

SAMAJ PARIVARTANA SAMUDAYA & ORS.

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v.

STATE OF KARNATAKA & ORS.

IA Nos. 10973/2018, 83141/2017, 72931/2017 and 218/2014

In

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(Writ Petition (Civil) No. 562/2009)

AUGUST 26, 2022

**[N. V. RAMANA, CJI, HIMA KOHLI AND
C.T. RAVIKUMAR, JJ.]**

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Environmental laws:

Mines and minerals: Iron ore – Ceiling Limit on production – Enhancement or removal – Production iron ore, from all mining leases in Districts of Bellary, Tumkur and Chitradurga in the State of Karnataka – In year 2011, complete ban imposed on mining in the districts of Bellary, Chitradurga and Tumkur districts of Karnataka on the basis of the report of Centrally Empowered Committee-CEC – In the year 2012, on recommendations of CEC, ceiling limit of 25 million metric tonnes-MMT in District Bellary and 5 MMT in Chitradurga and Tumkur districts prescribed – Applications seeking enhancement/lifting of ceiling cap – On basis of the fresh report of CEC in the year 2017, ceiling limit increased from 25 MMT to 28 MMT in District Bellary and from 5 MMT to 7 MMT in Chitradurga and Tumkur districts – However, presently the stand of the CEC, the State of Karnataka, Ministry of Steel, Union of India, Karnataka Iron and Steel Manufacturers Association and mining lease holders that there should be complete removal of the ceiling to ensure protection of the environment and keeping in mind the principles governing intergenerational equity – However, the petitioner’s case that lifting of the ceiling limit might lead to unmitigated mining activity in the State and would result in regression of the entire state of affairs – Held: The concerns raised by the petitioner, of possible over excavation and its adverse impact on intergenerational equity must be balanced and principle of sustainable development should also come to play – Situation merits a cautious approach – Conservation of the ecology and the

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A *environment must go hand in hand with the spirit of economic development and fine balance between two goals is to be achieved – Thus, ceiling limit of iron ore to be raised from 28 MMT to 35 MMT in District Bellary and from 7 MMT to 15 MMT in Chitradurga and Tumkur districts collectively.*

B CIVIL ORIGINAL JURISDICTION: IA Nos.10973/2018, 83141/2017, 72931/2017 and 218/2014 in Writ Petition (Civil) No. 562 of 2009.

Under Article 32 of The Constitution of India

C Tushar Mehta, SG, K. M. Nataraj, Ms. Madhvi Dewan, ASGs, Nikhil Goel, AAG, Dushyant Dave, R. Balasubramanian, Sr. Advs., Aditya Narayan, Rohit Sharma, Ganesh Bhatt, Sahil Mitra, Ms. Neha Sagwan, Kumar Dushyant Singh, Prashant Bhushan, Ms. Rashmi Singh, Rajat Nair, T.S. Sabarish, Mrs. Shraddha Deshmukh, Shubhranshu Padhai, Shailesh Madiyal, Ms. Sujatha Bagadhi, Arvind Kumar Sharma, Omkar Kambi, Parikshit P. Angadi, V. N. Raghupathy, Ms. Aparna Bhat, Advs. for the appearing parties.

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The following Order of the Court was passed:

ORDER

E 1. The present hearing is in continuation of our earlier hearing and order dated 20.05.2022, whereby this Court had considered and granted certain reliefs relating to the sale and export of iron ore in the Districts of Bellary, Tumkur and Chitradurga in the State of Karnataka. In the said order, we had specifically left open the question of the lifting/relaxation of the ceiling limit for production of iron ore in the abovementioned Districts and had sought an opinion from the Oversight Authority appointed by this Court *vide* order dated 21.04.2022. The observations made by this Court were as follows:

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G “22....For the present, we propose to confine the scope of this order to examining the twin prayers made by learned counsel for the applicants namely, permission to sell the unsold stock of iron ore already excavated without resorting to the process of eaction conducted through the Monitoring Committee and for lifting the ban on export of iron ore/pellets from the districts of Bellary, Chitradurga and Tumkur situated in the State of Karnataka. Although certain submissions were made by the parties regarding lifting of the ceiling limit for total production of iron ore, at this juncture we are not inclined to decide the said issue.

