lease may be granted shall not be less than twenty years;
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> (2) A mining lease may be renewed for a period not exceeding twenty years]:
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> (3) Notwithstanding anything contained in sub-section (2), if the State Government is of opinion that in the interests of mineral development it is necessary so to do, it may, for reasons to be recorded, authorise the renewal of a mining lease in respect of minerals not specified in Part A and Part B of the First Schedule for a further period or periods not exceeding twenty years in each case.
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> (4) Notwithstanding anything contained in sub-section(2) and sub-

section (3), no mining lease granted in respect of mineral specified in Part A or Part B of the First Schedule shall be renewed except with the previous approval of the Central Government."

23. Sub-section (1) of Section 8 of the MMDR Act, which provides the maximum and minimum periods for which a mining lease may be granted will not apply to deemed mining leases in Goa because sub-section (1) of Section 5 of the Abolition Act provides that the period of such deemed mining leases will extend upto six months from the date of assent notwithstanding anything contained in the MMDR Act. In other words, notwithstanding anything contained in sub-section (1) of Section 8 of the MMDR Act, the period of a deemed mining lease in Goa was to expire on 22.11.1987 (six months from the date of assent). Under sub-section (2) of Section 8 of the MMDR Act, a mining lease may be renewed for a period not exceeding twenty years. Sub-section (3) of Section 8, however, provides that notwithstanding anything contained in sub-section (2), if the State Government is of the opinion that in the interest of mineral development, it is necessary so to do, it

may for reasons to be recorded, authorise the renewal of a mining lease in respect of minerals not specified in Part A and Part B of the First Schedule for a further period or periods not exceeding twenty years in each case. Thus, renewal beyond the first renewal for a period of twenty years is conditional upon the State Government forming an opinion that in the interest of mineral development, it is necessary to do so and also conditional upon the State Government recording reasons for such renewal of a mining lease in respect of iron ore which is not specified in Part A and Part B of the First Schedule. In Tata Iron and Steel Company Ltd. v. Union of India & Anr. (supra), this Court has held that the language of sub- section (3) of Section 8 is quite clear that ordinarily a lease is not to be granted beyond the time specified in sub-section (2) and only if the Government is of the view that it would be in the interest of mineral development, it is empowered to renew lease of a lessee for a further period after recording sound reasons for doing so. This Court has further held in the aforesaid case that this measure has been incorporated in the legislative scheme as a safeguard against arbitrariness and the letter and spirit of the law must be adhered to in a strict manner.

24. The MC Rules have been made under Section 13 of the MMDR Act by the Central Government and obviously could not have been made in a manner inconsistent with the provisions of the Act. Sub-rule (6) of Rule 24A of the MC Rules provides that if an application for the renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of the lease shall be deemed to have been extended by a further period till the State Government passes order thereon. This sub-rule cannot apply to a renewal under sub-section (3) of Section 8 of the MMDR Act because the renewal under this provision cannot be made without express orders of the State Government recording reasons for renewal in the interest of mineral development. In other words, so long as there is a right of renewal in the lessee which in the case of a mining lease is for a maximum period of twenty years, the provision regarding deemed extension of a lease can operate, but if the right of renewal of a mining lease is dependent upon the State Government forming an opinion that in the interest of mineral development it is necessary to do so and the State Government recording reasons therefor, a provision regarding deemed extension till orders are passed by the State Government on the application of renewal cannot apply. We are, therefore, of the opinion that sub-rule (6) of Rule 24A of the MC Rules will apply to a case of first renewal under sub-section (2) of Section 8 of the MMDR Act other than a case covered under sub-rule (9) of Rule 24A of the MC Rules, but will not apply to renewal under sub-section (3) of Section 8 of the MMDR Act. In our view, the deemed mining leases of the lessees in Goa expired on 22.11.1987 under sub-section (1) of Section 5 of the Abolition Act and the maximum of 20 years renewal period of the deemed mining leases in Goa as provided in sub-section (2) of Section 8 of the MMDR Act read with sub-rules (8) and (9) of Rule 24A of the MC Rules expired on 22.11.2007.

Whether dump can be kept beyond the lease area:

25. The report of the Justice Shah Commission states that about 2796.24 ha of area have been found to be under encroachment by the mining lessees out of which about 578.42 ha have been found to have been illegally used for extraction/removal of iron ore. The CEC in its report has stated that the CEC visited some of the areas stated to be under encroachments and a number of lease holders have

filed representations against the findings of the Shah Commission stating that they are not involved in any encroachment. According to the Goa Foundation, this was a gross illegality committed by the mining lessees.

26. Mr. A.D.N. Rao, the Amicus Curiae, referred to Section 9 of the MMDR Act to submit that any removal of minerals from the leased area can be made by holder of a mining lease only on payment of royalty. He submitted that the waste material and overburden, therefore, cannot be dumped outside the leased area without payment of royalty. He referred to paragraph 48 of the judgment of this Court in Samaj Parivartana Samudaya and Ors. v. State of Karnataka and Ors. [(2013) 8 SCC 154] in which this Court has observed that dumping of mining waste (overburden dumps) also constitutes mining operations within the meaning of Section 3(d) of the MMDR Act and, therefore, the use of forest land for such activity would require clearances under the Forest Conservation Act, 1980. He submitted that in the event dumping of mining waste outside the leased area is to be done, it can only be done after clearance is obtained under the Forest Conservation Act, 1980.

27. The learned counsel appearing for the mining lessees submitted that the lessees have actually used areas outside the mining lease which are also owned mostly by the lessees for clearing the dump and this was permissible under the Mineral Conservation and Development Rules, 1988 (for short 'MCD Rules') and the MC Rules. In particular, they referred to Rule 16 of the MCD Rules, which provides for separate stacking of non-saleable minerals, such as over burden and waste material obtained during mining operation, on the ground earmarked for the purpose, which should be away from the working pit. They also referred to Rule 64 C of the MC Rules which provides that on removal of tailings or rejects from the leased area for dumping outside leased area, such tailings or rejects are not liable for payment of royalty. The State Government has supported this stand of the mining lessees that dumping of the overburden and mining waste outside the lease area was permissible under the MC Rules and MCD Rules.

28. Sections 4(1) and 9(2) of the MMDR Act, Rule 64C of the MC Rules and Rule 16 of the MCD Rules are extracted below:

> "4. Prospecting or mining operations to be under licence or lease.--
>
> (1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made thereunder:
>
> Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement.
>
> Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines,

the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government Company within the meaning of Section 617 of the Companies Act, 1956.

Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union territory of Goa, Daman and Diu.

....." "9. Royalties in respect of mining leases.--

(1) .....

(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any (mineral removed or consumed by his agent, manager, employee, contractor of sub-lessee) from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.

..... ." "64C. Royalty on tailings or rejects.--On removal of tailings or rejects from the leased area for dumping and not for sale or consumption, outside leased area such tailings or rejects shall not be liable for payment of royalty:

Provided that in case so dumped tailings or rejects are used for sale or consumption on any later date after the date of such dumping, then, such tailings or rejects shall be liable for payment of royalty." "16. Separate stacking of non-salable minerals.--(1) The overburden and waste material obtained during mining operations shall not be allowed to be mixed with non-salable or sub-grade minerals/ores. They shall be dumped and stacked separately on the ground earmarked for the purpose.

(2) The ground selected for dumping of overburden, waste material, the sub-grade or non-salable ores/minerals shall be away from working pit. It shall be proved for absence or presence of underlying mineral deposits before it is brought into use for dumping.

(3) Before starting mining operations, the ultimate size of the pit shall be determined and the dumping ground shall be so selected that the dumping is not carried out within the limits of the ultimate size of the pit except in cases where concurrent backfilling is proposed."

29. Under Section 4 of the MMDR Act, a person who holds a mining lease granted under the MMDR Act and the Rules made thereunder is entitled to carry on mining operations in accordance with the terms of the lease in the leased area and may carry on all other activities connected with mining

within the leased area. Rule 31 of the MC Rules prescribes that the lease deed will be in Form K or in a form near thereto. Part I of Form K delineates the area of the lease and Part II of Form K authorizes the activities that can be done by the lessee in the leased area. Thus, a holder of a mining lease does not have any right to dump any reject, tailings or waste in any area outside the leased area of the mining lease on the strength of a mining lease granted under the MMDR Act and the Rules made thereunder. Such area outside the leased area of the mining lease may belong to the State or may belong to any private person, but if the mining lease does not confer any right whatsoever on the holder of a mining lease to dump any mining waste outside the leased area, he will have no legal right whatsoever to remove his dump, overburden, tailings or rejects and keep the same in such area outside the leased area. In other words, dumping of any waste materials, tailings and rejects outside the leased area would be without a valid authorization under the lease-deed.

