



Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
PUBLIC INTEREST LITIGATION WRIT PETITION NO. 6 OF 2024
WITH
MISC. CIVIL APPLICATION NO. 199 OF 2024
WITH
MISC. CIVIL APPLICATION NO. 215 OF 2024
IN
PUBLIC INTEREST LITIGATION WRIT PETITION NO. 6 OF 2024
WITH
MISC. CIVIL APPLICATION NO. 239 OF 2024
IN
PUBLIC INTEREST LITIGATION WRIT PETITION NO. 6 OF 2024
WITH
MISC. CIVIL APPLICATION NO. 1216 & 1217 OF 2024 (F)
IN
MISC. CIVIL APPLICATION NO. 239 OF 2024
AND
MISC. CIVIL APPLICATION NO. 1416 OF 2024 (F)
IN
PUBLIC INTEREST LITIGATION WRIT PETITION NO. 6 OF 2024

PUBLIC INTEREST LITIGATION WRIT PETITION NO. 6 OF 2024

1. The Mulakh Khajan Farmers Association, with office at Haldanwadi, Mayem, Bicholim, Goa – 403504, through its Secretary, Mr. Sakharam Anant Pednekar, age 58 years, H. No. 766, Gaonkarwada, Mayem, Bicholim, Goa – 403504, Approx. Annual Income – Rs. 1,20,000/-. Aadhar No. 439600055987, Mobile – 9767050503.

2. The Goa Foundation, through its Secretary Dr. Claude Alvares, age 75 years, having Regd. Office at Room No. 7, Above Mapusa Clinic, Mapusa, Goa – 403507, PAN No.AAAAG0249C, Income : Rs – 10 – 15,00,000/- p.a. (approx.) Registration No. - 23/Goa/86, Email id: goafoundation@gmail.com.

... Petitioners

WITH

**MISC. CIVIL APPLICATION NO. 199 OF 2024
IN
PUBLIC INTEREST LITIGATION WP NO. 6 OF 2024**

Surakshit Distributors Pvt. Ltd., a Company incorporated under the Companies Act, 1956, having its office at Unit No. 306, 3rd Floor, Gera Imperium Grand, EDC Complex, Patto Plaza, Panaji, Goa, and represented herein by its Authorised signatory, Mr. Sushil Khandelwal.

... Applicant

IN

1. The Mulakh Khajan Farmers Association, with office at Haldanwadi, Mayem, Bicholim, Goa – 403504, through its Secretary, Mr. Sakharam Anant Pednekar, age 58 years, H. No. 766, Gaonkarwada, Mayem, Bicholim, Goa – 403504, Approx. Annual Income – Rs. 1,20,000/-. Aadhar No. 439600055987, Mobile – 9767050503.

2. The Goa Foundation, through its Secretary Dr. Claude Alvares, age 75 years, having Regd. Office at Room No. 7, Above Mapusa Clinic, Mapusa, Goa – 403507, PAN No.AAAAG0249C, Income : Rs – 10 – 15,00,000/- p.a. (approx.) Registration No. - 23/Goa/86, Email id: goafoundation@gmail.com.

V e r s u s

1. The Director of Mines and Geology, through its Director, Ground Floor of Institute Menezes Braganza, Panaji, Goa – 403 001.

2. The State of Goa, through its Chief Secretary, Secretariat, Porvorim, Goa, 403 521.

3. The Deputy Collector and SDO Bicholim, Bicholim, Goa – 403 504.

4. The Mamlatdar Bicholim, Office of the Mamlatdar, Bicholim, Goa – 403 504.

5. The Bicholim Police Station, through its Police Inspector, Bicholim, Goa – 403 504.

6. The Goa State Pollution Control Board, through its Member Secretary, near Pilerne Industrial Estate, Opposite Saligao Seminary, Saligao, Bardez, Goa, 403 511.

7. M/s. Blueglobe Exports Private Limited, B-3, F-1, Prudential Paradise, Peddem, Mapusa, Goa – 403 507.

... Respondents.

WITH

MISC. CIVIL APPLICATION NOS. 215 AND 239 OF 2024

IN

PUBLIC INTEREST LITIGATION WRIT PETITION NO. 6 OF 2024

Vedanta Limited, A public company duly incorporated under the provisions of the Indian Companies Act, 1956, having its registered office at 1st Floor, C wing, Unit 103, Corporate Avenue Atul Projects, Chakala, Andheri (East) NA Mumbai , Mumbai City MH 400093 IN. Having local office at Sesa Ghor, 20 EDC Complex, Patto, Panaji, Goa, 403 001, Represented in this petition through its authorised signatory, Mr. Benecio Menezes, 56 years of age, Indian National, Having residence at St. Roque Waddo, Colvale, Bardez, Goa.

