REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE TO APPEAL (CIVIL) NO. 32138 OF 2015

The Goa Foundation …Petitioner

Versus

M/s Sesa Sterlite Ltd. & Ors. …Respondents

WITH

SLP (C) NOS. 32699-32727 OF 2015, WRIT PETITION (C) NO. 711 OF 2015 AND WRIT PETITION (C) NO. 720 OF 2015

J U D G M E N T

Madan B. Lokur, J

1. Rapacious and rampant exploitation of our natural resources is the hallmark of our iron ore mining sector - coupled with a total lack of concern for the environment and the health and well-being of the denizens in the vicinity of the mines. The sole motive of mining lease holders seems to be to make profits (no matter how) and the attitude seems to be that if the rule of law is required to be put on the backburner, so be it. Unfortunately, the

State is unable to firmly stop violations of the law and other illegalities, perhaps with a view to maximize revenue, but without appreciating the long term impact of this indifference. Another excuse generally put forth by the State is that of development, conveniently forgetting that development must be sustainable and equitable development and not otherwise.

2. Effective implementation and in some instances circumvention of the mining and environment related laws is a tragedy in itself. Laxity and sheer apathy to the rule of law gives mining lease holders a field day, being the primary beneficiaries, with the State being left with some crumbs in the form of royalty. For the State to generate adequate revenue through the mining sector and yet have sustainable and equitable development, the implementation machinery needs a tremendous amount of strengthening while the law enforcement machinery needs strict vigilance. Unless the two marry, we will continue to be mute witnesses to the plunder of our natural resources and left wondering how to retrieve an irretrievable situation.

3. The Government of India appears to have received information of large-scale illegal mining of iron ore and manganese ore in different States in contravention of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (the MMDR Act), the Forest (Conservation) Act, 1980, the Environment (Protection) Act, 1986 and other rules and guidelines

issued on the subject from time to time.

4. Acting on this information, the Government of India appointed Justice M.B. Shah a former judge of this Court as a commission of inquiry under Section 3 of the Commissions of Inquiry Act, 1952 by a notification dated 22nd November, 2010. The terms of reference of the Commission for the State of Goa were as follows:

> 2. The terms of reference of the Commission shall be -
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> (*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;
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> (*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;
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> (*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
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> (*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."

5. Justice Shah visited Goa and after calling for and receiving information from the concerned authorities as well as the mining lease holders, he submitted a report on 15th March, 2012 and another on 25th April, 2012 to the Ministry of Mines in the Government of India. The reports were tabled in Parliament on 7th September, 2012 along with an Action Taken Report and as a result, the Government of Goa passed an order dated 10th September, 2012 suspending all mining operations in the State with effect from 11th September, 2012. The Ministry of Environment and Forests (MoEF) of the Government of India acted similarly and kept in abeyance the environmental clearances granted to 139 mines (actually 137 mines – there is some duplication) in the State of Goa by an order dated 14th September, 2012.

6. Subsequent to the reports given by Justice Shah, a writ petition was filed by Goa Foundation in this Court being WP (C) No. 435 of 2012. The writ petition was a public interest litigation praying, *inter alia*, for directions to the Union of India and the State of Goa to take steps to terminate the mining leases where mining was carried out in violation of various statutes.

7. Similarly, several mining lease holders preferred writ petitions in the Bombay High Court for a declaration that the reports given by Justice Shah are illegal and also for quashing the orders dated 10th September, 2012 and 14th September, 2012 whereby mining operations were suspended and environmental clearances were kept in abeyance. The writ petitions filed in the High Court were transferred to this Court for hearing along with WP (C) No. 435 of 2012.

8. This Court heard all these matters and rendered its decision in ***Goa Foundation v. Union of India*** on 21st April 2014.[1] Among other conclusions arrived at, it was held by the Court that all the iron ore and manganese ore leases had expired on 22nd November, 2007. Consequently, any mining operation carried out by the mining lease holders after that date was illegal. It was also held that all the mining lease holders had enjoyed a first deemed renewal of the mining lease and for a second renewal an express order was required to be passed in view of and in terms of Section 8(3) of the MMDR Act. For a second renewal of the mining lease, it was held that the State Government must apply its mind and record reasons for renewal being in the interest of mineral development and the necessity to

[1] (2014) 6 SCC 590

renew the mining lease. Any decision taken by the State Government should also be in conformity with the constitutional provisions. The decision taken by the State of Goa to grant a mining lease in a particular manner or to a particular party could be examined by way of judicial review. It was also held that the orders dated 10th September, 2012 and 14th September, 2012 are not liable to be quashed and that they would continue till decisions are taken to grant fresh leases and fresh environmental clearances for mining projects.

Goa Mineral Policy 2013

9. During the pendency of the proceedings before the Court, the State of Goa announced the draft Goa Mineral Policy on 21st August, 2012. After suggestions etc. were received, the Mineral Policy was finalized and gazetted on 28th September, 2013.

10. A few salient features of the Mineral Policy may be mentioned. It is stated in the Preamble to the Mineral Policy: "The Goan economy is heavily dependent on the iron ore industry insofar as the major share of the regional income from the mineral industry and its allied activities like transport and trade is concerned."

> "However, during the period from 2006-07 to 2011-12, due to huge spurt in demand of low grade ore in international market followed by **illegalities and irregularities** in the previous regulatory regime, the State has witnessed the peak of **chaotic and unregulated mining** without any concern for fragile ecology and environment of the State

> or for the general well being of an average Goan. It has resulted in massive export of unaccounted ore from unidentified sources like dumps and tailings. The **reckless exploitation** without any concern for sustainability that the State has witnessed in last five years has serious implications. Minerals are a finite and non-renewable natural resource and must be exploited wisely in the larger interest of the State.
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> It is high time that the new Government that has received an unprecedented mandate from the people of Goa should take note that dependence on mining presents extreme externalities and **the State has to tread cautiously promoting a sustainable extraction regime to facilitate systematic, scientific and planned utilization of mineral resources** and to streamline mineral based development of the State, keeping in view, protection of environment, health and safety of the people in and around the mining areas rather than race to bottom." [Emphasis supplied by us].

11. Notwithstanding this serious indictment of the pre-existing 'policy' for mining natural resources in Goa, the Mineral Policy did not address itself to the allocation or distribution of the natural resources in any of its 20 paragraphs and many sub-paragraphs. The topics dealt with in the Mineral Policy include objectives and parameters, sustainable mining and mineral conservation, mineral administration, regulation of mines and minerals, pollution and its social impact, and policy highlights. Some of the other topics dealt with in the Mineral Policy include capping, based on carrying capacity of public roads and to protect inter-generational equity, mines safety and rehabilitation of affected people, stakeholder participation (including corporate social responsibility), welfare and social responsibilities

and establishment of the Goa Minerals Development Fund etc.

12. However, what is of some significance is that paragraphs 1.4.4 and 1.4.5 of the Mineral Policy state that Goan iron ore is low grade, that is having low iron (or Fe) content and that its extraction provides no or minimal domestic value addition. Almost all the iron ore extracted in Goa is exported and we were informed that only one mining lease holder captively consumes Goan extracted iron ore. Paragraphs 1.4.4 and 1.4.5 of the Mineral Policy read as follows:

> "1.4.4 No Domestic Value Addition: The nature of Goan iron ore is such that value addition opportunities in the domestic market are minimal. The Chinese and Japanese use Goan iron ore for blending purposes to bring down the average cost of iron ore, whereas Indian steel producers have a wide range of high grade fines to choose from. **Despite the closure of mining operations in the neighbouring State of Karnataka, Goan iron ore is not used in Indian Steel Industry due to its low Fe content.**
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> 1.4.5. Low Grade v/s High Grade: Goan iron ore has always been of low grade Fe content in comparison with that of Odisha, Jharkhand and Karnataka. **The low grade of ore has been competitive in global markets, because of the non reliance on railways and close distances of mines to ports thereby reducing the overall cost.** The high silica presence in Goan ore also is a favourable factor for preference for Goan ore over Australian and Brazilian low grade ore." [Emphasis supplied by us].

13. It appears from the above that the extraction of iron ore in Goa is geared only towards export and not for domestic purposes because of the low Fe content and high silica presence.

Vishwanath Anand Expert Appraisal Committee

14. During the pendency of the writ petition in the Court, the MoEF constituted an Expert Appraisal Committee (EAC) on 21st March, 2013 with Shri Vishwanath Anand, former Secretary in the MoEF as the Chairman to specifically look into issues related to illegal mining in the State of Goa. The terms of reference of the EAC were as follows:

> (a) To examine the information/documents submitted by each of the 139 project proponents in response to aforesaid direction dated 14th September, 2012 under Environment (Protection) Act, 1986 for keeping environment clearance in abeyance and making case-by-case recommendations to the MoEF;[2]
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> (b) To evaluate status of compliance with respect to conditions stipulated as part of environment clearance;
>
> (c) xxx xxx xxx
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> (d) To examine the observations relating to MoEF in Justice Shah Commission report on illegal mining of iron and manganese ore in the State of Goa and make appropriate recommendations.

15. The EAC gave its report sometime in October 2013 with regard to 137 mining leases. Very briefly, the EAC found many of the mining lease holders had: (i) No approval from the National Board of Wildlife; or (ii) Indulged in excess mining; or (iii) Indulged in dump mining; or (iv) Intersected groundwater level; or (v) No clearance from the Central Ground

[2] Actually 137 project proponents – there is some duplication

Water Board to draw ground water; or (vi) No forest clearance. We may also note that the EAC also recommended the revocation of environmental clearance granted to several mining lease holders for a variety of reasons.

16. The Mineral Policy and the report of the EAC were perhaps placed before the Court in the writ petition filed by Goa Foundation and the transferred cases, but not dealt with, except for a brief mention of the Mineral Policy.

17. All the cases before the Court were heard quite extensively in September, October and November 2013. Judgment was reserved on 11th November, 2013 and pronounced on 21st April, 2014. Some of the conclusions arrived at by the Court relevant for our discussions have already been mentioned above.

18. At this stage, it may be mentioned that on 11th November, 2013 read with an order dated 18th November, 2013[3] this Court 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 intergenerational equity and all other relevant factors." The members of the Expert Committee were:

[3] Goa Foundation v. Union of India, (2014) 6 SCC 738 and Goa Foundation v. Union of India, WP (C) No. 435 of 2012

1. Dr. C.R. Babu (Ecologist)
2. Dr S.C. Dhiman (Geologist/Hydrogeologist)
3. Prof. B.K. Mishra (Mineralogist)
4. Prof. S. Parameswarappa (Forestry)
5. Shri Parimal Rai (nominee of the Ministry of Environment and Forests, Government of India).

19. The Expert Committee submitted an Interim Report dated 14th March, 2014 to the Court after considering reports prepared by the Tata Energy Research Institute (TERI), New Delhi (1997); TERI and International Development Research Centre, Ottawa, Canada (2006); MoEF (2014); research papers prepared by the Goa University and the National Institute of Oceanography; Indian Institute of Technology (Indian School of Mines), Dhanbad (2013); Pollution Control Board, Goa (Annual Report) and other literature. It noted large-scale degradation of the environment in Goa due to mining operations. A Final Report was also submitted by the Expert Committee to the Court on or about 12th April, 2015 - it was obviously not available to the Court.

Other proceedings in the High Court

20. Quite independent of the cases pending in this Court, writ petitions were filed by several mining lease holders in the Bombay High Court praying either for consideration of their application for a second renewal of

the mining lease or for the grant of a mining lease on second renewal. The High Court heard those writ petitions and delivered its judgment on 13th August, 2014.[4] In the course of its judgment, the High Court referred to the Mineral Policy and observed:

> "The State Government also framed Goa Mineral Policy, 2013, which was duly gazetted on 28th September, 2013 and was placed on record before the Supreme Court in Writ Petition (C) 435/2012. The State Government, in terms of this policy, in principle, agreed to renew 28 leases. These leaseholders were also asked to pay stamp duty. In some cases, after payment of the stamp duty, decision under Section 8(3) of the MMDR Act was taken to renew the leases and that decision is also gazetted. Thus, the petitions are classified in three categories mentioned hereinbelow:
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> (A) Where there is notification issued in the Official Gazette after taking a decision for renewal;
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> (B) Where there is a decision for renewal and there is stamp duty collected; and
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> (C) Where there are renewal applications made and are still pending.
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> All the petitioners initially sought directions to the State Government to decide their applications for renewal filed in the year 2007. However, the petitions which fell in the first two categories were subsequently amended and directions were sought against the Government to execute second renewal lease deeds."

21. In its decision, the High Court held: (i) The decision of this Court [in ***Goa Foundation***] is not an impediment on the State of Goa in considering the applications filed by the petitioners before the High Court for a second renewal of the mining lease. On the contrary, the decision casts an obligation

[4] Lithoferro v. State of Goa, MANU/MH/1292/2014 = 2014 SCC OnLIne Bom 997

on the Government of Goa to consider all the applications for renewal under Section 8(3) of the MMDR Act; (ii) Consideration of the applications should be in accordance with the Mineral Policy, the provisions of the MMDR Act and the Rules made thereunder and in accordance with constitutional provisions; (iii) The expression 'fresh leases' occurring in paragraph 67 (82) of the decision of this Court [in ***Goa Foundation***] is an affirmation of the law that the renewal of a lease is also a fresh grant. For arriving at this conclusion, the High Court placed reliance on ***State of M.P. v. Krishnadas Tikaram***.[5]

The High Court finally held:

> "In the case in hand, admittedly, all the petitioners have made applications for second renewal within the time limit i.e. before expiry of the term of first renewal of the mining leases. The mining plans for the second renewal, thereafter, came to be approved by the IBM. The IBM also recorded its subjective satisfaction that the same is in the interest of mineral development. Thus, there is enough material on record to show that the Government agreed to grant the second renewal of mining leases under Section 8(3) of the MMDR Act and thereafter amended the Stamp Act and directed some of the petitioners to pay the stamp duty and even accepted the same. Thus, the Government gave promise that the mining leases would be executed under Section 8(3) and pursuant to the promise, the petitioners altered their position by depositing the huge stamp duty. Therefore, it is now not open for the Government to resile from the promise as it is estopped by the doctrine of promissory estoppel from doing so. The petitioners legitimately expected that after payment of the stamp duty, the Government would execute the second leases under Section 8(3) of the MMDR Act. In our considered opinion, the

[5] 1995 Supp (1) SCC 587

> principle of promissory estoppel is squarely applicable to the facts of the present case. The Government is reluctant to execute the lease deeds under Section 8(3) only on the ground that it is not open for it to do so in the light of the Apex Court judgment in Writ Petition (C) No. 435/2012. We have already held that the Supreme Court judgment in Writ Petition (C) No. 435/2012 is not an impediment in the Government's way in executing the leases in terms of Section 8(3) of the MMDR Act."