30. Moreover, Section 9(2) of the MMDR Act makes the holder of a mining lease granted on or after the commencement of the Act liable to pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area. Thus, the moment the mineral is removed or consumed from the leased area, the holder of a mining lease has to pay royalty. By virtue of Section 9 of the MMDR Act, tailings and rejects excavated during mining operations being minerals will also be exigible to royalty the moment they are removed from the leased area.

31. Rule 64C of the MC Rules states that on removal of tailings or rejects from the leased area for dumping and not for sale or consumption, outside leased area such tailings or rejects shall not be liable for payment of royalty. Rule 64C of the MC Rules, therefore, exempts the removal of tailings or rejects from the leased area for the purpose of dumping and not for the purpose of sale or consumption from the levy of royalty. Rule 64C of the MC Rules does not authorise dumping of tailings or rejects in any area outside the leased area. This Court has held in The Central Bank of India & Ors. v. Their Workmen, etc. [AIR 1960 SC 12] that 'if a rule goes beyond what the section contemplates, the rule must yield to the statute'. In our view, if Rule 64C of the MC Rules suggests that tailings or rejects can be dumped outside the leased area, it must give way to Section 4 of the MMDR Act, which does not authorise dumping of minerals outside the leased area and must give way to Section 9 of the MMDR Act which does not authorise removal of minerals outside the leased area without payment of royalty. We, therefore, hold that dump cannot be kept by the lessees beyond the leased area.

32. Rule 16 of the MCD Rules provides that the overburden and waste material obtained during mining operations shall be dumped and stacked separately on the ground earmarked for the purpose and the ground selected for dumping of overburden, waste material shall be away from working pit. There is nothing in sub-rules (1), (2) and (3) of Rule 16 of the MCD Rules, which provides that such overburden or waste material obtained from mining operations shall be kept 'outside the leased area'. On the other hand, clause (7) of Part II of Form-K provides as follows:

> "Liberty and power to enter upon and use a sufficient part of the surface of the said lands for the purpose of stacking, heaping, storing or depositing therein any produce of the mines or works carried on and any tools, equipment, earth and materials and

substances dug or raised under the liberties and powers mentioned in this part." The expression 'said lands' in clause (7) of Part II of Form-K quoted above refers to the area of the lease in Part I of Form K and, therefore, is confined to the leased area. Rule 16 of the MCD Rules, therefore, cannot be read to permit dumping of overburden and waste materials obtained from mining operations outside the leased area.

33. Learned counsel for the lessees, however, submitted that many of these areas in which they have dumped the overburdens, tailings and rejects are lands owned by them and by virtue of their ownership right they could dump the mining waste on their own lands. This contention of learned counsel appearing for the lessees loses sight of the fact that most of these lands are located in forest areas where non-forest activity, such as mining, is prohibited under Section 2 of the Forest Conservation Act, 1980 without the prior permission of the Central Government. Moreover, the notification issued under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 requiring prior environmental clearance covers the activity of mining. Sub-rule (3) of Rule 5 empowers the Central Government to impose prohibition or restrictions on the location of an industry or the carrying on of processes and operations in an area for the purpose of protecting the environment. Inasmuch as the activity of dumping mineral wastes will pollute the environment, it will come within the meaning of activity of mining included in the Schedule to the notification issued under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986. Thus, for dumping of mining waste on a private land, a prior clearance of the Central Government under the notification issued under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 would be necessary. We, therefore, do not find any merit in the contention of learned counsel for the lessees that they can dump mining waste outside the leased area.

Within what distance from the boundaries of National Parks and Wildlife Sanctuaries, is mining not permissible in the State of Goa:

34. The Justice Shah Commission has stated in its report that the National Board for Wild Life (NBWL) adopted "The Wild Life Conservation Strategy–2002" and took a decision in its meeting held on 21.1.2002 under the Chairmanship of Prime Minister to notify the areas within 10 kms. from the boundaries of National Parks and Sanctuaries as eco-fragile zones under section 3(v) of the Environment (Protection) Act and Rule 5, Sub-rule (1)(viii) & (x) of the Environment (Protection) Rules and this decision has been communicated on 5.2.2002 to the Chief Wild Life Warden, Government of Goa and the State Government has been requested to list out such areas and furnish a detailed proposal for their notification as eco–sensitive areas under the Environment (Protection) Act, 1986. The Justice Shah Commission has found that this has not been done till date but the Government of Goa has allowed mines to operate. In this context, the Justice Shah Commission Report has referred to the order dated 04.12.2006 of this Court in Writ Petition No.460/2004 (Goa Foundation v. Union of India) by which this Court had directed the MoEF to refer to the Standing Committee of the National Board for Wild Life, under Sections 5B and 5C (2) of the Wild Life (Protection) Act, the cases in which environmental clearance has already been granted where activities are within 10 kms. zone. According to the report of the Justice Shah Commission, in spite of the clear provisions of Section 3(2)(v) of the Environment (Protection) Act, 1986 and the EIA

Notifications, conferring the jurisdiction, power and authority on the Central Government (MoEF) to grant or refuse prior environment clearance for any iron ore mining activity within 10 kms. of National Parks, Sanctuaries and Protected Areas and despite provisions in Section 5C(2)(b) of the Wild Life (Protection) Act, 1972 putting a restriction on mining activities inside National Parks, Sanctuaries and other Protected and eco–sensitive Areas, mining activities have been permitted within 10 kms. and inside the National Parks, Sanctuaries and Protected Areas. The report of the Justice Shah Commission further states that out of the environmental clearances, the clearances with regard to 74 mining leases should have been placed before the Standing Committee of the National Board for Wildlife in accordance with the order dated 04.12.2006 of this Court. The report of the Justice Shah Commission further states that there has been a total failure on the part of the MoEF in not considering this issue while granting the environmental clearances.

35. The Justice Shah Commission in its report has further stated that in the order dated 04.08.2006 of this Court in T.N. Godavarman Thirumulpad v. Union of India & Ors., this Court has taken a view that 1 km. from the boundaries of National Parks and Sanctuaries would be a safety zone, subject to the orders that may be made in IA No.1000 regarding Jamua Ramgarh Sanctuary and the State will not grant any Temporary Working Permit (TWP) in these safety zones comprising 1 km. from the boundaries of National Parks and Sanctuaries and yet some of the mines within 1 km. from the boundaries of National Parks and Sanctuaries have been allowed in the State of Goa.

36. The CEC in its report is of the view that had the MoEF implemented this Court's orders dated 14.02.2000 and 04.12.2006, the unregulated and environmentally unsustainable manner in which mining has taken place in Goa would have been avoided. The CEC has suggested that all environmental clearances granted for mining leases located upto a distance of 10 kms. from the boundaries of National Parks and Wildlife Sanctuaries should be directed to be kept in abeyance and the environmental clearances should be directed to be considered by the Standing Committee of the National Board for Wildlife in accordance with this Court's order dated 04.12.2006 and the Additional Principal Chief Conservator of Forests, Regional Office, MoEF, Bangalore, should be directed to verify, after examining the EIA/EMP reports and other relevant details, whether the mining operations will have adverse impact on the flora, fauna and wildlife habitat and whether the distance of the National Parks/Wildlife Sanctuaries and that the status of the 'forest' have been correctly stated in the EC/application for taking a decision regarding EC's and only after considering the recommendations of the Standing Committee of the National Board of Wildlife and the report of the Additional Principal Chief Conservator of Forests (Central) and other relevant information/details, this Court may take a decision. Mr. Prashant Bhushan, learned counsel appearing for the Goa Foundation, submitted that there should be no mining activity within any National Parks/Wildlife Sanctuaries or within 10 kms. from the boundaries of National Parks and Wildlife Sanctuaries so that the flora, fauna and wildlife habitat of National Parks and Wildlife Sanctuaries are protected.

37. Learned counsel for the lessees, on the other hand, stated that so far as the State of Goa is concerned, on the one side, there is a coastal regulation zone in which mining is not permitted and, on the other side, are the National Parks and Wildlife Sanctuaries in which again mining is not permitted and as a consequence a very small strip of land is available for mining. They submitted

that there is no basis for presuming that an area outside the limits of a National Park or a Wildlife Sanctuary is required to be maintained as a buffer zone. They submitted that by the order dated 04.12.2006 of this Court passed in Writ Petition (C) No.460 of 2004, this Court did not finally fix the buffer zone of 10 kms. from the boundaries of National Parks and Wildlife Sanctuaries, but granted a last opportunity to the States to submit their recommendations for eco-sensitive zone and that the issue is still pending in I.A. No.1000 in Writ Petition 202 of 1995 in T.N. Godavarman Thirumulpad v. Union of India & Ors. They further argued that by the order dated 04.08.2006, this Court had only directed that no mining would be permitted by Temporary Working Permits within 1 km. from the National Parks and Wildlife Sanctuaries and by the said order, absolute ban has not been imposed against mining even within 1 km. from the boundaries of National Parks and Wildlife Sanctuaries. They argued that for declaration of eco-sensitive zone, a notification under Section 3 of the Environment (Protect) Act, 1986 is mandatory and till date no such notification has been issued for the State of Goa delineating any eco-sensitive zone and in the absence of such a notification mining activities cannot be prohibited beyond the boundaries of a national park/wildlife sanctuary.