IN

1. The Mulakh Khajan Farmers Association, through its Secretary Sakharam Anant Pednekar, H. No. 776, Gaonkarwada, Mayem, Bicholim, Goa – 403504.

... Applicant

2. The Goa Foundation, through its Secretary Dr. Claude Alvares, having Regd. Office at Room No. 7, Above Mapusa Clinic, Mapusa,

Goa – 403507.

V e r s u s

1. The Director of Mines and Geology, through its Director, Ground Floor of Institute Menezes Braganza, Panaji, Goa – 403 001.

2. The State of Goa, through its Chief Secretary, having office at the Secretariat Complex, Porvorim, Bardez, Goa.

3. The Deputy Collector and SDO Bicholim, Office of the Deputy Collector and SDO, Bicholim, Bicholim, Goa.

4. The Mamlatdar, Office of the Mamlatdar, Bicholim, Goa.

5. The Bicholim Police Station, through its Police Inspector, Bicholim, Goa.

6. The Goa State Pollution Control Board, through its Member Secretary, near Pilerne Industrial Estate, Opposite Saligao Seminary, Saligao, Goa, 403 511.

7. Blueglobe Exports Private Limited, through its Director, B-3, F-1 Prudential Paradise, Peddem, Mapusa, North Goa, GA – 403 507 In.

8. The Union of India, through the Secretary, Ministry of Environment, Forests and Climate change, Government of India, Indira Paryavaran Bhavan, Jor Bagh Road, Aliganj, New Delhi, 110 003.

... Respondents.

**WITH
MISC. CIVIL APPLICATION NO. 1216 OF 2024 (F)
IN**

MISC. CIVIL APPLICATION NO. 239 OF 2024
IN
PUBLIC INTEREST LITIGATION WRIT PETITION NO. 6 OF 2024

Vedanta Limited, A public company duly incorporated under the provisions of the Indian Companies Act, 1956, having its registered office at 1st Floor, C wing, Unit 103, Corporate Avenue Atul Projects, Chakala, Andheri (East) NA Mumbai , Mumbai City MH 400093 IN. Having local office at Sesa Ghor, 20 EDC Complex, Patto, Panaji, Goa, 403 001, Represented in this petition through its authorised signatory, Mr. Benecio Menezes, 56 years of age, Indian National, Having residence at St. Roque Waddo, Colvale, Bardez, Goa.

IN

1. The Mulakh Khajan Farmers Association, through its Secretary Sakharam Anant Pednekar. ... Applicant
2. The Goa Foundation, through its Secretary Dr. Claude Alvares, having Regd. Office at Room No. 7, Above Mapusa Clinic, Mapusa, Goa – 403507.

V e r s u s

1. The Director of Mines and Geology, through its Director, Ground Floor of Institute Menezes Braganza, Panaji, Goa – 403 001.
2. The State of Goa, through its Chief Secretary, having office at the Secretariat Complex, Porvorim, Bardez, Goa.
3. The Deputy Collector and SDO Bicholim, Office of the Deputy Collector and SDO, Bicholim, Bicholim, Goa.

4. The Mamlatdar, Office of the Mamlatdar, Bicholim, Goa.
5. The Bicholim Police Station, through its Police Inspector, Bicholim, Goa.
6. The Goa State Pollution Control Board, through its Member Secretary, near Pilerne Industrial Estate, Opposite Saligao Seminary, Saligao, Goa, 403 511.
7. Blueglobe Exports Private Limited, through its Director, B-3, F-1 Prudential Paradise, Peddem, Mapusa, North Goa, GA – 403 507 In.
8. The Union of India, through the Secretary, Ministry of Environment, Forests and Climate change, Government of India, Indira Paryavaran Bhavan, Jor Bagh Road, Aliganj, New Delhi, 110 003. ... Respondents.