22. In view of the above conclusions, the High Court passed the following orders:

> "(I) The Respondent-State of Goa is directed to execute the lease deeds under Section 8(3) of the MMDR Act in favour of the petitioners/lease holders who/which have already paid the stamp duty pursuant to the orders of the Government, in accordance with the Goa Mineral Policy, 2013 placed before the Supreme Court in Writ Petition (Civil) No. 435/2012 and subject to the conditions laid down by the Apex Court in the said Writ Petition.
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> (II) So far as the petitioners/lease holders who/which have not paid the stamp duty are concerned, the Respondent-State of Goa is directed to decide their renewal applications under Section 8(3), as expeditiously as possible, and preferably within a period of three months from the date of receipt of copy of this order."

23. Two petitions for special leave have been filed directed against the judgment and order passed by the High Court on 13th August, 2014 being SLP (C) No. 32138 of 2015 and SLP (C) Nos. 32699-32727 of 2015 and these are also before us.

Goa Grant of Mining Leases Policy 2014

24. Keeping in mind the orders and directions passed by this Court and the High Court, the State of Goa formulated the Goa Grant of Mining Leases

Policy 2014. We were informed by the learned Additional Solicitor General that the Grant of Mining Leases Policy was approved by the Council of Ministers of the Goa State Cabinet on 1st October, 2014. It was issued on 4th November, 2014 and placed on the website of the Directorate of Mines and Geology of the Government of Goa on the same day. However, it was gazetted on 20th January, 2015 with two paragraphs deleted from the document issued on 4th November, 2014. The two deleted paragraphs are indicated below.

25. The Grant of Mining Leases Policy makes for some very important and interesting reading and includes an impassioned plea for rejecting the process of competitive bidding of mining leases ***for the time being***. It also contains the statement made by the Chief Minister on the floor of the Goa State Legislative Assembly. While the Grant of Mining Leases Policy is a large document, it is necessary to read relevant extracts from it since it indicates the factors that went into taking the policy decision and also to appreciate if there was any violation of Article 14 of the Constitution. The relevant extracts read as under:

> *Background*.— In accordance with the Directions contained in the judgment and order of the Hon'ble Supreme Court dated 21st April, 2014 in Writ Petition (Civil) No.435 of 2012, the Hon'ble Supreme Court has declared that all the Mining Leases in the State of Goa have expired on 22nd November, 2007.….

It has further been directed by the Hon'ble Supreme Court that it is for the *State Government to decide as a matter of Policy, in what manner Mining Leases are to be granted in the future*…..

The Hon'ble Supreme Court has in its Judgment and Order dated 21st April, 2014 clearly held that the action of allowing the mines to be run on Deemed Extension Basis from the years 2007 to 2012 was completely illegal and has further declared that the so-called deemed mining leases in the State of Goa have expired in the year 2007…..

Few things emerge out of the Hon'ble Supreme Court's Order. In the first place, the mining leases have been held to have expired in the year 2007. **In the second place, the State Government has been directed, in accordance with its policy to grant fresh leases in the State.**

With these, the options available with the State Government are as follows:–

The State Government can directly auction the leases in order to secure the best returns for the grant of leases by way of a competitive bidding process,

(a) The State Government can also form a State Corporation and undertake the mining activities through the State Mineral Development Corporation.

(b) The State Government could also proceed to grant fresh leases, in terms of the MMRD Act by the following the process of preferential grant of leases to certain persons as specified in the MMRD Act.

(c) Yet another option available to the State Government was to decide the renewal applications which were pending since the year 2006 and which had remained without any disposal.

Each of the aforesaid modes has its own merits and de-merits….

While the State Government was in the process of deliberating on all these issues at various levels, the judgment and order of the Hon'ble High Court in Writ Petition filed by certain lease holders came to be

delivered on 13th August, 2014 whereby the Hon'ble High Court has directed the execution of the Lease Deeds under Section 8(3) of the MMRD Act in favour of the lease holders who have already paid the stamp duty pursuant to Orders of the State Government in accordance with the Goa Mineral Policy, 2013, placed before the Hon'ble Supreme Court and subject to the conditions…..

This judgment and order of the Hon'ble High Court virtually leaves no choice to the State Government, thereby to completely abandon the process of competitive bedding [bidding] for earning the best revenue to the State Government. While this was the position taken by the State Government in the Goa Mineral Policy, 2013, and the Hon'ble High Court has interpreted the Order of the Hon'ble Supreme Court in Writ Petition (Civil) No.435/2012, **the State Government in view of Hon'ble High Court order, has for the present ruled out the process of going for competitive bidding.** The State Government is considering actively, within its Constitutional powers and functions, to come out with regulatory and controlling measures and levy and collect appropriate returns having regard to the fact that the soil comprising the land belongs to the State…. The State Government has also commenced the inquiry and investigation into the violations of matters under Rule 37 and 38 of the Mineral Concession Rules, 1960 as directed by the Hon'ble Supreme Court….

As is seen from the aforesaid, the Judgment and order of the Hon'ble High Court is an intervening circumstance inasmuch as it directs the execution of Lease Deeds in 28 cases and consideration of the Application under Section 8(3) by the State Government in the other cases….

In the considered Opinion of the State Government, it would be futile to challenge the Judgment of the Hon'ble High Court before the Hon'ble Apex Court as that would once again delay the commencement of the Mining Operations. As a matter of fact, a substantial portion of the State's Revenue comes from the Mining Sector. The State has been virtually starved of funds for undertaking many activities including Infra-structural Projects; and on account of the stopping of the Mining Operation, the State had to walk a tight-rope as there has been no Revenue coming from one of the major source of Revenue….

Having regard to the aforesaid, the State Government thought it proper to act in accordance with the Directions of the Hon'ble Supreme Court *by balancing the equities, needs; as also to sub-serve the Public Interest and by having sustainable development by protecting the Ecological and all other factors.*

Policy Framework.— The State Government has been considering and deliberating the entire matter, and thought it proper having regard to the facts that:

(a) The Mining Lease Holders had applied for the Second Renewal well within time.

(b) The fact that the Applications of the Mining lease holders for the Second Renewal were not disposed off by the then State Government and for which the Lease Holders cannot be blamed.

(c) Having further regard to the fact that 27 mining Lease Holders despite the closure of the mining operations, when called by the State to do so within the period, have paid the Stamp Duty; as also, other levies.

(d) Such payments helped the State Government to override the financial crisis at that point of time.

(e) Having regard to the fact that a large number of labour staff employed with these lease holders.

(f) That concerned Mining Lease Holders have invested heavily into the development of Mines; as also, into the Machinery such as Ripper Dozers, Cranes, wheel loader, Beneficiation plants etc.

(g) Other methods are not as suitable as this method for various reasons listed [in] Hon'ble Chief Minister statement to the House listed above.

The State Government after having considered the matter from every possible angle, has decided to exercise its Power under Section 8(3) of the Mines and Mineral Regulations and Development Act, 1957, and **to consider each of the cases on their own merits** and subject to compliance with the Conditions which may be laid down by the State Government including for strict Pollution Control measures, and thereafter take a decision on the renewal in terms of Section 8(3) of the MMRD Act, 1957, complying fully with the Procedure laid down therein.

Though the State Government has in principle decided to follow the route of the renewal of Lease under Section 8(3) of the MMRD Act, it shall be subject to the following:-

Unless and until the Inquiry initiated pursuant to the Judgment and Order of the Honourable Supreme Court of India against those Mine Lease Holders found to be violating either Rule 37 or Rule 38 of the Mineral Concession Rules 1960, or otherwise indicted in the Report of the Justice Shah Commission/PAC report or found to be engaged in, any kind of illegality of whatsoever nature such as illegal Sale of Ore, Sale of Royalty Challan without Ore, Encroachment of adjoining areas outside the lease over production in excess of the limit specified in the Environmental Clearance; those which have undertaken unscientific mining operations; those who have violated or have not paid the Royalty amount; those who have re-used old Royalty Challans for defrauding; and those involved in Illegal Mining Activities **shall not be considered for renewal of the Mining Leases.**

For this purpose, **presently the inquiries are in progress** at various levels and foras including the investigation by the SIT Team, by the Team of Chartered Accountants which have been set up by the State Government and after the Inquiry is complete or during the course of the inquiry where it is found that any violations have taken place, **such persons shall not be considered for Grant/Renewal of the Leases**…..

Those Mining Lease Holders who have paid Stamp Duty, in which there are no violations found in terms of Mr. Justice Shah Inquiry/Public Accounts Committee Report, shall be considered for Renewal. [Deleted from the gazetted Policy].

The formation of the entire Policy is aimed that it is required to balance various interests having regard to the Principle of Sustainable Development; but by keeping in mind the commercial interest of the present state of economy, the interest of the labour class, the interest of the working class including other staff, the interest of the market in the Mining Localities, the interest of the Public Sector, the interest of the existing Mining Lease Holders and the overall welfare needs of the State; and require all urgent

> infrastructural development. By balancing all these interests the present Policy has been formulated by the State Government."
>
> **The above policy is in principle decision of the State Government and will be vetted for exact legal requirements from specific necessities as also from financial view points and notified thereafter.**"[6] [Deleted from the gazetted Policy]. [Emphasis supplied by us].

26. Around this time, and pursuant to the Budget Speech given by the Hon'ble Minister of Finance of the Government of India on 10th July, 2014 it appears that steps were being taken by the concerned Ministry in the Government of India to amend the MMDR Act.[7] In fact a draft Mines and Minerals (Development and Regulation) Act, 2014 was prepared on or about 16th November, 2014 and uploaded on the website of the Ministry of Mines on 17th November, 2014. This information was placed before us from the response given by the Hon'ble Minister of Mines to Unstarred Question No. 2485 to be answered in the Lok Sabha on 8th December, 2014. The question was:

> (a) whether the Government proposes to formulate a new policy on grant of mining leases for various minerals by amending the Mines and Minerals (Development and Regulation) Act, 1957;
>
> (b) if so, the details thereof along with the time by which the new policy is likely to be implemented;

[6] http://www.goadmg.gov.in/Uploads/288.pdf

[7] 122. "It is my Government's intention to encourage investment in mining sector and promote sustainable mining practices to adequately meet the requirements of industry without sacrificing environmental concerns. The current impasse in mining sector, including, iron ore mining, will be resolved expeditiously. **Changes, if necessary, in the MMDR Act, 1957 would be introduced to facilitate this.**" [Emphasis supplied by us].

And the answer was:

> (a) & (b): Yes Madam. The Ministry has drafted the Mines and Minerals (Development and Regulation) (MMDR) (Amendment) Bill, 2014, which has been uploaded on the website of the Ministry on 17.11.2014, calling for comments/suggestions on the draft Bill. The last date for receipt of the comments/suggestions is 10th December 2014. Based on the comments/suggestions received the draft Bill will be finalized and taken forward for introduction in the Parliament.
>
> The Bill is designed to put in place mechanisms for: (i) Improved transparency in the allocation of mineral resources; (ii) Obtaining for the government its fair share of the value of such resources; (iii) Attracting private investment and the latest technology; and (iv) Eliminating delay in administration, so as to enable expeditious and optimum development of the mineral resources of the country.

27. What was the nature of the proposed amendments? As far as we are concerned, the introduction of Section 10B in the MMDR Act (relating to competitive bidding) is significant and this reads:

> "**Mining leases for notified minerals**
>
> 10B. (1) Notwithstanding anything contained elsewhere in this Act, but subject to the provisions of Section 10A and Section 17A, the procedure for obtaining a mining lease for notified minerals in respect of land in which the minerals vest in the Government shall be as laid down in this Section.
>
> (2) and (3) xxx
>
> (4) For the purpose of granting a mining lease in respect of any notified mineral in such notified area, the State Government shall select, through auction by a method of competitive bidding, including e-auction, an applicant who satisfies the eligibility conditions.

(5) The Central Government shall prescribe the terms and conditions, and procedure, subject to which the auction will be conducted, including the bidding parameters for the selection, which could include a share in the production of the mineral, or any payment linked to the royalty payable, or any other relevant parameter, or any combination or modification of them.

(6) and (7) xxx"

[Iron ore was proposed as a notified mineral in the draft statute].

28. Immediately after 4th November, 2014 (the date on which the Grant of Mining Leases Policy was uploaded on the website of the Government of Goa) the State Government commenced granting a second renewal of the mining leases from 5th November, 2014 onwards and that process was completed on 12th January, 2015. The following table gives the dates of second renewal of 88 mining leases granted by the State Government on or before 12th January, 2015:

Sr. No.	Date of renewal order	Number of renewal orders passed
1.	5.11.2014	5
2.	6.11.2014	5
3.	7.11.2014	3
4.	10.12.2014	3
5.	24.12.2014	10
6.	1.1.2015	3
7.	2.1.2015	3
8.	5.1.2015	2
9.	6.1.2015	22
10.	9.1.2015	1
11.	12.1.2015	31
TOTAL = 88		

29. The date of 12th January, 2015 is significant since on that date the President promulgated the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 (which was later enacted by Parliament) whereby the grant of mining leases for notified minerals was through competitive bidding or the auction process. It is important to mention here that the approval of the Ordinance by the Cabinet of the Government of India became public knowledge on 5th January, 2015[8] and it is within a week from that date that the Government of Goa granted a second renewal to 25 mining leases and to make matters worse, a second renewal was granted to 31 mining leases on 12th January, 2015 the day the Ordinance came into force making a total of 56 renewals of mining leases.

Environmental clearance and orders dated 20th March, 2015

30. Following the renewal of 88 mining leases, the State of Goa requested the MoEF by letters dated 7th January, 2015 and 5th February, 2015 to lift the abeyance order of 14th September, 2012 on the environmental clearances. Consequently, the MoEF passed three orders on 20th March, 2015 (the actual sequence of the orders is not very clear).