38 Mr. Nadkarni, learned Advocate General appearing for the State of Goa, submitted that presently the State of Goa is not permitting mining inside any National Park or Wildlife Sanctuary. He submitted that each of the seven wildlife sanctuaries in the State of Goa have got revenue villages and local habitation of people inside the sanctuaries and before notifying the buffer zone around a wildlife sanctuary the consequences of the restrictions of the buffer zone on the local population and on the local development have to be weighed. He submitted that the State Government is of the considered opinion that while evolving a conservation strategy, the following peculiar local constraints in the State of Goa have to be considered:

> (i) The State of Goa is the 3rd smallest State in the Union; with a total geographical are of only 3,702 square metres; and out of that, an area of 1,440 square metres is under 'Forest' (protected/reserved/private) which is almost about 38% of the total geographical area;
>
> (ii) Out of the said area under 'Forest' nearly 62% i.e. 75.35 square metres has been declared as 'National Park', and/or 'Wildlife Sanctuary';
>
> (iii) An area of approximately or more than 70 square kilometres falls under the 'Coastal Regulation Zone' (CRZ). Indeed, the CRZ runs into 106 kms., of the Coastal Belt of the State of Goa;
>
> (iv) In fact, the total land mass available to the State of Goa, free from various restrictions, would further be reduced by 196.80 square kilometers, i.e. up to 5.32%, on account of Rivers, Lakes and other Water Bodies;
>
> (v) Indeed, approximately 40% of the land is under agriculture which the Government has decided not to be diverted under any circumstances;

(vi) Further, the State Government has also directed that no 'Forest Land' is to be diverted for any mining purpose.

He submitted that considering all these constraints, the State Government has recommended that an area up to 1 km. from the boundaries of National Parks/Wildlife Sanctuaries should be treated as safety zones but even in these safety zones mining activity should be prohibited in a phased manner in 5 to 10 years.

39. Mr. Mohan Parasaran, learned Solicitor General, submitted that the Principal Chief Conservator of Forests and Chief Wildlife Warden, Government of Goa, vide his letter dated 02.05.2013 has submitted six proposals for declaration of eco-sensitive zones around six protected areas in the State of Goa (National Parks/Wildlife Sanctuaries) and the proposals were referred to a Committee constituted under the Chairmanship of Dr. Rajesh Gopal, Additional Director General of Forests and Member Secretary of National Tiger Conservation Authority-Chairman, with the following Terms of Reference:

(i) The Committee will undertake a site specific site survey of all six protected areas in Goa, with reference to studying the topography and report on the existing natural boundaries around that is outside each protected area. Such boundaries could include inter alia rivers, hills etc.

(ii) The Committee will draw up a definition of what could constitute a credible natural boundary, always keeping in mind that the object is to protect the flora, fauna and biodiversity in the PA from biotic pressure.

(iii) The Committee will submit its views on whether any of the natural boundaries of the PAs in Goa could be an effective boundary of a robust Eco-Sensitive Zone around the P.A. He submitted that the Committee has submitted its report on 18.10.2013 and the report has been considered by the Ministry of Environment and Forests and by office memorandum dated 24.10.2013, the Ministry of Environment and Forests has not accepted the recommendation of the Government of Goa regarding buffer zone and instead accepted the recommendation of the Committee to define the eco-sensitive zones in site specific manner subject to the relevant Court orders on the subject and that a draft notification defining eco-sensitive zones around each of the six protected areas would be issued for stakeholder consultations.

40. We have considered the submissions of learned counsel for the parties and we find that presently no mining operations are being carried on inside any National Park or Wildlife Sanctuary, and the State of Goa has taken a stand before us that it will not permit any mining operations inside any National Park or Wildlife Sanctuary. Hence, the only question that we have to decide is whether mining could have been permitted or could be permitted within a certain distance from the boundaries of the National Park or Wildlife Sanctuary in the State of Goa.

41. This Court in exercise of its power under Article 32 of the Constitution can direct the State to prohibit mining activities in an area adjacent to a National Park or a Wildlife Sanctuary for the purpose of protecting the flora, fauna and wildlife habitat of the National Park/Wildlife Sanctuary because these constitute part of the natural environment necessary for healthy life of persons living in the State of Goa. The right to life under Article 21 of the Constitution is a guarantee against the State and for enforcing this fundamental right of persons the State, which alone has a right to grant mining leases of the mines located inside the State, can be directed by the Court by an appropriate writ or direction not to grant mining leases or not to allow mining that will be violative under Article 21 of the Constitution. In Re: Construction of Park at NOIDA near Okhla Bird Sanctuary [(2011) 1 SCC 744] a three-Judge Bench (Forest Bench) of this Court has observed:

> "..... Environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution. Environment is, therefore, a matter directly under the Constitution and if the Court perceives any project or activity as harmful or injurious to the environment it would feel obliged to step in. ...." Thus, the submissions of learned counsel for the lessees that until a notification is issued under the Environment (Protection) Act, 1986 and the Rules made thereunder prohibiting mining activities in an area outside the boundaries of a National Park/Wildlife Sanctuary, no mining can be prohibited by this Court is misconceived.

42. We may now examine whether this Court has by the orders passed on 04.08.2006 and 04.12.2006, prohibited mining activities around National Parks or Wildlife Sanctuaries. When we read the order of this Court passed on 04.08.2006 in T.N. Godavarman Thirumulpad v. Union of India & Ors., we find that the Court while considering the question of grant of Temporary Working Permits for mining activities in National Parks, Sanctuaries and forest areas, directed that Temporary Working Permits shall be granted only where the conditions stipulated in the said order are satisfied. Condition Nos. (ii) and (iii) stipulated in the order dated 04.08.2006 are extracted hereinbelow:

> "(ii) The mine is not located inside any National Park/Sanctuary notified under Section 18, 26-A or 35 of the Wildlife (Protection) Act, 1972;
>
> (iii) The grant of the T.W.P. would not result in any mining activity within the safety zone around such areas referred to in
>
> (ii) above, (as an interim measure, one kilometre safety zone shall be maintained subject to the orders that may be made in I.A. No.1000 regarding Jamua Ramgarh Sanctuary);'" It would, thus, be clear that this Court was of the opinion that grant of Temporary Working Permits should not result in any mining activities within the safety zones around a National Park or Wildlife Sanctuary and as an interim measure, one kilometer safety zone was to be maintained subject to the orders that may be made in I.A. No.1000 in Jamua Ramgarh Sanctuary.

This order dated 04.08.2006 has not been varied subsequently nor any orders made in I.A.No. 1000 regarding Jamua Ramgarh Sanctuary saying that Temporary Working Permits can be granted within one kilometer safety zone beyond the boundaries of a National Park or Wildlife Sanctuary. The result is that the order passed by this Court saying that there will be no mining activity within one kilometer safety zone around National Park or Wildlife Sanctuary has to be enforced and there can be no mining activities within this area of one kilometer from the boundaries of National Parks and Wildlife Sanctuaries in the State of Goa.

43. When, however, we read the order dated 4.12.2006 of this Court in Writ Petition (C) No.460 of 2004 (Goa Foundation v. Union of India), we find that the Court has not prohibited any mining activity within 10 kilometer distance from the boundaries of the National Parks or Wildlife Sanctuaries. The relevant portion of the order dated 04.12.2006 is quoted hereinbelow:

> "The Ministry is directed to give a final opportunity to all States/Union Territories to respond to its letter dated 27th May, 2005. The State of Goa also is permitted to given appropriate proposal in addition to what is said to have already been sent to the Central Government. The Communication sent to the States/Union Territories shall make it clear that if the proposals are not sent even now within a period of four weeks of receipt of the communication from the Ministry, this Court may have to consider passing orders for implementation of the decision that was taken on 21st January, 2002, namely, notification of the areas within 10 km. of the boundaries of the sanctuaries and national parks as eco-sensitive areas with a view to conserve the forest, wildlife and environment and having regard to the precautionary principles. If the State/Union Territories now fail to respond, they would do so at their own risk and peril.
>
> The MoEF would also refer to the Standing Committee of the National Board for Wildlife, under sections 5 (b) and 5 (c) (ii) of the Wild Life (Protection) Act, the cases where environment clearance has already been granted where activities are within 10 km. zone." It will be clear from the order dated 4.12.2006 of this Court that this Court has not passed any orders for implementation of the decision taken on 21st January, 2002 to notify areas within 10 kms. of the boundaries of National Parks or Wildlife Sanctuaries as eco sensitive areas with a view to conserve the forest, wildlife and environment. By the order dated 04.12.2006 of this Court, however, the Ministry of Environment and Forest, Government of India, was directed to give a final opportunity to all States/Union Territories to respond to the proposal and also to refer to the Standing Committee of the National Board for Wildlife the cases in which environment clearance has already been granted in respect of activities within the 10 kms. zone from the boundaries of the wildlife sanctuaries and national parks. There is, therefore, no direction, interim or final, of this Court prohibiting mining activities within 10 kms. of the boundaries of National Parks or Wildlife Sanctuaries.