AND

Shri Narendra Vinayak P. Gaoncar, aged about 50 years, Son of late Vinayak P. Gaoncar, R/o. Pilgao, Bicholim, Goa. ...Applicant/
Intervener

**WITH
MISC. CIVIL APPLICATION NO. 1217 OF 2024 (F)
IN
MISC. CIVIL APPLICATION NO. 239 OF 2024
IN
PUBLIC INTEREST LITIGATION WRIT PETITION NO. 6 OF 2024**

Vedanta Limited, A public company duly incorporated under the provisions of the Indian Companies Act, 1956, having its registered office at 1st Floor, C wing, Unit 103, Corporate Avenue Atul Projects, Chakala, Andheri (East) NA Mumbai , Mumbai City

MH 400093 IN. Having local office at Sesa Ghor, 20 EDC Complex, Patto, Panaji, Goa, 403 001, Represented in this petition through its authorised signatory, Mr. Benecio Menezes, 56 years of age, Indian National, Having residence at St. Roque Waddo, Colvale, Bardez, Goa.

IN

1. The Mulakh Khajan Farmers Association, ... Applicant through its Secretary Sakharam Anant Pednekar.
2. The Goa Foundation, through its Secretary Dr. Claude Alvares, having Regd. Office at Room No. 7, Above Mapusa Clinic, Mapusa, Goa – 403507.

V e r s u s

1. The Director of Mines and Geology, through its Director, Ground Floor of Institute Menezes Braganza, Panaji, Goa – 403 001.
2. The State of Goa, through its Chief Secretary, having office at the Secretariat Complex, Porvorim, Bardez, Goa.
3. The Deputy Collector and SDO Bicholim, Office of the Deputy Collector and SDO, Bicholim, Bicholim, Goa.
4. The Mamlatdar, Office of the Mamlatdar, Bicholim, Goa.
5. The Bicholim Police Station, through its Police Inspector, Bicholim, Goa.
6. The Goa State Pollution Control Board, through its Member Secretary, near Pilerne Industrial Estate, Opposite Saligao Seminary, Saligao, Goa, 403 511.

7. Blueglobe Exports Private Limited, through its Director, B-3, F-1 Prudential Paradise, Peddem, Mapusa, North Goa, GA – 403 507 In.

8. The Union of India, through the Secretary, Ministry of Environment, Forests and Climate change, Government of India, Indira Paryavaran Bhavan, Jor Bagh Road, Aliganj, New Delhi, 110 003.

... Respondents.

AND

Shri Trivikram Govind Prabhu Gaunkar alias Prabhugaonkar, aged about 47 years, son of Govind Vasudev Prabhu Gaunkar, R/o. H. No. 76, Pilgao, Bicholim, Goa 403 504

...Applicant/
Intervener

AND

**MISC. CIVIL APPLICATION NO. 1416 OF 2024
IN
PUBLIC INTEREST LITIGATION WRIT PETITION NO. 6 OF 2024**

Vedanta Limited, A public company duly incorporated under the provisions of the Indian Companies Act, 1956, having its registered office at 1st Floor, C wing, Unit 103, Corporate Avenue Atul Projects, Chakala, Andheri (East) NA Mumbai , Mumbai City MH 400093 IN. Having local office at Sesa Ghor, 20 EDC Complex, Patto, Panaji, Goa, 403 001, Represented in this petition through its authorised signatory, Mr. Benecio Menezes, 56 years of age, Indian National, Having residence at St. Roque Waddo, Colvale, Bardez, Goa.

IN

1. The Mulakh Khajan Farmers Association, through its Secretary Sakharam Anant

... Applicant

Pednekar.

2. The Goa Foundation, through its Secretary Dr. Claude Alvares, having Regd. Office at Room No. 7, Above Mapusa Clinic, Mapusa, Goa – 403507.

V e r s u s

1. The Director of Mines and Geology, through its Director, Ground Floor of Institute Menezes Braganza, Panaji, Goa – 403 001.

2. The State of Goa, through its Chief Secretary, having office at the Secretariat Complex, Porvorim, Bardez, Goa.

3. The Deputy Collector and SDO Bicholim, Office of the Deputy Collector and SDO, Bicholim, Bicholim, Goa.

4. The Mamlatdar, Office of the Mamlatdar, Bicholim, Goa.

5. The Bicholim Police Station, through its Police Inspector, Bicholim, Goa.

6. The Goa State Pollution Control Board, through its Member Secretary, near Pilerne Industrial Estate, Opposite Saligao Seminary, Saligao, Goa, 403 511.