[8] http://www.businesstoday.in/current/economy-politics/narendra-modi-cabinet-approves-ordinance-for-mines-auction/story/214253.html
https://timesofindia.indiatimes.com/business/india-business/Cabinet-approves-ordinance-for-mines-auction/articleshow/45765290.cms
http://www.financialexpress.com/economy/reforms-cabinet-approves-ordinance-for-mines-auction/26342/
http://www.livemint.com/Politics/VDXphnUmPYGbN4lmzEBslK/Govt-passes-executive-order-to-auction-minerals.html

31. The first order of 20th March, 2015 was in the form of a letter addressed to the Principal Secretary, Environment, Government of Goa and it recorded that MoEF had considered all the 139 cases in which the abeyance order has been passed and had taken into account the request of the State Government, the recommendation of the EAC and the directions of this Court. It was noted that the EAC had observed that there were violations of the following nature: (i) No clearance from the National Board of Wildlife and non-compliance of orders of this Court on the subject; (ii) Excess production; (iii) Dump mining; (iv) Intersecting ground water table and drawal of ground water without permission of the Central Ground Water Board; (v) No forest clearance obtained where required; (vi) Encroachment and false information/concealment of fact. It was stated that the MoEF had decided to refer the cases to the appropriate authorities (including the State Government) for taking action on the violations. Accordingly, a request was made to examine the report of the EAC and take appropriate action against the concerned lessees.

32. The second order passed on 20th March, 2015 was an Office Memorandum to the effect that if a project proponent has a valid and subsisting environmental clearance for a mining project under the Environment Impact Assessment Notification of 27th January, 1994 (EIA

1994) or Environment Impact Assessment Notification of 14th September, 2006 (EIA 2006), it will not be required to obtain a fresh environmental clearance at the time of renewal of the mining lease. This was subject to the maximum period of validity of 30 years for the environmental clearance for a mining lease.

33. The third order passed on 20th March, 2015 related to lifting the abeyance order dated 14th September, 2012 on the environmental clearance of the mining leases for iron ore and manganese ore. The cases of all 139 mining leases in which the abeyance order was passed were considered and the abeyance order lifted in respect of 72 cases. The details in this regard are given in the table below:

Number	Remarks	Remaining
Total mines = 139		
2	Inadvertent repetitions	137
2	Already withdrawn	135
12	Fully located in Protected Area (abeyance order cannot be lifted)	123
6	Partly located in Protected Area (abeyance order cannot be lifted)	117
23	Within 1 km. of Protected Area (awaiting modification of order dated 4.8.2006 passed by this Court)	94
22	Not having any Forest Clearance and will be considered only after clearance is obtained	72
35	Environmental Clearance already granted under EIA Notification of 27.1.1994 and no fresh clearance is required in view of Office Memorandum dated 20.3.2015. Abeyance order lifted.	37

37	Environmental Clearance already granted under EIA Notification of 14.9.2006. Abeyance order lifted.	0
Abeyance order lifted on 20th March, 2015 for 72 mines out of 139		

34. The third order of 20th March, 2015 also placed certain additional specific conditions while lifting the abeyance order. These additional conditions were:

1. State Government of Goa shall develop and implement a credible mechanism to regularly monitor and ensure that capping of 20 MTPA on the mining leases in the State of Goa is implemented as per the directions of Hon'ble Supreme Court in its order dated 21.04.2014 and any further order in the matter of Goa Foundation vs. Union of India in W.P. 435 of 2012.
2. No Mining shall be allowed in the forest land for which FC [forest clearance] is not available.
3. The Mining of dumps is not permitted unless mentioned in approved mine plan and Environmental Clearance letter.
4. Dumping of material outside the mine lease is not permitted unless mentioned in approved mine plan and Environmental Clearance letter.
5. Prior permission be obtained from Central Ground Water Board for drawl of ground water and intersection of ground water table as applicable.
6. Violations will be dealt as per the existing law and lifting of abeyance of EC will not in any manner affect that.
7. If any violation is observed in future the environmental clearance will be cancelled as per rules.
8. State Government will take action in cases of violation under Section 15/19 of Environment (Protection) Act, 1986 as noted and recommended in EAC report.
9. Project Proponent will file six monthly compliance to Regional Officer, MoEFCC and State Pollution Control Board.

Questions for consideration

35. Broadly speaking, on the basis of the submissions and documents placed before us, the questions raised by the Goa Foundation, the State of Goa, the Union of India and the mining lease holders are three-fold:

(a) Relatable to the second renewal of the mining leases: (i) In view of the decision in ***Goa Foundation*** only fresh leases were to be granted by the State of Goa and not second renewals. (ii) For granting fresh leases, the State of Goa should have introduced competitive bidding or the auction process. (iii) Assuming the decision to grant a second renewal to the mining lease holders was valid, the second renewals were not in accordance with law and should be set aside.

(b) Relatable to the grant of environmental clearances: In view of the decision in ***Goa Foundation*** fresh environmental clearances were required to be obtained by the mining lease holders.

(c) The impugned judgment and order passed by the High Court in ***Lithoferro*** on 13th August, 2014 was erroneous and deserves to be set aside.

Whether fresh mining leases were required to be granted?

36. The controversy in this regard has arisen in view of what is stated in paragraph 82 of the decision in ***Goa Foundation***. It was stated as follows:

> "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 10-9-2012 of the Government of Goa suspending mining operations in the State of Goa and the Order dated 14-9-2012 of 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 10.9.2012 of the Government of Goa and the Order dated 14.9.2012 of the MoEF will have to continue till decisions are taken by the State Government to grant fresh leases and decisions are taken by MoEF to grant fresh environmental clearances for mining projects**." [Emphasis supplied by us].

37. The issue that arose for discussion before us was the meaning and intention of the Court in the context of grant of 'fresh leases' for mining projects. Did the Court literally mean that a fresh mining lease was required to be granted or was a second renewal sufficient compliance?

38. As the above quoted paragraph indicates, the Court was aware and conscious of the fact that the mining leases had expired on 22nd November, 2007 and the mining operations thereafter carried out by the mining lease holders was illegal. For this reason, the Court held that the suspension order passed by the State of Goa on 10th September, 2012 and the abeyance order passed by the MoEF on 14th September, 2012 did not require any interference.

39. Since the mining operations carried out after 22nd November, 2007 were illegal, the Court, in subsequent paragraphs of the judgment noted (as a follow up) that an order was passed on 5th October, 2012 suspending transportation of iron ore and manganese ore from those leases identified by the Justice Shah Commission.[9] Thereafter on 11th November, 2013 it was directed that an inventory be made of the excavated mineral ores and the inventoried mineral ores be sold by e-auction under the supervision of a Monitoring Committee.[10]

40. Further, it was held by the Court on 21st April, 2014 that from the e-auction sale of the mineral ores, the mining lease holders would be entitled to the average cost (not the actual cost) of extraction, the workers would be entitled to 50% wages and allowances on the principle of laid-off compensation and the Marmagao Port Trust would be entitled to 50% of the storage charges. Out of the balance amount, 10% would be appropriated to the Goan Iron Ore Permanent Fund for the purpose of sustainable development and intergenerational equity and the remaining amount would be appropriated by the State who is the owner of the mineral ores illegally excavated by the mining lease holders and sold by e-auction.

[9] Goa Foundation v. Union of India, WP (C) 435 of 2012 – order dated 5th October, 2012
[10] Goa Foundation v. Union of India, (2014) 6 SCC 738

With this in mind, the Court declared in paragraph 87.5 of the Report:

> "**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." [Emphasis supplied by us].

It was then directed by the Court in paragraph 88.4 of the Report as follows:

> "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 the MMDR Act and the Rules made thereunder in consonance with the constitutional provisions." [Emphasis supplied by us].

41. The Court was quite obviously aware that it was concerned, *inter alia*, with the second renewal of mining leases and yet it chose to recount the factual situation, make a declaration and pass a direction without adverting to the possibility of a second renewal of a mining lease. The Court was also conscious that the mining lease holders had carried out indiscriminate and illegal mining for about five years (from November 2007 to September 2012) and had made profits out of the illegal mining. The Court, in our opinion, was rather charitable in not penalizing the mining lease holders for the illegal mining carried out by them. But be that as it may, quite clearly, the sequence of events from September 2012 onwards, the appointment of a

Monitoring Committee to dispose of the illegally mined ore, the declaration and direction unmistakably point to the intention of the Court to end the sordid chapter of illegal mining by the lease holders and start on a clean slate. Viewed in this perspective, we have no doubt that the Court really did intend the State of Goa to consider the grant of fresh leases in accordance with law.

42. In this context, the declaration of the Court in ***Goa Foundation*** in paragraph 87.5 of Report is also quite clear, namely, "It is for the State Government to decide as a matter of policy in what manner mining leases are to be granted in future…." The declaration was explicit and related to the grant of mining leases and not a second renewal.

43. Similarly, the direction given in paragraph 88.4 of the Report that "The State Government may grant mining leases of iron ore and other ores in Goa in accordance with its policy decision….." was equally explicit and related to the grant of mining leases and not a second renewal.

44. Subsequent events confirm our impression and view. The decision of the Court to e-auction the mined mineral ore was sought to be recalled through I.A. No. 86 of 2014 filed by M/s Bandekar Brothers Private Ltd. The applicant prayed for a direction to restrain the authorities from e-auctioning the iron ore mined by it prior to 22nd November, 2007 and that

the mined ore should be released to the applicant with the right to dispose of the same. A Bench of three learned judges (other than those that decided ***Goa Foundation***) noted that: "The submissions advanced on behalf of the applicant were premised merely on the assertion, that the mineral ore which the applicant was claiming a right over, had been legitimately mined before 22.11.2007, and therefore, the applicant had an absolute and legitimate ownership over the same. We may note, that the above position was emphasized, stressed and persistently reiterated to make the stand absolutely crystal clear." The learned judges considered the submissions and held by an order dated 14th October, 2014 that the direction in ***Goa Foundation*** was clear and categorical that the iron ore vested in the State Government and therefore the application deserved dismissal. In other words, the mining lease holders deserved no latitude for the illegal mining and all issues needed to be dealt with strictly.

45. There is additional material to support the view that the Court had intended the State of Goa to grant fresh mining leases rather than grant a second renewal.

46. From a reading of the decision rendered by the Bombay High Court in ***Lithoferro*** (subject matter of SLP (C) No. 32138 of 2015 and SLP (C) Nos. 32699-32727 of 2015) it is evident that the State of Goa understood the

decision of this Court in ***Goa Foundation*** to mean that fresh mining leases were required to be granted on the basis of a policy yet to be framed by the State of Goa and the issue of second renewals did not survive consideration. The contention of the learned Advocate General of the State of Goa in this regard is recorded by the High Court in the following words:

> "The learned Advocate General [of the State of Goa] took us through the Judgment of the Apex Court in Writ Petition (C) 435/2012 and relied upon the observations of the Supreme Court in paras 67, 68, 69 and 70. The learned Advocate General submitted that the Honourable Supreme Court has held that the deemed mining leases of the lessees in Goa expired on 22nd November, 1987 and the maximum of 20 years renewal period of the deemed mining leases in Goa as provided under subsection (2) of Section 8 of the MMDR Act, read with sub-Rules 8 and 9 of Rule 24-A of the MC Rules expired on 22nd November, 2007. **The learned Advocate General submitted that in view of these findings of the Supreme Court, there is no question of renewal of the mining leases. The learned Advocate General submitted that in terms of the Supreme Court decision, it is for the State Government to grant fresh leases in accordance with the policy which is yet to be framed.** The learned Advocate General submitted that the Supreme Court has kept Writ Petition (C) 435/2012 pending and, therefore, it is for the petitioners to approach the Supreme Court and seek appropriate orders. **The learned Advocate General submitted that the orders on which the petitioners rely, at the most show that the Government in principle has agreed for renewal of the leases for a further period of 20 years and the same was not a final decision. He submitted that in terms of the said decision of the Apex Court, it is for the State Government to frame a fresh mining policy and after framing the same, to decide granting of fresh mining leases.**" [Emphasis supplied by us].

47. While considering the submissions of the learned Advocate General and learned counsel, the High Court noted that this Court was alive to the

fact that the State of Goa had granted in-principle second renewal to 28 mining leases and had collected renewal fees or stamp duty from 27 mining leases (presumably out of the 28 mining leases) as stated in the brief resume filed by the State of Goa in this Court. The High Court noted:

> (II) In the brief resume presented by the State of Goa and placed on record of the Supreme Court, in Writ Petition (C) 435/2012, it is inter alia, mentioned thus:
>
> "…Presently in the State of Goa, it is found that the Applications for Renewal were filed well within time as contemplated by Rule 24A of the Mineral Concession Rules, 1960. Presently, the State has ordered renewal of 28 mining leases, granted in principle approvals and has collected Renewal Fees/Stamp Duty from 27 Mining Leases.."

48. In other words, notwithstanding the in-principle grant of second renewal of 28 mining leases and collection of renewal fees or stamp duty, this Court in ***Goa Foundation*** consciously required the State of Goa to grant fresh leases. What is equally significant is that the State of Goa also understood the decision of the Court in the same manner and intended to act on that basis.

49. Unfortunately, the State of Goa was overtaken by events in that the High Court delivered its judgment in ***Lithoferro*** on 13th August, 2014 and while doing so, it misunderstood or incorrectly appreciated the decision of this Court in ***Goa Foundation*** and disagreed with the view of the State of

Goa. While this Court had required the State of Goa to grant fresh mining leases and the State of Goa was willing to comply with this direction, the High Court instead directed it to execute mining leases under Section 8(3) of the MMDR Act in respect of those who had paid the renewal fees or stamp duty. The High Court also directed the State of Goa to decide their pending second renewal applications within a period of three months keeping in mind the provisions of Section 8(3) of the MMDR Act (presumably after paying the renewal fees or stamp duty in terms of the Government order of 21st February, 2013). The understanding by the High Court of the decision of this Court in ***Goa Foundation*** is totally incorrect.

50. It appears from the contents of the Grant of Mining Leases Policy that in view of the decision of this Court in ***Goa Foundation*** the State was actively considering a policy for granting fresh mining leases by considering several factors. However, the decision and directions of the High Court supervened leaving no choice, according to the State, but to completely abandon the process of grant of fresh mining leases through the process of competitive bidding for earning revenue and justify the abandonment.

51. As per the Grant of Mining Leases Policy, the State of Goa therefore had two realistic options before it: (i) To implement the judgment and order of this Court in ***Goa Foundation*** (as understood by the State of Goa) and

grant fresh mining leases in the manner felt appropriate and in accordance with law; (ii) To abide by the judgment of the High Court (and its understanding of the judgment of this Court in ***Goa Foundation*** while rejecting its understanding by the State of Goa) and grant second renewal to the mining leases in terms of Section 8(3) of the MMDR Act. The State of Goa appears to have taken the view that challenging the decision of the High Court (and therefore abiding by the decision of this Court) would delay the commencement of mining operations. The State took into consideration that a substantial portion of its revenue comes from the mining sector and that the State had been virtually starved of funds on account of stoppage of mining operations. Therefore, the State decided to grant a second renewal to the mining leases and not grant fresh leases. This is quite apparent from the contents of the Grant of Mining Leases Policy wherein the above facts and conclusions have been stated in greater detail. Was this decision correct?

