

IN THE SUPREME COURT OF INDIA
ORIGINAL CIVIL JURISDICTION
WRIT PETITION (C)NO.711 of 2015

IN THE MATTER OF:

Goa Foundation

...Petitioner

Versus

The State of Goa & Anr.

...Respondents

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ADVOCATE FOR THE RESPONDENT NO.1: NIRNIMESH DUBE

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COUNTER AFFIDAVIT ON BEHALF OF

THE RESPONDENT NO. 1, STATE OF GOA

I, Prasanna Acharya, aged about 39 years, son of Arvind Acharya, Indian, National, having residence at Davorlim, Salcete, Goa, presently at New Delhi, do hereby on solemn affirmation state and affirm as under:-

1. I state that I am the Director of Mines and Geology, Government of Goa and I am authorized to file the present Affidavit. I state that I am conversant with the facts and circumstances of the present case and I am able to depose thereto.

2. I state that I have read the present Petition and I am competent to depose to this Affidavit in Reply on behalf of Respondent No. 1, State of Goa. I state that at the moment I am not dealing with each and every contention/ averment made in the present petition and the contentions/ averments which have not been dealt with and/or denied by me, may not be taken as having been admitted by me for want of specific denial. I am filing this Affidavit for the limited purpose of opposing the admission of the present Petition,

and to place certain correct facts before this Hon'ble Court. I crave leave to file a detailed Affidavit in the event this Hon'ble Court is pleased to issue *Rule* in the aforesaid matter.

3. At the outset, I deny each and every averment set out by the Petitioner in the said Petition, to the extent, same are inconsistent with the case set out by me herein below. Nothing may be deemed as having been admitted, although the same may have escaped specific denials. I state that the Petitioner herein has made certain outright false statements on oath.
4. I respectfully state that the Petitioners have made incorrect statements as well as false statements in the Writ Petition and on this ground alone the present Petition is required to be dismissed.
5. I respectfully state that the Petitioner had a duty to get notices issued in the SLP after making the mining companies as parties to the SLP pending before this Hon'ble Court. The State of Goa has since been informed that the Petitioners have not complied with the said Order dated 22/09/2014 passed by this Hon'ble Court in SLP No. 16080 /2014 at the time of filing this Writ Petition. On this ground also the Petitioners may not be entertained by this Hon'ble Court.
6. The Petitioners have indulged themselves in *suggestio falsi* in as much as at the very threshold of the Petition it is mentioned that the State Government has en mass renewed the mining leases to sabotage the effect of the ordinance on lease renewals. In the first place, the said statement is completely incorrect and

deliberately made containing false accusations, to cause prejudice to the case of the Respondent. I state that making of such false statements, would only embolden the petitioner, to make further false statements. Indeed, it is completely wrong to suggest that all 88 mining lease renewals have been done on one day as is suggested by the petitioner. I state that the renewal applications were filed in the year 2006 by the mining companies and have been processed at various and different points of time as is mentioned hereinafter in this affidavit. I respectfully state that the process of seeking report from the Indian Bureau of Mines (IBM) had started in the year 2007 itself, thereafter order of renewal have been passed in the year commencing from 5th November 2014 to 12th January 2015 pursuant to the Goa Mineral Policy 2013 and subsequent framing of the Goa Grant of Mining Lease Policy 2014 framed pursuant to the directions issued by this Hon'ble Court in Writ Petition No. 435/2012 dated 21stApril 2014.

7. I further respectfully state that the Petition filed by the petitioners ought not to be entertained by this Hon'ble Court as the Petitioner has filed a very generic, casual, and a general kind of statements in the PIL despite there being Statutory Orders passed by the State Government under the provisions of the MMDR Act. Indeed pursuant to the framing of the policy, the State Government has considered each and every mining lease separately, applied its mind as regards the question of interest of mineral development, considered various aspects of the matter, law on the point,

Judgment of the Hon'ble Supreme Court in the matter of Writ Petition No. 435/2012 and Order of this Hon'ble Court dated 16/05/2014 in Common Cause V/s Union of India being Writ Petition No. 114/2014 and the Order of the Hon'ble High Court of Bombay at Goa, and only thereafter decided to pass the order of renewal in compliance with Section 8(3) of MMDR Act and Rule 24A(3) of the MCR, 1960. I state that prior to this the State Government had framed policy on 04.11.2014 considering all aspects of the matter and the policy document of the State Government itself reflects a complete application of mind by the State Government to various aspects of the matter. I therefore respectfully state that the petitioner who has filed a general kind of challenge making very casual, irresponsible and baseless allegations against the State Government ought not to be entertained by this Hon'ble Court. It is well settled that the mandatory rules for maintaining a Writ Petition, with proper pleadings, making out necessary grounds and relevant challenges are not exempted in the case of a public interest litigation. Hence, I pray that the present Writ Petition be dismissed.

PETITION AND PETITIONERS NOT BONAFIDE IN APPROACH:

8. I state that the State of Goa in the returns filed in a matter of this type would have straight away proceeded to answer the averments made in the petition on their own merits. But having regard to certain important things, it feels appropriate to raise these issues.

a) In the first place the Petitioner herein have sought to raise the very same issues which have been concluded in the disposed of matter namely Writ Petition (c) 435 of 2012 filed by the very Petitioner herein, as had been pointed out herein after in greater detail the Petitioners are seeking to re-visit, re-agitate, re-open and raise the same issues concluded earlier. In the respectful submission of the State Government the Petitioners are always at liberty to challenge the State's Order passed by the State Government under section 8(3) of the MMDR Act. But the challenge cannot be based on grounds and issues which have been agitated earlier and decided by this Hon'ble Court and even those grounds which had been raised and not decided are deemed to be rejected. In these circumstances the Petition and Petitioners cannot be said to ameliorate any public grievance if this pre-condition of bonafide approach is absent in the matter.

b) In the second place, the experience over the past few years and particularly of late has revealed that the petitioner organization, prima facie seems to be having a different agenda and some ulterior motives. Apart from the fact that the Petitioner perhaps being interested in stalling the economy and progress; of late the organization has filed various litigations primarily targeting the essential State's vital infrastructure projects such as bridges and Garbage treatment plants. The Petitioner has despite being aware of the fact that the additional bridge on river Mandovi is the need of the hour

and that it causes serious traffic jam, and terrible traffic hazards, yet is objecting and trying to stall the project, which is a project of prime importance for the state on flimsy grounds. The Petitioner has also filed another petition before the National Green Tribunal, at Pune, trying to stall the Terecol bridge which is also demanded by the locals, the villagers and the local Panchayat and wherein the bridge has been a demand since the last several years. There is yet another Petition filed in NGT Pune, and since transferred to the Principal Bench at New Delhi, at the request of the State Government whereby a garbage treatment plant which brings a state of the Art technology and which is in compliance with the Municipal Solid Waste Management Rules having an approved technology having been approved by the State Government which will deal with the existing garbage as well as the new garbage is challenged by the Petitioner. I state that such an eco friendly project has also been challenged by the Petitioners herein, by filing a Petition before the NGT on ground which are frivolous. Therefore the State Government of late has found that the approach of the Petitioners is to target infrastructural projects and against the interest of the State and the Nation. These types of approach of the Petitioner coupled with press statement smack of a different Agenda.

I state that the statements of the Petitioners and the stand taken by the Petitioners at various foras, their attitude and

approach has since convinced the State Government that the Petitioners have essentially an ulterior agenda of not only halting the economic progress, obstructing the development of the State and the nation but also of a kind of a discreet agenda with some ulterior motives.

- c) The Petitioners are aware that even this Hon'ble Court after realizing the plight of unemployed workman and the unemployed work force which accounts to around 2 to 3 lakh people in the State of Goa dependant on mining and that the State had lost vital revenue thereby affecting the ongoing infrastructural works and other essential matters had taken up Writ Petition No. 435/2012 for hearing and disposed off the same, Petitioners herein have again approached this Hon'ble Court with a prayer to stall the mining operations which have recently commenced in the State of Goa. This action of the Petitioners in not approaching the Hon'ble Court in November 2014 when the Policy is framed or in between November 2014 to 12th January 2015, wherein the renewal orders were issued but to approach now after a delay of almost nine months after mining operation have commenced shows complete malice and an agenda to create unrest in the Economy.

BOMBAY HIGH COURT ORDER CHALLENGED IN THE WRIT

PETITION:

9. The Petitioner in the Writ Petition virtually challenges the Judgment and order of the Bombay High Court inasmuch as the

Petitioner is assailing the reasoning given by the Hon'ble High Court. In the first place such a challenge even to the reasoning of the High Court Order by filing a Writ Petition is unknown to law. Secondly, the Petitioner has not challenged the Judgment and order of the Bombay High Court passed in several matters.

10. I respectfully state and submit that even a PIL Petitioner is not exempted from complying with the minimum principle required to be followed in filing Special Leave Petition or a Writ Petition. In the entire Petition Petitioner has failed to demonstrate and make out any case as to how his Fundamental Right under Part III of the Constitution of India have been violated. Failure to show this is something fatal to the Petition itself.

ALL 88 LEASE HOLDERS ARE NOT JOINED AS PARTIES:

11. The present Petitioner has not joined all the 88 persons to whom mining leases have been granted. The Petitioner has a duty to this Hon'ble Court to ensure that all these persons are joined as party respondents. Being a Public Interest Litigation, this Respondent in compliance with and in deference to the order passed by this Hon'ble Court on 17.11.2015 have served the copy of the Petition on all the parties whose leases have been renewed. Indeed, this Respondent was given a compilation of four different petitions which ran into about 800 pages. 88 copies of the Petition along with the documents running into 800 pages were scanned by the department and by taking out CDs of the

matter. This Respondent has served the 88 leaseholders in compliance with the order of this Hon'ble Court.

WRIT PETITION VIRTUAL ATTEMPT TO REOPEN, RE-AGITATE

DISPOSED WRIT PETITION:

12. I respectfully state and submit that the present Writ Petition is virtually an attempt by the Petitioner to reopen, re-visit, re-agitate, the issues which were raised in the earlier Writ Petition and which also have been conclusively heard and decided or rejected by this Hon'ble Court in the earlier Writ Petition No. 435 of 2012.
13. I respectfully state that in the earlier Writ Petition the Petitioners had vehemently argued and sought a relief that this Hon'ble Court should direct that the leases should not be renewed but should be auctioned. A reading of the Judgment of this Hon'ble Court makes it clear that this contention was not accepted. The same issue and many other issues the Petitioners are seeking to raise again. Indeed, the points raised herein namely Renewal cannot be granted and, Mines be auctioned were all matters argued and rejected earlier.
14. I further state that the prohibition on mining within 10 kilometers of the boundaries of national parks and wildlife sanctuaries was also argued and specifically rejected by this Hon'ble Court.
15. I further state that the findings in Mr. Justice Shah Commission of Enquiry and the CEC Report were all before this Hon'ble Court and argued by the Petitioners by heavily relying upon them. The Petitioner therefore, cannot be allowed to re-open these and

other issues, concluded in earlier matters. Such an exercise is something impossible in law.

16. I state that the mining had stopped in Goa since October 2012 and has recently commenced post the renewals of mining leases by the State Government. I state that in the Affidavit filed before this Hon'ble Court in WP/435/2012, the State Government has brought on record the ill effects of the mining ban in Goa which has not only affected the population at large but the same has also affected the major revenue of the State Government, Liquidity in Banks, Ports like Marmugao Port Trust, etc. I state that the relevant extracts of the said Affidavit dated 08/02/2013 are reproduced herein for ready reference:

“

- *The mining ban has left a lack of population jobless and 3.50 lakhs people impacted by the ban.*
- *There are 20,000 to 25,000 trucks estimated to be plied for mining operations, out of which altogether 11,100 have been registered so far with the Mining Department, which are engaged in transportation of iron ore.*
- *The stoppage of mining activity has affected all these truck owners.*
- *The drivers of these trucks have been rendered unemployed.*
- *This has directly affected the families of the truck owners as well as the drivers.*

- *This apart, all the garages and service stations, petrol/diesel stations, which were directly dependent on the mining trucks, have shut down their businesses.*
- *This has also affected the banking sector, more particularly small cooperative banks, who had advanced loans to the truck owners at the time of purchase of the trucks. In fact, non-payment of the instalments has adversely affected the financial state of the smaller cooperative banks.*
- *There are around 375 barges estimated to be plied for mining transportation, out of which 223 barges have been registered so far with the Mining Department in the State of Goa, who are primarily engaged in transportation of mining ore.*
- *In fact stoppage of mining activity has stopped all the barge transport thereby affecting their owners, staff and their families.*
- *The stoppage of barge transportation has rendered around 4,000 employees unemployed thereby affecting them and their families in their day-to-day lives.*
- *The school dropouts in mining belt has drastically increased, which is the effect of ban on mining in Goa.*
- *Many of the dockyards, which were catering to barge services, have laid off their employees for lack of work*

thereby affecting not only the owners of the dockyard but also its employees and their families depending upon it.

- *There are around 220 mining machineries so far registered with the Department of Mines & Geology. Presently due to stoppage of mining activity, these machineries and the staff employed on these machineries are not being used at the mines.*
- *This has rendered many of the employees depending on this mining machinery, unemployed thereby directly affecting them and their families.*
- *Most of the mining companies have retrenched/laid off their employees and some of the mining companies are in the process of doing so. This has directly affected the said employees and their families.*
- *All these aforesaid factors would demonstrate that there has been drastic fall in the purchasing power of the persons who were directly or indirectly depending on the mining activity.*
- *Due to this, the spending power has reduced drastically, which has directly affected the hotel business, other businesses, shops, small time vendors in the mining belt, thereby affecting the economy as a whole.*
- *Most of the employees of the mining companies were travelling to their work place by bus. Stoppage of mining*

activity has directly affected the bus owners as well who were catering to the transport needs of the employees of mining companies thereby affecting the owners of these buses as well as its employees and other persons depending on it.

- *The aforesaid facts would demonstrate that stopping of mining activity had a cascading effect on the overall economy and it has directly affected all the persons who were directly or indirectly dependent upon mining.*
- *Apart from this, this has directly affected the State revenue, whereby royalty collections have been directly affected apart from other losses incurred on non-tax revenue of the State and Center.*
- *There is an on account of the aforesaid, halt to all exports.*
- *Export commitments are affected to overseas buyers.*
- *Non-export has created a loss of foreign exchange resulting in loosing thousands of crores.*
- *This has kept the staff at Goa Port, Mormugao Port Trust and at Transhipper idle and without job, thereby affecting their livelihood and basic human needs and rights.”*

I state that due to the mining ban, during the period from October 2012 till April 2014, as highlighted earlier, the people and the persons who are enlisted above have been severely affected thereby depriving them of their valuable right of livelihood

enshrined in Article 21 of the Constitution of India. I state that any Orders passed by this Hon'ble Court granting any interim relief would stall the mining operations in Goa which have started recently and it will directly affect those poor people who have regained some sort of ground post the resumption of the mining operations. I state that any interim order from this Hon'ble Court would severely affect the people who are directly and indirectly dependent upon the mining industry in Goa as well as the state in terms of revenue, power to undertake projects, schemes, etc and ultimately create a law and order situation.