7. Blueglobe Exports Private Limited, through its Director, B-3, F-1 Prudential Paradise, Peddem, Mapusa, North Goa, GA – 403 507 In.

8. The Union of India, through the Secretary, Ministry of Environment, Forests and Climate change, Government of India, Indira Paryavaran Bhavan, Jor Bagh Road,

Aliganj, New Delhi, 110 003.

... Respondents.

AND

1. Shankar Chandrakant Jalmi, aged 25.
2. Savlo Raghu Kavlekar, aged 49, both major, residents of H. No., Bagwada, Pilgao, Bicholim, Goa.
3. Sudhakar Vasudev Vaignkar, Age 43, major, resident of H. No. 65, Bagwadao, Bicholim, Goa.
4. Govind Shankar Kavlekar, age 62, major, resident of H. No. 23, Gaonkar Wada, Pilgao, Bicholim, Goa.

...Applicant/
Interveners

Ms. Norma Alvares, Advocate with *Mr. Om D'Costa, Advocate for the Petitioners.*

Mr Y. V. Nadkarni, Advocate with *Mr Nilay Naik and Ms. Simran S. Khadilkar, Advocate for the Applicant in MCA No. 199/2024.*

Mr. D. Pangam, Advocate General with *Mr. Deep Shirodkar, Additional Government Advocate for Respondent nos. 1 to 5.*

Mr. Manish Salkar, Government Advocate for *Respondent no.6-GSPCB.*

Mr. Raviraj Chodankar, Central Government Standing Counsel for *the Union of India-Respondent No.8.*

Mr. A. D. Bhohe, Advocate with *Ms. A. Fernandes Advocate for Respondent No. 9.*

Mr. Janak Dwarkadas, Senior Advocate (*Through V.C.*) with Mr. Shivan Desai, Mr. A. Gosavi, Advocate with Ms. Krupa Naik and Mr. Guruprasad Naik, Advocates for the Interveners-Applicants in MCA No. 215/2024 and MCA No. 239/2024.

Mr. H. D. Naik, Advocate for the Applicant in MCA No. 1216/2024(F) and MCA No. 1217/2024(F).

Mr. Nigel Da Costa Frias, Advocate with Ms. Sonadevi Nishad and Mr. Shane Coutinho, Advocates for the Applicants-Interveners in MCA No.1416/2024(F)

**CORAM: M. S. KARNIK &
VALMIKI MENEZES, JJ.**

**RESERVED ON : 26th JUNE 2024
PROUNOUNCED ON : 29th JUNE 2024**

JUDGMENT (*Per M. S. Karnik, J.*)

1. We have taken up this petition for final disposal in view of the earlier order passed and with the consent of all parties.

2. It is the case of the petitioner that the otherwise tranquil situation in the village will be jeopardised as a result of the large scale transportation of mineral ore. The safety of the villagers, and that of the school going children will be endangered with the sudden increase in the traffic of trucks/tippers carrying the ore. The resultant noise pollution as well as the environmental pollution resulting from such unwarranted intrusion in the serene and peaceful environs of the village is in complete conflict with the cherished principles of

fundamental right enshrined by Article 21 of the Constitution of India. The submission is that this massive invasion will completely disturb the equilibrium of the village which serves only the business interests of the project proponent to the detriment of the villagers. The villagers say that they do not deserve such intrusion.

3. The concern expressed by the villagers is genuine. On one hand are the fundamental rights of villagers and on the other are the economic interests of the State as well as the rights of the project proponent. These are competing interests in conflict with each other.

4. It goes without saying that it is the foremost duty of the State to work towards achieving and maintaining a fine balance between competing interests taking into account various myriad considerations. Present is a case where there is an apparent conflict between the fundamental rights of the villagers and that of the State. The State finds mining and as a consequence transportation necessary to further its economic interest for the development of the State. A conflict in the present case has arisen between the right to life under Article 21 of the Constitution of India on one hand and Article 19(1)(g) of the Constitution of India on the other. The villagers claim a right to a dignified existence in a safe pollution free environment. The State asserts its economic right necessitating such transportation which villagers submit amounts to bulldozing the otherwise peaceful life

which they are accustomed to for a long time. The task of achieving this fine balance is surely a difficult one as observed by His Lordship in **K. S. Puttaswamy (Aadhaar-5J) vs. Union of India**¹. The observations which form a part of a dissenting opinion in **K. S. Puttaswamy** (supra) are significant. An ideal situation would be one which would preserve the core of the right for both sets of citizens whose entitlements to freedom appears to be in conflict. Realistically, drawing balances is not a simple task. Balances involve sacrifices and the foregoing of entitlements.