52. Learned counsel for the mining lease holders submitted that the renewal of a mining lease is equivalent to or amounts to the grant of a fresh lease and therefore when the mining leases were renewed, it amounted to the grant of a fresh lease in compliance with the directions of this Court. Reliance was placed upon ***Delhi Development Authority v. Durga Chand***

Kaushish[11] wherein this Court held:

> **"**A renewal of a lease is really the grant of a fresh lease. It is called a "renewal" simply because it postulates the existence of a prior lease which generally provides for renewals as of right. In all other respects, it is really a fresh lease."

53. Reference was also made to ***Provash Chandra Dalui v. Biswanath Banerjee***[12] in which it was held in paragraph 14 of the Report that there is a distinction between extension of a lease and renewal of a lease. We do not find any relevance of this to our discussion. Reference was also made to the view expressed in ***M.C. Mehta v. Union of India***[13] wherein this Court noted that it is settled law that grant of renewal is a fresh grant and must be consistent with law.

54. Finally reliance was placed on ***State of West Bengal v. Calcutta Mineral Supply Company Private Limited***[14] in which decision it was noted in paragraph 31 of the Report that the renewal of a lease is a fresh grant. This decision also refers to ***Gajraj Singh v. State Transport Appellate Tribunal***[15] wherein this Court observed in paragraph 38 of the Report that the grant of renewal is a fresh grant though it breathes life into the operation of the previous lease or licence granted.

[11] (1973) 2 SCC 825
[12] 1989 Supp (1) SCC 487
[13] (2004) 12 SCC 118
[14] (2015) 8 SCC 655
[15] (1997) 1 SCC 650

55. There is no doubt that the renewal of a lease is virtually the same as the grant of a fresh lease but a converse direction to grant a mining lease cannot be understood to mean granting a renewal of a mining lease. Obviously, the grant of a fresh lease is not the same as the renewal of a lease and when the Court in ***Goa Foundation*** required the State of Goa to grant a fresh lease, it did not require the State to renew the existing (expired) lease. The Court could have explicitly declared and directed the State of Goa to grant a second renewal of the mining leases rather than to say it in a roundabout manner that it should do so by granting a fresh lease equivalent to a renewal. We simply cannot accept the submissions made by learned counsel for the mining lease holders in this regard.

56. That apart, as we have already noted above, the context and material on record disabuse the thought that the Court in ***Goa Foundation*** did not mandate the grant of fresh mining leases in accordance with law.

57. Learned counsel for the mining lease holders contended that the very same learned judges that decided ***Goa Foundation*** permitted the State Government in ***Common Cause v. Union of India***[16] to consider granting a second renewal of mining leases under Section 8(3) of the MMDR Act. Therefore the requirement in ***Goa Foundation*** for the grant of 'fresh leases'

[16] (2014) 14 SCC 155

must be understood in a manner similar to what was directed in ***Common Cause***. We are unable to accept this contention. The direction given in ***Common Cause*** was an interim direction and not a final direction as in ***Goa Foundation***. Moreover, the facts in both cases are not at all similar so as to warrant a similar order being passed or understood. Finally, the fact that the same set of learned judges thought it fit to direct the grant of 'fresh leases' in one set of cases and thought it fit to direct consideration of a 'second renewal' in another set of cases indicates that the learned judges were aware of the difference in directions. Therefore when the leaned judges directed the grant of 'fresh leases' in ***Goa Foundation*** it was a deliberate and conscious decision distinct and different from granting a second renewal of expired mining leases.

58. In our opinion, the direction in ***Goa Foundation*** is quite clear and instead of considering the grant of a second renewal of the mining leases, the State of Goa was required to consider the grant of fresh mining leases. Therefore the decision of the State of Goa to grant a second renewal of the mining leases is erroneous, contrary to the decision in ***Goa Foundation*** and must be and is quashed.

Whether the State of Goa should have auctioned the mining leases?

59. As mentioned in the Grant of Mining Leases Policy there were several

options available to the State of Goa. It took the view that all its options were foreclosed post the decision of the High Court and it was obliged to grant a second renewal of the mining leases. We have already held that this was not so and that the decision to grant a second renewal of the mining leases was erroneous and fresh leases were required to be granted in accordance with the decision in ***Goa Foundation***. In view of our conclusion, the discussion on whether the State of Goa should have auctioned the mining leases through a process of competitive bidding is now rendered academic. However, since detailed submissions were made by learned counsel on both sides, including by the learned Additional Solicitor General, we propose to express our views on the subject.

60. The discussion on the question of auction being the only method of allocation or disposal of natural resources arose due to the view expressed by this Court in ***Centre for Public Interest Litigation v. Union of India***.[17] In that decision (hereafter referred to as ***CPIL*** – although this case is generally referred to as the 2G scam case) the Court dealt with the question of following a non-discriminatory policy for alienation of natural resources. While doing so it was observed that an auction is "perhaps the best method for discharging this burden" and concluded by holding that "while

[17] (2012) 3 SCC 1

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." This led to the belief that the view of this Court was that natural resources should be alienated or disposed of ***only*** by auction and by no other method. The Court held in paragraphs 95 and 96 of the Report as follows:

> "This Court has repeatedly held that wherever a contract is to be awarded or a licence is to be given, the public authority must adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. To put it differently, the State and its agencies/instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy applicants. When it comes to alienation of scarce natural resources like spectrum, etc. it is the burden of the State to ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in protection of national/public interest.
>
> In our view, a duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden and the 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. **In other words, 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.**" [Emphasis supplied by us].

61. In ***Manohar Lal Sharma v. Principal Secretary***[18] a Bench of 3 judges of this Court paraphrased the above passages and observed that the view

[18] (2014) 9 SCC 516

expressed in ***CPIL*** necessitated a reference by the President of India to this Court under Article 143(1) of the Constitution being ***Special Reference No. 1 – Natural Resources Allocation***.[19]

62. What was the Advisory Opinion given by this Court in ***Natural Resources Allocation***? Among the questions referred for opinion were the following:

> ***Question 1.*** Whether the only permissible method for disposal of all natural resources across all sectors and in all circumstances is by the conduct of auctions?
>
> ***Question 2.*** Whether a broad proposition of law that only the route of auctions can be resorted to for disposal of natural resources does not run contrary to several judgments of the Supreme Court including those of the larger Benches?

63. In the Reference, it was submitted before the Constitution Bench that paragraphs 94 to 96 in ***CPIL*** laid down the ratio vis-à-vis disposal of natural resources. It was argued that "these paragraphs lay down, as a proposition of law, that all natural resources across all sectors, and in all circumstances are to be disposed of by way of public auction, and on the other [hand], it was urged that the observations therein were made only qua spectrum."

64. The submissions made by learned counsel were then discussed and thereafter this Court recorded its conclusions between paragraphs 82 and 84 of ***Natural Resources Allocation***. In paragraph 84, it was held:

[19] (2012) 10 SCC 1

> "84. Thus, having come to the conclusion **that *2G case*[20] does not deal with modes of allocation for natural resources, other than spectrum**, we shall now proceed to answer the first question of the Reference pertaining to other natural resources, as the question subsumes the essence of the entire reference, particularly the set of first five questions." [Emphasis supplied by us].

65. Thereafter, while answering the first question in the Reference, the Court considered the issue from various perspectives. It first dealt with the issue in the context of Article 14 and Article 39(b) of the Constitution and concluded in paragraph 120 of the Report that the disposal of natural resources for revenue maximization through auctions is not a constitutional mandate. It was held:

> "Therefore, in conclusion, the submission that the mandate of Article 14 is that any disposal of a natural resource for commercial use must be for revenue maximisation, and thus by auction, is based neither on law nor on logic. **There is no constitutional imperative in the matter of economic policies—Article 14 does not predefine any economic policy as a constitutional mandate.** Even the mandate of Article 39(*b*) imposes no restrictions on the means adopted to subserve the public good and uses the broad term "distribution", suggesting that the methodology of distribution is not fixed. Economic logic establishes that alienation/allocation of natural resources to the highest bidder may not necessarily be the only way to subserve the common good, and at times, may run counter to public good. Hence, it needs little emphasis that disposal of all natural resources through auctions is clearly not a constitutional mandate." [Emphasis supplied by us].

66. The issue was then considered from the standpoint of legitimate deviations from an auction. After adverting to several decisions of this Court

[20] Centre for Public Interest Litigation v. Union of India (CPIL case or 2G scam case)

where auctions were not the favoured method of allocation of natural resources, it was held between paragraphs 129 and 131 of the Report as follows:

> "Hence, it is manifest that there is no constitutional mandate in favour of auction under Article 14. The Government has repeatedly deviated from the course of auction and this Court has repeatedly upheld such actions. The judiciary tests such deviations on the limited scope of arbitrariness and fairness under Article 14 and its role is limited to that extent. **Essentially, whenever the object of policy is anything but revenue maximisation, the executive is seen to adopt methods other than auction**.
>
> *A fortiori*, besides legal logic, mandatory auction may be contrary to economic logic as well. Different resources may require different treatment. Very often, exploration and exploitation contracts are bundled together due to the requirement of heavy capital in the discovery of natural resources. **A concern would risk undertaking such exploration and incur heavy costs only if it was assured utilisation of the resource discovered: a prudent business venture would not like to incur the high costs involved in exploration activities and then compete for that resource in an open auction.** The logic is similar to that applied in patents. Firms are given incentives to invest in research and development with the promise of exclusive access to the market for the sale of that invention. Such an approach is economically and legally sound and sometimes necessary to spur research and development. Similarly, bundling exploration and exploitation contracts may be necessary to spur growth in a specific industry.
>
> Similar deviation from auction cannot be ruled out when the object of a State policy is to promote domestic development of an industry, like in *Kasturi Lal case*[21]discussed above. However, these examples are purely illustrative in order to demonstrate that **auction cannot be the sole criterion for alienation of all natural resources**." [Emphasis supplied by us].

[21] (1980) 4 SCC 1

67. Finally, the issue was considered from the point of view of the potential of abuse in allocation of natural resources other than through auction and in this context it was held in paragraph 135 of the Report:

> "Therefore, a potential for abuse cannot be the basis for striking down a method as ultra vires the Constitution. **It is the actual abuse itself that must be brought before the court for being tested on the anvil of constitutional provisions.** In fact, it may be said that even auction has a potential of abuse, like any other method of allocation, but that cannot be the basis of declaring it as an unconstitutional methodology either. These drawbacks include cartelisation, the "winner's curse" (the phenomenon by which a bidder bids a higher, unrealistic and unexecutable price just to surpass the competition; or where a bidder, in case of multiple auctions, bids for all the resources and ends up winning licences for exploitation of more resources than he can pragmatically execute), etc. However, all the same, auction cannot be called ultra vires for the said reasons and continues to be an attractive and preferred means of disposal of natural resources especially when revenue maximisation is a priority. Therefore, **neither auction, nor any other method of disposal can be held ultra vires the Constitution, merely because of a potential abuse**." [Emphasis supplied by us].

68. The conclusion arrived at by the Constitution Bench was then recorded between paragraphs 148 and 150 of the Report in the following words:

> "In our opinion, **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.
>
> Regard being had to the aforesaid precepts, we have opined that auction as a mode cannot be conferred the status of a constitutional

> principle. **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.
>
> **In conclusion, our answer to the first set of five questions is that auctions are not the only permissible method for disposal of all natural resources across all sectors and in all circumstances."** [Emphasis supplied by us].

69. It is therefore more than explicit that there is no constitutional requirement (let alone a mandate) for allocation of natural resources through the auction method (other than spectrum) but at the same time the auction process should not be given a go-bye without any justification – the decision to give a go-bye is judicially reviewable though the scope of judicial review might be rather restricted. The melting pot of allocation of a natural resource, a social or welfare purpose and adherence to the requirements of Articles 14 and 39(b) of the Constitution in matters of policy was a great leap forward fashioned by the Constitution Bench. Consequently, while

there is no mandate, constitutional or otherwise, that natural resource allocation must be only by auction, it is certainly "a more preferable method". There are exceptions, such as when the natural resource allocation is for a "social or welfare purpose". On the other hand if the natural resource allocation is "for commercial pursuits of profit maximising private entrepreneurs" *de hors* any social or welfare purpose, then judicial review would be permissible and Article 14 of the Constitution would be attracted and if the executive action is found to be arbitrary, it would be struck down. Therefore, when it comes to natural resource allocation, the executive has a somewhat limited elbow room.

70. In his concurring opinion, Justice Khehar took the view (in paragraph 186 of the Report) that: "…when natural resources are made available by the State to private persons for commercial exploitation exclusively for their individual gains, the State's endeavour must be towards maximisation of revenue returns." [Emphasis supplied by us] The learned judge concluded his opinion by agreeing that an auction is one of the price recovery mechanisms, but not the only one for allocation of natural resources. "That should not be understood to mean that it can never be a valid method for disposal of natural resources." It was further held that natural resources cannot be alienated by way of largesse – there must be a reciprocal

consideration either in the form of earning revenue or sub-serving the common good or both. The learned judge had this to say:

> "The policy of allocation of natural resources for public good can be defined by the legislature, as has been discussed in the foregoing paragraphs. Likewise, policy for allocation of natural resources may also be determined by the executive. The parameters for determining the legality and constitutionality of the two are exactly the same. In the aforesaid view of the matter, there can be no doubt about the conclusion recorded in the main opinion that auction which is just one of the several price recovery mechanisms, cannot be held to be the only constitutionally recognised method for alienation of natural resources. That should not be understood to mean that it can never be a valid method for disposal of natural resources (refer to paras 186 to 188 of my instant opinion).
>
> I would, therefore, conclude by stating that **no part of the natural resource can be dissipated as a matter of largesse, charity, donation or endowment, for private exploitation. Each bit of natural resource expended must bring back a reciprocal consideration. The consideration may be in the nature of earning revenue or may be to "best subserve the common good". It may well be the amalgam of the two. There cannot be a dissipation of material resources free of cost or at a consideration lower than their actual worth.** One set of citizens cannot prosper at the cost of another set of citizens, for that would not be fair or reasonable." [Emphasis supplied by us].

71. This issue was considered in ***Goa Foundation*** as well. The Court adverted to ***Natural Resources Allocation*** in paragraph 81 of the Report and pithily expressed its view that the manner of granting a mining lease is a policy decision of the State Government, but the decision can be examined by way of judicial review. It was held:

> "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." [Emphasis supplied by us].

It was then declared in paragraph 87.5 of the Report that:

> "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**." [Emphasis supplied by us].