17. I state that it has been held by this Hon'ble Court time and again that wisdom and advisability of economic policies are ordinarily not amenable to Judicial Review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. More importantly, I state that, it is fundamentally accepted position by this Hon'ble Court that it is not for the Courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. I state that for testing the correctness of a policy, grounds known to law are required to be raised. I state that, apart from the fact that the economic policy of the State cannot be questioned as such, the facts herein show that transparent, fair, just, all stakes protection and equitable procedure has been followed in framing the policy. I state that the casual allegations loosely made of lack of transparency or that the decision was taken in a hurry or there has been an arbitrary exercise of power are not grounds available

to challenge a policy validly framed. I state that moreover, valuation is a question of fact and the Court will not interfere in matters of valuation unless the methodology adopted is arbitrary. I state that judicial interference by way of PIL is available if there is injury to public because of dereliction of Constitutional or statutory obligations on the part of the Government. I respectfully state that in the present case, it is not so and in the sphere of economic policy or reform the Court is not the appropriate forum. I state that every matter of public interest or curiosity cannot be the subject matter of PIL. I state that courts are not intended to and nor would they conduct the administration of the country, howsoever, Petitioner may plead for it. I state that courts will interfere only if there is a clear violation of Constitutional or statutory provisions or non-compliance by the State with its Constitutional or Statutory duties. I state that none of these contingencies arise in this present case. I state that in the case of a policy decision on economic matters, the Courts are very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the Judgment of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision itself. It is submitted that no ex-parte relief by way of injunction or stay especially with respect to public projects and schemes or economic policies or schemes should be granted. It is only when the Court is satisfied for good and valid reasons, that there will be irreparable and irretrievable damage can an injunction be issued after hearing all the parties.

Even then the Petitioner should be put on appropriate terms such as providing an indemnity or an adequate undertaking to make good the loss or damage in the event the PIL filed is dismissed.

18. I state that there is one more reason as to why this Hon'ble Court may not entertain the present petition. It is respectfully submitted by the state of Goa that some of Mining Companies had filed Writ Petitions before the Hon'ble High Court seeking a direction more particularly prayed for in the said Writ Petition. I state that the main grievance of the mining companies in those Writ Petitions was non renewal of mining leases despite pendency of applications before the State Government. I state that the Hon'ble High Court vide its Judgment and Order dated 13/08/2014 directed the State of Goa to execute the mining leases in case of certain lease holders and in case of other to consider their applications and take a decision in a time bound manner. Indeed, the renewals of the mining leases which have been challenged by way of this Petition takes into consideration amongst various things, the said Judgment and Order passed by the Hon'ble High Court and this Hon'ble Court. I crave leave to refer and rely upon the said Judgment as and when produced. I state that the said High Court's Judgment was challenged by the very same petitioners by filing Special Leave Petition before this Hon'ble Supreme Court. Indeed what is important is for the defaults on the part of the petition, the said matter has never come up for hearing. The petitioner has now filed this petition under Article 32 of the Constitution of India.

PARAGRAPH WISE REPLY TO THE WRIT PETITION:

19. I shall now deal *ad seriatim* with the paragraph wise allegations raised by the Petitioner in the present petition.
20. With reference to paragraph 1 of the Petition, the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. I state that in all the 88 mining leases, second renewal Orders of deemed mining leases have been issued in conformity with the Order of this Hon'ble Apex Court dated 21/04/2014 and also provisions of Section 8(3) of the MMDR Act, 1957, and Rule 24(A)3 of the MCR, 1960. I state that as per the Abolition Act read with the MMDR Act 1957, the first renewal period of deemed Mining Lease is w.e.f. 23.01.1987 till 22.11.2007. Furthermore, as per Rule 24A of MCR 1960, Renewal Applications in Form J are to be filed one year before expiry of the lease period i.e. in case of deemed leases, the renewal applications ought to have been filed on or before 22/11/2006. I state that in terms of first and second Proviso added to Rule 24-A (3) of MCR, 1960 w.e.f. 11.1.2002, in case of Second and subsequent renewals of mining leases, a communication by the State Government is required to be sent to IBM office seeking a report on whether such renewals are in the interest of mineral development. If no such report is received within 3 months, it shall be deemed that IBM has no adverse comments to offer. Additionally, as a necessary corollary, even if a negative report is received from IBM, after 3 months it may not be material. Similarly, I state that there is no provision either by

way of Proviso or otherwise, to Rule 24(3) of the Mineral Concession Rules, 1960 which prohibits State Government from granting second or subsequent renewal of Mining Lease in case a negative report is received from IBM within the 3 months period. Consultation with IBM therefore is time bound but is considered in law as an expert consultation. I state that it is denied that the renewals prima facie disclose malafides, collusion between mining companies and the state authorities, circumvention and violation of this Hon'ble Courts order dated 21/04/2014 and the provisions of the MMDR Act, 1957.

21. The M.M.D.R. Act, 1957 requires a speaking Order to be passed by the State Government in exercise of powers under Section 8 (3) of MMDR Act, 1957. Section 8 (3) of M.M.D.R.Act, 1957 authorizes the State Government to authorize grant of second & subsequent renewals' of leases for a period of upto 20 years, if such renewal is in the interest of mineral development by passing a reasoned recorded Order in that behalf. Further, In M.M.D.R. Act, 1957 under the heading "**Mineral Development**" Section 18 of M.M.D.R. Act, 1957 casts a duty on the Central Government to take all steps necessary for the conservation and systematic development of minerals in India and for protection of the environment by preventing or controlling any pollution which is caused by prospecting or by a mining operation and thus authorizes the Central Government to frame rules for such purposes. In exercise of such powers, the Central Government has framed Mineral Conservation and Development Rules, 1988

which deals with Mining Plans and mining activities to be carried out as per Mining Plan approved by IBM. Section 5 (2) (b) of MMDR Act, prohibits grants of Mining Leases unless there is Mining policy duly approved by Central Government or State Government.

22. I state that there are altogether 88 leases in which speaking reasoned Order in writing have been passed by the State Government in exercise of its power under Section 8(3) of MMDR Act, 1957 as per details as given below. I state that in all these 88 Mining leases, the requisite Renewal Applications in Form J were filed well within time in the year 2006 as required under Rule 24A(1) of MCR, 1960. I state that in exercise of power under section 5 (2) (b) of MMDR Act, Indian Bureau of Mines has approved mining plans in all 88 mining leases for a period of 20 years w.e.f. 23-11-2007 till 22-11-2027.

23. I state that under first proviso to Rule 24A (3) of MCR 1960, The details of reports sought from IBM are given as under:

Sr.No.	Year	No of Communications sent to IBM by State
1	2007	32
2	2008	38
3	2009	09
4	2012	03
5	2013	01
6	2015	05
	TOTAL	88

Annexed hereto and marked as **Annexure R-1** is a tabular chart showing details of the mining leases renewed.

I state that such renewal Orders are also in conformity with the provisions of the Goa Mineral Policy, 2013 and Goa Grant of Mining Leases Policy, 2014, the Hon'ble Supreme Court Order dated 21.4.2014 in W.P. 435 of 2014 and the common Order of the Hon'ble High Court dated 13.08.2014. In all 88 cases, a speaking Order, containing reasons as to how such renewal is in the interest of mineral development has been passed by the State Government in exercise of its powers vested in it u/s 8(3) of MMDR Act, 1957.

24. I respectfully state and submit that the State Government has authorized the Renewal in terms of Section 8(3) of the Mines and Minerals Regulation and Development Act, 1957, and in compliance with the provisions of Rule 24(A) (3) of the Mineral Concession Rules, 1960. I respectfully state that the sequence of events as has been mentioned in this Affidavit and which have clearly disclosed the chronological dates and events after the Judgment of this Hon'ble Court in Writ Petition No.435 of 2012, leave no manner of doubt that the State Government has acted in terms of the provisions of the MMRD Act and the Rules framed thereunder.

25. I state that after the Judgment of this Hon'ble Court, the State Government at various levels had consulted IBM as required, considered, debated and discussed matters relating to the Policy to be framed as regards the mining to be recommenced in Goa

including the aspect of renewal of the mining leases in the State of Goa as well as the decisions on the pending applications for renewal which were pending since the year 2006.

- 26.** I respectfully state that in the Goa Mineral Policy, 2013 which was placed before this Hon'ble Court, the State of Goa had clearly represented to this Hon'ble Court, that the renewal applications pending would be decided within a period of 6 months while reiterating the State Government's stand that at the relevant point of time mining operations under the deeming clause of Rule 24A(6) could not allow indefinitely the mining operations without the same being renewed. Annexed hereto and marked as **Annexure R-2** is copy of the Goa Mineral Policy 2013.
- 27.** I state that somewhere in the month of September 2014, after the State Government had formulated, and decided in principle to follow the provisions of the MMRD Act of disposing of applications under Section 8(3), in the first instance having regard to the fact that the Legislative Assembly session was to commence, the then Hon'ble Chief Minister (Minister of Mine) first disclosed the Government's intention and made a statement on the floor of the Legislative Assembly. The said statement has been incorporated as part of the Goa Mineral Policy of Renewal of Leases 2014. The Legislative Assembly unanimously resolved to approve the State Government's stand reflected in the speech of the Chief Minister.
- 28.** I state that thereafter the Council of Ministers approved the Policy initially on 1st October, 2014, and thereafter on 4th November, 2014 and the Policy was issued under an Order and in the name

of the Governor of Goa on 4th November, 2014 duly authenticated by the Secretary, Mines, Government of Goa. On the said date i.e. 01.10.2014 and 04.11.2014, the said Policy was published and uploaded on the Website of the Directorate of Mines and Geology, Government of Goa. The said Policy was available for everyone on 4th November, 2014. Indeed, the said Policy document had received wide coverage and publicity and published in the local and National dailies also, and telecast by news channels. Therefore, everyone in Goa including the Petitioner was aware of the Policy Document Finalization.

- 29.** I state that the provisions of law required the State Government to form an opinion whether to grant a second or subsequent renewal after recording its reasons in writing and that such an Order under Section 8(3) can be passed in the interest of Mineral Development.
- 30.** It is respectfully stated that the word “interest of Mineral Development” is not a concept as is sought to be canvassed by the Petitioner. It has a definite meaning and it requires reasons to be recorded in writing in terms of Section 8(3) of the MMRD Act, which indeed has been done by the State Government.
- 31.** I respectfully state that Section 18 of the Act speaks of “Mineral Development” which casts a duty on the Government to take all such steps as may be necessary for the Conservation and Systematic Development of Minerals and for protection of environment by preventing or controlling any pollution which may be caused thereby.

- 32.** It is important to note that minerals are those materials which require mining operation to be undertaken for the purpose of mining and wining of minerals. Such minerals belong to the Sovereign. It is an inorganic substance found either on or in the earth which may be graveled and exploited for profit.
- 33.** Pursuant to such duty under Section 18, the Government is required to regulate and permit development of mines by giving out mining leases or licenses for prospective operations. The term Mineral Development and more particularly in the interest of Mineral Development means and refers to the requirement of the State to exploit or develop the mineral and this includes not only the financial aspect, the revenue aspect, the aspect as regards working class involved in the mines, the matter as regards investment done by the existing lease holders incurring a substantial cost in development of mines and together with scientific exploitation and ancillary steps in that regard for such Mineral Development. I state that the interest of Mineral Development would include consultation with IBM, an Expert Body, and not at all the kind of view which is sought to be canvassed by the Petitioners.
- 34.** I respectfully state that it would predominantly be in the interest of the State in scientific exploitation and systematic Mineral Development without losing the mineral forever.
- 35.** I respectfully state that cases of the persons who had developed mines for excavation of minerals and for their effective exploitation, had been possessing lands and who had reasonably

been aspiring for such leases having filed an application way back in the year 2006, all such matters required proper consideration. Indeed, in a given case, non consideration of renewal of leases of such person can also amount to consideration of the matter “not in the interest of Mineral Development” inasmuch as the systematic exploitation of minerals, formation of Benches, obtaining of the consent from the surface owners, initial development of the mines and carrying out systematic mining operations are all matters which are relevant and material. Hence, the term “interest of Mineral Development” would also though at an ancillary level include the rights of the person who are aspiring for renewal having filed an application in the year 2006.

36. I respectfully state and submit that the very provision under Section 8(3) which requires the State to consider the interest of Mineral Development coupled with the requirements to record reasons, provide ample guidelines that the Authorities have to form an opinion in this regard and grant a lease pursuant to the Policy of the State Government framed in this regard.

37. I respectfully state and submit that scientific exploitation of minerals without waste is a part of the Mineral Development as envisaged by the MMRD Act and the Rules framed there under. The exercise under Section 8(3) is dependent upon the satisfaction of the State Government but the same is to be exercised within the parameters of Mineral Development, and the State action in the present case is fully just and reasonable. Such an exercise undertaken by the State Government which is

dependent on the subjective, satisfaction of the State Authority cannot be put to objective test in the manner sought to be done by the Petitioner.

- 38.** I respectfully state that there are so many aspects which cover the topic of Mineral Development. The State Government cannot have a blindfold approach to the endorsement by the IBM, advanced technology adopted and purchased by the existing lease holders as also the social economic and political set up in the State as also the changes in economic and political scenario in other countries. These are all matters which create and make exigencies requiring framing or modification or re-appreciation of the large Policy, as well as consideration of matter under Section 8(3) of the MMDR Act, 1957.
- 39.** I respectfully state that even the fact that the Goa's ore after being blended with a beneficiating material was exported and considerable foreign exchange received by the country was also material consideration forming part of Mineral Development, inasmuch as appropriate time to exploit, sell, export mineral would depend upon various conditions including local, national and overseas market conditions.
- 40.** I respectfully state that interest of Mineral Development is a matter within the domain of the State Government and there cannot be unchartered embarkment on such exclusive field reserved for the Executive in so far as framing of a Policy is concerned.
- 41.** I respectfully state that whether the policy decision is wise or a better policy decision can be arrived at is certainly not for the

Petitioner or anyone else to do. But these are matters for the Executive Authorities. The Petitioners can only raise the issue as regards the validity of a Policy only when a proper challenge is made to such a Policy decision based on as having infringed any of the Fundamental Rights enshrined in the Constitution of India or based on any other violation of statutory rights. Petitioners cannot sit in judgment over the policy or on the making of it.

42. I state that apart from the aforesaid, there are various relevant matters which indeed have been considered by the State Government while framing the Policy and while taking a decision, apart from technology set up, the fact that existing mining leases had carried out systematic development of mines and invested huge amounts as they were permitted to carry out mining operations without deciding their applications for renewal which they had filed well within time are all mitigating circumstance meriting consideration while dealing with greater interest of Mineral Development in the State.

43. I respectfully state and submit that the question of granting lease or renewing lease to such persons including the aspect of better revenue earning of such developmental mining operations are all matters which are required to be considered by the State Government in an objective manner while framing and pursuant to the Policy.