5. While forming an opinion, we have extensively sought guidance from the aforementioned decision of the Supreme Court and the observations in **Rajeev Suri vs. Delhi Development Authority & Ors.**², which we have referred to in the later part of our order.

6. Let us now consider the facts of the present case. Our attention is invited to the interim order dated 17.01.2024 and the subsequent orders passed during the pendency of the petition. This petition raises an important issue in the public interest about the transportation of mineral ore by road through the village of Mayem. The petition as filed was limited to the problems to be faced by village 'Mayem'

1 (2019) 1 SCC 1

2 (2022) 11 SCC 1

7. By subsequent orders, the scope of the petition was expanded to the transportation of ore through the villages in Goa. The State of Goa and the project proponents opposed restrictions in the transportation of ore through the village roads asserting their rights on the basis of valid permissions and right to carry on business. Examination of such conflicting interests is surely not an easy task. How do we achieve the right balance while considering competing interests in the present case; does such transportation pass the muster of the relevant legislations; what should be the safeguards; are the measures to mitigate the perils of transportation through village roads adequate, are questions which arise for our consideration. Please show compassion to those living in the villages is the fervent plea of Ms. Norma Alvares, learned counsel for the petitioner.

8. The petitioners contended that the permissions granted by the Goa State Pollution Control Board ('GSPCB', for short), and the Director of Mines and Geology ('DMG', for short), were without any application of mind to several relevant considerations, including, but not restricted to the conditions referred to in the Office Memorandum (OM) dated 29.10.2014, issued by the Ministry of Environment, Forests and Climate Change (Annexures to the petition at pages 40 and 42 of the paper book) and the ground conditions at the Mayem village. Pursuant to the filing of the petition, the GSPCB and DMG

have by way of SOPs, proposed several safeguards and measures for safe transport and as fairly submitted by Ms. Norma Alvares, these measures are positive. Such submission is made by the learned Counsel for the petitioners with a caveat that the concern of the villagers must be more adequately addressed in the best manner possible. She submits that though several safeguards are put in place, the environmental concerns affecting the safety and health of the villagers must be monitored effectively and addressed from time to time with the aid of real time monitoring of pollution with modern sophisticated equipment.

9. Learned Advocate General has serious objection to the course adopted by us in expanding the scope of the PIL as according to him there are no pleadings to justify such a course. We strongly feel that the concern of transportation through village roads needs to be addressed. We cannot ignore the larger issue of such large scale transportation through the village roads. Do we overlook the concerns of those residing in these villages through which roads the transporting operations are to take place only on some technical objections raised? We do appreciate the submission that the concerns may differ from village to village. It is the duty of the State and the statutory authorities to conduct a scientific exercise in evaluating what requirements are best suited on a village to village basis to ensure the

safety of the life and limb of its subjects. Howsoever small the population may be, the basic aspiration of their right to live should not be bulldozed on some technical considerations. The Court is not expected to shut its eyes and not even question the State as to what the measures proposed for the safety of the villagers are. There is not the slightest doubt in our mind that such a course is necessary. The petition was filed specific to village Mayem. During the course of hearing, learned Advocate General submits a decision is taken that there is to be no transportation through village 'Mayem'.

10. Let us examine what are the measures in place to regulate transportation through such villages in the first place. The problems cited of transportation of ore through the villages will have to be addressed in the context of two scenarios which are :-

(i) Transportation of the ore which was already extracted in the course of the decisions in **Goa Foundation vs. Union of India & Ors.**³ (referred to as *Goa Foundation-I*) and **Goa Foundation vs. Sesa Sterlite Limited & Ors.**⁴ (referred to as *Goa Foundation-II*), which we refer to as 'e-auction ore'; and

(ii) Transportation of ore by the project proponent i.e. Vedanta, who has intervened in the present case in whose favour there exists a 50-year lease having been granted Environmental Clearance (EC, for short) under the

³ (2014) 6 SCC 590

⁴ (2018) 4 SCC 218

Environment Protection Act. This aspect pertains to transportation pursuant to the EC granted as a result of fresh leases executed.