44. Apart from the powers of the Court to give a direction prohibiting mining activities up to a certain distance from the boundaries of National Parks or Wildlife Sanctuaries, the Central

Government has powers under Rule 5 of the Environment Protection Rules, 1986 to prohibit carrying on of mining operations in areas which are proximate to a Wildlife Sanctuary or a National Park. Rule 5 of the Environment (Protection) Rules, 1986 is extracted herein under:

> "5. Prohibitions and restrictions on the location of industries and the carrying on processes and operations in different areas (1) The Central government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas-
>
> (i) Standards for quality of environment in its various aspects laid down for an area.
>
> (ii) The maximum allowable limits of concentration of various environmental pollutants (including noise) [or an area.
>
> (iii) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.
>
> (iv) The topographic and climatic features of an area.
>
> (v) The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.
>
> (vi) Environmentally compatible land use.
>
> (vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.
>
> (viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international confcrcnce1 association or other body.
>
> (ix) Proximity to human settlements.
>
> (x) Any other factor as may be considered by the Central Government to be relevant to the protection of the environment in an area.
>
> (2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.

(3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the locations Of an industry or the carrying on of processes and operations in an area, it may by notification in the Official Gazette and in such other manner as the Central government may deem necessary from time to time, give notice of its intention to do so.

(b) Every notification under clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the locations of the industries and carrying on of process or operations in that area.

(c) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.

(d) The Central Government shall within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette consider all the objections received against such notification and may within one hundred and eighty days from such day of publication] impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.

(4) Notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause

(a) of sub-rule (3).”

45. Sub-rule (1) of Rule 5 lists the number of factors, which the Central Government has to take into consideration while prohibiting or restricting the carrying on of processes and operations in different areas.

Sub-rule (2) of Rule 5 provides that before prohibiting the processes and operations in the area the Central Government has to follow the procedure laid down in sub-rule (3). The procedure in sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 includes giving notice of the intention of the Central Government to prohibit the carrying on of processes and operations in the reserved area, giving brief description of the area, the operations and processes in that area relating to which the notification pertains and also specifying the reasons for the imposition of the prohibition on carrying on of the processes or operations in that area, and an opportunity to persons interested in filing an objection against the imposition of such prohibition on carrying on of processes or operations by the Central Government. These procedural checks have been made in Rule 5 because a notification issued by the Central Government prohibiting an operation or a process will have serious consequences on the rights of different persons. For example, persons who are carrying on the process or operation and those who are directly or indirectly employed in the

process or the operation may be affected by the proposed prohibition of the process or the operation in the entire area. Therefore until the Central Government takes into account various factors mentioned in sub-rule (1), follows the procedure laid down in sub-rule (3) and issues a notification under Rule 5 prohibiting mining operations in a certain area, there can be no prohibition under law to carry on mining activity beyond 1 km. of the boundaries of National Parks or Wildlife Sanctuaries.

46. In fact, we find that the process of issuing a notification under Rule 5 of the Environmental Protection Rules, 1986 prohibiting mining activities in eco-sensitive zones around the National Parks or Wildlife Sanctuaries in the State of Goa has now been initiated. The Government of Goa vide letter dated 02.05.2013 submitted the following six proposals for declaration of eco- sensitive zones around protected areas in the State of Goa to the Ministry: (i) Cotigao Wildlife Sanctuaries; (ii) Netravali Wildlife Sanctuary; (iii) Bhagwan Mahaveer Wildlife Sanctuary and Bhagwan Mahaveer National Park; (iv) Madei Wildlife Sanctuary; (v) Bondla Wildlife Sanctuary; and (vi) Dr. Salim Ali Bird Sanctuary. These six proposals were referred to a Committee constituted under the Chairmanship of Dr. Rajesh Gopal, Additional Director General of Forests and Member Secretary of National Tiger Conservation Authority, with specified terms of reference and the Committee gave its findings and the Ministry of Environment and Forests, Government of India by the Office Memorandum dated 24.10.2013 have accepted the findings of the Committee and rejected the proposals of the Government of Goa. It is also stated in the Office Memorandum dated 24.10.2013 of the Ministry of Environment and Forests, Government of India that a draft notification defining Eco-Sensitive Zones around each protected area is being issued for stakeholder consultations. This notification will have to be issued under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, and after objections are received, the Central Government will have to consider the same and thereafter take the decision regarding imposition of prohibition of mining activities in the eco sensitive areas within the period stipulated in sub-rule 3(b) of Rule 5 of the Environment (Protection) Rules, 1986. At this stage, we can only direct the Ministry of Environment and Forests to follow the procedure and issue the notification of eco sensitive zones under Rule 5 of the Environment (Protection) Rules, 1986 within six months.

Whether there has been a violation of Rules 37 and 38 of the MC Rules by the mining lessees in the State of Goa:

> 47. The Justice Shah Commission has found in its report that in the State of Goa, 16 companies/firms/individuals are carrying out mining operations under different leases granted to them as a single unit as if the leases are amalgamated. The Shah Commission has referred to Rule 38 of the MC Rules which provides that the State Government may, in the interest of mineral development and with reasons to be recorded in writing, permit amalgamation of two or more adjoining leases held by a lessee provided that the period of amalgamated leases shall be co-

terminus with the lease whose period will expire first. The Justice Shah Commission is of the opinion that as amalgamation of two leases can only be permitted by the State Government for reasons to be recorded in writing, and no such permission has been taken from the State Government for the amalgamation of different leases as a single unit, the lessees who are operating

different leases as a single unit have violated Rule 38 of the MC Rules.

48. The CEC in its report, however, has not stated about any violation of Rule 38 of the MC Rules and has instead stated that Rule 37 of the MC Rules which provides that the lessee shall not, without the previous consent in writing of the State Government assign, sublet, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein, has been violated by several lessees. The CEC has reported that there are several complaints received by the State Government that the leases have been operated by the persons other than the lessees. The CEC has observed in its report that Rule 37 itself provides that in such cases of violation of Rule 37, the State Government may determine the mining lease, but the State Government has taken no action and has taken a stand that working of the mining leases by a person other than lease holder is a prevailing mining practice in Goa and these facts are in the knowledge of the Government. Mr. Prashant Bhushan, learned counsel for the Goa Foundation, submitted that in all these cases the violation should be identified by a Committee headed by the Chief Secretary, Goa, and those lessees who have been found to have violated Rule 37 of the MC Rules, should be penalized by determination of the leases.

49. Rules 37 and 38 of the MC Rules are extracted hereinbelow:

> "37. Transfer of lease. – (1) The lessee shall not, without the previous consent in writing of the State Government and in the case of mining lease in respect of any mineral specified in [Part 'A' and Part 'B' of] the First Schedule to the Act, without the previous approval of the Central Government :-
>
> (a) assign, sublet, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein, or
>
> (b) enter into or make any bonafide arrangement, contract, or understanding whereby the lessee will or may be directly or indirectly financed to a substantial extent by, or under which the lessee's operations or undertakings will or may be substantially controlled by, any person or body of persons other than the lessee:
>
> Provided further that where the mortgagee is an institution or a Bank or a Corporation specified in Schedule V, it shall not be necessary for the lessee to obtain any such consent of the State Government.
>
> (1A) The State Government shall not give its consent to transfer of mining lease unless the transferee has accepted all the conditions and liabilities which the transferor was having in respect of such mining lease.
>
> (2) Without prejudice to the provisions of sub-rule (1) the lessee may, subject to the conditions specified in the proviso to rule 35, transfer his lease or any right, title or interest therein to a person who has filed an affidavit stating that he has filed an up-to-date income-tax returns, paid the income tax assessed on him and paid the income tax on the basis of self-assessment as provided in the Income Tax Act, 1961(

43 of 1961), on payment of a fee of five hundred rupees to the State Government:

Provided that the lessee shall make available to the transferee the original or certified copies of all plans of abandoned workings in the area and in a belt 65 metres wide surrounding it;

Provided further that where the mortgagee is an institution or a Bank or a Corporation specified in Schedule V, it shall not be necessary for any such institution or Bank or Corporation to meet with the requirement relating to income tax;

Provided further that the lessee shall not charge or accept from the transferee any premium in addition to the sum spent by him, in obtaining the lease, and for conducting all or any of the operations referred to in rule 30 in or over the land leased to him;

(3) The State Government may, by order in writing determine any lease at any time if the lessee has, in the opinion of the State Government, committed a breach of any of the provisions of sub-

rule (1) or sub-rule (1A) or has transferred any lease or any right, title or interest therein otherwise than in accordance with sub-rule (2);

Provided that no such order shall be made without giving the lessee a reasonable opportunity of stating his case.