44. I state that it is also not true to suggest that the Hon'ble Apex Court held that renewals can be granted in exceptional cases as stated in Para (1) of petition. None of the leases are renewed

mechanically without application of mind as alleged. As, in terms of section 8(3) of MMDR Act, 1957 the sole consideration for renewal of mining leases for second and subsequent renewals as it then stood was that such renewal should be in the “interest of mineral development” which has to be recorded by a reasoned Order in writing. The renewals of such leases was done subject to following conditions.

- *The renewal shall not absolve the lessee or any other person claiming through the original concessioner from payment of any dues, royalty, dead rent, surface rent, fine, compounding charges etc. which are due to the State Government from such lessee or any person claiming through him or the erstwhile concessioner for their acts or omissions prior to the present Order.*
- *The renewal shall not absolve the lessee from any action under MMDR Act and Rules framed thereunder for the acts done prior to passing of this Order.*
- *The lessee shall have to fulfill all the statutory/regulatory requirements under MMDR Act 1957, MCR 1960, MCDR 1988, as well as other Acts and Rules & Regulations, Notification to the satisfaction of relevant authorities under such Act's, Rules etc.*

- *The renewal Order is a administrative decision/ministerial act taken by subjective assessment of the facts and Application for Second renewal, in exercise of powers under the MMDR Acts and Rules made thereunder. As such solely on basis of renewal of lease, no mining operations shall be undertaken in the leasehold area unless all clearances, NOC's, Consents, permission etc under various Legislations, rules, regulations, Notifications, etc. are in place. So also Orders of Hon'ble Supreme Court of India, High Court of Bombay at Panaji and administrative instructions, directives etc. issued by Government or autonomous bodies like Goa State Pollution Control Board etc. are to be scrupulously followed, to the satisfaction of the concerned Authorities under relevant Legislations etc.*
- *The renewals are also subject to the capping of production which may be imposed by State Government irrespective of the EC limit specified for this lease or group of leases.*
- *The lessee shall not have any claim whatsoever on ore, which was lying in the State of Goa from 05.10.2012 which is subject matter of e-auction*

and declared to be the property of State by Hon'ble Supreme Court of India.

- *Renewal is subject to conditions that the lessee shall pay 10% of sale value for mineral produced in the lease towards Goa Iron Ore Permanent Fund from the date of passing of this Order.*
- *This renewal is subject to liberty of State Government to reduce the area of lease in the interest of Environment, Ecology, etc. which may be exercised by the State Government at any point of time.*
- *The DGPS survey shall be the sole basis for renewal of leases and such plans shall seal the boundary of lease on the basis of latitude and longitude as far as the Applicants are concerned. The survey numbers etc. mentioned in the plan if changed or required to be changed for any reason whatsoever like change of cadastral records after readjustment of the area of any village or survey number, or resurvey of any village or survey number or for similar reason. The change in the survey records, shall accordingly be noted by the Director of Mines & Geology, for the purpose of his records and all such changes shall be accordingly updated at any stage from the signing of the lease deeds.*

Director of Mines & Geology is authorized to deal with all such issues including boundary dispute of adjoining leases and shall have the final authority to do the needful.

- *The lessee shall abide by the conditions laid down in this Order and the lease deed to be executed in this behalf.*
- *The lessee shall obtain surface rights or obtain consent of the owner/occupier of land before entering the land for commencement of mining operation in the area.*
- *The lessee shall not commence mining operations without having mining plan, duly approved by IBM.*
- *The Lessee shall execute within a period of 180 days from the date of communication of this Order and on acceptance of terms and conditions mentioned herein, a Deed of Lease as contemplated under rule 31 of the Mineral Concession Rules, 1960.*
- *The Lessee shall comply with the provisions of the Stamp Duty Act as amended from time to time to the satisfaction of the concerned authority under the Act.*

45. I respectfully state and submit that the powers of the State Government to grant or refuse renewals of a mining lease under

sub-section (3) of Section 8 was not in any way restricted or impeded by the Judgment and Order of this Hon'ble Court. On the contrary, this Hon'ble Court specifically recognized that the power to grant mining lease is with the State Government. Such a power to grant mining leases includes in terms of the legislative enactment, the power to renew a lease under Section 8(3) of the 1957 Act.

46. I respectfully state and submit that the mining leases in Goa had expired in the year 2007 as the period of 20 years from 1987 to 2007 was the period of first renewal which ended in 2007. However this does not in any way take away the power of the State Government to renew a lease under Section 8(3) of the said Act. Section 8(3) dealt with the power of the State Government to authorize the renewal of a lease for a further period or periods not exceeding 20 years in each case. The power to renew the mining lease under sub-section (3) of Section 8 is a period different from the period specified under Section 8(2). In fact, Sections 8(1), (2), (3) and (4) operate differently for different periods.

47. I respectfully state and submit that there is no legal impediment whatsoever in the State Government granting a renewal of the mining lease, in accordance with and in furtherance to the Policy framed pursuant to the Judgment and Order of this Hon'ble Court, for a second renewal under Section 8(3) of the said Act. This power under Section 8(3) was always available to the State Government either in the year 2007 or in the year 2014 or up till

12th January, 2015 when it granted second renewal to the mining leases. The predicates required for granting such a renewal including seeking Report from the IBM under the Rules, consideration of such Report from the IBM, and the further reason that it should be in the interest of Mineral Development, have all been complied with considered, and it is only after taking a view of the matter and the reasons having been recorded, the State Government authorized the renewal of a mining lease for a further period not exceeding 20 years. Unlike in the case of a normal lease which creates a tenancy for a term of years, wherein unless the lease deed specifies that the option is available to the lessee to renew the lease, in terms of the MMDR Act, 1957 such a power is available only to the State Government in terms of sub-section (3) of Section 8 of the said Act.

48. I respectfully state that here is a case where the lessees were always ready and willing to accept Renewal of lease on proper terms. The findings of this Hon'ble Court were on account of the fact that the then State Administration, (though the State Government is a continuous body) that is the State Government between the period 2006 to 2011 failed to dispose of the pending applications for renewal and allowed the mining operations to be undertaken and carried out only on a deemed extension basis which was something impermissible in law. The deemed extension period is provided for only to facilitate the State Government from disposing of its business/applications within the time or slightly beyond that but that does not in any way mean

that the entire mining operations can be carried out for more than 5 years under such a deemed extension. I crave leave to refer and rely upon the State's Affidavit filed in reply to Writ Petition No.435 of 2012 as also the State's reply to paragraph 9.1 to 9.3 in this Affidavit hereinafter.

- 49.** With respect to paragraphs 2 & 3 of the Petition, I state that the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. I state that the present petition and W.P. No. 435/2012 include false statements which have been made even before this Hon'ble Court. I state that the Petitioner completely undermines the executive powers of an elected Government and the decision taken by it under the statute namely Section 8(3) of MMDR Act, 1957 so also the collective wisdom of people of Goa represented through their elected representatives namely Members of Goa Legislative Assembly, who have unanimously resolved in favour of renewal of mining leases in accordance with provisions of MMDR Act, 1957.
- 50.** I state that the present petition also discloses the casual manner of defiance of the Order dated 22.09.2014 passed in Special Leave Petition (Civil) No. 16080/2014, which was passed based upon the request of present Petitioner, wherein oral request to implead all the Petitioners before Hon'ble High Court of Bombay in Order dated 13.08.2014 were allowed by this Court to be added as Respondent within two days from the date of passing of Order. This was not done.

51. I state that it is denied that the action of the Respondent prima facie discloses mala fides, collusion between mining companies and the State Authorities, circumvention and violation of this Hon'ble Court's order dated 21.04.2014 and the provisions of the MMDR Act, 1957. The allegations in this regard made by the Petitioners are made in a baseless, casual manner showing complete lack of knowledge, irresponsible statements and disregard for the Rule of Law.

52. Further, I state that the present Petition is also an attempt to revive Special Leave Petition (Civil) No.16080/2014, along with other Special Leave Petitions filed by another Petitioner known to the Petitioner namely Rama Velip challenging the Order of the Hon'ble High Court of Bombay at Goa dated 13/08/2014. The said Special Leave Petition is filed along with a PIL Writ Petition by one Shri. Sudip Tamankar, ex-spokesperson of a Political Party in the State of Goa, which does not prima-facie disclose the *bonafide* intentions of the Petitioner in filing the present petition do not admit that the Respondent in renewing the leases have acted in execution of Order of the Hon'ble High Court of Bombay dated 13.08.2014 or that such act as described by the Petitioner is in any way prima-facie *malafide*, collusive and or are acts in circumvention and violation of this Hon'ble Court's Order and MMDR Act, 1957. I state that averments of such nature actually undermine the majesty and authority of the Judgment and Order passed by the Hon'ble High Court of Bombay at Goa in exercise of its statutory power conferred under Article 226 of the

Constitution of India and such attempts by individuals like Petitioners cannot be called as *bonafide* acts in public interest.

- 53.** With reference to paragraphs 4,5,6 & 7 of the Petition, I state that the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. Further, I state that the contents of the same are admitted to the extent that the same are consistent with whatever has been stated herein below and the rest of the contents are denied.
- 54.** With reference to paragraph 8 of the Petition, the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. I state that it is denied that the leases of the erstwhile leaseholders, namely; Respondent Nos. 5-24 have been illegally granted renewals by the Answering Respondent under Section 8(3) of the MMDR Act.
- 55.** With reference to paragraph 9.1 to 9.3, the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. I state that both; Mr. Justice Shah Commission of Enquiry Report and the CEC Report were placed before this Hon'ble court in W.P. (C) 435/2012, considered by this Hon'ble Court which was thereon disposed of by Judgment and Order dated 21/04/2014.

56. (A) PERIOD BETWEEN 2006 – 2011

The State Government in the Affidavit filed in Writ Petition No. 435 of 2012 had stated as under:-

“(I) That the so called illegal mining as alleged by the Petitioners was going on during the regime of the

previous Government viz. the Coalition Government headed by Indian National Congress, from 2006-2012; which had two different persons as Chief Minister;

(II) That the people of Goa had shown their resentment at the General Elections held on 3.03.2012 by overthrowing and rejecting the said Government and electing in its place a popularly elected Government giving a clear absolute majority of 21 seats out of 40 seats of Goa Legislative Assembly to the political party viz. Bhartiya Janata Party headed by Shri Manohar Parrikar (who as the Leader of Opposition had chaired the Public Accounts Committee which had come down heavily on the illegal mining in the State).

(III) That immediately after being sworn in as Chief Minister of the State of Goa, Shri. Manohar Parrikar had gone on record to state that all illegal mining in the State of Goa would be completely stopped and in pursuant to this statement, had taken various steps, which included the following:

- a) Suspension of Director;*
- b) Suspension of Traders' licenses for scrutiny and revalidation. Out of 461 traders, only around 200 applied for revalidation and only 47 leaseholders traders and their sister concerns' applications for revalidation have been granted so far;*

- c) *The details of unused royalty challans were called for to prevent misuse thereof. It was decided to have investigative auditing of the returns filed by the mining companies and traders for last 10 years by panel of Chartered Accounts;*
- d) *The N.O.C. system introduced after the suggestions of Public Accounts Committee for regulating exports before the sailing of vessels was changed and it was made mandatory that before loading of the vessel, the N.O.C. from the Department of Mines should be obtained so that the ore in transit can be detected for checking its legality;*
- e) *The daily report of transportation is obtained from all the leaseholders since 16.04.2012;*
- f) *The tender for RFID system issued involving several hundreds of crores, was kept on hold by the Cabinet decision for not being transparent;*
- g) *The Draft Mining Policy was formulated for objections and suggestions of public;*
- h) *Barges, trucks and machinery is registered with the Department of Mines;*
- i) *To track movement of vessels in inland water ways Installation of Automatic Identification System (AIS) and Vehicle Tracking system (VTS) is made compulsory for barges;*

(IV) *Incidentally the Public Accounts Committee, which was headed by the present Chief Minister Shri. Manohar Parrikar as Leader of Opposition, (as he then was), had in its report heavily castigated, and censored the earlier Government for allowing illegal mining in the State of Goa and had recommended a detailed Enquiry, investigation and to identify the officials, bureaucrats, politicians, mine owners and traders, who have indulged in undertaking and carrying out illegal mining operations. Further, the Public Accounts Committee had itself come to the conclusion that due to the mining scam in Goa, there is loss of revenue to the exchequer to the tune of Rs. 4,000 Crores and which has resulted in personal gain to the politicians, bureaucrats, Mining Department officials and others, thereby indulging in acts of corruption and in allowing the mining.*

(V) *The Public Accounts Committee had further observed that such large scale illegal mining in the State of Goa was not possible without the active connivance, support of the people in power viz. the Department of Mines, the Director of Mines & Geology (former since suspended), the then Government, Mining Minister, bureaucrats and other officials who had actively supported such mining scam.*

(VI) *The State Government was in the process of identifying various issues relating to mining and in this regard there*

was some material submitted by the Petitioner to the Chief Minister, which was also being examined.

(VII) It is respectfully stated that even to the knowledge of the Petitioner it was a known fact that the entire scam could not be unearthed in a matter of few days and it would have been required to have systematic planning, identify loopholes, check the entire process, system and put in place checks and balances at every stage and plug the loopholes, identify and thereafter set the process in motion.

(VIII) While the process was on at the State Government level, the report of the Honorable Mr. Justice Shah Commission of Enquiry came to be furnished to the Central Government and subsequently tabled in the Parliament and this report, incidentally relying heavily on the Public Accounts Committee report of Shri. Manohar Parrikar as Chairman of the Public Accounts Committee, castigated the State Government, the minister, bureaucrats, officials, for the illegal mining and the mining scam which was prevalent in Goa and more particularly identified the period for last five years i.e. 2006-2011 (it may be mentioned here that the State Government which was castigated by the Shah Commission was incidentally the Governments headed by Shri. Pratapsingh Rane during 2005-2007, which was sworn in by, unconstitutionally ousting the then Government headed by Shri Manohar Parrikar and

thereafter the Coalition Government headed by Shri Digambar Kamat from June 2007 to March 2012).

(IX) I state that no sooner the report of Shah Commission of Enquiry was out, the State Government took the decision to close all mining operations in the State of Goa in all the mines in the State, and to suspend all transportation of mineral ore and all mining activities of excavation, extraction, beneficiation, etc. I respectfully state that this was such a decision; bold, assertive and with a true intent to protect the State of Goa from any ecological imbalance; taken for the first time by any of the State Governments in the State of Goa including the Union Territory since 1961 and that too at the cost and price of incurring the wrath of the mining lobby which is considered to be otherwise powerful comprising of rich and famous people. This was done by the State Government only to ensure step in aid to establish the Rule of Law and to do away with the Rule of Men;

(X) It is of considerable significance to mention here that the State Government had also for the first time since 1961 taken a decision stopping all transportation of mineral ore from the mines in the State of Goa by a Notification u/s 127 of the Motor Vehicles Act for a period of 3 months up to 30.09.2012. It must also be mentioned here that some of the mining companies who had filed petitions challenging the said Order, all such orders were strongly defended by

the State Government being in public interest taken with a view to bring down pollution, control accidents and in greater public interest and State Government successfully defended ensuring no reliefs to the Petitioners in those petitions viz. the mine owners.