11. The second aspect i.e. in respect of EC granted to Vedanta, need not detain us much. This petition does not challenge the EC granted to Vedanta. We make it clear that though learned Senior Advocate Shri Janak Dwarkadas was at pains to point out that the EC has been granted pursuant to a detailed examination by an expert body constituted under the EP Act, we do not express any opinion on such submission in this petition. The limited issue that we are examining is transportation of ore through the villages which allegedly creates disharmony in the fundamental right to life of the villagers. We make it clear that it is open for the aggrieved persons to lay a challenge to the EC on its own merits and in accordance with law before the forum competent to entertain such a challenge. It must be noted that the measures and safeguards recommended and which are part of the EC are accepted by Vedanta.

12. The first aspect of transportation of ‘e-auction ore’ is something we need to examine in some detail. Ms. Alvares alleged that the conditions imposed by the GSPCB and DMG were not complied with by the transporters during the earlier regime. It was pointed out that there was incessant transportation of ore through trucks right from 4.30 a.m. in the morning till 6.30 p.m. in the evening. It is submitted

that such transportation is a source of pollution that has affected the entire village and the villagers.

13. On the basis of the submission of learned Counsel appearing for the petitioners and hearing the respondents, this Court was of the *prima facie* opinion that there was not much application of mind by either the GSPCB and DMG before the clearances or transit permits were issued in the context of the route now proposed by the project proponent, i.e. the seventh respondent. This Court *prima facie* observed that the authorities, without adverting to several relevant considerations, not to mention the Ministry's OM dated 29.10.2014, mechanically issued the clearance or the transit pass. It was noticed that there was confusion about the roles the GSPCB and the DMG was expected to play in such matters affecting the lives and properties of the villagers. After referring to the provisions of OM dated 29.10.2014, this Court was of the opinion that some measures had to be put in place which would safeguard the life and properties of the Villagers. The relevant directions issued from paragraph 26 onwards which form part of the interim Order dated 17.01.2024 read thus :

“26. We direct the DMG and GSPCB to file detailed affidavits on the issue of grant of permissions, etc., for transportation of ore through villages in the State of Goa. The affidavits, as far as possible, should state the procedure that is

presently followed and the procedure that the authorities would like to follow in the future in case there are any shortcomings in the existing procedure. We think that the DMG and GSPCB should act in tandem and coordinate with each other so that proper procedures are evolved. For this, if possible, the authorities should hold a meeting. Other stakeholders, like the representatives of the mining industry, transportation industry, environmentalists, representatives of the Panchayat, etc., could also be invited to such meetings so that some policy which takes care of the interests of all stakeholders could be evolved.

27. The affidavits must also deal with an action plan for implementation or enforcement of the conditions included in the permissions. There is no point in imposing conditions to prevent pollution and hardships to villagers if there is no will or proper mechanism for effective implementation. It is not uncommon that considerable police forces are deployed when villagers raise their voices against ore transportation through villages. While it is improper for the villagers to take the law into their own hands, the Authorities must be vigilant in the enforcement of the conditions imposed for the benefit of such villagers. If the transporters disregard such conditions with impunity, strict action must be taken.

28. Since there is no clarity on the procedures for granting permissions for transportation of ores through villages, and at least prima facie, we get the

impression that DMG and GSPCB are passing the buck on each other without each of them assuming any responsibility, we direct that until the next date, no permissions shall be granted for transportation of ore by private parties through villages, without the leave of this Court. Such a direction is necessary to avoid a repetition of what has happened in the present case. Besides, we propose to dispose of this Petition at an early date.

29. We stand over this matter to 20.02.2024. The affidavits should be filed by 12.02.2024 by giving advance copies to the learned counsel for the petitioners. If the petitioners wish to file any rejoinder, they may do so on or before 20.02.2024 by giving advance copies to the learned counsel for the respondents. We also direct the Petitioners to implead and serve the Union of India through the Ministry of Environment, Forests and Climate Change.

30. The matter is posted for final disposal at the admission stage.”

14. Learned Counsel for the petitioners submitted that having regard to the measures and safeguards provided and placed on record by the GSPCB and DMG pursuant to the filing of the petition so far as transportation of ‘e-auction ore’ is concerned, the spirit of the conditions which are set out in the OM of 2014 has been imbibed in the Standard Operating Procedure (‘SOP’ for short). At one stage, learned Advocate General did proceed to canvas that the OM of 2014

does not bind the GSPCB or the DMG as the said OM is only an executive instruction which does not pass muster of Section 3 of ‘The Environment (Protection) Act, 1986, (herein after referred to as the *EP Act* for short). In view of the aforesaid submission of the learned Counsel for the petitioners, we refrain from expressing any opinion on such contention of learned Advocate General in this petition.