38. Amalgamation of leases. – The State Government may, in the interest of mineral development and with reasons to be recorded in writing, permit amalgamation of two or more adjoining leases held by a lessee:

Provided that the period of amalgamated leases shall be co- terminus with the lease whose period will expire first:

Provided further that prior approval of the Central Government shall be required for such amalgamation in respect of leases for minerals specified in Part 'A' and Part 'B' of the First Schedule to the Act.

It will be clear from sub-rule (1)(a) of Rule 37 that the lessee cannot assign, sublet, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein, without the previous consent in writing of the State Government in the case of those minerals which are not specified in Part A and Part B of the First Schedule to the Act. Since iron ore is specified in Part C of the First Schedule to the Act, the previous consent in writing of the State Government is necessary before any such transfer is made by a mining lessee. Sub-rule (1A) of Rule 37 further states that the State Government shall not give its consent to transfer of a mining lease unless

> the transferee has accepted all the conditions and liabilities which the transferor was having in respect of such mining lease. Sub-rule (3) of Rule 37 further provides that the State Government may, by order in writing determine any lease at any time if the lessee has, in the opinion of the State Government committed a breach of any of the provisions of sub-rule (1) or sub-rule (1A) of Rule 37 of the MC Rules. These provisions have been made in Rule 37 to ensure that all the conditions and liabilities to which a lessee is subjected to under a mining lease are also accepted by the transferee. Sub-rule (2) of Rule 37 further provides that without prejudice to the provisions of sub-rule (1), the lessee may transfer his lease or any right, title or interest therein to a person who has filed an affidavit stating that he has filed up-to-date income-tax returns, paid the income-tax assessed on him and paid the income-

tax on the basis of self-assessment as provided in the Income Tax Act, 1961. This provision is meant to ensure that the transferee of a mining lease is an income-tax assessee and is paying his income tax assessed on him and due from him on the basis of self-assessment. Sub-rule (3) of Rule 37 empowers the State Government to determine any lease at any time if the lessee has, in the opinion of the State Government, committed a breach of any of the provisions of sub-rule (1) or sub-rule (1A) or has transferred any lease or any right, title, or interest therein otherwise than in accordance with sub-rule (2) after giving the lessee a reasonable opportunity of stating his case. The intent of the Rule-making authority in making these provisions in Rule 37 is that the liabilities and conditions in a mining lease are also enforceable against the transferee and that the transferee pays his dues towards income tax regularly. Rule 37, therefore, cannot be allowed to be violated by the lessees with impunity and the State Government cannot overlook transfers by saying that the transfers of the mining leases are part of the mining practice in the State of Goa. In our view, if these violations of Rule 37 are allowed, there shall be substantial leakage of revenue and mining operations cannot be effectively regulated and controlled by the State Government. The State Government, therefore, must initiate action against those mining leases who violate Rule 37 of the Rules.

50. Rule 38 of the MC Rules provides that the State Government may, in the interest of mineral development and with reasons to be recorded in writing, permit amalgamation of two or more adjoining leases held by a lessee, provided that the period of amalgamated leases shall be co-terminus with the lease whose period will expire first. If the State Government has not permitted amalgamation of adjoining leases in the interest of mineral development and has not recorded the reasons for such permission, the State Government cannot allow the amalgamation of the leases.

Was there a complete lack of control on production and transportation of mineral from the mining leases in the State of Goa:

51. The CEC in its report has stated that in the State of Goa, there is no system of periodic verification of the quantity of iron ore produced in the mining leases, the payments of royalty, the permits issued for transportation of mineral by the Mining Department, the transit permits issued by the Forest Department nor any reconciliation of the quantity of the mineral stated to have been produced in the mining lease with the quantity of the mineral for which royalty has been paid and

transit permits have been issued, and there is no verification of the transit permits at the check posts and no verification of the quantity of the mineral exported/domestically used vis-à-vis the quantity legally produced. According to the CEC, in the absence of such checks/verifications/controls, illegal mining can easily be undertaken and the actual quantity of iron ore produced and transported from the mining leases may not be accounted for by the State of Goa or by the lessees, resulting in leakage of revenue. The CEC in its report has given a chart to show the difference of figures in the iron ore exported as provided by the Goan Mineral Ore Exporters' Association and the total iron ore produced in the State of Goa as per reports compiled by the Indian Bureau of Mines, which is extracted hereinbelow:

Year	Goan Iron Ore Exports	Total Production	(In Lakh MT) Excess of exports over production
2006-2007	308.940	277.931	31.009
2007-2008	334.334	300.091	34.253
2008-2009	380.752	315.994	64.758
2009-2010	456.869	331.649	125.22
2010-2011	468.464	328.059	140.405
Total	1949.369	1553.724	395.645

According to the CEC, there is every reason to believe that the excess quantity of 395.645 lakh MT, as shown in the aforesaid chart, is illegally mined ore.

52. We entirely agree with the CEC report that in the absence of proper checks, verifications and controls, there is bound to be illegal mining, storage and transportation of minerals, but we find that after the CEC Report, the Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013 have been framed by the State Government under Section 23(c) of the MMDR Act. A reading of these Rules show that several provisions have been made in these rules to prevent illegal mining and to regulate the sale, export and transit of ore, storage of mineral and transportation and winning of mineral. The rules also provide for establishment of check posts, barriers and weighbridges and inspection of minerals in transit. Moreover, these rules empower any person authorised by the Government to enter, inspect, search and seize articles. These rules will have to be strictly enforced by the State Government and we hope that by such strict enforcement of these rules, the mining, storage and transportation of minerals in the State of Goa will get controlled and regulated and the leakages and evasion of revenue will, to a large extent, be prevented.

To what extent mining has damaged the environment in Goa and what measures are to be taken to ensure inter-generational equity and sustainable development:

53. Mr. Prashant Bhushan, learned senior counsel appearing for Goa Foundation, relying on the report of the Justice Shah Commission, submitted that substantial damage has been caused to the eco sensitive zone in Goa by excavating large quantities of iron ore through mining and as suggested

by the Justice Shah Commission action should be taken in this regard. He submitted that the conditions stipulated in the EIA clearances imposed by the Chief Wildlife Warden, Goa, have not been implemented. He submitted that the environmental clearance system has actually collapsed resulting in amassing of wealth by certain individuals and companies at the cost of the environment and the eco-system. He submitted that principles of sustainable development and inter-generational equity which were part of the fundamental right under Article 21 of the Constitution, require that a cap should be put on the annual excavation of iron ore from different mines in the State of Goa, after taking into account the need to conserve iron ore resources for future generations and the carrying capacity of the State of Goa for mining and transportation of mineral ores.

54. Learned counsel appearing for the lessees, on the other hand, submitted that there are adequate provisions in the MCD Rules for preventing damage to the environment and for restoration of the environment. They referred to Rules 23A, 23B, 23D and 23E of the MCD Rules which relate to the mine closure plan which must provide for protective measures including reclamation and rehabilitation work. They submitted that the holder of the mining lease, therefore, has to take all the protective measures including reclamation and rehabilitation work before abandoning the mine. They submitted that Chapter V of the MCD Rules also contains various provisions which a holder of mining lease has to comply and these provisions include precautions for protection of environment and controlling of pollution while conducting mining operations in the area. In reply to the submissions of Mr. Bhushan that there should be a cap on the annual excavation of mineral ore in the State of Goa to ensure that future generations are not denied the mineral resources, Mr. Mukul Rohtagi, learned senior counsel appearing for Sesa Goa Limited, relied on a publication of the British Geological Survey and submitted that there would never be any scarcity of mineral resources and there would be enough for the future generations. He submitted that Sesa Goa Limited has also taken steps to reclaim the land which was damaged through mining operation and produced photographs to show how reclamation and rehabilitation work has been done after mining was over in any area.