(XI) *It is also of considerable importance to point out here that the State Government for the first time within few months of being sworn in had framed and issued the Mineral Policy which was pending for the last 7 years highlighting several issues and clearly declaring the intent, motive and the avowed Policy of the State Government to control, fully regulate and establish point by point supervision by the State Government and other authorities on any kind of mining in the State of Goa.”*

56.(B) I respectfully state and submit that the Report of the Hon’ble Mr. Justice Shah Commission of Enquiry was made without giving to the parties likely to be affected a statutory notice under Section 8B of the Commissions of Enquiry Act which by several Judgments of this Hon’ble Court has been held to be mandatory and in the absence of which the Commission’s Report cannot be used against the person likely to be affected thereby.

56. (C) I respectfully state that some of the leaseholders had indeed filed Writ Petitions challenging the said Report of Enquiry precisely on the grounds, inter alia, amongst others

that the mandatory notice was not given to them and hence the report should be quashed.

56. (D) I state that realizing the importance of the matter and the further fact that the position of law that Section 8 Notice was held to be mandatory by this Hon'ble Court, the State Government through the Learned Advocate General of the State of Goa, appearing in the matter made a statement that action will not be taken merely relying on Mr. Justice Shah Commission's Report but the State Authorities shall hear the parties who are likely to be affected, and arrive at its own conclusion before initiating any action against the leaseholders. It is the statement of the State Government that saved the Mr. Justice Shah Commission's report else as is evident from the Judgment of this Hon'ble Court there was a clear non compliance with the mandatory issuance of notice by the Commission of Enquiry.

56. (E) I further state and submit that the State Government had analyzed the Report of Mr. Justice Shah Commission of Enquiry and found that there were certain observations/ conclusions which were arrived at in the absence of proper data, material and information.

56. (F) I state that State Government had also considered the Report and PAC Report in the matter.

56. (G) In the first and second report of Mr. Justice Shah Commission of Enquiry there were essentially three main

findings and several suggestions. I shall first deal with the three main findings herein below:

(I) Violation of Rule 38 of Mineral Concession Rules, 1960 (MCR, 1960)

- a. Essentially this Rule relates to the power of the State Government to allow amalgamation of mining leases in the interest of mineral development. The finding arrived at was that “on account of obtaining common Environmental Clearance / common scheme of mining, there was violation of Rule 38 of the Mineral Concession Rules, 1960.
- b. I state that environmental clearance is obtained by a party in terms of the EIA Notification of 1994 or subsequent Notification of 2006 issued under the provisions of the Environment (Protection) Act, 1986.
- c. I state that in the case of mining, a mining scheme for a cluster of mines or different mines can always be done and at times it is done to ensure that the minerals lying within the periphery of the boundary is not lost. There are various reasons why a scheme of mining is submitted and got approved by the leaseholders.
- d. I state that in the case of Goa Mining Leaseholders it was found that wherever the mining leases are adjacent to each other or contiguous, the leaseholders had prepared a scheme of mining to operate all the leases.

- e. I state that the mining plan is approved by the Indian Bureau of Mines in terms of Mineral Conservation and Development Rules, 1988.
- f. I state that mining plan and scheme of mining are both prepared and approved under the Mineral Conservation and Development Rules and each of the lessees were found to be having approved mining plan and scheme of mining in terms of the Rules by the Indian Bureau of Mines, which is an expert body in terms of the MMDR Act, 1957.
- g. Amalgamation of a lease is provided for under Rule 38 of the Mineral Concession Rules, 1960, it empowers the State Government in the interest of mineral development and for reasons to be recorded in writing, to permit amalgamation of two or more adjoining leases held by a lessee. This amalgamation of leases, is an enabling power vested with the State Government. A lessee can apply for amalgamation which may or may not be granted by the State Government.
- h. The State Government cannot be forced to agree to amalgamation nor in every case wherever there is a common mining plan or scheme of mining the State Government can agree to amalgamation. There are various reasons why amalgamation of leases may or may not be permitted by the State Government in a given case.

- i.** Merely because there is a common mining plan for two or three mines and the scheme of mining, it cannot be stated that the leases stood amalgamated. Factually, mining in each of the leases is carried out separately. Separate returns are filed for each of the leases. There are separate and distinct mining plans as also separate and distinct identity of each of the lease. Furthermore, the mining activity had been carried out in compliance of the terms and conditions of the approved mining plan which in turn provides for independent and separate mining in each lease.
- j.** The royalty, monthly returns and annual returns are paid / filed separately for each of the lease.
- k.** The DGPS survey of respective leases is also conducted leasewise, maintaining boundaries as per the old concession and the survey plans have also been issued leasewise.
- l.** The monthly and annual returns under the MCDR, 1988 for each lease are filed separately.
- m.** The boundaries and coordinates of each lease are separate and distinct.
- n.** Royalty for the ore extracted had been paid separately for each lease.

- o.** Even the renewal applications filed in 'Form J' as early as 2006 were filed separately in respect of each lease.
- p.** Even the Indian Bureau of Mines had allotted for each of the respective mining leases, separate lease codes for the purpose of registration under Rule 45 (2) of MCDR, 1988 and maintain separate records leasewise.
- q.** In view of Rule 9 of the MCDR, 1988 read with section 5(2)(b) of the MMDR Act, 1957, mining operations were conducted in accordance with the approved mining plan.
- r.** The Indian Bureau of Mines had issued a circular dated 09-12 October, 1992, which in terms authorized the leaseholders to submit a combine mining scheme and not a common mining plan. The said circular has now been withdrawn on 10th January, 2013.
- s.** Therefore, as long as the mining plans are separate and distinct mining activity in these leases is carried out separately, they cannot be said to be amalgamated.
- t.** In so far as the common environmental clearance is concerned it is important to note that the clearance is not given from the perspective of the boundaries of a lease but considering its impact upon the Environment in the surrounding areas upto a radius of 10 kilometers, as is seen from the EIA manual issued by the Ministry of Environment and Forest, Government of India. Therefore,

the grant of common Environment Clearance cannot *ipso facto* mean that the leases are amalgamated.

- u. It is also of importance that prior to the liberation of Goa and even thereafter, the mining concession / leases which are contiguous have been worked as contiguous leases. The requirement of obtaining permission for amalgamation came in force in the year 2000.
- v. Therefore, the question of applicability of Rule 38 and the situation in which Rule 38 will apply will have to be seen in the context of this historical background. Indeed, the circular of IBM is of 1992 while the power of the State Government to permit amalgamation of leases, was inserted in the year 2000 by virtue of G.S.R. 56 (E) dated 17.01.2000 w.e.f. 18.01.2000. Indeed, the earlier Rule 38 was omitted by G.S.R.724(E) dated 27.09.1994. Therefore, when the IBM issued the circular which authorized the mining leases to submit common scheme of mining and wherever the lessee, in terms of the said circular submitted a combine scheme of mining and got approval from the IBM, the State Government concluded that this cannot be termed as violation of Rule 38 of the Mineral Concession Rules, 1960.
- w. The provisions of Rule 9 of the MCDR, 1988 clearly provide that no person shall commence mining operation in any area. The use of the word “area” is significant

inasmuch as this area could be one lease, two leases or more than that. This Rule does not state about mining operations in a lease. Therefore, in the considered opinion of the State Government none of these lessees in the state of Goa can be accused of having violated Rule 38 of the Mineral Concession Rules, 1960.

x. Therefore, by various orders dated 21.10.2014 the State Government disposed of Rule 38 matters relating to 16 mines with common scheme of mining, which were pointed out by the Hon'ble Mr. Justice Shah Commission of Enquiry.

y. Indeed, it is important to point out that if one reads the Judgment and Order dated 21.04.2014 passed in Writ Petition No.435 of 2012 by this Hon'ble Court from paragraphs 54 onwards till paragraph 61, it is clear that in paragraph 60 the direction to the State Government was to initiate action against those mining leases, who violate Rule 37 of the Rules only and there was no such direction in paragraph 61 so far as the alleged violation of Rule 38 is concerned. It is only while passing the final order, a direction is issued in paragraph 88.2, asking the State Government to initiate action against those mining leases who violate Rule 37 & 38 of the MCR, 1960.

(II) **Violation of Rule 37 of Mineral Concession Rules, 1960 (MCR, 1960)**

- a. I state that in the Hon'ble Mr. Justice Shah Commission of Enquiry there are 11 cases wherein violation of Rule 37 of the MCR, 1960 has been pointed out in which State Government initiated Enquiry.
- b. All such 11 leaseholders were issued separate notices asking them to show cause by the State Government as to why action including of termination of lease should not be taken against them for violation of Rule 37 of MCR 1960.
- c. I state that the Show Cause Notices have been issued after the Judgment of this Hon'ble Court. The mining leaseholders filed their replies to these Show Cause Notices and demanded that they should be heard through their Advocates as the matter was serious and there was a threat of termination of the lease.
- d. I state that thereafter, they were called for personal hearing and opportunity of hearing was accorded to them and the State Government had authorized the Secretary (Mines) to hear and dispose of the said notices.
- e. I state that before the final orders could be issued by the Secretary, the Ministry of Home Affairs, Government of India had transferred the said official, namely; Secretary (Mines), an I.A.S. Officer from the AGMU Cadre and the said Officer had to be relieved from the service of the State Government.

- f. I state that it is imperative and one of the mandatory cardinal principles of Natural Justice that the person who hears the matter has to decide the matter. I state that as the secretary was transferred, the State Government directed the present Principal Secretary (Mines) to hear the matter a fresh and pass necessary orders therein.
- g. The hearings in all such cases are presently conducted by the Principal Secretary (Mines), Government of Goa. Once these hearings are concluded, suitable orders would be passed in each of these cases. I state that as regards violation of Rule 37, I have dealt with only those leases where renewal orders have been passed. I state that apart from these 11 leases, there are other leases also wherein Shah Commission had pointed out violation but however, the said leases were not renewed. I state that since those leases were not renewed I am not dealing with the said Show Cause Notices and the status of the same in this Affidavit, however, the State of Goa has filed a detailed Affidavit giving the status of the hearing as regards Rule 37 violations in a detailed affidavit filed in Writ Petition No.435 of 2012, which matter is being heard by another Bench of this Hon'ble Court.
- h. It is, however, of some importance to note that one of the main contention of these notices was that each of them were a concession granted under the Portuguese Mining Laws, which governed them until 1987 when the abolition

of Mineral Concession was done through a parliamentary enactment called “Goa Daman and Diu Mining Concession (Abolition and Declaration as Mining Leases) Act 1987, Hereinafter referred to as the “Abolition Act”).

- i. Simultaneously, the State Government had already framed the Goa (Prevention of Illegal Mining/ Storage and Transportation of Minerals) Rules 2013 and all raising contracts or any such arrangements on long term basis made by the mining leases with third parties were declared null and void. I further state that in terms of these Rules, any such arrangement for raising contract, transport contract or any other contract for sharing of minerals on long term basis has to now be necessarily registered with the Directorate of Mines and Geology. I state that this provision would certainly ensure that hereafter no such violations would occur and if at all they are found, the same would be dealt with in accordance with the Rules.

- j. I respectfully state and submit that the mining companies who have been given notice under Rule 37 of MCR, 1960 and for its violations have pleaded that the kind of arrangements which they have does not come or violate Rule 37 of MCR, 1960 and further their arrangement had been done prior to liberation and which arrangements were continued and in force. There are other various contentions raised by the mining lessees in support of their arguments.

At this stage I am not dealing with the same as the matters are yet to be decided.

- k. The State Government, therefore, at the given stage after considering all options decided to consider these leases as Category 'B' in terms of the Goa Grant of Mining Leases Policy, 2014 framed pursuant to and in accordance with the directions contained in the Judgment and Order of this Hon'ble Court dated 21.04.2014 delivered in Writ Petition No. 435 of 2012, namely considered them pending enquiry and subject thereto.
- l. Once these leases were treated as category 'B' mining leases specific conditions have been imposed in their renewal orders clearly stating that the renewal is subject to any action or order that may be passed in accordance with law. Therefore, the renewal granted is obviously subject to the outcome of the ongoing Enquiry.

(III) FINDING AS REGARDS ENCROACHMENT:

- a. In the Hon'ble Mr. Justice Shah Commission of Enquiry there were altogether pit encroachments in 36 leases, alleged to be found and were subject to confirmation by the Department of Mines.
- b. On an Enquiry by the Mining Department, the Directorate of Mines has *prima facie* found that there were only 7 encroachments beyond lease area, in terms of the DGPS mapping survey.

- c. A Committee of officers comprising of officials from the Directorate of Mines and Geology, Government of Goa, and office of Regional Controller of Mines, Indian Bureau of Mines (IBM) is assigned the task to identify the quantum of the mineral, if any, extracted from such encroached area.
- d. Out of these 7 leases, only 3 mines are renewed and they fall in Category 'B' under the policy inasmuch as in cases of these 3, the encroachment found was much less than 10% criteria adopted in Karnataka and upheld in the matter of Samaj Parivartan Vs. State of Karnataka, decided by this Hon'ble Court, wherein the encroachments to the extent of 10% were allowed to operate. The same principle was therefore followed by the State Government, while considering them for renewal.
- e. I, however, respectfully state that the encroachments found in these 3 cases was in case of T.C. No. 70/51 of R.S. Shetye it was 1.23 Hectors out of total lease area of 99 Hectors which is about 1.25%, in case of T.C. No. 55/51 of GeetabalaParulekar 0.2 Hectors out of total lease area of 88 Hectors which is about 0.22% and in case of T.C. No. 6/49 of Hiralal Khodidas 1.1 Hectors out of total lease area of 70.19 Hectors which is about 1.57%. Therefore, in the respectful submission of the State Government these mines would be **category 'B'** leases as per the Policy, when in fact having regard to the negligible area of encroachment, they could have very well been categorized

as 'A' category leases. Since, an Enquiry in this regard is pending and the Committee is yet to submit its report and Show Cause Notices have also been issued in these cases, they have been treated as Category 'B' and their renewal is made subject to the outcome of ongoing Enquiry.

IV. Condonation of Delay and non disposal of application for renewal within time, in the first renewal in the year 1988.

- a. This finding of the Hon'ble Mr. Justice Shah Commission of Enquiry was in Paragraph 22 found by this Hon'ble Court to be not correct, therefore, question of going by this finding does not arise at all.
- b. The State Government however, has identified 42 cases of condonation of delay which were found to be wrongly dealt with out of which two cases were rejected after condoning the delay. In remaining 40 cases, the delay was condoned and first renewal application was accordingly processed. These cases were identified by the State Government as cases of illegal condonation of delay and an Enquiry was held which is on the point of applicability of sub rule (10) of Rule 24A of the Mineral Concession Rules, 1960 to the State of Goa as observed by the Public Accounts Committee of the Goa State Legislative Assembly and also referred to in Hon'ble Mr. Justice Shah Commission

Report. A separate SIT Enquiry is also pending in this regard.