Similarly, in ***Manohar Lal Sharma*** this Court adverted to the issue and noted the following in paragraph 98 of the Report:

> "The Constitution Bench [*Natural Resources Allocation*] clarified that the statement of law in *2G case* [*CPIL*] that while transferring or alienating the natural resources, the State is duty-bound to adopt the method of auction was confined to the specific case of spectrum and not for dispensation of all natural resources. The Constitution Bench said that findings of this Court in *2G case* were limited to the case of spectrum and not beyond that and that it did not deal with the modes of allocation for natural resources other than spectrum."

The Court also referred to the views expressed by Justice Khehar and held, in paragraph 104 of the Report:

> "In light of the above legal position, the argument that auction is the best way to select private parties as per Article 39(*b*) does not merit acceptance."

72. This Court then exercised its power of judicial review and considered the merits of the explanation given by the Central Government for not adopting the competitive bidding route for the allocation of coal blocks. The various submissions made, the various hurdles faced (including objections of the State Governments) as well as the impracticality of opening up the allocation of coal blocks to competitive bidding were considered and then it was held (after opening the window of Article 14 of the Constitution) in paragraph 110 of the Report:

> "The above facts show that it took almost 8 years in putting in place allocation of captive coal blocks through competitive bidding. During this period, many coal blocks were allocated giving rise to present controversy, which was avoidable because competitive bidding would have brought in transparency, objectivity and very importantly given a level playing field to all applicants of coal and lowered the difference between the market price of coal and the cost of coal for the allottee by way of premium which would have accrued to the Government. Be that as it may, once it is laid down by the Constitution Bench of this Court in *Natural Resources Allocation* that the Court cannot conduct a comparative study of various methods of distribution of natural resources and cannot mandate one method to be followed in all facts and circumstances, then if the grave situation of shortage of power prevailing at that time necessitated private participation and the Government felt that it would have been impractical and unrealistic to allocate coal blocks through auction and later on in 2004 or so there was serious opposition by many State Governments to bidding system, and the Government did not pursue competitive bidding/public auction route, then in our view, the administrative decision of the Government not to pursue competitive bidding cannot be said to be so arbitrary or unreasonable warranting judicial interference. It is not the domain of the Court to evaluate the advantages of competitive bidding vis-à-vis other methods of distribution/disposal of natural

resources. **However, if the allocation of subject coal blocks is inconsistent with Article 14 of the Constitution and the procedure that has been followed in such allocation is found to be unfair, unreasonable, discriminatory, non-transparent, capricious or suffers from favouritism or nepotism and violative of the mandate of Article 14 of the Constitution, the consequences of such unconstitutional or illegal allocation must follow.**" [Emphasis supplied by us].

73. More recently in ***M/s. Ajar Enterprises Private Limited v. Satyanarayan Somani***[22] this Court once again examined the issue of distribution of natural resources and held:

> "Undoubtedly, disposal of natural resources by auction is not a mandatory principle for, as the Constitution Bench held,[23] individual statutes may provide for modalities of transfer by alternate modes which subserve public interest. ….. The choice of methods is not left to the unbridled discretion of a public authority. Where a public authority exercises an executive prerogative, it must nonetheless act in a manner which would **subserve public interest and facilitate the distribution of scarce natural resources in a manner that would achieve public good**. Where a public authority implements a policy, which is backed by a constitutionally recognised social purpose intended to achieve the welfare of the community, the considerations which would govern would be different from those when it alienates natural resources for commercial exploitation. When a public body is actuated by a constitutional purpose embodied in the Directive Principles, the considerations which weigh with it in determining the mode of alienation should be such as would achieve the underlying object. **In certain cases, the dominant consideration is not to maximize revenues but to achieve social good such as when the alienation is to provide affordable housing to members of the Scheduled Castes or Tribes or to implement housing schemes for Below the Poverty Line (BPL) families. In other cases where natural resources are alienated for commercial exploitation, a public authority cannot**

[22] 2017 (10) SCALE 346
[23] Natural Resource Allocation

> **allow them to be dissipated at its unbridled discretion at the cost of public interest**." [Emphasis supplied by us].

The window is now more than ajar.

74. Till fairly recently, policy matters particularly of economic policy were hands-off as far as the courts were concerned.[24] But the recent decisions of this Court, including by the Constitution Bench in its advisory jurisdiction, have partially modified this theory and kept open the window to judicially review such a policy if it does not serve the common good as understood in Article 39(b) of the Constitution, if it violates Article 14 of the Constitution and alienates natural resources for maximizing profits of private entrepreneurs while sidelining Article 39(b) of the Constitution. "The legislature and the executive are answerable to the Constitution and it is there where the judiciary, the guardian of the Constitution, must find the contours to the powers of disposal of natural resources, especially Article 14 and Article 39(*b*) [of the Constitution].[25]

75. Notwithstanding this, a Court must exercise restraint and not set aside Government policy only because it disagrees with it or because a better policy could be framed or simply because it has the power to set aside the policy. Policies framed by the State, after due consideration, must be

[24] BALCO Employees' Union (Regd) v. Union of India, (2002) 2 SCC 333 at paragraphs 46 and 47
[25] Paragraph 95 of the Natural Resource Allocation decision

respected and given enough elbow room and flexibility for implementation. Of course, there would be occasions when the implementation of a policy has teething problems or some lacuna is discovered at a slightly later stage, but that does not mean that policy itself is defective. Therefore, Courts must be very cautious and circumspect in diluting or setting aside a policy and must do so only if it is constitutionally unavoidable, otherwise good governance could be a casualty.

76. The conclusions that could be drawn from all these decisions are: (i) It is not obligatory, constitutionally or otherwise, that a natural resource (other than spectrum) must be disposed of or alienated or allocated only through an auction or through competitive bidding; (ii) Where the distribution, allocation, alienation or disposal of a natural resource is to a private party for a commercial pursuit of maximizing profits, then an auction is a more preferable method of such allotment; (iii) A decision to not auction a natural resource is liable to challenge and subject to restricted and limited judicial review under Article 14 of the Constitution; (iv) A decision to not auction a natural resource and sacrifice maximization of revenues might be justifiable if the decision is taken, *inter alia*, for the social good or the public good or the common good; (v) Unless the alienation or disposal of a natural resource

is for the common good or a social or welfare purpose, it cannot be dissipated in favour of a private entrepreneur virtually free of cost or for a consideration not commensurate with its worth without attracting Article 14 and Article 39(b) of the Constitution.

Whether the decision of the State of Goa forsaking the auction route is arbitrary?

77. Keeping in mind the broad principles identified above, the question that arises for our consideration is whether the State of Goa was justified in not adopting the auction route for the grant of mining leases and simply granting a second renewal. For a better understanding of this issue, it would be worthwhile to again refer to the Goa Mineral Policy, the report of the EAC, the Grant of Mining Leases Policy and the decision of the Bombay High Court, which documents were relied upon by the learned Additional Solicitor General.

(i) Goa Mineral Policy

78. The Mineral Policy makes it very clear that during the period from about 2006 till about 2012 (for about 5 years) extraction of iron ore in Goa was nothing but a free-for-all situation. Illegalities and irregularities were committed in abundance by all concerned, particularly the mining lease holders. The Mineral Policy records that the State witnessed the peak of

chaotic and unregulated mining. The thought of protecting and preserving the environment, concern for the fragile ecology of Goa was far from the thoughts of the stakeholders – even the well-being of the average Goan was not taken into consideration by the stakeholders. A reading of the initial paragraphs of the Mineral Policy suggests that nothing short of rapacious mining was going on in Goa. Who were the beneficiaries of all this rapaciousness? Could all this be ignored?

79. The Mineral Policy informs us that the beneficiaries of the rapaciousness were not the domestic industry and certainly not the average Goan. The reason for this is spelt out in the Mineral Policy itself. Iron ore from Goa is not suitable for the Indian industry due to the low Fe content and the high silica presence. Therefore, there is no value addition to the Indian industry and the iron ore was mined only for export – mainly to China and also to Japan. With a port in the vicinity, Goan iron ore was an attractive buy for the global market and the spin-offs benefited those in the port, transporters and barge owners etc. The primary beneficiary of this was, of course, the mining lease holder, a private entity, and the price was paid by the average Goan who had to suffer a polluted environment and witness the damage to the State's ecology.

80. If the issues mentioned in the Mineral Policy are objectively considered in strict monetary terms, the only conclusion that can be drawn is that the extraction of iron ore was for commercial purposes and maximizing the revenues of private entrepreneurs and not necessarily the State of Goa. The natural resource was exploited by some mining lease holders for making profits and nothing else. There were some collateral beneficiaries as well, and they too were commercially driven entities such as barge owners, truck owners etc. Under these circumstances, the question that arises is whether the mining lease holders should have been given a second renewal of the mining lease virtually for a song, that is, payment only of royalty, when they were driven only by a profit motive or whether the mining leases ought to have been auctioned? Unfortunately, the Mineral Policy did not advert to or even consider any solution that would break from the past.

81. As far as the environment, the fragile ecology of Goa and the well-being of the average Goan and the rule of law is concerned, the Mineral Policy categorically states that the State had witnessed, from 2006-07 till 2011-12 the peak of chaotic and unregulated mining without any concern for the fragile ecology and environment of the State or for the general well-being of an average Goan. Surely, all this cannot be ignored or brushed aside particularly since the exploitation of mineral resources for five years

had no element of social or public purpose, no concern for society and no regard for the environment and the laws.

(ii) Vishwanath Anand Expert Appraisal Committee

82. A reading of the report of the EAC is disturbing and acutely highlights the damage to the environment and ecology by the mining lease holders. The complete indifference by all concerned is evident from a careful reading of the report. We propose to refer to and quote in *extenso* the 'summary of observations' and the 'concluding remarks' from the report of the EAC since they are self explanatory:

> **"Summary of Observations**
>
> I. The absence of specific conditions highlighting the mandatory requirement to obtain prior approval of the Standing Committee of the NBWL [National Board for Wild Life] in the EC [Environmental Clearance] has led to misinterpretation of the legal requirement. There has been an inordinate delay of more than 5 years before effective action against defaulting units were initiated by the Ministry for non-compliance of the Hon'ble Supreme Court order dated 04.12.2006.
>
> II. Out of 137 ECs, the requirement of obtaining approval of the Standing Committee of the NBWL under the W.L. (P) Act 1972 [Wild Life (Protection) Act] has not been complied with in 123 cases where the distances are less than 10 km from the nearest PA [Protected Area].
>
> III. In respect of 10 cases approval of the Standing Committee of the NBWL is not mandatory as the mine leases are located beyond 10 km from nearest PA.

IV. Contrary to the directions of the Hon'ble Supreme Court dated 04.08.2006 in Writ Petition (Civil) No. 202/1995; ECs have been accorded to 41 mines located within 1 km from the nearest PA.

V. In respect of 20 cases mine leases were renewed under MMDR Act, 1957 prior to grant of FCs [Forest Clearance].

VI. In 29 cases, project proponents have furnished wrong information about distance from the nearest PAs.

VII. Non-compliance of various EC conditions such as excess production/unauthorized dump mining/drawal of ground water without prior approval of CGWB/encroachment; have also been reported in respect of working mines.

Concluding Remarks

A reading of our observations and recommendations would show that **without exception, every proponent to whom an environment clearance was issued has either violated its conditions or has furnished information in the application which has been distant from the truth.** There are basically two types of violations; one that cannot be legally condoned and those that can be rectified with remedial measures. This is the reason why the committee has recommended that all ECs for mines located within one km from PAs should be revoked and in cases where untruthful information was furnished in the application for EC, such mines should not be allowed to reopen. In the case of those mines which have been closed for more than five years, their reopening has not been recommended without their applying de novo for a fresh environmental clearance as micro environmental conditions on the ground would have changed during the period they remained closed. However, when one looks at the manner in which the directives dated 04.08.2006 and 04.12.2006 of the Supreme Court have been implemented one cannot help but feel that there is the absence of a bridge mechanism within the Ministry to ensure and oversee that directives of the Courts are complied with due diligence and seriousness.

There are two factors which stand out; in some ECs as mentioned in this report, the condition was inserted that the project proponent should seek approval of the CWLW [Chief Wild Life Warden], in

others it was stated that approval of the Competent Authority/Standing Committee of the NBWL should be obtained and in a third category no condition at all was imposed, even though some of these ECs pertain to the same meeting and timelines between 2005 and 2007. It is strange that concerned officials in the MOEF were not aware that other than the Standing Committee of the NBWL no other person was authorised to grant the permission envisaged by the order dated 04.12.2006 of the Supreme Court. This is not to state that any discrepancy in the EC letter would absolve the project proponent from complying with the law of the land. This has resulted in creating ambiguity amongst many of the project proponents and it was not until 01.01.2009, that the MOEF issued a public notice clarifying the position.

Considering that some of the project proponents may have been misguided by the ambivalence of the MOEF in not clearly delineating the legal position, it is suggested that in the case of those project proponents who did not conceal facts in their applications but did not apply for permission to the Standing Committee of the NBWL, their applications may be considered for being placed before the Standing Committee of the NBWL. However this can in no way be construed as a justification on the part of the project proponents for not complying with the requirements of the law. It must be noted for example that in those cases where mining has intersected the ground water, approval of the CGWB [Central Ground Water Board] had not been taken by the project proponents as was required by the EC. Similarly, there are cases where mining operations have taken place without obtaining a FC.

…….

As regards violations of the conditions of the ECs and where environmental damage has been caused, the concerned proponents should be made accountable and the MOEF should examine as to how some monetary damages can be levied through due legal process based on the Polluter Must Pay principle, the proceeds of which could be used for environmental rehabilitation.

There are concerns about the carrying capacity of the area with regard to its ability to sustain the extent and quantum of mining that has taken place there. It is recommended that a carrying capacity study should be commissioned for the area, or if another study by a nationally recognised institution is coming to fruition the result of

> that should be acted upon. Such a study should also take into account the impact of mining on the hydrology of the region and the extent of pollution caused to surface and ground water. This study should be compared to the earlier 10 years baseline data to determine the impact of mining on the biodiversity and hydrology of the area in the last decade. Based on the finding of this, a specific policy for mining of iron ore in the region may be developed. Such a policy along with a proper control and monitoring mechanism is necessary in order to avoid a situation such as the one under question. It would hopefully also ensure that mining in this region is carried out in accordance with best sectoral practices using appropriately clean technologies." [Emphasis supplied by us].

83. The report of the EAC reveals that there is not a single environment related or mining related law or legal requirement that was not violated by one or the other mining lease holder. Quite clearly, the rule of environmental law in Goa had gone with the wind.