55. Mr. N.S. Nadakarni, learned Advocate General for the State of Goa, submitted that in the Goa Mineral Policy of 2013, State Government has proposed a capping of the mineral ores to be excavated annually in the State of Goa based on the carrying capacity of public roads and the need to protect inter-generational equity. He submitted that as per the Goa Mineral Policy of 2013, until the road capacity in Goa improves, there should be a gross capping at 45 MT per annum.

56. After considering the aforesaid submissions of learned counsel for the parties, we took the view that a Committee of Experts must conduct a macro EIA study and propose ceiling of the annual excavation of iron ore from the State of Goa, considering its iron ore resources and its carrying capacity and keeping in mind the principles of sustainable development and inter-generational equity and all other relevant factors. Accordingly, by orders dated 11.11.2013 and 18.11.2013, we constituted an Expert Committee comprising Professor C.R. Babu (Ecologist), Dr. S.D. Dhiman (Geologist/Hydro-geologist), Professor B.K. Mishra (Mineralogist), Professor S. Parameshwarppa (Forestry), Shri Parimal Rai (Nominee of the Ministry of Environment and Forests, Government of India). This Expert Committee has submitted an interim report dated 14.03.2014. In this report, the Expert Committee has indicated that the economy of Goa depends on tourism and iron ore mining,

besides agriculture, horticulture and minor industries, but in recent years, while there has been increase in the growth rate in tourism and mining, there has been a decline in the growth rate of agriculture and fishing. The Expert Committee has in particular highlighted the damage that has been done by increase in the production of iron ore through mining to the environment in Goa in the following words:

> "The production of iron ore has jumped from 14.6 million tons in 1941 to 41.17 million tons in 2010-11. In 1980's the production was about 10 MT/annum. The quantum jump in iron ore production in Goa was essentially due to steep rise in exports of fines and other low grade ore of 42% Fe content to China. This has led to massive negative impacts on all ecosystems leading to enhanced air, water, and soil pollution affecting quality of life across Goa. This is evident by three important reports i.e. (i) Area wide Environmental Quality Management (AEQM) Plan for the Mining belt of Goa by Tata Energy Research Institute, New Delhi and Goa (1997) and it was submitted to the Directorate of Planning, Statistics, and Evaluation, Government of Goa, (ii) Environmental and Social Performance Indicators and Sustainability Markers in Minerals Development Reporting progress towards improved Ecosystem Health and Human Well-being, Phase-III by TERI and International Development Research Centre, Ottawa, Canada (2006) and (iii) the Regional Environmental Impact Study of iron ore mining in Goa region sponsored by MoEF, New Delhi (2014) by Indian School of Mines. Besides the above three main Reports, a number of scientific research papers on the impact of iron ore mining on the environment and ecology of diverse ecosystems were published by scientists working at Goa university and NIO.

These reports and publications substantiates that the mining, particularly the enhanced level of annual production contributed to adverse impacts on the ecological systems, socio economics of Goa and health of people of Goa leading to loss of ecological integrity. This is due to enhanced levels of pollutants, particularly RSPM and SPM, sedimentation of materials from dumps and iron ore in rivers, estuaries and shallow depth (20m) of sea water, agricultural fields, high concentration of Fe and Mn in surface waters and their bioaccumulation." The Expert Committee has also studied the sustainability of iron ore mining in the Goa and after analyzing the existing data from TERI report, 1997, ISM, Dhanbad Report, 2013, Pollution Control Board, Goa (Annual Report) and relevant literature relating to sustainability and after adopting the Folchi method has given the opinion that mining at the rate of 20 to 27.5 million tons per annum appears sustainable in the State of Goa. However, in its summary of recommendations, the Expert Committee has made these recommendations:

> "10. To eliminate the element of subjectivity, due to the time constraints and limitation of available authentic time series data relating to mineral resources and environmental impact of mining in the State of Goa, this Committee suggests that mining be permitted to be carried out at the level of 20 million ton per annum with adequate monitoring of impacts on different ecological and environmental parameters, which will also help this Committee in its future appraisal.

11. Till the scientific study by this Committee is completed, which may take about 12 months more, the mining activity at levels as directed by the Hon'ble Supreme Court, be strictly monitored and regulated by the Department of Mines and Geology and Goa State Pollution Control Board of the State of Goa, in consultation with other statutory bodies such as Indian Bureau of Mines, Ministry of Environment and Forests (Govt. of India) and others." It, thus, appears that the Expert Committee has suggested that for the time being annual excavation of 20 million tons of iron ore may be permitted in Goa with adequate monitoring impacts on different ecological and environmental parameters, which will also help the Expert Committee in its future appraisal. Regarding the authorities or agencies which should strictly monitor and regulate the mining activities in Goa, the Expert Committee has recommended that the Department of Mines and Geology of Government of Goa and the Goa State Pollution Control Board in consultation with other statutory bodies such as Indian Bureau of Mines, Ministry of Environment and Forests (Government of India) should carry on such monitoring and regulation strictly. The Expert Committee, however, has said nothing about how the mining dumps inside or outside the leased areas noticed by the Justice Shah Commission are to be dealt with presumably because in our order dated 11.11.2013 we had not issued any direction in this regard. We think that we should seek the opinion of the Expert Committee in this regard.

57. We find that the State Government has also engaged the services of NEERI for macro level EIA study for Clusters of Iron Ore Mines in the State of Goa, but NEERI in its preliminary report has not recommended as to what should be the total quantum of annual production of iron ore in Goa in future. We also find that Ministry of Environment and Forests, Government of India had entrusted the Indian School of Mines (ISM), Dhanbad to carry out a regional environment impact assessment study of mining in Goa region and ISM, Dhanbad has submitted its report proposing a cap of 24.995 MT per annum on the basis of the carrying capacity of the existing infrastructure of Goa. Relevant portion of the report of ISM, Dhanbad, is extracted hereinbelow:

"20.7.4.7 Cluster Wise Capping on Transport The cap of 24.995MTPA proposed in the aforementioned section is dependent primarily on the existing infrastructure and must be followed based on the spatial variations. To present an overall capacity of mining in North Goa and South Goa, the road capacity has been taken as a parameter. The capacity was arrived at 13.685MTPA for North Goa and 11.31MTPA for South Goa. The cap proposed will not include the mines lying within the buffer zones as these have imposed restriction of phasing out in time bound period. Further, this cap can be represented into a cluster wise scenario to decipher how much each cluster will be able to transport under the existing transport facilities. The values are presented in table below.

Table 20.7.19: Cluster Wise Capping on Transport Based on Existing Transport Facilities |Cluster |Routes |Capacity of |Capacity of | | | |the Routes |the Cluster | | | |(MTPA) |(MTPA) | |Adwalpal- |Adwalpale to |0.81 |5.875 | |Bicholim |Sirsai Jetty | | | | |Shrigao to Sirsai|1.26 | | | |Jetty | | | | |Shrigao to Kalvin|1.16 | | | |Jetty | | | |

|Dahbdhaba to | 2.645 | | | |Sarmanas Jetty | | | |Velguem- |Sonshi to Amona |2.11 |7.9 | |Pissurlem |Jetty | | | | |Sanquelim to |0.52 | | | |Amona Jetty | | | | |Honda to |1.32 | | | |Navelim(Maina) | | | | |Sonshi to Khazan |1.32 | | | |Jetty | | | | |Ambesi to Cotambi|1.29 | | | |Jetty | | | | |Digneum to Surla |1.34 | | | |Jetty | | | |Codli-Costi |Codli to Amona |1.94 |4.69 | | |Jetty | | | | |Codli to Capxem |1.24 | | | |Jetty | | | | |Costi to |1.51 | | | |Sanvordem | | | |Collem |Collem to Amona |1.94 |2.76 | | |Jetty | | | | |Shigao to |0.82 | | | |Sanvordem | | | |Tollem |Tollem to |1.71 |1.71 | | |Shelvona Jetty | | | |Maina- Sulcorna|Sulcorna to |1.02 |2.06 | | |Shelvona Jetty | | | | |Maina to Shelvona|1.04 | | |Total capacity of the Region |24.995 | Thus, the cumulative ore transportation capacity of the existing road networks is 24.995MTPA." We, therefore, find that the Expert Committee as well as ISM, Dhanbad, after considering the available data and after considering the adverse impact on environment and the limited carrying capacity of the transport system in Goa, are of the opinion that a cap between 20 to 27.5 million tons per annum should be fixed for excavation of iron ore in the State of Goa. In its recommendations, however, the Expert Committee has suggested that till the scientific study by the Expert Committee is completed in about 12 months or so, and more of data including impacts on different ecological environmental parameters is available through monitoring of the impacts by different agencies including the Goa State Pollution Control Board, 20 million tons per annum should be fixed as the annual excavation of iron ore in Goa.