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32. With respect to the submissions of the parties in relation to the lifting of the ceiling limit for production of iron ore for mining leases in the Districts of Bellary, Chitradurga and Tumkur, we are of the considered opinion that it would be expedient to obtain an opinion from the Oversight Authority appointed by this Court vide order dated 21st April, 2022 about the same before deciding the said issue. We request the Oversight Authority to take inputs from the stakeholders, including the CEC and the Monitoring Committee, and to send his opinion to this Court preferably within a period of 4 weeks.”

2. On the last date of hearing, this Court took on record the Report filed by the learned Oversight Authority and had directed that copies of the same be made available to the parties whereafter, the matter was posted for considering the issue of lifting of ceiling limit.

3. Heard Mr. Prashant Bhushan, learned counsel appearing on behalf of the original petitioner and Mr. Dushyant Dave, learned senior counsel appearing on behalf of Federation of Indian Mineral Industries, South.

4. Mr. Prashant Bhushan submitted that the ceiling limits were imposed in view of the earlier CEC recommendation and the report of the learned Lokayukta, which suggested that the rate of mining of iron ore in the State of Karnataka was unsustainable and would result in exhaustion of the iron ore deposits in the State of Karnataka within 30 years. This as per the learned counsel would seriously impact the goal of inter-generational equity. Lastly, he submitted that as the learned Oversight Authority has sought additional information regarding the infrastructural capacity before giving an opinion as to the viability of lifting of the ceiling limit, this Court should presently refrain from passing any orders at this juncture.

5. On the other hand, Mr. Dushyant Dave, Senior Advocate submitted that the present regime relating to iron ore mining in the State of Karnataka, with Court imposed ceiling limits, has been in existence for over a decade. When the ceiling limit was first imposed, the Court was confronted with a vastly different situation, where there was rampant illegal mining activity taking place in the State of Karnataka. The said situation has now been remedied through series of orders passed by this Court. As a result, all illegal mining in the area has been halted and

- A several ameliorative measures have been taken for the improvement of the environment and ecology of the region. In such circumstances, the learned Senior Advocate submitted that the present mining lease holders, who are complying with all the laws, are being unfairly penalized for the illegalities that were committed a decade ago. Such ceiling limits has resulted in a discriminatory situation where mining lease holders in the State of Karnataka are governed by one legal regime, while those in other States of the country are governed by a completely different regime.
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6. At this juncture, it might be relevant, to highlight the history of the ceiling limits on production of iron ore through various Court orders. On 29.07.2011 and 26.08.2011, this Court had imposed a ban on mining in the districts of Bellary, and Chitradurga and Tumkur, respectively based on the report of the Centrally Empowered Committee ('CEC').
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7. On 13.04.2012, this Court had accepted some of the recommendations contained in the Report dated 13.03.2012 of the CEC, including the following recommendation:
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"(B) a ceiling of **25 Million Metric Tonnes (MMT) for total production of iron ore from all the mining leases in District Bellary** may be prescribed. A **ceiling of 5 MMT for production of iron ore from all the mining leases in Districts Chitradurga and Tumkur together** may be prescribed"

- E (emphasis supplied)

8. The above position was reiterated by this Court *vide* judgment dated 18.04.2013, wherein the underlying set of petitions were disposed.

9. *Vide* judgment dated 14.12.2017, while dealing with certain applications seeking enhancement/lifting of ceiling cap. This court had permitted to increase the same from **25 MMT to 28 MMT with respect to Bellary District, and from 5 MMT to 7 MMT for Chitradurga and Tumkur Districts collectively**, based on a fresh report of the CEC dated 14.07.2017. Certain observations made by this Court for granting the relaxation merit reiteration:
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- G "16. The **cap fixed by this Court by Orders dated 5.08.2011 and 1.09.2014 was in a situation where there was virtually no control or effective regulatory measures as to the maximum output that could be generated by a particular mine. There was no scientific study of the iron ore reserves**
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allocated to a particular mine in the lease granted. As a result, it was virtually a free for all exercise designed to achieve the maximum profit within the shortest possible time frame. There was rampant and illegal mining with encroachments into forest land, particularly for use as overburdened dumps resulting from excessive mining. This had led to environmental and ecological depredation to an extent that necessitated judicial intervention to resolve a situation which is the normal course may have fallen within the executive domain. It is on the basis of the intervention by the Court that R&R Plans have been prepared for each mine by an expert body, ICFRE, based on a scientific study of various parameters including mining reserves. R&R Plans have been drawn up specifying a particular/permissible limit for each mine on the basis of limitations of reserves, dumping areas, available infrastructure etc. Accordingly, recommendations have been made for increase of MPAP for 13 different category ‘A’ mines and also for increase of MPAP in respect of 2 leases held by the public sector lessee, i.e., NMDC. Similarly, 10 mines are anticipated to undertake operations within a short time....The solution offered by the Court has to be realistic. Therefore, it is the various features of the current scenario on the ground as highlighted in the report of the CEC that would deserve a close look/consideration. In this regard, we may also take note of the fact that the assessment of reserves has also changed over the years and today the iron-ore reserves across the State of Karnataka, comprising of haematite and magnetite reserves, is to the tune of 10.071 BMT (Billion Metric Tonnes). All these reasons impel us to accept the recommendations of the CEC for enhancement of the cap for category A and B Mines in the 3 district of Bellary, Tumkur and Chitradurga as well as the recommendations with regard to MPAP of NMDC and MML, as mentioned in paragraph 12 hereinabove, with the further direction that all pending proposals for enhancement of MPAP shall be decided without delay, naturally, subject to the cap as above.”