84. There was one extremely important requirement relating to extraction of groundwater – that is clearance from the Central Ground Water Board - but even that was ignored. During the course of submissions, we were informed that there is plenty of groundwater available in Goa. However, what seems to have been overlooked is that with the intersection of groundwater levels with mining operations, the groundwater would get depleted much faster than expected or the quality of the groundwater would deteriorate. It is for this reason that MoEF insisted that clearance for drawal of groundwater must be taken from the Central Ground Water Board and

care taken in respect of the intersection of groundwater level with mining operations (this happened in 46 cases). Unfortunately, no heed was paid to these requirements by the State of Goa or any of the mining lease holders and not one mining least holder has any clearance (where required) from the Central Ground Water Board, or at least none was brought to our notice.

(iii) Decision of the Bombay High Court

85. The High Court essentially created two classes of applicants for the grant of a mining lease – those in whose favour an in-principle decision had been taken for a second renewal of the mining lease and who had paid the necessary stamp duty in terms of the Government order of 21st February, 2013 and those who had not yet paid the requisite stamp duty.

86. As regards the first category, the High Court directed execution of the mining lease in their favour in accordance with the provisions of Section 8(3) of the MMDR Act. This was on the belief that the applicants had applied for the second renewal within the prescribed time period; the Indian Bureau of Mines had approved the mining plans of these applicants; the Indian Bureau of Mines was subjectively satisfied that the second renewal was in the interest of mineral development; and that in view of the principles of promissory estoppel these applicants were entitled to a second renewal of

their mining lease since they had altered their position to their detriment by paying the stamp duty demanded.

87. As regards the second category (those who had not paid the stamp duty), the High Court directed the State of Goa to decide their second renewal application within a period of three months keeping in mind the provisions of Section 8(3) of the MMDR Act (and the requirement to pay the stamp duty).

88. The decision of the High Court does not at all discuss the options available to the State of Goa, namely, second renewal of the mining leases versus auction of a natural resource. In fact it appears that the High Court was not at all alive to the possibility of an auction of the mining leases, notwithstanding the view canvassed by the learned Advocate General of the State of Goa.

(iv) Goa Grant of Mining Leases Policy 2014

89. The Grant of Mining Leases Policy announced and issued on 4th November, 2014 is perhaps the most important document in the entire scheme of things and that is the reason it was read out extensively by the learned Additional Solicitor General and that is why we have chosen to quote it extensively.

90. A consideration of the contemporaneous facts beginning with the

Budget Speech given by the Hon'ble Minister of Finance of the Government of India on 10th July, 2014 makes it clear that an amendment to the MMDR Act was to be effected sooner than later. The Grant of Mining Leases Policy overlooks that and proceeds on the basis that the judgment of the High Court delivered on 13th August, 2014 left the Government of Goa with no choice but to abandon the grant of mining leases through competitive bidding, even though that might be the most appropriate method of obtaining the best revenue for the public good. The Government of Goa had therefore "for the present" ruled out the process of going in for competitive bidding keeping also in mind that the State was virtually starved of funds and had to balance the equities and needs of all, including the labour class, working class and other staff, markets in mining localities, public sector, mining lease holders, welfare needs of the State, environment and fragile ecology of the State and general well-being of the average Goan.

91. The State of Goa was also alive to the fact that many (if not all) mining lease holders had violated the terms of the mining lease or some statutory obligation. Therefore, it was decided to categorize the offenders as follows:

> **Category I** – will be those Mining Leases which have no violations or very minimal violation of any provision / condition of applicable

laws/rules orders/permissions etc. or those which cannot otherwise be referred to as 'violations'.

Category II – are those Mining Leases which have been found to have violated the Provisions of the Mineral Concession Rules including Rules 37 and 38 and other matters as mentioned in the Public Accounts Committee Report/Justice Shah Commission Report. In this category, the State Government will consider each of the cases on its own merits; and wherever the violations are noticed subject to the same being remedied by paying appropriate Penalty/Fines including those of forfeiture, the State Government shall pass appropriate Orders in accordance with Law.

Category III – Mining leases will be those which are found to have violated substantially any provision / condition of applicable laws / rules/orders/permissions etc., and in which cases the State Government shall determine the Lease/reject their 'Application for the Second Renewal'.

92. The offences ranged, amongst others, from illegal sale of ore, sale of royalty challan without ore, encroachment of adjoining areas outside the lease, over production in excess of the limit specified in the environmental clearance, unscientific mining operations, violations with respect to payment of royalty amount, re-use of old royalty challans for defrauding, illegal mining activities etc. etc. None of these are 'minimal' violations. However, and this is important, the Grant of Mining Leases Policy made it clear that the following shall not be considered for renewal of mining leases: (i) Those facing an inquiry initiated pursuant to the orders of this Court in paragraph 88.2 of ***Goa Foundation*** for the violation of Rules 37 and 38 of the Mineral

Concession Rules, 1960; (ii) Those indicted by the Justice M.B. Shah Commission; and (iii) Those indicted by the Public Accounts Committee. The Grant of Mining Leases Policy stated that inquiries are already in progress "at various levels and foras" including a Special Investigation Team and a team of Chartered Accountants. We dare say that violations pointed out by the EAC ought also to have been taken into consideration.

93. Be that as it may, there is no doubt that iron ore mining in Goa was solely for commercial purposes – it was extracted primarily for export to China and Japan without any value addition to the domestic industry. True this brought in considerable foreign exchange – nevertheless iron ore extraction gave insignificant value addition (if at all) to Indian industry. The only advantage that iron ore extraction gave to the State was in terms of royalty, but the larger benefit accrued to the private mining lease holder who could obtain a mining lease on renewal virtually free and without any social or welfare purpose. In other words, the State sacrificed maximizing revenue for no apparent positive reason, virtually surrendering itself to the commercial and profit making motives of private entrepreneurs and ignoring the interests of Goan society in general. Therefore, in principle, the decision of the State of Goa to not auction the grant of mining leases was flawed in that it did not serve the common or public or social good but primarily

assisted in filling the coffers of private entrepreneurs. We are not inclined to go so far as to describe the decision as arbitrary since it is not necessary to do so.

94. However, we make it clear that we have dealt with this issue because it was canvassed before us. We are not inclined to quash the decision of the State of Goa of not going in for competitive bidding for the grant of fresh mining leases since it is not necessary in view of our conclusion that fresh mining leases were required to be granted by the State of Goa.

95. At this stage we must refer to a submission made by Mr. C.U. Singh learned counsel appearing for some of the mining lease holders. He submitted that prior to 12th January, 2015 the MMDR Act did not permit the auction of mining leases. Therefore, even if the State of Goa was desirous of introducing competitive bidding for grant of fresh mining leases it could not have done so. He drew our attention to Section 11 of the MMDR Act (as it stood prior to its amendment in 2015) which provided a preferential right for obtaining a prospecting license or mining lease to the holder of a reconnaissance permit or prospecting license. He submitted, placing reliance on ***Sandur Manganese and Iron Ores Limited v. State of Karnataka***[26] that since the MMDR Act is a complete code in itself, the method or procedure

[26] (2010) 13 SCC 1

for grant of a lease cannot travel outside the confines of the statute and the Mineral Concession Rules, 1960 framed thereunder. Reference was made to paragraphs 40 to 43 of the judgment:

> "In view of the specific parliamentary declaration as discussed and explained by this Court in various decisions, there is no question of the State having any power to frame a policy dehors the MMDR Act and the Rules.
>
> In *State of Assam* v. *Om Prakash Mehta*[27] this Court in SCC para 12 held that the MMDR Act, 1957 and the MC Rules, 1960 contain a complete code in respect of the grant and renewal of prospecting licences as well as mining leases in lands belonging to the Government as well as lands belonging to private persons.
>
> Again this Court in *Quarry Owners' Assn.* v. *State of Bihar*[28] held that both the Central and the State Government act as mere delegates of Parliament while exercising powers under the MMDR Act and the MC Rules.
>
> **It is not open to the State Government to justify grant based on criteria that are dehors the MMDR Act and the MC Rules. The exercise has to be done strictly in accordance with the statutory provisions and if there is any deviation, the same cannot be sustained.** It is the normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. This principle has been reiterated in *CIT* v. *Anjum M.H. Ghaswala*[29] SCC at p.644; *Captain Sube Singh* v. *Lt. Governor of Delhi*[30] and *State of U.P.* v. *Singhara Singh.*[31]" [Emphasis supplied by us].

[27] (1973) 1 SCC 584
[28] (2000) 8 SCC 655
[29] (2002) 1 SCC 633
[30] (2004) 6 SCC 440
[31] (1964) 4 SCR 485

Reference may also be made to paragraph 44 of the Report that reads thus:

> "Mr. Harish N. Salve and Mr. Dushyant Dave, by drawing our attention to the decision of this Court in *TISCO Ltd.* v. *Union of India* [(1996) 9 SCC 709] , submitted that inasmuch as this Court had upheld the grants based on "captive consumption", there is no flaw or error in the recommendation of the State Government dated 6-12-2004. A perusal of the above decision clearly shows that it concerned with Section 8(3) of the MMDR Act which requires consideration of the extremely general criterion of the interests of mineral development before granting second renewal of a mining lease. Unlike in Section 11(3), no further criteria were specified and it was in this background, this Court upheld on the facts of that case that relevant material taken into account by the Committee set up by the Central Government rightly included "captive consumption". In view of the factual situation, the said decision can have no bearing on initial grants of mining lease where the only permissible criteria are the matters set out in Section 11(3) of the MMDR Act."

96. The controversy in ***Sandur Manganese*** related to the grant of mining leases contrary to the provisions of Section 11 of the MMDR Act in that a non-statutory criterion was taken into consideration *de hors* Section 11 of the MMDR Act for evaluating the applications and seeking approval of the Central Government for granting a mining lease. This was held to be impermissible and it may be so. In any event, paragraph 44 of the Report makes it clear that there is a distinction between the requirements of Section 11(3) of the MMDR Act and Section 8(3) of the MMDR Act. ***Sandur Manganese*** is not applicable to the facts of the present case.

97. Similarly, reference was made to the Statement of Objects and

Reasons for the Bill introduced in 2015 to amend the MMDR Act. It was stated therein that "The present legal framework of the MMDR Act, 1957, does not permit the auctioning of mineral concessions."

98. This submission need not detain us since we are not required to adjudicate whether the State of Goa should have auctioned the mining leases or not. The State of Goa decided to renew the mining leases and we are only called upon to decide (i) Whether the policy decision not to auction the grant of mining leases was arbitrary (we have already held that we are not required to express a final opinion on this). We may, however, recall ***en passant*** that the Goa Grant of Mining Leases Policy proceeded on the basis that the auction of mining leases was permissible and that had the sanction of the Court in ***Goa Foundation***. It may be added that the MMDR Act did not prohibit the auction of mining leases. (ii) Whether the second renewals were in accordance with law and the constitutional principles.

99. We may also note that the Constitution Bench in ***Natural Resources Allocation*** referred to the submission that if auction were the only method of allocating natural resources (as it appears from ***CPIL***) then the mandate would create a conflict with some statutes including the MMDR Act. The Constitution Bench dealt with this submission in paragraph 83 of the Report by observing:

> "Moreover, if the judgment in *2G case*[32] is to be read as holding auction as the only permissible means of disposal of all natural resources, it would lead to the quashing of a large number of laws that prescribe methods other than auction e.g. the MMDR Act."

However, the Constitution Bench did not advert to the consequence vis-à-vis the MMDR Act of holding that auction was not mandated as the only method of allocating a natural resource. Since the question does not arise in these cases, we decline to go into this issue – we need not finally adjudicate whether the State of Goa should have auctioned the mining leases but we are called upon to decide whether the grant of second renewals was valid in law.

Judicial review of renewals

100. In view of decisions of this Court, including in ***Natural Resources Allocation*** it is permissible for this Court to judicially review, to a limited and restricted extent, the Grant of Mining Leases Policy, among other things, if it falls foul of Article 14 read with Article 39(b) of the Constitution and if it ignores the common or public or social good but benefits private entrepreneurs, particularly when it involves the natural resources, by sacrificing the maximization of revenue for the State.

101. In ***Natural Resources Allocation*** the Constitution Bench observed that "Alienation of natural resources is a policy decision, and the means

[32] (2012) 3 SCC 1

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."

102. Similarly in ***Goa Foundation*** this Court declared that "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."

103. Despite the dicta of the Constitution Bench and the declaration made by this Court in ***Goa Foundation*** we do not propose to judicially review the Grant of Mining Leases Policy but to consider on merits whether the grant of second renewal to the mining leases was in accordance with the Grant of Mining Leases Policy and the law.

104. In our opinion, in renewing the mining leases, the State of Goa completely ignored several relevant and important and significant factors giving the impression that the renewals were not quite fair or reasonable.

105. For one, the State ignored the fact that every single mining lease

holder had committed some illegality or the other in varying degrees. To identify these illegalities (although they had already been identified by the Justice Shah Commission and by the EAC), a Special Investigation Team had been set up as also a team of Chartered Accountants. Instead of waiting for a report from any one of these teams, the State acted in violation of the Grant of Mining Leases Policy and renewed the mining leases. Why was the report from the Special Investigation Team not awaited or called for and examined? In the Grant of Mining Leases Policy it was clearly and explicitly stated (as mentioned above) as follows:

> "Unless and until the Inquiry initiated pursuant to the Judgment and Order of the Hon'ble Supreme Court of India against those Mine Lease Holders found to be violating either Rule 37 or Rule 38 of the Mineral Concession Rules, 1960, or otherwise indicated in the Report of the Justice Shah Commission/PAC report or found to be engaged in, any kind of illegality of whatsoever nature such as illegal Sale of Ore, Sale of Royalty Challan without Ore, Encroachment of adjoining areas outside the lease over production in excess of the limit specified in the Environmental Clearance; those which have undertaken unscientific mining operations; those who have violated or have not paid the Royalty amount; those who have re-used old Royalty Challans for defrauding; and those involved in Illegal Mining Activities **shall not be considered for renewal of the Mining Leases.**
>
> For this purpose, presently the inquiries are in progress at various levels and foras including the investigation by the SIT Team, by the Team of Chartered Accountants which have been set up by the State Government and **after the inquiry is complete or during the course of the inquiry where it is found that any violations have taken place, such persons shall not be considered for Grant/Renewal of the Leases**." [Emphasis supplied by us].