58. Even this mining of 20 million tons per annum in the State of Goa, according to the Expert Committee, has to be strictly monitored and regulated by the Department of Mines and Geology, Government of Goa and the Goa State Pollution Control Board in consultation with other statutory bodies such as the Indian Bureau of Mines, the Ministry of Environment and Forests (Government of India) and others. It was the responsibility of the Government of Goa, Department of Mines, to enforce the provisions of the MMDR Act, the MC Rules and the MCD Rules, but as we have already noticed, this responsibility was not properly discharged. We hope that in future, it will enforce the provisions of the MMDR Act, the MC Rules, the MCD Rules and the Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013.

59. The Goa State Pollution Control Board has immense powers under the Water (Prevention & Control of Pollution) Act, 1974 (for short 'the 1974 Act') to prevent pollution of water. Section 33A of the 1974 Act which confers on the State Pollution Control Board the power to give directions is quoted hereinbelow:

> "33A. Power to give directions.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service." Similarly, the Air (Prevention and Control of Pollution) Act, 1981(for short 'the 1981 Act') confers immense powers on the State Pollution Control Board to prevent air pollution. Section 31A of the 1981 Act which confers powers on the State Pollution Control Board to give directions is quoted hereinbelow:

"31A. Power to give directions.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service."

60. It will be clear from the aforesaid provisions of Section 33A of the 1974 Act and Section 31A of the 1981 Act that the Goa State Pollution Control Board had powers to issue any direction including the power to close, prohibit or regulate mining operations or even to stop or regulate supply of electricity, water or any other service with a view to prevent water pollution or air pollution. Yet, from the report of the Expert Committee as well as the reports of ISM, Dhanbad and NEERI, it is clear that iron ore production in Goa has led to massive negative impacts on all ecosystems leading to enhanced air, water and soil pollution affecting quality of life across Goa. The Goa State Pollution Control Board in its note filed in Writ Petition (C) No.435 of 2012, however, states:

"Details of monitoring of water quality (with regards to mining leases) from 2007 to 2012 – The Board conducts inspections during the monsoon and other seasons also to verify the discharge of surface runoff/discharge from the pit outside the mining lease and also collects samples for analyzing in the Board Laboratory. Wherever the parameters exceed the prescribed limits necessary directions are issued to the mining units to take remedial measures for controlling the waste water being discharged into the water bodies/fields without treatment. Directions are also issued to provide settling ponds, arrestor walls, filter beds so as to ensure that no untreated waste water is discharged into the water bodies/fields.

> Details of monitoring of air quality (with regards to mining leases) from 2007 to 2012 – The Board is presently carrying out the periodic monitoring of Air Quality in pre-selected areas throughout the State to comply with one of the mandates of the Central Pollution Control Board (CPCB) under National Ambient Monitoring Programme (NAMP) at 16 stations." We do not agree with Mr. Arvind Datar, learned senior counsel for the Goa State Pollution Control Board, that sincere efforts were made by the Pollution Control Board to monitor the water quality and air quality in the mining areas. Rather, it appears that the Goa State Pollution Control Board, though conferred with immense statutory powers, has failed to discharge its statutory functions and duties. We hope that in future the Goa State Pollution Control Board exercises strict vigil and monitors the water quality and air quality in accordance with the provisions of the two Acts and if necessary, exercises the powers conferred on it to close down mining operation of a lessee, if the lessee does not conform to the air emission and water discharge standards while carrying on mining operations and does not take other preventive measures as directed by the State Pollution Control Board.

61. Regarding the regulation by the Ministry of Environment and Forests, in our order dated 06.01.2014 passed in I.A. Nos.1868, 2091, 2225-2227, 2380, 2568 and 2937 in Writ Petition (Civil) No.202 of 1995 (T.N. Godavarman Thirumulpad v. Union of India & Ors.), we have already directed Union of India to appoint a Regulator with offices in as many States as possible under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 as directed in the order in the case of Lafarge Umiam Mining Private Limited. As and when the Union of India appoints a Regulator under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 with an office for Goa in compliance with the aforesaid direction of this Court, the Regulator so appointed will carry out its functions in accordance with the order passed under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986.

62. Regulatory and monitoring measures enforced by the Departments of Mines and Geology, the Goa State Pollution Control Board and the Regulator appointed by the Central Government under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 cannot, however, restore entirely the environment that is damaged in course of mining operations. The Expert Committee has, therefore, recommended that a permanent fund for inter- generational equity and sustainability of mining for all times to come named as "Goan Iron Ore Permanent Fund" be created and an expert group may be constituted by the State for working out the details of this fund. Mr. Harish Salve, learned Amicus Curiae, submitted that as the lessees of mining leases earn out of the sale proceeds of the iron ore excavated by them, they should be directed to contribute 10% of the sale proceeds of all iron ore excavated in the State of Goa and sold by them towards the Goan Iron Ore Permanent Fund. He cited the judgment of this Court in Samaj Parivartana Samudaya and Ors. v. State of Karnataka and Ors. (supra) in which this Court has similarly directed for creation of a Special Purpose Vehicle out of 10% of the sale proceeds of the ore sold by e-auction. There is a lot of force in the aforesaid submission of Mr. Salve.

63. We find from the report of the Expert Committee that the State of Goa heavily depends on iron ore mining for revenue as well as employment. The legislative policy behind the MMDR Act made by Parliament is mineral development through mining. The State Government of Goa has also adopted the executive policy to encourage mining of minerals in Goa. Moreover, as Mr. Ravi Shankar Prasad, learned senior counsel appearing for 33 Panchayats, has submitted about 1.5 lakh people are directly employed in mining in Goa and large number of persons have taken bank loans and purchased trucks for transportation of iron ore. Hence, people who earn their livelihood through work in connection with mining will be seriously affected if mining is totally banned to protect the environment. We cannot, therefore, prohibit mining altogether, but if mining has to continue, the lessees who benefit the most from mining, must contribute from their sale proceeds to the Goan Iron Ore Permanent Fund for sustainable mining. Accordingly, in exercise of our powers under Article 32 read with Article 21 of the Constitution, we direct that henceforth 10% of the sale proceeds of iron ore excavated in the State of Goa and sold by the lessees must be appropriated towards the Goan Iron Ore Permanent Fund for the purpose of sustainable development and inter-generational equity and the State of Goa in consultation with the CEC will frame a comprehensive scheme in this regard and submit the same to this Court within six months.

Whether in future the mining leases are to be auctioned or have to be granted in accordance with the policy of the State and the provisions of the MMDR Act and the MC Rules?

64. Mr. Prashant Bhushan, learned counsel for Goa Foundation, submitted that in Article 39(b) of the Constitution, it is provided that the ownership and control of the material resources of the community should be so distributed so as to best subserve the common good and, therefore, the State cannot distribute the material resource of the community in any way it likes. He submitted that in Centre for Public Interest Litigation & Ors. v. Union of India & Ors. [(2012) 3 SCC 1], a two-Judge Bench of this Court has held relying on Article 39(b) of the Constitution that the State is the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good. He submitted that in the aforesaid case, the two Judge Bench has further held that a duly publicized auction conducted fairly and impartially is perhaps the best method for discharging this burden and methods like 'first-come-first-served' when used for alienation of natural resources/public property are likely to be misused by unscrupulous people who are only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. He relied on the conclusion of the two Judge Bench of this Court in the aforesaid case that while transferring or alienating the natural resources, the State is duty-bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process. He submitted that as MMDR Act does not prohibit the State from holding auction of the mining leases, this Court should direct that in future the mining leases must be auctioned by the State Government.

65. Learned counsel for the lessees and the learned Advocate General, on the other hand, submitted that the MMDR Act and the MC Rules have made specific provisions regarding the manner in which the State is to grant mining leases and it is for the State to take decisions on grant of mining leases in accordance with the policy and the provisions of the MMDR Act and the MC Rules. They cited the

opinion of the Constitution Bench of this Court in Natural Resources Allocation, In Re, Special Reference No.1 of 2012 [(2012) 10 SCC 1] that auction despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources and, therefore, every method other than auction cannot be struck down as ultra vires the constitutional mandate.

66. We are of the considered opinion that it is for the State Government to decide as a matter of policy in what manner the leases of these mineral resources would be granted, but this decision has to be taken in accordance with the provisions of the MMDR Act and the Rules made thereunder and in consonance with the constitutional provisions and the decision taken by the State of Goa to grant a mining lease in a particular manner or to a particular party can be examined by way of judicial review by the Court. To quote the opinion of four Judges out of five Judges expressed by D.K. Jain J. in Natural Resources Allocation, In Re, Special Reference No.1 of 2012 (supra):

> "Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution." Whether suspension of mining operations in the State of Goa by order dated 10.09.2012 of the Government of Goa and the suspension of the Environmental Clearances granted to the mines in the State of Goa by order dated 14.09.2012 were legal and valid?