- c. Out of these 40 cases, only 1 (one) case was considered for second renewal and placed in Category 'A' inasmuch as it was found that an application was indeed filed within the time prescribed and which reference was available in the records of the Directorate of Mines and Geology. Remaining 39 cases have not been renewed. It was found that despite having made this application in time, the party had made yet another application and got the delay condoned. Having regard to the fact that the application in the first instance had already been filed within time and records of it were available with the department, it was thought to be proper and fair and this mine was categorized as category 'A' under the policy and considered for renewal.

V. MINING WITHIN 10 KILOMETERS OF WILDLIFE BOUNDARY

- a. In the Report of Hon'ble Mr. Justice Shah Commission of Enquiry it was observed that the State Government had allowed the mining leases to operate within 10 km from the boundary of national parks and sanctuaries described as eco fragile zones.
- b. Indeed, the Petitioners in this Writ Petition, had contended before this Hon'ble Court that no mining activity should be

permitted even within 10 km from the boundaries of national parks and wildlife sanctuaries. This contention is found recorded in the Judgment of this Hon'ble Court at paragraph 43 of the reported in (2014) 6 SCC 590 @ 614.

- c. This Hon'ble Court found in paragraph 50 of the said Judgment that the order dated 04.12.2006 of this Hon'ble Court in Goa Foundation vs. Union of India had not prohibited any mining activity within 10 km distance from the boundaries of the national parks or wildlife sanctuary. Similarly, in paragraph 87.4 it has been specifically declared that this court had not prohibited mining activities within 10 km distance from the boundaries of the national parks or wildlife sanctuaries.

VI. I state that in so far as the CEC report is concerned, the same was subject matter of consideration by this Hon'ble Court. The same issue was raised by the Petitioners before this Hon'ble Court. After considering the CEC report the only direction which was given was as regards Rule 37 of MCR 1960.

VII. DUMPING OUTSIDE THE MINING LEASE AREA:

- a. Dumping of Minerals outside the ***Mining Lease Area***. In the report of Hon'ble Mr. Justice Shah Commission Enquiry, as well as in the CEC Report, issue as regards 'dumping outside the mining lease' was a subject matter before this Hon'ble Court. In the Judgment dated

21.04.2014 this Hon'ble Court from paragraph 29 onwards has dealt with the issue as regards 'dumping'.

- b.** Indeed, these dumps as was stated by the State Government in their Affidavit filed before this Hon'ble Court in earlier Writ Petition in February 2013 that the overburden / sub grade ore / rejects/ tailings could not be dumped on a mineralized area, as well as area over which the ultimate size of the pit may be affected. State Government had specifically referred to Rule 16 of the MCDR, 1988, which required non sellable or sub grade minerals/ ore to be dumped and stake separately from the overburden and waste material. The obvious intent of this rule is that it should not block the underpinned mineral deposit for future exploitation, in the spirit of conservation of minerals.
- c.** The State Government in its affidavit at paragraph 96 had also referred to Rule 64 (2) of the MCR, 1960, as also Rule 33 of MCDR, 1988.
- d.** I state that the State Government had specifically pointed out at paragraph 101 of the said Affidavit that in the year 1974 a Mineral Conservation Committee had recommended dumping of overburden outside leased area in order to conserve mineral within the mining lease and that this recommendation was accepted by the State Government as it was felt that for optimal utilization of the land for the purposes of mining is to be ensured with a view

to extract the resources available under the ground. This was done having regard to the small leases existing in the State of Goa, heavy rainfall and the further impracticability to confine storage of overburden or dumps within leased area.

- e. The State Government had also stated in paragraph 102 that a large number of dumps came up much before the Goa Land Revenue Code, 1968 was enacted and brought into force w.e.f 1969. However, while framing the mining policy in 2013 much before the Judgment of this Hon'ble Court the State Government had taken note of dumps and the over burden dumps ore, overburden dumps stored outside the lease area, ore and a separate chapter was dedicated for regulating the mining dumps on government as well as private lands and related issues. Accordingly, necessary provisions were enacted and levy of charges including conversion fee for occupying the mining dumps was levied and collected by the State Government. I crave leave to refer and rely upon the provisions of the said Goa Mineral Policy for regulating the mining dumps published in the official gazette dated 03.09.2013 as also other notifications published in the Gazette dated 07.09.2013 and the State Government had framed the necessary regulations in this regard.
- f. Therefore, in so far as these dumps are concerned, the matter is covered by the Judgment of this Hon'ble Court

which clearly holds that the mining leases cannot dump overburden material or rejects outside the mining lease without environmental clearance and without paying royalty as contemplated under the Rules.

g. In so far as the existing old overburden dumps are concerned the matter was referred by this Hon'ble Court to the Expert Committee which was constituted by this Hon'ble Court for the purpose of determining certain issues, one of which related to handling of dumps existing outside the mining lease. The said Committee was constituted by the Order dated 11.11.2013, and pursuant to the exercise undertaken by this Committee, the said expert committee had submitted two interim reports and a final report before this Hon'ble Court. Indeed, this interim reports and final report have since been considered by this Hon'ble Court and an order has have been passed asking parties to respond to the said reports by another Bench of this Hon'ble Court.

h. I state that in so far as the State Government is concerned, the fact is that these overburdened dumps had been existing since prior to liberation and this dumping was done prior and subsequent to liberation. As is already explained in the earlier Affidavit the Mineral Conservation Committee had itself suggested to allow mining leases to dump their rejects outside mining lease.

- i. The position of law was clarified by the Hon'ble Supreme Court in its Judgment dated 21.04.2014 for the first time. The State Government was therefore, of the considered opinion that hereafter the mining leaseholders cannot be allowed to dump any overburden or rejects or sub grade ore outside the lease area after the Judgment of this Hon'ble Court and in so far as the existing dumps are concerned the matter is subject to the orders of this Hon'ble Court pending before this Hon'ble Court itself pursuant to the Expert Committee's Final Report, being considered by another Bench of this Hon'ble Court.
- j. In these circumstances, the State Government in its considered opinion thought it to be fair and proper and decided not to hold this issue against the mining leaseholders and therefore decided to consider them for second renewal under Section 8(3) of the MMRD Act, 1957.
- k. It may however be stated in terms of the Clause 10.13 of Goa Mineral Policy 2013, dumps in Government Forest Areas stood confiscated and would be auctioned by following the legal procedure and subject to orders of this Hon'ble Court in the matters pending before this Hon'ble court, being heard by another Bench of this Hon'ble court dealing with compliance of the Orders passed in Writ Petition No.435 of 2012.

VIII. ALLEGED FINDING OF EXCESS PRODUCTION IN THE REPORT OF HON'BLE MR. JUSTICE SHAH COMMISSION ENQUIRY AND CEC.

- a. This Hon'ble Court in the Judgment and order dated 21.04.2014, has dealt with this issue at paragraph 62 & 63 thereof at page 624 of the Report in SCC.
- b. Taking note of the fact that there was absence of proper checks, verifications and controls and that such absence would lead to illegal mining, storage and transportation of minerals, this Hon'ble Court noted that after the CEC report the State Government of Goa has already framed Goa (Prevention of Illegal mining, storage and transportation of minerals) Rules, 2013 under Section 23-C of the MMDR Act, 1957. This Hon'ble Court further took note of the fact that the Rules framed have made several provisions to prevent illegal mining, regulate the sale, export and transit of ore, storage and transportation of mineral and winning of mineral. This Hon'ble Court noted that the Rules also contemplate establishment of check posts barriers and way bridges and inspection of minerals and transit including inspection, search, seizure of articles. This Hon'ble Court therefore, directed the State Government to enforce these Rules strictly, which is what is being done presently by the State Government.
- c. The State Government in addition has already appointed a Panel of Chartered Accountants for comprehensive audit of leaseholders including details of production, dispatch,

exports etc., and to recover dues, if any, based on the findings of said panel. Around 103 reports have already been submitted to the State Government and they are referred to a committee of Chartered Accountants for analysis and implementation. Wherever the findings are returned by the panel and confirmed by the committee, necessary recovery will be initiated from the leaseholders after providing them an opportunity of hearing wherever required.

- d. As a matter of fact, it was found that allegations of over production, if any, had taken place in the past due to absence of proper regulation as is noted by this Hon'ble Court in its Judgment dated 21.04.2014. It was also found that such over production, if any, need not necessarily be from the excavation out of the pit but could be on account of the dump handling which was done by the leaseholders and which handling of dumps was not prohibited by the State Government during the period 2006 to 2011. Indeed, it was only in September 2010 that the State Government by a Notice called for details of dumps in a format so as to inventory the said dumps and only on 23.09.2011 issued the circular, whereby handling of dumps and transportation of ore from the dumps was stopped pending the policy to be framed by the State Government.
- e. Indeed, in the Goa Mineral Policy, 2013, specific provisions have been made about the existing dumps from Clause 6.1

onwards. Therefore, this matter will have to be strictly dealt with in accordance with the order passed by this Hon'ble Court after considering the Expert Committee report pending before this Hon'ble Court.

- f. For the purpose of considering the leaseholders for renewal under Section 8(3) of the MMDR Act, 1957, obviously this finding or allegation would not be material. However, the dumps have now been made subject of another policy under which penalties, charges and fees are levied and the dumps existing in the Government Forest Areas have already been confiscated to the State Government, as property of the State Government. Therefore, in the renewal order specific clause as regards protection of dues, arrears is inserted and provided for as a condition of renewal.

57. With reference to paragraphs 10, 11, 12, 13 & 14, I state that the Respondent does not wish to comment on the same at this stage of the Petition since the contents of the abovementioned paragraphs deal with the issue pertaining to MOEFCC.

58. With reference to Paragraph 15, the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. I state that the Hon'ble Apex Court has interpreted the provisions of Rule 24(A)(6) of MCR Rules 1960 and has declared that unless the State Government decides by way of a reasoned Order in writing, the provisions of the deemed renewals shall not be applicable to the State of Goa. Further, I

state that the Goa Iron Ore Permanent Fund is set up as per the Judgment of this Hon'ble Court.

59. With reference to paragraph 16, I state that on 13/08/2014, the Hon'ble High Court of Bombay at Goa has passed a reasoned Order after hearing the State Government and the lease holders. This Order of Hon'ble High Court was examined by the State Government for further course of action if any, and, after examining the matter, the Government decided not to challenge the same although it had vehemently opposed the grant of relief to the Petitioners on the ground that the State Government would form the lease policy in accordance with the Judgment passed by this Hon'ble Court and decide on the matter. As the State Government decided to proceed in accordance with the judgment of this Hon'ble Court, question of challenging the said judgment did not arise.

60. With reference to Para No. 17 to 19, I state that the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. I state that it is emphatically denied that there was shadow boxing between two entities who always supported each other's interest as contended by the Petitioner. I state that the Petitioner has literally attempted to undermine the majesty and wisdom of the Hon'ble High Court of Bombay at Goa by calling it an attempt to legitimize illegal mining by directing second renewal and setting aside the decision of the Hon'ble Apex Court. In fact, I state that the Hon'ble High Court of Bombay at Goa has interpreted the Order of this Hon'ble

Court *vis-a-vis* the Goa Mineral Policy, 2013 etc. Not only this, I state that it is true that the Petitioner even made an unsuccessful attempt to challenge the Order of the Hon'ble High Court by filing an Special Leave Petition. I state that if the Order displayed on the official website of the Hon'ble Apex Court is perused, it can be observed that an opportunity was given to Petitioner upon his oral request to include all the Petitioners before High Court within two days. However, because of inaction on the part of the Petitioners, the further proceedings in this Hon'ble Court, from 13/10/2014 onwards could not take place. I state that if the statement of Petitioner that the Petitioner's stand before the Hon'ble Apex Court in Special Leave Petition was same as that of the State Government before the Hon'ble High Court of Bombay at Goa, then such issue stands finally decided by Order dated 13/08/2014, by the Hon'ble High Court of Bombay at Goa and for failure of Petitioner in pursuing S.L.P No. 16080 of 2014 after Order dated 22/09/2014. Further, I state that though there is a mention of the Hon'ble High Court's Order in the Petition, the Petitioner in this Writ Petition cannot say pray for setting aside of the Hon'ble High Court's Order dated 13/08/2014. Petitioner herein has misconstrued the opposition of the State Government to High Court hearing the matter on principle as opposition to Removal.

CONTENTION REGARDING CHANGE OF STATE GOVERNMENT'S STAND BEFORE THE HON'BLE HIGH COURT AND NON FILING OF SLP BY STATE GOVERNMENT AGAINST HIGH COURT ORDER

- 61.** I respectfully state that the petitioner has repeatedly in the SLP as well as the Writ Petition alleged that the State Government took one stand before the High Court by opposing the writ petitions when they were heard by the High Court, but thereafter granted renewal contrary to State Government's stand of opposing the Petitions before the Hon'ble High Court.
- 62.** I state that this contention emanates on the part of the Petitioner on account of lack of conceptual clarity and failure to appreciate the arguments of the State Government on law.
- 63.** I state that it is true that the State Government opposed the Writ Petitions filed by the mining companies. This opposition of the State Government by filing an Affidavit was principally on the ground that the matter was concluded by Judgment of the Apex Court and that in the said Judgment the Apex Court had directed the State Government to frame a policy and thereafter decide to grant the leases in terms of the MMDR Act and Rules framed thereunder. The State Government opposed the Petitions inasmuch as there could not have been a "*quia-timet*" action by the mining leaseholders or an order by the High Court in considering the writ petition, inasmuch as this Hon'ble Court had clearly held that the State Government will as a matter of policy decide on the grant of leases and only after such decision is taken, the same is open for Judicial review.
- 64.** At the time when the mining leaseholders filed the Writ Petition before the High Court the State Government was seized of the matter in so far as policy formation is concerned. The policy was

not finalized nor any decision was taken which could be challenged in the Court of law. It is on account of this precisely that the State Government opposed the Writ Petition by filing an Affidavit stating that the matter is for State Government as per is of the Apex Court. As the matter is covered by Judgment of the Apex Court which had directed the State Government to frame a policy and take decision on the matter.

65. I state that this explain therefore the contention of the Petitioner. I further state that whether an SLP should be filed or not is a matter purely within the domain of the Executive. There can't be any adverse inference against the party for not filing a petition challenging the Judgment of the Court. The clear stand of the State Government as reflected in the mining policy was that the Judgment of the Apex Court stood the ground and that the State Government has bound by and will act in terms of the Judgment of this Hon'ble Court and that the High Court Judgment could not have come in the way of the State Government either in framing the policy or in deciding on the matters.

66. With reference to Paragraphs 20, 21, 22 and 23, I state that the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. I state that it is denied that the renewals were in breach of this Hon'ble Courts Judgment dated 21/04/2014. I deny that there was any *malafide* intent to beat the law. I state that the renewals were granted based upon the provisions of MMDR Act, 1957 which has provisions for second and subsequent renewals under section

8(3) of MMDR Act read with Rule 24(A) of MCR, 1960. I state that the Policy decision of the State Government concerning renewals is reflected in Goa Mineral Policy, 2013 and 2014. The details with regards to policy decision of prioritization of considering renewals of Applicants etc can be seen in the Goa Grant of Mining Leases Policy, 2014, for which the proposal was moved on 09/09/2014. The proposal was thereafter accepted by the State Government on 29/09/2014, and by the State Cabinet on 01.10.2014 and 04.11.2014, and published thereto.