(emphasis supplied)

10. It is in light of the above set of facts that the submissions made by learned counsel ought to be considered. In 2017, this court was

A of the view that the situation had vastly changed in the State of Karnataka and had therefore allowed an increase in the ceiling limit. We are now in the year 2022. It can be no one's case that the situation subsisting in the State of Karnataka currently, is the same as had existed when the underlying petition was first taken up, or when the Court had passed the order in 2017, relaxing the ceiling limit to some extent.

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11. This is also clear from the changed stance of the State of Karnataka and the CEC before this Court. In 2017, the CEC had recommended a cumulative increase in the ceiling limit up to 5 MMT, whereas now, the CEC supports the view that the ceiling limit need not to continue. The State of Karnataka, in 2017, had submitted before this Court that the ceiling limit may be raised to 40 MMT, and gradually increased later to 50 MMT. However, the State of Karnataka is now in favor of a complete removal of the ceiling limit.

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12. In fact, it appears that the CEC, the State of Karnataka, the Ministry of Steel, Union of India, Karnataka Iron and Steel Manufacturers Association ('KISMA') and the mining lease holders are all *ad idem* that the changed situation on ground warrants a complete removal of the ceiling limits that were imposed by this Court to ensure protection of the environment and keeping in mind the principles governing intergenerational equity. The response dated 10.04.2022 of the CEC (viz. CEC Report No. 3 of 2022) on the issue of lifting of ceiling limits merits reproduction and is extracted herein below:

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"17. This Hon'ble Court by orders dated 05.08.2011 and 01.09.2014 had fixed a production cap of 25 MMT in respect of District Bellary and 5 MMT in respect of Districts Chitradurga and Tumkur. This Hon'ble Court by Judgement dated 14.12.2017 enhanced the production cap to 28 MMT in respect of District Bellary and 7 MMT for Districts Chitradurga and Tumkur. The availability of iron ore as approved in the R&R plans currently exceeds the limit of 35 MMT per annum fixed by this Hon'ble Court. As per the latest data furnished by the Monitoring Committee, currently 34 category 'A' and 'B' mining leases are in operation with an approved MPAP of 36.31 MMT. An Additional 9 Category "C" mining leases and 4 Category "A" and "B" expired leases, which were e-auctioned, are operational with MPAP of 5.54 MMT and 2.41 MMT respectively. Another 4 mining leases located in Districts Bagalkote

and Davanagere have production capacity of 6.29 lakh MT per annum and 60000 MT per annum respectively. The production of iron ore in these two Districts is not affected by the orders of this Hon'ble Court. The sum of approved annual production capacity of iron ore in Karnataka as on 31.03.2022 adds upto 44.949 MMT. In addition, there are 5 Category "C" and 2 expired Category "A" & "B" mines which have been e-auctioned by the state but the execution of lease agreements are pending in respect of these 7 mines as on 31.3.2022.

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23. Keeping in view the facts highlighted in the preceding paragraphs, it is for consideration of this Hon'ble Court whether the restrictions on production and sale of the iron ore in the three Districts Bellary, Chitradurga and Tumkur imposed following the total ban on mining are required to be reviewed and if agreed upon by this Hon'ble Court the following may please be considered

(i) Vacation of the orders of this Hon'ble Court directing sale of iron ore through e-auction conducted by the Monitoring Committee, and which ore has been produced by the lessees after resumption of mining operation. However, the sale of balance old stock of iron ore, including sub-grade iron ore available on the date of imposition of ban on mining be continued through e-auction. The Monitoring Committee be directed to dispose all the balance old stock through e-auction before 31st July 2022. If any stock over which the lessee has the ownership right is left unsold the lessee may be allowed to dispose of it.