106. Unfortunately, the undue haste in which the State acted gives the impression that it was willing to sacrifice the rule of law for the benefit of the mining lease holders and the explanation of satisfying the needs of some sections of society for their livelihood (after keeping them in the lurch for more than two years) was a mere fig leaf. The real intention of the second renewal was to satisfy the avariciousness of the mining lease holders who were motivated by profits to be made through the exploitation of natural resources.

107. The undue haste also needs to be looked at in the context of the statement made in the final paragraph of the Grant of Mining Leases Policy to the effect that this Policy is an in-principle decision and would be notified after it is vetted for legal requirements "from specific necessities as also from financial view points". In other words, the Grant of Mining Leases Policy as published on 4th November, 2014 was not a final policy statement but only an intent that would take final shape after due vetting. The Grant of Mining Leases Policy was eventually published on 20th January, 2015 but it was acted upon even before it was gazetted.

108. A partial explanation for this hurry, if we may venture to suggest, is that the State of Goa was aware (like everybody else) on 17th November, 2014 if not earlier, of the policy of the Government of India to auction the

grant of mining leases which policy was made available in the public domain on that date and suggestions invited. It is on 17th November, 2014 that the draft Mines and Minerals (Development and Regulation) Act, 2014 was published on the website of the Ministry of Mines of the Government of India. The policy of the Government of India proposed to introduce Section 10B by way of an amendment to the MMDR Act and the proposed amendment made it very clear that if it were to be accepted, auction of mining leases in respect of notified minerals (including iron ore) would become a reality if not an obligation. It appears that to circumvent this rather uncomfortable policy, the State pressed the accelerator on the renewal of mining leases from December 2014 onward to benefit mining lease holders. So much so that in respect of 5 mining leases, the State overstepped the law and granted a second renewal in early January 2015 to some entities without even waiting for any approval or deemed approval of the mining plan from the Indian Bureau of Mines or any other authority.

109. This sequence of events acquires further significance when it is recalled that an Ordinance to amend the MMDR Act was made known to the general public on 5th January, 2015 and promulgated by the President on 12th January, 2015 thereby mandating competitive bidding or auction for the grant of mining leases. The State of Goa perhaps anticipated this in view of

the publication of the draft Mines and Minerals (Development and Regulation) Act, 2014 and therefore hurried into the second renewal of mining leases (notwithstanding the Grant of Mining Leases Policy) to defeat the introduction of the auction process. In fact in the period from 5th January, 2015 to 12th January, 2015 the Government of Goa granted a second renewal to as many as 56 mining leases and from 17th November, 2014 the State of Goa granted a second renewal to as many as 75 mining leases. The sudden spurt of renewal of mining leases is beyond comprehension. The judgment and order of the High Court in ***Lithoferro*** cannot be used as a shield for explaining the haste.

110. These facts must also be appreciated in the context that mining operations were suspended in Goa with effect from 10th September, 2012 due to an order passed by the State of Goa. Therefore, mining operations having been suspended for more than two years, the State could have certainly waited for a few weeks more and taken an informed and reasoned decision on granting a second renewal to mining leases – but waiting for a few weeks could have led to an uncomfortable situation that would have compelled the State of Goa to auction the mining leases, hence the haste.

111. This Court held in ***Tata Iron & Steel Co. Ltd. v. Union of India***[33] that for the purposes of Section 8(3) of the MMDR Act[34] the concept of 'mineral development' encompasses the concept of captive mining, an assessment of its requirement by different industries as well as the principle of equitable distribution (under Article 39(b) of the Constitution). It is not at all clear from the records before us that the State had applied its mind to these and other factors including the report of Justice Shah, the report of the EAC, the absence of any value addition to the domestic industry and the degradation of the environment as noted by the Expert Committee appointed by this Court in concluding that a second renewal was 'in the interests of mineral development'. Mere reliance on the acceptance or deemed acceptance of the Indian Bureau of Mines is not enough, as imagined by the State of Goa. The matter of 'interests of mineral development' has to be considered holistically and not in an isolationist manner.

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[33] (1996) 9 SCC 709

[34] "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:
Provided that the minimum period for which any such mining lease may be granted shall not be less than twenty years.
(2) A mining lease may be renewed for a period not exceeding twenty years.
(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.
(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."

112. In this context, it is also necessary to point out that the National Mineral Policy 2008 provided that: "To maximise gains from the comparative advantage which the country enjoys intra se mineral development will be prioritised in terms of import substitution, value addition and export, in that order." Admittedly, iron ore is not extracted in Goa for import substitution, or value addition for domestic industry, but only for the last option, that is, export. Can it reasonably be said that the export of iron ore is in the interest of mineral development? We were informed that only one of the mining lease holders captively consumes the extracted iron ore and it is evident from the Mineral Policy that despite mining operations having closed down for some period in other States, iron ore from Goa was not used in the domestic steel industry. Therefore, it is not at all clear who, other than the mining lease holders making exports, was benefited by resumption of mining operations in Goa through a second renewal.

113. The Mineral Policy clearly suggests that for a period of five years between 2006 and 2012 the mining lease holders committed various illegalities and irregularities in the mining process. This is an indication of their exploitative and rapacious attitude having little or no concern for the environment, the fragile ecology of Goa or even the health and well-being of the average Goan. This irreparable damage was being caused by the mining

lease holders without any benefit to the domestic industry. Therefore, while the mining lease holders may have contributed virtually nothing to the domestic industry, they might have made considerable profits through exports and might have also benefited the foreign exchange reserves of the country, but the real-time damage to the quality of health and life of the average Goan and damage to the environment and ecology of Goa is nevertheless incalculable or at least considerable – and export benefits cannot be weighed against health or the environment.

114. What is unfortunate about the entire commercial activity of the mining lease holders is that there was no social or public purpose attached to the mining operations. There was one and only one objective behind the mining activity and that was profit maximization. The renewal of the mining leases would give considerable profits to the mining lease holders well beyond the benefits that could accrue to the State or to the average resident of Goa. It was observed by Justice Khehar in ***Natural Resources Allocation*** that material resources of the country should not be dissipated free of cost or at a consideration lower than their actual worth. This was not kept in mind and mining leases were renewed for a small payment of stamp duty and royalty. It is therefore clear that the considerations that weighed with the State were not for the people of Goa but were for the mining lease holders. This

certainly cannot be described as being "in the interests of mineral development."

115. With the mining lease holders violating virtually every applicable law or legal requirement, it is clear that the rule of law was not their concern. The list of violations and their variety was documented by the EAC and it makes for some very sad reading. To make matters worse, it was clearly mentioned in the Grant of Mining Leases Policy that a Special Investigating Team and a team of Chartered Accountants would look into all the violations but the State chose not to wait for any of the reports. There is no explanation for this.

116. In this background, there is little to suggest that the State considered the requirements of Section 8(3) of the MMDR Act in that the interests of mineral development was secondary while granting the second renewal of mining leases. The entire exercise undertaken by the State was a hasty charade, regardless of violations of the law by the mining lease holders, without any benefit to the Indian industry and without any concern for the health of the average Goan.

117. The undue haste with which the State granted the second renewal of mining leases particularly after the amendments proposed to the MMDR Act were placed in the public domain by the Government of India (relating to the

auction of mining leases) is a clear indication that the decision of the State was not based on relevant material and not necessarily triggered by the interests of mineral development. The very large number of renewals granted over a comparatively brief period is a clear indication that the State did not have 'mineral development' in mind but had some other non-statutory interests while taking its decision to grant a second renewal to the mining leases. The haste with which the State took its decision also needs to be understood in the background of the fact that mining had been suspended by the State in September 2012 that is more than two years prior to the grant of second renewals. The urgency suddenly exhibited by the State therefore seems to be make-believe and motivated rather than genuine.

118. Facts from the record also disclose some interesting information regarding the second renewal of mining leases. The table below indicates that except 13 mining leases, all the others were renewed after publication of the draft Mines and Minerals (Development and Regulation) Act, 2014 on 17th November, 2014. The table is given below and is self explanatory:

Period	**Mining leases renewed**
Between 5-17 November, 2014	13
Between 10 December, 2014 and 2 January, 2015	19
Between 5-12 January, 2015	56
Total	88
On 12 January, 2015	31

119. Of the 13 mining leases renewed in November 2014, it is found that according to the State of Goa all of them are Category-I violators (except Geetabala M.N. Parulekar who is a Category–II violator). However, it was pointed out by learned counsel appearing on behalf of Goa Foundation that the report of the Vishwanath Anand EAC indicates that a recommendation was made to revoke the environmental clearance in respect of 6 mining lease holders; additionally, none of the mining lease holders had approval from the National Board for Wildlife (where required); all of them (except 2) had mined in excess of the permissible limit under the environmental clearance; all of them had indulged in dump mining; some of them were guilty of encroachments; in almost every case the mining activity intersected ground water level and none of the mining lease holders had permission for ground water withdrawal. These cannot be described as minor violations but were actually multiple violations in almost all cases. How could the State of Goa and MoEF overlook these recommendations and multiple violations?

120. It may be recalled that the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 came into force on 12th January, 2015 and on that day as many as 31 mining leases were renewed. In respect of 5 mining leases renewed in January, 2015 the report from the Indian

Bureau of Mines was called for in January, 2015 itself and the mining leases were renewed without receipt of the report from the Indian Bureau of Mines and before expiry of the mandatory period for submitting the report in terms of the second proviso to Rule 24A(3) of the Mineral Concession Rules, 1960. In other words, without even receipt of any report from the Indian Bureau of Mines and even before the expiry of the statutory waiting period, the State of Goa renewed some mining leases. This is patently illegal.

121. We were informed by the learned Additional Solicitor General that of the 88 mining leases that were renewed, 38 of them are not working for a variety of reasons – making their renewal an empty exercise.

122. These facts are mentioned in the context of the undue haste shown by the State of Goa in granting a second renewal to the mining leases keeping the following dates in mind:

> 17th November, 2014 – The draft Mines and Minerals (Development and Regulation) Act, 2014 was uploaded on the website of the Ministry of Mines of the Government of India.
>
> 5th January, 2015 – Approval of the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 by the Cabinet of the Government of India became public knowledge.
>
> 12th January, 2015 – President of India promulgated the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015.

123. It is possible that the State did have some serious governance issues to contend with as mentioned in the Grant of Mining Leases Policy, namely, since iron ore mining had been suspended for more than two years, the State faced a lack of funds resulting in its having difficulty in undertaking infrastructure projects and other activities. The State had also to contend with the adverse effects faced by a large population that was directly or indirectly dependent on the mining sector. Additionally, the transport sector was affected as well as barges used for transport through rivers from jetties. The stoppage of mining operations therefore affected several categories of stakeholders including small business or small commercial ventures and workers/labour. The Grant of Mining Leases Policy also noted that there was a tremendous loss of foreign exchange of about $8 billion through exports and more than Rs. 850 crores towards loans/advances on the mining sector for a variety of activities as well as about Rs. 1000 crores towards housing, business and other loans. Over all there was a slump in economic activity which also had an impact on the education sector etc.

124. The State has projected virtual chaos (which could be an exaggeration) but that is why we have left open the issue of arbitrariness of the policy decision. Nevertheless the State is bound by the law, however uncomfortable it might be in granting a second renewal in terms of Section

8(3) of the MMDR Act. Therefore, on an overall consideration of all aspects of the case, we are of opinion that the decision of the State of Goa to quickly renew the mining leases while ostensibly complying with the requirements of Section 8(3) of the MMDR Act and thereby jettisoning the rule of law was unjustified.

Whether fresh environmental clearances were required to be obtained by the mining lease holders?

125. The question whether the mining lease holders required fresh environmental clearances arises in the context of paragraph 82 of the decision rendered in ***Goa Foundation*** quoted above. It must be stated that some mining lease holders had environmental clearances under EIA 1994 while others under EIA 2006. Notwithstanding this, since we have held that fresh mining leases were required to be granted, it follows that fresh environmental clearance is required to be obtained by those who are granted a fresh mining lease.

126. That apart, the materials before the Court while deciding ***Goa Foundation*** included the report of the Justice Shah Commission, the report of the EAC and the report of the Expert Committee constituted by the Court by orders dated 11th November, 2013 and 18th November, 2013. On a combined reading of the material before it, the Court took a broad view that

large-scale mining of iron ore led to several adverse impacts including those related to the environment, ecology and health of the people of Goa and that these illegalities and irregularities were committed by almost all (if not all) mining lease holders as reported by the EAC. The Court also accepted the view of the Expert Committee that the ecology of Goa was being degraded through indiscriminate mining and placed a cap on the annual excavation of iron ore. It was noted that mining by the lessees in Goa after 22nd November, 2007 was illegal and that mining operations were suspended by the State of Goa on 10th September, 2012 and environmental clearances granted to the mines were kept in abeyance by the MoEF on 14th September, 2012. Considering all this, as well as the law laid down in ***Goa Foundation*** to the effect that there is no automatic second renewal of a mining lease but that a second renewal must be granted in accordance with the provisions of Section 8(3) of the MMDR Act, the Court used the expression "grant fresh environmental clearances for mining projects" in the passage referred to above.

127. We have already adverted to the report of the EAC. As far as the Expert Committee set up by the Court is concerned, it had furnished an Interim Report dated 14th March, 2014 in which it noted large-scale degradation of the environment and recommended placing an annual cap

between 20 and 27.5 million tonnes on the extraction of iron ore in Goa. The Expert Committee noted the following (which makes for some very depressing reading):

> "The production of iron ore has jumped from 14.6 million tons in 1941 to 41.17 million tons in 2010-2011. In 1980s 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*) Areawise 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 substantiate 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 (20 m) of sea water, agricultural fields, high concentration of Fe and Mn in surface waters and their bioaccumulation." [Emphasis supplied by us].

128. Faced with this material evidence before it, the Court took the view in ***Goa Foundation*** that fresh environmental clearances must be obtained. Unfortunately however, the State of Goa was more concerned with earning revenue rather than the health of the people of Goa or enforcing the rule of law and therefore gave a complete go-bye to the directions of this Court and to the concerns of the citizens of Goa and requested the MoEF to lift the abeyance on the environmental clearances.

129. Acting on the request made by the State of Goa by letters dated 7th January, 2015 and 5th February, 2015, the MoEF passed three orders on 20th March, 2015. We have already adverted to the contents of the orders passed on 20th March, 2015.

130. The first order of 20th March, 2015 is essentially a communication documenting the variety of illegalities and irregularities committed by the mining lease holders and that the Government of India would be referring the cases for appropriate action and also requesting the Principal Secretary, Environment in the Government of Goa to take necessary action.