RE: PETITIONERS CONTENTION THAT RENEWALS COULD NOT HAVE BEEN GRANTED:

67. I respectfully state that this Hon'ble Court had clearly concluded in the Judgment and Order delivered in Writ Petition No.435/2012 that the deemed mining leases of the lessees in Goa expired on 22.11.1987 under sub section (1) of Section 5 of the Abolition Act, and the maximum of 20 years renewal period of the deemed mining leases in Goa as provided in sub Section (2) of Section 8 of the MMDR Act, 1957 read with sub Rules (8) &(9) of Rule 24A of the MCR 1960 expired on 22.11.2007. A mere reading of paragraph 28 and 82 of the earlier judgment it is clear that this Hon'ble Court has held that the period of 1st Renewal of leases in Goa had expired on 22.11.2007.

68. I respectfully state that nowhere in the entire Judgment have this Hon'ble Court stated anywhere that renewals under Section 8(3) of the MMDR Act, 1957 is not available in cases of leases in Goa or that the Government of Goa was in anyway denuded from

exercising its powers under the MMDR Act, 1957. Indeed, the Judgement holds to the contrary.

69. I respectfully state that the reliance placed by the Petitioner on the word “fresh leases” is with respect a great misnomer inasmuch as every renewal is also a fresh grant.

70. I state that in the matter of “Common Cause Vs. Union of India 2014” (14) SCC 155 in the order dated 16.05.2015 delivered by the very same Bench comprising Their Lordships of this Hon’ble Court, stayed the mining operations in the State of Orissa, whose first renewal period had expired by placing reliance on the Judgment in Writ Petition No.435 of 2012, and further directed a decision to be taken by the State Government under Section 8(3) for the grant of second or subsequent renewal of these leases in Orissa. I state that this order therefore indicates in no uncertain terms laid clear *dictas* (a) the contrary assertion of the Petitioner that leases could not be renewed under Section 8(3) is completely set at naught, (b) this Judgment itself clarified that orders under Renewal under Section 8(3) could be passed.

Indeed, in Paragraph 27 of the Judgment of this Hon’ble Court in Writ Petition (c) No. 435 of 2012, their lordships held as under:-

“.....sub section (3) of Section 8, however provides that notwithstanding anything contained in sub section (2), if the State Government is of the opinion then in the interest of mineral development it is necessary so to do, it may for reasons to be recoded authorize the renewal of a mining lease in respect of minerals”

The aforesaid clearly shows that this Hon'ble Court has in the entire judgment nowhere restrained the State Government from exercising its powers under Section 8(3) of the MMDR Act, 1957.

- 71.** I further state that the Petitioner in the earlier Writ Petition No.435 of 2012 had contended in the said Writ Petition that the leases in Goa would not be entitled to any renewal and hence they were not entitled to operate the lease beyond 22.11.2007. I state that in Paragraph 23 of the Judgment of this Hon'ble Court the said contention of the Petitioner that leases in Goa are not entitled to any renewal beyond 22.11.2007 has been noted.
- 72.** I state that in paragraph 27, however, while answering the said arguments this Hon'ble Court noted the arguments of the State Government which clearly show that the State Government had taken a very clear stand that the mine cannot be allowed to operate merely on the deemed extension status indefinitely without a decision on renewal application. In the arguments of the State Government a reference is made in para 27 to the Goa Mineral Policy, 2013, which clearly mentions that the State Government would decide Section 8(3) Renewal Applications pending with the State Government as soon as possible within a period of 6 months.
- 73.** It is after this that in paragraph 27 of the Judgment after considering the aforesaid arguments of the Petitioner as well as the State Government that this Hon'ble Court observed in para 27 that the State has the power to renew mines under Section 8(3) of the MMDR Act, 1957 provided it complies with the safeguards

provided in the legislative scheme, namely of recording reasons etc.

- 74.** In these circumstances, the entire Writ Petition filed by the Petitioners is nothing but a subterfuge and a slipshod technique adopted to reargue, and re-agitate the same issues all over again, which the law does not countenance and hence the Petitioners cannot be allowed to re-argue the same while challenging the orders of renewal.
- 75.** I respectfully state that the entire gravamen of the petition is based on this premise alone that the State Government does not have the power to renew mining leases under Section 8(3) of the MMDR Act, 1957, which contention as is pointed out by me herein above was specifically rejected by this Hon'ble Court.
- 76.** I respectfully state that this Hon'ble Court in paragraph 27 having clearly laid down that a renewal under Section 8(3) is possible in Goa after the expiry of 20 years from 22.11.1987, the entire contention of the Petitioner deserves to be rejected.
- 77.** In my respectful submission with the aforesaid observations of this Hon'ble Court in Judgment delivered in Writ Petition No.435 of 2012, and further confirmed by the clear observations and directions contained in the Orissa case of Common Cause (supra) leave no manner of doubt whatsoever that the power under section 8(3) of the MMDR Act, 1957 of the State Government had not in any way been restricted. Indeed, with such clear observations, it was bounden duty of the Petitioner to clearly accept such position of law as laid down in the aforesaid

two judgments and not in any way attempt to overreach the two judgments of this Hon'ble Court by trying to re-agitate the said issues again. A review of this nature by re-agitating the issues which have been given quietus by judgment of this Hon'ble Court cannot be reopened in this manner.

AUCTION OF LEASES AGAINST RENEWAL OF LEASES

78. The Petitioner in Writ Petition No.435 of 2012 had argued this very point. In the Judgment of this Hon'ble Court at page 633 of the Supreme Court Cases Report the following question framed by this Hon'ble Court:

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

79. I State that in Paragraph 79 the arguments of the Ld. Counsel for the Petitioner are recorded. The argument was that MMDR Act does not prohibit the State from holding auction of the mining leases, this Court should direct that in future the mining leases must be auctioned by the State Government.

80. I state that in Paragraph 80 the arguments of the State Government have been reflected. The contention of the State Government that the MMDR Act and MC Rules have made specific provisions regarding the manner in which the State is to grant mining leases and it is for the State to take decisions on grant of mining leases in accordance with the policy and the provisions of the MMDR Act and the MC Rules, has been accepted by this Hon'ble Court in paragraph 81 while dealing with

the contentions in paragraph 79 and paragraph 80 of the said Judgment. In other words, the contention of the Petitioner stood rejected and the contention of the State Government that it will in accordance with its policy, which policy (Goa Mineral Policy 2013 was placed before this Hon'ble Court) clearly mentioned that the renewal application would be considered under 8(3) of the MMDR Act was before this Hon'ble Court.

In my respectful submission the said contention of the State Government has been accepted and the contention of the Petitioner for auctioning of the leases stood rejected. The only Caveat which this Hon'ble Court added was that the decision must be in consonance with the constitutional provision and such decisions are always amenable to Judicial review by the Court.

81. I respectfully state that the Petitioners contention that in terms of Article 14 the mining lease had to be auctioned, is in the first place rejected by this Hon'ble Court and in the second place completely derides the inbuilt flexibility in Article 14 itself which prohibits class legislation and not reasonable classification.

82. I respectfully submit that Article 14 itself permits classification amongst persons if such classification has an objective basis consistent with the object and purpose for which reasonable classification is intended.

83. In my respectfully submission, therefore, matters which were material and genuine, relevant matters were all considered by the State Government while framing the Policy as well as while

passing Orders under Section 8(3) of the MMRD Act. Neither the policy nor the statutory reasoned orders are arbitrary or unreasonable.

84. I further state that the existence of minerals underneath the earth specially in cases of those mines which are now renewed, are all iron ore mines. These iron ore earn substantial revenue for the State Government by exploiting and development of the minerals. The State Government could not be oblivious that on account of the declaration of the Wild Life sanctuary, Salaulim Irrigation Dam Area, several mines which are about 100 in number have been closed. In addition to the aforesaid, there has been presently a regulation imposed by this Hon'ble Court in the 1 km. area from boundary of such Wild Life Sanctuary until the Union Government notifies the Eco Sensitive Zone by a Notification issued under the Environment Protection Act. ESZ is done by the Government of India and limited period therein is granted. In these mines which are situated in the Wild Life Sanctuary, Salaulim Dam, as well as other areas which come under CRZ, "No Development Zone", under the Town and Country Planning or which are under highly Eco Sensitive Zone, the minerals from these areas would be lost in the sense that they cannot be exploited. Therefore, even these matters are relevant considerations when the State Government takes a decision in the interest of Mineral Development. The Mineral Development therefore involves largest interest in the State of Goa development of minerals in compliance with the statutory

provisions, subject of course to safeguard like environment, intergenerational equity etc.

85. I state that the very fact that the mining activities undertaken in the instant leasehold areas would earn greater revenue for the State rather than closure of a mine which would amount to loss of premier vital revenue resource, when there are well developed mines, and which would go against ensuring and sustainability of the mineral, which the State Government had considered.
86. Therefore, I respectfully state and submit that even this contention of auctioning the mining leases, is also an act of re-agitating the very same issue before this Hon'ble Court which was earlier rejected.

RENEWAL ORDERS ARE NOT MECHANICAL BUT ARE REASONED ORDERS IN COMPLIANCE WITH SECTION 8(3) AND PASSED PURSUANT TO THE POLICY FRAMED AS PER THE DIRECTIONS OF THIS HON'BLE COURT.

87. I respectfully state that as directed by this Hon'ble Court in its judgment and more particularly paragraph 87.5, the State Government had framed the policy and have thereafter taken a decision to grant or reject leases in accordance with the provisions of the law.

I respectfully state that in the Goa Mineral Policy, 2013 the State Government had taken a clear stand that working of the mines on deemed extension basis cannot be permitted and that the State Government will not allow continuous working of these mines on deemed extension basis. The State Government had also stated in the said document that the Goa Mining Policy of 2013 stated

that a decision on the renewal application would be taken within six months. I crave leave to refer and rely upon the said policy when produced.

88. I respectfully state that in paragraph 25 of the Judgment of this Hon'ble Court in Goa Mining matter the arguments based on policy are clearly reflected.

89. I respectfully state that the Goa Mineral Policy 2013 was before this Hon'ble Court and the said policy document was considered by this Hon'ble Court.

90. I state that the said Goa Mineral Policy 2013 clearly stated that the Goa Government would take a decision on the renewal application under Section 8(3) of the said Act within a period of six months in clause 10.2.

91. I state that thereafter the Judgment of this Hon'ble Court was delivered in Writ Petition No. 435 of 2012 on 21.04.2014. In the said Judgment at paragraph 87.5 this Hon'ble Court directed as under:-

“87.5.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.”

This Hon'ble Court further directed that 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.

- 92.** The MMDR Act as is already stated herein above contemplated renewal of the mining leases for the second and subsequent Renewal under Section 8(3) of the said Act. Power under Section 8(3), is a power which could be exercised notwithstanding anything contained in Sub Section (2) thereof and when the Government forms an opinion that in the interest of mineral development it is necessary so to do, it may for reasons to be recorded in writing authorize the renewal of a mining leases.
- 93.** I respectfully state that in the case of State of Goa both the preconditions as required in law and Rules; have been complied with. The State Government has formed an opinion considering relevant factors IBM Report, and relevant material, and further recorded reasons and only thereafter have authorized the renewal of only 88 mining leases out of 415 pending Renewal Applications in the State of Goa. The State Government has also declared around 71 mines as having lapsed under the provisions of the Act. 95 Applications are either rejected or cases of illegal condonation of first renewal and those who have surrendered the leases previously and filed for second renewal. Total 160 Applications remained pending decision of the Government after 12/01/2015.
- 94.** I respectfully state that in the case of the State of Goa unlike what is alleged by the Petitioner, out of about 249 leases in all in the

State of Goa and for all of which renewal applications were filed in time i.e. one year prior to 21.11.2007, the State Government has permitted only 88 mines and authorized their renewal, that too after recording the reasons in each of the cases.

95. I respectfully state that the decision making process of the State Government has been transparent. Indeed, the Policy of the State Government was first disclosed on the floor of the legislative assembly of the State wherein the then Hon'ble Chief Minister Shri. Manohar Parrikar (also the Minister for Mines) had made a statement on the floor of the house as regards Government's intention to consider the renewal of the mining leases and not to go for auctions. This was unanimously accepted by the State Legislative Assembly.

96. I state that thereafter the policy document was finalized. The decision to consider renewal applications in terms of the MMDR Act and the Rules was debated, considered and thereafter arrived at the Government level as a matter of policy decision and even for arriving at this Policy decision the State Government has given its reasons for framing such a policy decision.

97. I respectfully state that the decision making process contains reasons and once the decision making process contains reasons, the adequacy or inadequacy of the reasons cannot be a matter of subject of Judicial Review, so long as the reasons are material and relevant. Only in cases where the reasons are completely extraneous, can there be a judicial interference but in a case where the reasons are not extraneous, the adequacy or

inadequacy, ought not to be gone into, although in the present set of orders reasons are indeed more than adequate.

98. I respectfully state that the policy decision was finalized and published and uploaded on the website of the Goa Mining Department in the Director of Mines and Geology Goa on 01.10.2014 after the first cabinet approval. I crave leave to refer and rely upon the same when produced.

99. I state that after the policy decision was finalized by the State Cabinet again on 04.11.2014, and the State Government became effective from 04.11.2014 the process for renewal of the mining leases started from 05.11.2014 and uptill 12.01.2015, only 88 mining leases were renewed under Section 8(3) of the MMDR Act, out of the 415 pending applications.

100. I respectfully state and submit that in each of the cases IBM report is considered, duly approved mining plan for 20 years, the reasons have been recorded by the authority. The said reasons are also available on the file, and specific orders have been issued passed under section 8(3) of this MMDR Act in each of the 88 cases.

101. I respectfully state that the orders under section 8(3) of MMDR Act are statutory orders and if at all the petitioner desires to assail the same the petitioner is required to assail each of the orders and challenge each of the order separately and there cannot be any omnibus petition such as the one as this to lay a challenge to the renewal orders.

102. I further respectfully state that the renewal orders have not been passed in a mechanical manner or without any reasons. I state that the orders have been passed in compliance with the statutory scheme relating to the renewals and the same have been passed after considering the report sought from the IBM in cases wherever it is received and the further based on the objective and technical assessment of the requirement of renewal in the interest of mineral development was considered, assessed and thereafter renewal orders have been issued as the State Government was of the considered opinion that it is in the interest of the Mineral Development to authorize renewals under Section 8(3) of the said Act.

103. I further state that the allegations by the Petitioner that the expired leases cannot be renewed, does not have any support of law or logic.

The said contention that the expired leases cannot be renewed is completely belied by the order of this Hon'ble Court in the case of Common Cause (supra).

104. I emphatically deny the most irresponsible and casual allegation of collusion and *mala fide* made by the Petitioner without any basis or any material in this regard.