(ii) The collection of 10 per cent of the sale value from all the lessee except NMDC and 20% of sale value from NMDC towards their contribution to the SPV may be discontinued.

(iii) Vacation of the orders on total ban on export of iron ore and pellets from the districts of Bellary, Chitradurga and Tumkur.

(iv) Vacation of the orders on fixing district level caps on production of iron ore in respect of Category 'A' and Category 'B' mines from the financial year 2022-2023.

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A 24. However the system of determination of the Maximum
Permissible Annual Production (MPAP) being fixed through the
R&R Plans and Supplementary Environment Plans, after ensuring
the scientific and sustainable mining and after taking into account
the mining reserves available within the lease area and after
B following the standards stipulated under various environmental
and mining statutes, as approved in order dated 13.4.2012 and
judgement dated 18.4.2013 of this Hon'ble Court, may continue.
All mining leases to operate strictly adhering to such MPAP, as
may be fixed /refixed."

C 13. The Monitoring Committee, without directly alluding to the
issues raised by the others with respect to why the ceiling limit should be
maintained or lifted, has highlighted a separate concern, viz., the
infrastructural incapacity to transport the iron ore excavated if the ceiling
limits were to be raised. It is in this context that the learned Oversight
Authority appointed by this Court expressed his inability to conclude on
D the said issue. The learned Oversight Authority, in his report dated
29.07.2022, observed as follows:

E The Oversight Authority as at present is unable to express its
firm opinion in the matter in view of the conflicting reports
submitted by Central Empowered Committee and the Monitoring
Committee. It is not for the Oversight Authority to express any
opinion as to whether the Monitoring Committee has exceeded its
brief in joining an issue with Central Empowered Committee by
pleading for continuation of the ceiling limit. Be it as it may, it is
just and necessary to gather some further evidence in the matter
of 'current available road infrastructure', 'existing as well as
F improvements made to transport infrastructure'. There is no
evidence as such made available for the perusal of the Oversight
Authority as to what are the developments that have taken place
between today and 20.05.2022 i.e. when the Hon'ble Supreme
Court of India passed the Orders referred to hereinabove.

G 14. Mr. Prashant Bhushan, learned counsel appearing on behalf
of the original petitioner, is therefore the sole objector to the request of
lifting of the ceiling limit, on principles. The motivating concern behind
the objection appears to be the anxiety that lifting of the ceiling limit may
spiral into the same situation that had resulted in this Court's judicial
H intervention in the first place. Learned counsel submitted that such an

order of lifting the ceiling limit might lead to unmitigated mining activity in the State of Karnataka, setting the clock back entirely and resulting in regression of the entire state of affairs. A

15. The concerns of the original petitioner and the Monitoring Committee merit due consideration of this Court. Much good work has been done in the State of Karnataka, because of the action initiated by the original petitioner and the subsequent judicial interventions by this Court. In fact, it is this progress made steadily over the past decade that weighed with this Court to even consider the relief regarding raising of the ceiling limit sought by the present applicants. The concerns raised by the original petitioner, of possible over excavation and its adverse impact on intergenerational equity, must be balanced against the concerns of the other parties, as the principles of sustainable development also comes into play. B C

16. This Court has generally accepted the recommendations of the CEC when it comes to the ceiling limit. In the present case, the CEC has recommended a complete relaxation of the ceiling limit. But we are not inclined to allow the same in toto. Rather, the situation merits a cautious approach, keeping in view the concerns raised and to ensure that any changes in the situation with respect to the mining activity in the State of Karnataka is brought about gradually, we are of the opinion that the ceiling limit of iron ore mining may be raised from 28 MMT to 35 MMT for District Bellary, and from 7 MMT to 15 MMT for Chitradurga and Tumkur Districts collectively. D E

17. Conservation of the ecology and the environment must go hand in hand with the spirit of economic development and the fine balance between the two goals is what is sought to be achieved even now. F

18. IA Nos. 83141/2017, 72931/2017 and 218/2014 are disposed of on the above terms. As far as IA No. 10973/2018 is concerned, the same relates to directions to the CEC and Monitoring Committee regarding deciding applications for enhancement of MPAP in terms of the earlier orders of this Court. The same may be considered by the Court on the next date of hearing. G