131. The second order of 20th March, 2015 is an Office Memorandum to the effect that a project proponent will not be required to obtain a fresh environmental clearance at the time of renewal of the mining lease. This is misleading information and contrary to the decision of this Court in ***M.C.***

Mehta v. Union of India[35] as well as the decision rendered in ***Common Cause v. Union of India***.[36]

132. It was held in ***Ambica Quarry Works v. State of Gujarat***[37]***, Rural Litigation and Entitlement Kendra v. State of U.P.***[38] and ***State of M.P. v. Krishnadas Tikaram***[39] (which decisions were followed in ***M.C. Mehta***) that the renewal of a lease, whether under the provisions of the Forest (Conservation) Act, 1980 or otherwise cannot be granted without the lease holder complying with the necessary statutory requirements particularly since the grant of renewal is a fresh grant and must be consistent with law. The principle of compliance with statutory provisions at the stage of renewal of a lease was re-affirmed in ***Common Cause*** in paragraphs 105 and 106 of the Report. In paragraph 188(2) of the Report it was categorically held as follows:

> "(2) The renewal of a mining lease after 27-1-1994 will require an EC even if there is no expansion or modernisation activity or any increase in the pollution load."

133. The third order of 20th March, 2015 is extremely cryptic in the matter of lifting the abeyance order of 14th September, 2012 on environmental

[35] (2004)12 SCC 118
[36] (2017) 9 SCC 499
[37] (1987) 1 SCC 213
[38] 1989 Supp (1) SCC 504
[39] 1995 Supp (1) SCC 587

clearances. While dealing with 35 mining leases for which environmental clearance had been granted under EIA 1994 and 37 mining leases for which environmental clearance had been granted under EIA 2006, the following is stated:

> "It has been decided in the Ministry that the EC issued under 1994 notification in case they are valid and subsisting **would not require fresh EC at the time of renewal** (O.M. L-11011/15/2012-IA-II (M) dated 20.3.2015. Therefore it has been decided to lift abeyance on the 72 cases of which 35 cases had been granted EC under the provisions of EIA notification 1994 and 37 cases had been granted EC under EIA notification 2006." [Emphasis supplied by us].

134. As mentioned above and as held in ***M.C. Mehta*** and ***Common Cause***, the renewal of a lease after 27th January, 1994 would require an environmental clearance. Therefore, a mining lease holder having a valid environmental clearance obtained under EIA 1994 would still require a fresh environmental clearance for renewal of the mining lease in 2014-2015 as the case may be. That being so there is no doubt at all that the 35 cases referred to in the third order of 20th March, 2015 who had an environmental clearance under EIA 1994 did require a fresh environmental clearance at the time of renewal of the mining lease. Since they did not have such a fresh environmental clearance the renewal of these 35 mining leases is clearly bad in law. Moreover, as held in ***M.C. Mehta*** and ***Common Cause*** the

validity of an environmental clearance granted under EIA 1994 is only for five years. Therefore all environmental clearances granted under EIA 1994 had lost their validity before 2015, EIA 1994 having been replaced by EIA 2006.

135. As regards the 37 mining leases that had obtained environmental clearance under EIA 2006, since the validity of the environmental clearance is for the estimated project life or a maximum of 30 years in terms of paragraph 9 of EIA 2006 therefore no violation can be found on the ground of validity for the time period. To this limited extent, no interference is necessary at this stage in respect of these 37 mining leases. We make it clear, however, that this is subject to our conclusion that fresh mining leases were required to be granted by the State of Goa. Consequently, a mining lease holder obtaining a fresh mining lease would require a fresh environmental clearance in terms of EIA 2006.

136. What is disturbing is that notwithstanding several and various violations, the MoEF granted environmental clearance to 72 mining leases. It seems to us that the MoEF acted without any application of mind in lifting the order placing all the environmental clearances in abeyance. Since the entire exercise carried out by the MoEF on 20th March, 2015 was mechanical, at the behest of the State of Goa, without due application of

mind, without considering the multiple illegalities and irregularities committed by the mining lease holders or passing on the buck to the State of Goa and without considering relevant material such as the report of the EAC and the Expert Committee appointed by this Court, the exercise of lifting the abeyance order on 20th March, 2015 by the MoEF must be held void and as directed by the Court in ***Goa Foundation*** all the mining lease holders must obtain fresh environmental clearance for their mining project.

137. We were informed by the learned Additional Solicitor General that show cause notices have now been issued to some mining lease holders demanding huge amounts - some running into hundreds of crores of rupees towards value of ***ore extracted in excess of the environmental clearance***. We were handed over some sample show cause notices (about 12) issued in September and October 2017 and the figures are quite staggering – the demand raised being about Rs. 1500 crores! Similarly, from the Summary of Mining Audit Report submitted by the auditors (and handed over to us by the learned Additional Solicitor General – for the period July 2016 to December 2016) the amount demanded (including interest) by the State of Goa from the mining lease holders through show cause notices issued is about Rs. 1500 crores! And without making any serious attempt to recover such huge amounts, the State of Goa has granted second renewal of mining

leases and the MoEF played ball by lifting the abeyance order in respect of the environment clearances. The inferences that can be drawn are quite obvious.

138. We must emphasise that issues impacting society are required to be looked at holistically and not in a disaggregated manner. An overall perspective is necessary on such issues including issues that impact on the environment and the people of a community or a region or the State. It is for this reason that it is necessary to look at them broadly otherwise if that broader perspective is lost everyone will be a loser and no one will be a real beneficiary. One or two violations here and there may be wished away as inconsequential, but multiple violations by several persons can result in serious problems. As the novelist and philosopher Ayn Rand had said: We can evade reality, but we cannot evade the consequences of evading reality. Therefore, there is no doubt that the Mineral Policy, the Grant of Mining Leases Policy, the amendment to the MMDR Act, the report of the EAC and the report of the Expert Committee must be considered in the larger context of constitutionalism, the rule of law, environmental jurisprudence as well as the fundamental right of the people of Goa to have clean air and protection of the fragile ecology. Governance cannot and should not be carried out *de hors* the interests of the people and some uncomfortable

decisions may be inevitable for balancing the equities.

139. Finally, a controversy (wholly unnecessary in our view) was raised with regard to the period of validity of the environmental clearance granted under EIA 1994. Firstly, in the view that we have taken, the validity period of an environmental clearance under EIA 1994 is academic since a fresh environmental clearance was necessary at the time of renewal of a lease. Secondly, the period of validity of an environmental clearance was considered in ***M.C. Mehta*** and it was clearly held that it is valid for 5 years only. In paragraph 77 of the Report it was observed:

> "We are unable to accept the contention that the notification dated 27-1-1994 would not apply to leases which come up for consideration for renewal after issue of the notification. The notification mandates that the mining operation shall not be undertaken in any part of India unless environmental clearance by the Central Government has been accorded. **The clearance under the notification is valid for a period of five years.** In none of the leases the requirements of the notification were complied with either at the stage of initial grant of the mining lease or at the stage of renewal. Some of the leases were fresh leases granted after issue of the notification. Some were cases of renewal. No mining operation can commence without obtaining environmental impact assessment in terms of the notification." [Emphasis supplied by us].

A similar view was expressed in paragraph 87 in ***Common Cause***. Any contrary view expressed in any notification issued by MoEF (including the notification of 15th January, 2016) cannot overrule decisions of this Court

and is void to the extent that it does so.

140. It was submitted that all relevant notifications on the subject had not been placed before the Court and hence an erroneous conclusion was arrived at with respect to EIA 1994. We propose to deal with the notifications placed before us.

141. The notification of 27th January, 1994 (EIA 1994) deals with site clearance in paragraph 2.II(d). This provides, *inter alia*, that site clearance will be granted for a mining operation by the Central Government and that site clearance will be valid for a period of five years for commencing the operation or mining. Paragraphs 2.III(a) and 2.III(c) of the notification deal with the procedure for obtaining environmental clearance, but do not provide for the validity period of the environmental clearance.

142. A notification of 4th May, 1994 refers to the notification of 27th January, 1994 and substitutes paragraph 2.III(c) therein and provides that the environmental clearance "shall be valid for a period of five years from commencement of the construction or operation." What this provides, therefore, is that if environmental clearance is granted on a particular date and the mining operation starts on a later date, then the validity of the environmental clearance commences from the later date and is valid for five years from that date. This was reiterated in the notification of 10th April,

1997.

143. The validity of an environmental clearance is specifically provided for in EIA 2006 in paragraph 9 thereof. As far as we are concerned, it provides that in respect of mining operations, the environmental clearance would be valid for the "project life as estimated by Expert Appraisal Committee or State Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects….".

144. For no apparent reason and after EIA 2006, the issue of the validity of an environmental clearance granted under EIA 1994 was raked up and a notification was issued by the MoEF on 21st August, 2013 in which it was noted that the notification of 4th May, 1994 provided that "the clearance granted shall be valid for a period of five years from commencement of the construction or operation". Another notification of 21st August, 2013 goes on to say that the intent of the Central Government has been and has always been that the validity of the environmental clearance is for five years "for" commencement of the construction or operation and not that the environment clearance is only for five years "from" the commencement of construction or operation. Therefore, the Central Government clarified in the notification of 21st August, 2013 that the expression "for a period of five years" shall mean "for a period of five years for commencement of the

construction or operation and not five years from commencement of the construction or operation." We do not see how this controversy really arises or its relevance to the present case, but we refer to it since submissions were made to explain the distinction between "for" five years and "from" five years in respect of the validity of an environmental clearance.

145. It is perhaps sought to be contended that if environmental clearance is granted and mining operations commence within the five year period, then the environmental clearance under EIA 1994 is valid till the project or the mining lease period is over. We cannot see how such an inference can be drawn. Moreover, this submission overlooks the decisions in ***M.C. Mehta*** and ***Common Cause*** which accept the view that the validity of an environmental clearance granted under EIA 1994 is only five years as also the view that a valid environmental clearance is necessary for the renewal of a mining lease. No notification of the MoEF can overrule decisions of this Court. As far as EIA 2006 is concerned this submission is academic and not relevant since paragraph 9 of EIA 2006 provides that the environmental clearance would be valid for the estimated project life subject to a maximum of 30 years.

146. Learned counsel for the mining lease holders also relied upon a

decision of the Delhi High Court in ***S. N. Mohanty v. Union of India***[40] to contend that notwithstanding a notification issued by MoEF on 4th April, 2011 it was not obligatory for a mining lease holder to obtain a fresh environmental clearance at the time of renewal of a lease, if the environmental clearance was subsisting. In that case, the petitioner had an environmental clearance obtained under EIA 2006 on 15th January, 2007 and the first renewal of the mining lease was due on 2nd April, 2012. In that context, it was submitted that it was not necessary for the petitioner to obtain environmental clearance for renewal of the mining lease. The Delhi High Court took the view that: "… if a person has a valid and subsisting EC [environmental clearance] at the point of time he seeks a renewal of the mining lease, he would still be required to obtain another EC prior to the grant of renewal by the respondents. That, in our view, is not the intent and purport of the Supreme Court directions in ***M.C. Mehta***." This question does not arise in the context of EIA 1994.

147. One final submission before us was that these cases be referred to a Bench of 9 learned judges since the constitutional validity of the Goa, Daman & Diu Mining Concessions (Abolition & Declaration of Mining Leases) Act, 1987 was under challenge in some cases and the decision in

[40] 2012 SCC OnLine Del 4000

those cases would perhaps render the present proceedings infructuous. In some of these pending cases, this Court had passed an order on 29th October, 2002 to await the decision of 9 learned judges in ***Property Owners' Association v. State of Maharashtra***.[41] We are not at all inclined to accept this request and mention it only to reject it.

Correctness of the decision of the High Court in *Lithoferro*

148. As far as the SLPs are concerned (SLP (C) No. 32138 of 2015 and SLP (C) Nos. 32699-32727 of 2015) we set aside the judgment and order dated 13th August, 2014 of the High Court in view of our conclusion that the State of Goa was required to grant fresh licences in terms of the decision of this Court in ***Goa Foundation***. The High Court proceeded on the erroneous basis that it could direct the State of Goa to grant a second renewal of the mining leases notwithstanding the direction in ***Goa Foundation***.

Conclusions and directions

149. In view of our discussion, we arrive at the following conclusions:

1. As a result of the decision, declaration and directions of this Court in ***Goa Foundation***, the State of Goa was obliged to grant fresh mining leases in accordance with law and not second renewals to the mining lease holders.

[41] (2013) 7 SCC 522 dated 20th February, 2002

2. The State of Goa was not under any constitutional obligation to grant fresh mining leases through the process of competitive bidding or auction.

3. The second renewal of the mining leases granted by the State of Goa was unduly hasty, without taking all relevant material into consideration and ignoring available relevant material and therefore not in the interests of mineral development. The decision was taken only to augment the revenues of the State which is outside the purview of Section 8(3) of the MMDR Act. The second renewal of the mining leases granted by the State of Goa is liable to be set aside and is quashed.

4. The Ministry of Environment and Forest was obliged to grant fresh environmental clearances in respect of fresh grant of mining leases in accordance with law and the decision of this Court in ***Goa Foundation*** and not merely lift the abeyance order of 14th September, 2012.

5. The decision of the Bombay High Court in ***Lithoferro v. State of Goa*** (and batch) giving directions different from those given by this Court in ***Goa Foundation*** is set aside.

6. The mining lease holders who have been granted the second

renewal in violation of the decision and directions of this Court in ***Goa Foundation*** are given time to manage their affairs and may continue their mining operations till 15th March, 2018. However, they are directed to stop all mining operations with effect from 16th March, 2018 until fresh mining leases (not fresh renewals or other renewals) are granted and fresh environmental clearances are granted.

7. The State of Goa should take all necessary steps to grant fresh mining leases in accordance with the provisions of the Mines and Minerals (Development and Regulation) Act, 1957. The Ministry of Environment and Forest should also take all necessary steps to grant fresh environmental clearances to those who are successful in obtaining fresh mining leases. The exercise should be completed by the State of Goa and the Ministry of Environment and Forest as early as reasonably practicable.

8. The State of Goa will take all necessary steps to ensure that the Special Investigation Team and the team of Chartered Accountants constituted pursuant to the Goa Grant of Mining Leases Policy 2014 give their report at the earliest and the State

of Goa should implement the reports at the earliest, unless there are very good reasons for rejecting them.

9. The State of Goa will take all necessary steps to expedite recovery of the amounts said to be due from the mining lease holders pursuant to the show cause notices issued to them and pursuant to other reports available with the State of Goa including the report of Special Investigation Team and the team of Chartered Accountants.

150. The writ petitions and SLPs are disposed of in accordance with the above conclusions and directions.

...……J
(Madan B. Lokur)

..……....J
(Deepak Gupta)

New Delhi;
February 7, 2018