105. I deny that there is any circumvention of the Judgment of this Hon'ble Court, per contra I respectfully state that the State Government has acted in terms of and relevant to the directions issued in the judgment of this Hon'ble Court.

- 106.** I respectfully state that in the entire petition the Petitioner has used strong words such as mala fide, collusion, procured, without in anyway specifying or making necessary averments in support of such bald assertions. Suffice it to state that I emphatically deny each of such irresponsible and casual allegations.
- 107.** I respectfully state that the Petitioner has made a patently false statement in paragraph 18. I state that in the SLP (CC) No. 16080 of 2014, there is no order reflecting any notice issued by this Hon'ble Court at the time of filing of the instant Petition. Therefore, the statement in paragraph 18 is an incorrect statement.
- 108.** I also do not endorse and rather deprecate the statements made by the Petitioners in paragraph 17 and paragraph 19 of the Writ Petition by which the Petitioners are commenting on the judgment of the High Court. In my respectful submission a party may challenge the judgment but cannot make impermissible and irresponsible statements on the orders passed by the Hon'ble High Court.
- 109.** I emphatically deny that the Goa Grant of Leases Policy 2014 was notified on 20.01.2015, I respectfully state that the same was notified on 01.10.2014 on the official website of the Department and the subsequent publication in the official gazette on 20.01.2015 was a routine publication. Indeed after finalization of the policy on 04.11.2014 process of passing of orders on renewal started on 05.11.2015.

- 110.** I emphatically deny the contention of the Petitioner that the leases in Goa held by the mining leaseholders were dead leases which could not be renewed. The Petitioner apparently have lost site of the fact that it was always open in law for the State Government to relate back the renewal to the date of expiry of the lease.
- 111.** The Petitioner have not made out any ground whatsoever to substantiate their challenge in the Petition. I respectfully state that this Hon'ble Court in the entire judgment in Writ Petition No.435 of 2012, nowhere, granted any restrictions on the State Government from deciding the applications for renewal. Indeed, as already pointed out herein above, the State Government acted in terms of the MMDR Act and the Rules.
- 112.** In the entire Writ Petition the Petitioner has failed to plead or prove the averments made in the Writ Petition nor have even pleaded as to how the order granting renewal are bad in law. I respectfully state that even a PIL petitioner is not exempted from the law of pleadings. This Hon'ble Court in the Judgment of Ashok Kumar Pandey Vs. State of West Bengal reported in 2004 (3) SCC 349 has clearly held that even a PIL petitioner has to substantiate its allegations and cannot be permitted to hold a fishing or roving Enquiry. The reliance placed on the report of Mr. Justice Shah Commission or CEC by the Petitioner is thoroughly misplaced or misconceived.
- 113.** I respectfully state that the contentions raised by the Petitioner are barred by the principles of *res-judicata* inasmuch as all these

contentions were raised by the Petitioner, and were heard and finally decided by this Hon'ble Court.

114. I state that the Cabinet approval for Goa Grant of Mining Leases Policy 2014 was obtained on 01/10/2014 and thereafter on 04.11.2014. Further, the Policy was also made available to the public since it was uploaded on the website of the Directorate of Mines and Geology, Goa, after the first approval on 01.10.2014, and the same was published in Official Gazette on 20/01/2015. I state that the Policy had become effective on and from 04/11/2014 after it received final cabinet approval. I state that the lease renewal process was started from 05/11/2014 as per the chart given herein below.

Sr. No.	Date of Renewal Order	No. of Renewal Orders passed
1.	05/11/2014	5
2.	06/11/2014	5
3.	07/11/2014	3
4.	10/12/2014	3
5.	24/12/2014	10
6.	01/01/2015	3
7.	02/01/2015	3
8.	05/01/2015	2
9.	06/01/2015	22
10.	09/01/2015	1
11.	12/01/2015	31

Further, I state that it has to be noted that the MMDR Ordinance, 2015 dated 12/01/2015 was published on website of Ministry of Mines, Government of India on 13/01/2015 because of which two more renewals approved by the Government of Goa on 13/01/2015 were not communicated for grant for the second renewal for 20 years.

115. I state that it is also important to mention that the Goa Grant of Mining Leases Policy, 2014 was already notified on website of the department on 01.10.2014 and which can be still seen on website in Notifications with the date of publication. I state that the Notification of the Official Gazette on 20/01/2015 was not an intentional attempt and definitely did not have any *malafide*. I state that the said policy was by way of guidelines to the State Government and it was applicable and effective from the date of finalization that is 04/11/2014 and not from the date of publication in the Official Gazette. I state that the policy in normal course became effective from the date of Council of Ministers decision taken on 01/11/2014, prior to which the same was disclosed to the Legislative Assembly of the State in September 2014.

116. I state that the implementation of the policy of the State Government by execution of lease deeds cannot be called as *malafide* and/or wholly corrupt conduct from the State Government as the acts of the Respondent were as per the provisions of the Act and Rules. Even assuming without admitting that MMDR Act, Amendment, 2015 is applicable to leases renewed on 12/01/2015, most of leases were Petitioners in the

Writ Petition before the Hon'ble High Court of Bombay at Goa in which common Judgment and Order dated 13.8.2014 was passed and a Writ of Mandamus was issued against the State Government. MMDR Ordinance, 2015 was published on website of Ministry of Mines on 13/01/2015. It is respectfully stated that some of the mining companies have already filed Writ Petitions before the Hon'ble High Court of Bombay at Goa being Writ Petitions Nos. WP/736/2015, WP/649/2015 and WP/737/2015, wherein they have contended that the Ordinance and the Amending Act 2015, grants them validity of mining leases, whose applications are pending with the State Government till 31/03/2020, which is claimed as a statutory protection to such leases upto 31/03/2020. The State Government is yet to file its reply on merits in the said Writ Petitions, but without prejudice to the rights and contentions of the State Government, it is important to mention here that even assuming without admitting that the period goes upto 2020 even in such cases the lease holders would be required to pay the stamp duty as per the Goa Stamp Duty (Amendment) Act on and from 2007 till 2020 and get a proper supplementary lease deed executed and comply with other conditions and requirements as mentioned in the Goa Mineral Policy and the Rules framed by the State Government. In any event Ordinance had neither been issued nor published when State Government passed orders on 12.01.2015.

117. I respectfully state and submit that the 2015 Ordinance amending the MMDR Act, 1957, and the subsequent legislation which

creates three categories of cases under Section 8A by virtue of subsections (5) and (6) thereof, subject to the purpose as mentioned in the respective sections for which the mineral lease used, which provides for a deeming clause of extending the mining lease upto a period ending 31.03.2030 or 2020 as the case may be w.e.f. the date of expiry of the period of renewal last made, or till the completion of renewal period, if any, or a period of 50 years from the date of grant of such lease whoever is later, is subject to the conditions that all the terms and conditions of the lease have been complied with. In my respectful submission to avail of this benefit by mining leases which have not been renewed or whose renewal applications have not been disposed of by the State Government, the concerned leaseholders would be required to execute a supplementary lease deed with the State Government and pay appropriate stamp duty as prescribed by law and abide by all terms and conditions as may be specified by the State Government. Suffice it to say that at this stage the State Government does not wish to deal with this contention any further.

118. I state that as such this is an attempt to paint the due process of renewal which has been undertaken by the Respondent from 05/11/2014 till 12/01/2015 and that it cannot be called as an *en mass* attempt to sabotage the effect of Ordinance on lease renewals especially when there was a full-fledged decision making process, policy framed. The Mineral Policy was framed as per this Hon'ble Courts Judgment such action of renewal of

mining leases cannot be painted as *malafide* and corrupt act by the Petitioner. On the date of Mineral Policy at the time of renewal order, no ordinance was promulgated by the President of India.

119. Further, I state that as the Petitioner has scant regard for the Hon'ble High Court of Bombay at Goa, as can be seen from the present petition as well, it is humbly submitted that since renewal Orders in all 88 cases are in conformity with provision of section 8(3) of MMDR Act and Rules as it stood, which required passing of reasoned Order in the interest of mineral development and not otherwise as painted in Para 22 of the petition.

120. I state that all the applications considered for renewal were filed on time as required under Rule 24(i) of MCR, 1960, and there was no requirement for fresh renewal application as alleged by petitioner in Para 23. Further, it is denied that the pending applications related to renewal of lease under sub section 8(2) of MMDR Act as there are no applications under 8(2) or 8(3) of MMDR Act, but renewal applications are to be filed in form "J" of MC Rules, 1960 as per Sub Rule (1) of Rule 24-A of MC Rules, 1960. As such all applications filed and considered for second renewal in 2006 were in fact for second renewal of mining leases from 2007 to 2027.

121. With reference to paragraph 24, the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. It is submitted that all 88 renewed mining leases had approved mining plans for a period of 20 years i.e till

2027, duly approved by IBM, which were issued in exercise of powers conferred under Sub Section 2(b) of Section 5 of MMDR Act, 1957. Further, it is even worth mentioning that the mining plans are prepared under the provisions of MCDR Rules 1988. The MCDR Rules 1988 are framed by Central Government in exercise of its powers u/s 18 of MMDR Act, which speaks of the development of minerals. I state that such mining plans have been approved by IBM in the interest of mineral development.

122. I state that on 11/01/2002, 2 proviso's were added to Sub Rule 3 to Rule 24(A) of MCR 1960, by which the State Government was mandated to seek a report of IBM for second and subsequent renewal asking whether such renewals would be in the interest of mineral development. If no report was received from IBM within a period of 3 months from receipt of communication from the State Government, it would be deemed that IBM has no adverse comments to offer regarding grant of mining lease. At this juncture, it is imperative to state that as such the report of IBM is not a must for considering renewal applications. Firstly, because if no report is received within 3 months from receipt of communication of the State Government, it is presumed that State has no adverse comments to offer. Further, even assuming that a negative report was received after 3 months or within the stipulated 3 months, the State is not estopped from considering the renewal applications.

123. I state that the most important part is in the interest of mineral development on mining operations are to be carried out as per the mining plan. It is reiterated that in all 88 cases, the IBM has approved the mining plan valid for 20 years. Contrary to what has been alleged in the said Petition in paragraph 24, it is submitted that in all 88 cases, IBM's report has been sought. It is also pertinent to note that such reports are always called for under Section 8(3) of MMDR Act, 1957 and not under 8(2) of MMDR Act, 1957 and as for first renewal, the IBM report is not required. The reason why that is so is because T.C No. 47/54 report was sought on 10.8.2015 and it is given in letter addressed to IBM. I state that in any event the lease holder has been directed not to commence mining operations till a positive reply is received from the IBM or not to commence for a period of 3 months from 10/08/2015. which period ended on 09/11/2015

124. With reference to paragraph 25, the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. I state that the leases mentioned in paragraph 25 are renewed under section 8(3) of MMDR Act, 1957.

125. With reference to paragraph 26, I state that if Petitioner has not been furnished information under RTI, the Petitioner could have appealed under RTI Act. However, only because the Petitioner has made his own so called analysis on the renewed leases, it cannot be said that he had no information about renewals. The Petitioner is also not a Member of the Goa Legislative Assembly,

though he claims to have obtained copies of renewal Orders placed on floor of the Goa Legislative Assembly.

126. With reference to Para No. 27, the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. I state that it is emphatically denied that reasons in the renewal orders are a copy of the other and that no efforts were made by the Government to lay out reasons in granting renewal under section 8(3). I state that the reasons for grants of renewals are mentioned in detail in the renewal Order passed in each case and not only on grounds mentioned in Para 27 of the petition. Some of the conditions mentioned are reproduced herein above.

127. With reference to Para No. 28, the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. It is submitted that MMDR Act does not specify that the State Government has to seek an opinion of IBM for grant of second renewal whereas section 8(3). It only specifies that for second and subsequent renewals, the State Government should form an opinion that such renewals is in the interest of mineral development and it is necessary to do so and this should be substantiated in the form of a reasoned recorded Order renewing mining leases for a period not exceeding 20 years. I state that as such since in all 88 cases there is compliance of Section 8(3) of MMDR Act 1957.

128. With reference to Para No. 29, the contents thereof are denied to the extent that the same are inconsistent and contrary to what

has been stated herein. I state that it is denied that the sanctioning authority was in a hurry to grant renewals. It is submitted that IBM reports under proviso to Rule 24 (A) (3) of MC Rules, 1960 were obtained in 2015 in only five cases. However, the same were to be sought in the year 2006 itself after which the proposal for approving of mining plan were to be processed. In all 5 cases the mining plan has been duly approved, which is approved by IBM in exercise of powers under sub section 2(b) of section 5 of MMDR Act, as per which scientific mining operations are to be carried out. As such it is not correct to state that such reports were sought in hurry. In fact a conditional Order similar to one passed by Odisha Government pending report of IBM is annexed herewith to demonstrate that there was no *malafides* in passing the said conditional Order. From the date of seeking such report and within 3 months after such report has been sought no mining operations were allowed in such leases.

Annexed hereto and marked as **Annexure R-3** is copy of order dated 29/05/2014 passed by Government of Odisha, Steel & Mines Department.

129. With reference to Para No.30, the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. It is submitted that the contentions raised by the Petitioner in this paragraph is devoid of merit. I state that what is required in terms of the Act is seeking a report from IBM. Once the report is sought from IBM and if it is not received within

a period of three months then it is presumed that the IBM has no adverse comments to offer concerning second and subsequent renewal. I state that there is no requirement in law that for granting second renewal, the report of the IBM is a must. Indeed, Section 8(3) only stipulates passing a reasoned order that such second and subsequent renewal is in the interest of mineral development.

130. With reference to Para No. 31 to 33, the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. It is submitted that all reports sought and furnished by IBM are with respect to section 8(3) of MMDR Act 1957 and as for first renewal there is no legal requirement for seeking such report. In all renewals, provisions of section 8(3) of MMDR Act are duly complied with. Further, I repeat and reiterate that the Order dated 21/04/2014 has categorically stated that the benefit of deemed extension would extend to first renewal cases and mining operations carried out during first deemed extension period as such are legal and there is nothing illegal in the recommendation of IBM under Rule 24(A) in recommending renewals 'cases' in which First renewal Order is not passed and not under section 8(3) as erroneously mentioned by the Petitioner.

131. With reference to Para No. 34, the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. I state that the MMDR Ordinance Act 2015; if held to extend the life of the lease whose applications

were pending till 31/03/2020 as such even in the worst case scenario, there is no illegality whatsoever in respect of the renewal Order passed on 12/01/2015, which were issued before publication of Ordinance on website of Ministry of Mines on 13/01/2015. I state that it is denied that the renewals were completely and absolutely without jurisdiction.

132. With reference to Para No. 35 and 36, the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. I repeat and reiterate what has been stated by me hereinabove that the first renewal period of deemed mining leases expired on 22/11/2007. I state that it is denied that the lease renewal orders are highly irregular and unsustainable. I state that since the applications for renewal were granted for 20 years the validity of lease commenced from 23/11/2007. The mining operations carried out without the Order of renewal were declared illegal by the Hon'ble Apex Court and in addition to this, as an equitable measure the State Government was allowed to retain the proceeds by way of sale of ore in e-auction under the supervision of the Monitoring Committee. The State Government continues to be the owner of this ore lying in the State from 2007 to 2012 and of which an inventory has been done.