67. As we have held that the deemed mining leases of the lessees in Goa expired on 22.11.1987 and the maximum period (20 years) of renewal of the deemed mining leases in Goa has also expired on 22.11.2007, mining by the lessees in Goa after 22.11.2007 was illegal. Hence, the order dated 10.09.2012 of the Government of Goa suspending mining operations in the State of Goa and the order dated 14.09.2012 of the MoEF, Government of India, suspending the environmental clearances granted to the mines in the State of Goa, which have been impugned in the writ petitions in the Bombay High Court, Goa Bench (transferred to this Court and registered as transferred cases) cannot be quashed by this Court. The order dated 10.09.2012 of the Government of Goa and the order dated 14.09.2012 of the MoEF will have to continue till decisions are taken by the State Government to grant fresh leases and decisions are taken by the MoEF to grant fresh environmental clearances for mining projects.

68. On 05.10.2012, this Court while issuing notice in Writ Petition (C) No.435 of 2012 (Goa Foundation vs. Union of India & Others) also passed orders that all mining operations in the leases

identified in the report of the Justice Shah Commission and transportation of iron ore and manganese ore from those leases, whether lying at the mine-head or stockyards, shall remain suspended. Thereafter on 11.11.2013, this Court passed an order that the inventory of the excavated mineral ores lying in different mines/stockyards/jetties/ports in the State of Goa made by the Department of Mines and Geology of the Government of Goa be verified and thereafter the whole of the inventorised mineral ores be sold by e-auction and the sale proceeds (less taxes and royalty) be retained in separate fixed deposits (lease-wise) by the State of Goa till this Court delivers judgment in these matters on the legality of the leases from which the mineral ores were extracted. In our order passed on 11.11.2013, we had also directed that this entire process of verification of the inventory, e-auction and deposit of sale proceeds be monitored by a Monitoring Committee appointed by the Court. The Monitoring Committee comprising Dr. U.V. Singh (Additional Principal Chief Conservator of Forests, Karnataka), Shri Shaikh Naimuddin (former Member of Central Board of Direct Taxes) and Parimal Rai (Nominee of Govt. of Goa) have in the meanwhile monitored the e-auction. We extract hereinbelow the relevant portion of the interim report dated 12.03.2014 of the Monitoring Committee:

> "After the two e-auctions, the total ore auctioned is about 1.62 million MT and the total value realized is 260.68 crores approximately. As directed by this Hon'ble Court, the State Government has been requested to maintain separate accounts, lease wise, and keep the sale proceeds as fixed deposits in Nationalized Banks.
>
> The process of transportation of ore for export has not yet been initiated because of the storage charges being demanded from the successful bidder by the Marmagoa Port Trust (MPT). As a result, the process of e-auction is likely to slow down. The extent of storage charges demanded is as per Annexure MC III."

69. As we have held that renewal of all the deemed mining leases in the State of Goa had expired on 22.11.2007, the mining lessees will not be entitled to the sale value of the ores sold in e-auction but they will be entitled to the approximate cost (not actual cost) of the extraction of the ores. On account of suspension of mining operations in the State of Goa, the workers who were employed by the lessees claim that they have not been paid their wages. Under Section 25C of the Industrial Disputes, Act, 1947, when a workman whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, he is entitled to be paid by the employer for all the days which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to 50% of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off. Following this principle of lay-off compensation, we hold that workers who could not be paid wages by the lessees will have to be paid compensation at the rate of 50% of their basic wages and dearness allowance during the period of non-employment on account of suspension of mining operations. Moreover, Marmagoa Port Trust will have to be paid 50% of their charges for storage of the mineral ores after 05.10.2012.

> 70. The entire sale value of the stock of mineral ores sold by e-auction less the average cost of excavation, 50% of the wages and allowances and 50% of the storage charges to be paid to MPT is thus due to State Government which is the owner of the mineral ores which have been sold by e-

auction. The State Government will set-aside 10% of this balance amount for the Goan Iron Ore Permanent Fund for the purpose of sustainable development and inter-generational equity. This entire exercise of calculating the average cost of extraction of ores to be paid to the mining lessees, 50% of the basic wages and dearness allowance to be paid to the workers, 10% of the balance amount towards the Goan Iron Ore Permanent Fund and the balance amount to be appropriated by the State Government will be done by the Director of Mines and Geology, Government of Goa, under the supervision of the Monitoring Committee. Till this exercise is over and the report of the Monitoring Committee is filed, the Monitoring Committee will continue and their members will be paid their remuneration allowances as directed in the order dated 11.11.2013.

71. In the result, we declare that:

> (i) the deemed mining leases of the lessees in Goa expired on 22.11.1987 and the maximum of 20 years renewal period of the deemed mining leases in Goa expired on 22.11.2007 and consequently mining by the lessees after 22.11.2007 was illegal and hence the impugned order dated 10.09.2012 of Government of Goa and the impugned order dated 14.09.2012 of the MoEF, Government of India are not liable to be quashed;

(ii) dumping of minerals outside the leased area of the mining lessees is not permissible under the MMDR Act and the Rules made thereunder;

(iii) until the order dated 04.08.2006 of this Court is modified by this Court in I.A. No.1000 in T.N. Godavarman Thirumulpad v. Union of India & Ors., there can be no mining activities within one kilometer from the boundaries of National Parks and Sanctuaries in Goa;

(iv) by the order dated 04.12.2006 in Writ Petition (C) No.460 of 2004 (Goa Foundation v. Union of India), this Court has not prohibited mining activities within 10 kilometers distance from the boundaries of the National Parks or Wildlife Sanctuaries;

(v) it is for the State Government to decide as a matter of policy in what manner mining leases are to be granted in future but the constitutionality or legality of the decision of the State Government can be examined by the Court in exercise of its power of judicial review.

And we direct that:

> (i) MoEF will issue the notification of eco-sensitive zones around the National Park and Wildlife Sanctuaries of Goa after following the procedure discussed in this judgment within a period of six months from today;

(ii) the State Government will initiate action against those mining lessees who violate Rules 37 and 38 of the MC Rules;

(iii) the State Government will strictly enforce the Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013;

(iv) the State Government may grant mining leases of iron ore and other ores in Goa in accordance with its policy decision and in accordance with MMDR Act and the Rules made thereunder in consonance with the constitutional provisions;

(v) until the final report is submitted by the Expert Committee, the State Government will, in the interests of sustainable development and intergenerational equity, permit a maximum annual excavation of 20 million MT from the mining leases in the State of Goa other than from dumps;

(vi) the Goa Pollution Control Board will strictly monitor the air and water pollution in the mining areas and exercise powers available to it under the 1974 Act and 1981 Act including the powers under Section 33A of the 1974 Act and Section 31A of the 1981 Act and furnish all relevant data to the Expert Committee;

(vii) the entire sale value of the e-auction of the inventorised ores will be forthwith realised and out of the total sale value, the Director of Mines and Geology, Government of Goa, under the supervision of the Monitoring Committee will make the following payments:

(a) Average cost of excavation of iron ores to the mining lessees;

(b) 50% of the wages and dearness allowance to the workers in the muster rolls of the mining leases who have not been paid their wages during the period of suspension of mining operations;

(c) 50% of the claim towards storage charges of MPT.

Out of the balance, 10% will be appropriated towards the Goan Iron Ore Permanent Fund and the remaining amount will be appropriated by the State Government as the owner of the ores;

(viii) the Monitoring Committee will submit its final report on the utilization and appropriation of the sale proceeds of the inventorised ores in the manner directed in this judgment within six months from today;

(ix) henceforth, the mining lessees of iron ore will have to pay 10% of the sale price of the iron ore sold by them to the Goan Iron Ore Permanent Fund.

(x) the State Government will within six months from today frame a comprehensive scheme with regard to the Goan Iron Ore Permanent Fund in consultation with the CEC for sustainable development and intergenerational equity and submit the same to this Court within six months from today; and

(xi) the Expert Committee will submit its report within six months from today on how the mining dumps in the State of Goa should be dealt with and will submit its final report within twelve months from today on the cap to be put on the annual excavation of iron ore in Goa.

70. With the aforesaid declarations and directions, Writ Petition (C) No.435 of 2012 is allowed. The Transferred Cases and IA filed by MPT as well as other IAs also stand disposed of. The interim order dated 05.10.2012 of this Court is vacated. These matters will be listed as and when the Monitoring Committee and the Expert Committee submit their final reports and the State Government submits the scheme for the Goan Iron Ore Permanent Fund. The parties shall bear their own costs.

.....J. (A. K. Patnaik) .....J. (Surinder Singh Nijjar) .....J. (Fakkir Mohamed Ibrahim Kalifulla) New Delhi, April 21, 2014.