133. I state that the lease renewal period is mentioned in the lease deeds executed pursuant to the Order of renewal. Since the lease renewals are carried out in accordance with MMDR Act, 1957, the estimated loss etc calculated by the Petitioner is

paragraph 36 is without any base as such and thus does not deserve any merit. Moreover, by filling such petitions and showing thousands of cores of loss to exchequer, the Petitioner's demands donations from the public from India and abroad which is a major source of the funds received by the Petitioner. Therefore, I state that as such the petition may be treated as Private Interest litigation or as a Fund Raising Petition with ulterior motives by jeopardizing the life of lakhs of mining-dependent people in the State of Goa.

134. With reference to Para No. 37 to 40, it is submitted that the calculation suggested etc. by the petitioner is devoid of merit and without knowledge of basics of mining, as he does not have the requisite expertise in the field. As such, the calculations made by the Petitioners are denied and are in itself a mockery of the democracy by which an individual tries to dictate the terms to the elected Government of the day.

135. With reference to Para No.41, the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. I state that it is denied that the Government of Goa has acted contrary to several orders and Judgments of this Hon'ble Court. It is submitted that 88 leases are granted as per law i.e. MMDR Act, 1957 and Rules, the Policy of State Government was also in conformity with decision of the Hon'ble Apex Court dated 21/04/2014 and of Hon'ble High Court of Bombay at Goa dated 13/08/2014.

**REGARDING PRAYER 3 TO DIRECT INVESTIGATION UNDER
THE PREVENTION OF CORRUPTION ACT:**

136. With reference to Para No.42, the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. It is submitted that upon the complaint of the Petitioner, the necessary satisfactory reply was given to the Vigilance Department. Such acts on part of Petitioner, despite knowledge of fact that the acts of respondent are also in conformity with Order of mandamus issued by the Hon'ble High Court of Bombay at Goa, against Respondent was infact a mockery of democracy and an abuse of individual freedom which is guaranteed with reasonable restrictions. However, the acts of Petitioner, in filling complaints under the Prevention of Corruption Act etc. only demonstrate his disrespect for Orders of the Hon'ble High Court etc. Annexed hereto and marked as **ANNEXURE R-4** is the copy of the reply addressed to Additional Director Vigilance dated 27.08.2015.

137. I state that the Petitioners have at serial no.3, prayed for directing an investigation of the so called and alleged prima facie case of corruption under the Prevention of Corruption Act and to say the least, this prayer and the manner in which the prayer has been made is absolutely preposterous inasmuch as there are no pleadings whatsoever except making general allegations of mala fides and pollution. This prayer fall short of the standards required in a Writ Petition to even make this kind of prayer.

138. At paragraph 42 of the Petition, the Petitioner has only stated that he has filed a complaint under Section 13(D) with the CBI which was not entertained by the CBI for want of Jurisdiction.

139. I respectfully state that CBI is not empowered or authorized to entertain any complaints in matters concerning the State Government unless the State Government has referred or consented to the matter to CBI under the Delhi Police Establishment Act. It is emphatically denied that the Chief Minister is the Chairman of the Vigilance Committee.

140. The Petitioner does not seem to know what he is speaking about

141. I respectfully state and submit that the Vigilance Department had sought comments from the Mining Department based on a purported complaint filed by the Petitioner herein. It is thus obvious that it is the Petitioner who instigates all these agencies to issue such letters without any basis whatsoever. I state that along with the letter of vigilance department, there was a complaint made by the Petitioner to the Vigilance Department. I state that the said letter of the Vigilance Department as well as the contentions raised in the complaint were duly replied by the Director of Mines and Geology vide communication dated 27.08.2015. I state that subsequent thereto there is no communication from the Vigilance Department in this behalf. As all the queries of the Petitioners were satisfactorily answered by the Director of Mines and Geology.

REGARDING HALF MARGIN MEMO OF CAG

- 142.** With reference to Para No. 43, the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. It is submitted that the Annexure 16 and Annexure 17 are in terms letters/communication between two departments of the Government to which public has no access. I state that reliance on such documents by him is nothing less than a fraud with ulterior motives. In fact the Petitioner must inform the Respondent as well as this Hon'ble Court about the source of such information, being received by Petitioner.
- 143.** I state that such letters are part of the Audit, which are undertaken by office of Accounts General for State and once satisfactorily reply is given to the half margin, remarks, observations etc. such queries are treated to be satisfactorily answered and hence removed and they do not reflect in the audit Paragraph of the respective department. I state that reliance on these letters is an attempt to misguide this Hon'ble Court that these are conclusions of Audit Team. Infact the Petitioner must be asked to file a detail Affidavit as to how he got such documents which are confidential communication between the departments.
- 144.** I state that the perusal of paragraph 43 of the Petition shows the complete lack of understanding of the Petitioner as regards the audit reports and the preparation of the reports by CAG. I state that what is referred to by the Petitioner is only a 'half margin note' which have been satisfactorily replied to by this respondent

vide communication dated 16/10/2015. I state that post the reply there is no further action from the Office of the Accountant General. Annexed hereto and marked herewith as **ANNEXURE R-5** is copy of the reply dated 16.10.2015 addressed to office of Accountant General.

145. I state that it is a routine procedure that once an observation is made by CAG in half margin memo, the comments are invited from the concerned department. In the instant Case comments are invited from the Director of Mines and Geology which were answered vide communication dated 16/10/2015. I state that it is standard procedure that once comments are received by the CAG, after verifying and assessing the said comments, the CAG prepared its report. I state that in the event that no adverse material is found against the concerned department, the said observations are dropped and the communication to that effect is addressed to the concerned department. I state that in the instant case the allegations have been made based on a half margin note which has no relevance whatsoever.

146. Furthermore, the Petitioner has not disclosed in the Petition as to the source from which it has received the half margin note, which is a confidential communication between the CAG and the concerned. I state that the Petitioner should be directed to disclose the source from where this half margin note was availed by the Petitioner.

147. I state that Petitioner in Para 43 of his Writ Petition have contended that the Accountant General Goa, has since

addressed two communications to the Director of Mines and Geology raising queries about the renewal of mining leases. Reliance is placed on the letter dated 31.07.2015. Firstly, the said letter dated 31.07.2015 annexed at page 128 was a letter regarding approval of second renewal of mining licenses without waiting for the receipt of mandatory opinion / report from IBM. It was pointed out in this letter that in cases of 12 leases, IBM opinion was sought in the first and second week of January 2015 whereas en-masse lease renewal orders were issued immediately on or before 12.01.2015 thereby not complying with the mandatory requirement of three months period for a want of opinion from the IBM and therefore, clarification was sought from the Director of Mines and Geology.

148. I state that the Director of Mines, Goa, have replied to this letter, by their communication dated 16.10.2015, a copy of which is hereto annexed to this affidavit in reply.

149. I respectfully state that the communication dated 31.07.2015 is what is called as a 'Half Margin Note', which whenever there are audit queries, are raised by the concerned audit department. These Half Margin Memos are sent to the concerned department and comments of the department are sought on this Half Margin Memos. It is only after the receipt of the comments of the Department, the CAG or the Accountant General's office, being satisfied with the same, drops the observation or maintains it and submits the report to the Public Accounts Committee of the legislature of the State.

- 150.** Such Half Margin Memos, filed by the Petitioner cannot be relied upon in a court of law. If at all the Petitioner, came in possession of this document, it was required of the petitioner to disclose the reply of the department to such half margin note. The Petitioner does not seem to have understood the role of auditors and has virtually contended in the Petition as if the audit authorities are some super boss over the constitutional and other statutory authorities.
- 151.** I may state that it is the organization, NGOs, activists, who write to such organizations and provoke them to write such Half Margin Memos. The Petitioner himself had complained to the CAG.
- 152.** Since the Petitioner has raised this point, I am herewith explaining the same. I respectfully state that the number of leases mentioned by the Audit Officer are incorrect. The number of leases are not 12 but are only 5 in number wherein the date of communication to IBM are from 02.01.2015 to 06.01.2015 and in one exceptional case on 10.08.2015 for which a self explanatory letter was addressed to IBM concerning such report and the leaseholder was specifically asked not to commence mining operations in said lease for a period of 3 months from the date the communication was sent to IBM or till a positive report is received from IBM in this behalf.
- 153.** With reference to Para No. 44, the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. I state that it is denied that the Mining Policy notified on 20/01/2015 is liable to be quashed and set

aside. I state that it is denied that the renewals are without legal sanction and contrary to the explicit direction of this Hon'ble Court. It is submitted that the revocation Order dated 15/01/2015 was in conformity with this Hon'ble Court's Order dated 21/04/2014, and therefore it is denied that the revocation of suspension could not have been done by this Respondent.

THE CONTENTION AS REGARDS ENVIRONMENT CLEARANCE:

154. With reference to Para No. 45, it is submitted that the State Government cannot pressurize the Central Ministry, it can only request certain relief in the interest of the State Government and thus I state that as such contents of Para 45 are baseless.

155. I state that this is essentially a matter for the Ministry of Environment and Climate Change Government of India to deal with. However, the State Government would like to state that Environment Clearances were rightly restored inasmuch as Environment Clearances are granted pursuant to earlier 1994 and 2006 Notification for the life of a mine. Unless the Environment Clearances is either quashed and set aside by a Court of law or cancelled by the Authority issuing the same, the same remains operative and in full force. Merely because some Committee has recommended something, that does not mean that ipso facto the Environment Clearance granted becomes redundant or can be ignored.

156. I respectfully state and submit that for proper operation of mines in Goa, restoration of the Environment Clearances to these mines

was the step rightly taken by the Ministry of Environment and Forest.

GOA STATE POLLUTION CONTROL BOARD "GPSCB"

CONSENTS:

157. With reference to Para No.46, the Respondent does not wish to offer any comments of the content of the same at this stage of the Petition.
158. I respectfully state that although the Goa State Pollution Control Board has been made a party in this Writ Petition, there is no prayer challenging the statutory consents granted by the Goa State Pollution Control Board neither has the Petitioner sought quashing of there statutory consent orders.
159. Except in paragraph 46 and Ground G, wherein there is a very casual and unsubstantiated statement as regards the decision of the Board to grant consent, there is no challenge thrown in the Prayers. The explanation given by the Petitioner is that specific challenge is not made to the Consent Orders by the Petitioners but they will bring them on record. Till date, there is no application made by the Petitioners for this. I state that as and when the Consent Orders issued by the Board are challenged, the Goa State Pollution Control Board would file a proper Affidavit in that regard. Presently, once the mining leases have got valid Environment Clearances, there is no reason or ground for the Goa State Pollution Control Board to withhold consents to operate the leases from the point of view of the Water Act 1994

and the Air Act 1981 to the Mining Leases which already had these consents, in their favour.

- 160.** With reference to Para No. 47A, the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. I state that since the Petitioner has failed to comply with the directions of the Hon'ble Apex Court in Special Leave Petition No. 16080/2014, dated 22.09.2014, the said petition is devoid of merit and hence the Petitioner is not entitled for any reliefs as prayed for.
- 161.** I state that the grant of renewal could even have been granted independently under Section 8(3) of MMDR Act, 1957 without a specific provision in Goa Mineral Policy, 2013 and Goa Grant of Mining Leases Policy, 2014 though both also confirm the grant of renewals subject of course to the Order of the Hon'ble Apex Court in W.P. 435 of 2012 dated 21.4.2014.
- 162.** With reference to Para No. 47 B, the contents thereof are denied to the extent that the same are inconsistent and contrary to what has been stated herein. It is submitted that the MMDR Ordinance Act, 2015 gives deemed extension to pending Renewal Applications upto 31/03/2020. Most of the leases renewed on 12/01/2015 are pursuant to Mineral Policy and there was already a mandamus issued against the Respondent directing the State to decide an Application for renewal under 8(3) of MMDR Act, 1957 of the Petitioner / leaseholders in time bound manner. MMDR Ordinance Act, 2015 was published in the Official Gazette of Ministry of Mines on 13/01/2015. The two renewals

Applications' approved by the State Government on 13/01/2015 prior to the publication of the Ordinance on the official website of the Ministry of Mines were not granted second renewal Order. I state that this only demonstrates the *bonafide* intention on the part of Respondent State.

- 163.** With reference to Para No. 47.C, I state that all renewal Orders are passed in conformity with section 8(3) of MMDR Act, 1957.
- 164.** With reference to Para No. 47.D, I state that the argument of the petitioner is same and similar as is in W.P. No. 435/2012.
- 165.** With reference to Para No. 47.E, I state that revocation Order dated 15/01/2015 is in conformity with Order of the Hon'ble Apex Court 21/04/2014.
- 166.** With reference to Para No. 47.F and G, I state that the Respondent does not wish to offer any comments on the contents of the same at this stage of the Petition.
- 167.** With reference to Para No. 48, it is submitted that there is no cause of action in favour of the Petitioner because of failure to comply with direction of court in Special Leave Petition No. 16080/2014, in Order dated 22/09/2014. I state that since the Petition is devoid of merits, the same may be dismissed with cost. I state that by way of the present Petition the Petitioner is agitating the same claim as is in the said Special Leave Petition No. 16080/2014, and therefore unless the High Court orders under challenge in the said Special Leave Petition are set aside the Petitioner cannot claim any reliefs herein. Furthermore, I state that the Petitioner has made false statement as regards the

notice being issued on 22/09/2014. I state that therefore the conduct of the Petitioner itself warrants dismissal of the Present Petition by this Hon'ble Court. I state that in view thereof the Petitioner is not entitled to any relief whatsoever from this Hon'ble.

168. I state that in view of whatever is stated hereinabove, no relief whatsoever can be granted in favor of the Petitioner.

169. I respectfully state and submit that the State Government has deep and vital concern for the mining affected people and the mining dependant people. As already stated, these are persons belonging to lower income group comprising of truck drivers, workman, their families, canteen operators, working class in the canteen and other sectors, small time garages, machines, loaders, workers in the port, working people in the barges, cleaners and all other persons who are heavily dependent, on the mining operations carried out in the state. These persons comprise of around directly 2.5 to 3 lakh population in the State. I state that the Petitioner herein has scant regard for either the State's Revenue or the interest of the working class specially those mining dependant persons. Petition has been filed making false statement and suggesting false facts which is a serious matter.

170. I pray to this Hon'ble Court that in view of what is stated herein above by the State Government, this Hon'ble Court be pleased to dismiss the present petition.

171. I state that whatever is stated hereinabove is based on the records available with the office of the Respondent to which I have access and which I believe to be true and correct.

DEPONENT

VERIFICATION

I, Prasanna Acharya the above named Deponent, do hereby verify that the contents of the foregoing paragraphs of this Affidavit are based on the records available with the Office of this Respondent to which I have access and I believe the same to be true and correct and nothing material has been concealed there from.

Verified on this 1st day of December, 2015 at New Delhi.

DEPONENT