15. It needs to be considered whether there should be a complete ban on transport of the ore through village routes or providing safeguards and measures for mitigating the concerns of the villagers while permitting transportation can be a solution. For a better understanding, it would be apposite to refer to the decisions of the Supreme Court in **Goa Foundation vs. Union of India & Ors.**⁵ (*supra*) and **Goa Foundation vs. Sesa Sterlite Limited & Ors.**⁶ (*supra*). The facts related to mining in Goa is set out by Their Lordships in Goa Foundation-I, which reads thus :

“2. Prior to 19-12-1961 when Goa was a Portuguese territory, its Portuguese Government had granted mining concessions in perpetuity to concessionaires. On 19-12-1961, Goa was liberated and became part of the Indian Union and on 1-10-1963, the Mines and Minerals (Development and Regulation) Act, 1957 (for short "the MMDR Act") was made applicable to the State of Goa. On 10-3-1975, the

⁵ (2014) 6 SCC 590

⁶ (2018) 4 SCC 218

Controller of Mining Leases issued a Notification calling upon every lessee and sub-lessee to file returns under Rule 5 of the Mining Leases (Modification of Terms) Rules, 1956 and sent copies of the notification to the concessionaires in Goa. Aggrieved, the concessionaires moved the Bombay High Court, Goa Bench, and by judgment dated 29-9-1983, in *Vassudeva Madeva Salgaocar v. Union of India*, the Bombay High Court restrained the Union of India from treating the concessions as mining leases and from enforcing the notification against the concessionaires.

3. Parliament thereafter passed the Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987 (for short "the Abolition Act") which received the assent of the President on 23-5-1987. Section 4 of the Abolition Act abolished the mining concessions and declared that with effect from the 20th day of December, 1961, every mining concession will be deemed to be a mining lease granted under the MMDR Act and that the provisions of the MMDR Act will apply to such mining lease. Section 5 of the Abolition Act further provided that the concession holder shall be deemed to have become a holder of the mining lease under the MMDR Act in relation to the mines in which the concession relates and the period of such lease was to extend up to six months from the date when the Abolition Act received President's assent i.e. up to 22-11-1987. On 14-10-1987, sub-rules (8) and (9) were inserted in Rule 24-A of the Mineral Concession Rules, 1960 (for short "the MC Rules")

which deal with renewal of mining leases in Goa, Daman and Diu.

4. The Abolition Act was challenged by the lessees before the Bombay High Court in a writ petition. The High Court passed an interim order permitting the lessees to carry on mining operations and the mining business in the concessions for which renewal applications had been filed under Rule 24-A of the MC Rules. Subsequently, the High Court held in its judgment dated 20-6-1997 that the Abolition Act was valid but Section 22(1)(a) of the Abolition Act would operate prospectively and not retrospectively. The concessionaires filed special leave petition against the judgment dated 20-6-1997 before this Court. On 2-3-1998, this Court passed an interim order permitting the concessionaires to carry on mining operations and mining business in the mining areas for which renewal applications have been made on the condition that the lessee pays to the Government dead rent from the date of commencement of the Abolition Act. Subsequently, this Court granted leave in the special leave petition and continued the aforesaid interim order.

The Justice Shah Commission and its Report

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

Inquiry Act, 1952 by Notification dated 22-11-2010. Paras 2 and 3 of the Notification, which are relevant, are extracted hereinbelow:

"2. The terms of reference of the Commission shall be-

(i) to inquire into and determine the nature and extent of mining and trade and transportation, done illegally or without lawful authority, of iron ore and manganese ore, and the losses therefrom; and to identify, as far as possible, the persons, firms, companies and others that are engaged in such mining, trade and transportation of iron ore and manganese ore, done illegally or without lawful authority;

(ii) to inquire into and determine the extent to which the management, regulatory and monitoring systems have failed to deter, prevent, detect and punish offences relating to mining, storage, transportation, trade and export of such ore, done illegally or without lawful authority, and the persons responsible for the same;

(iii) to inquire into the tampering of official records, including records relating to land and boundaries, to facilitate illegal mining and identify, as far as possible, the persons responsible for such tampering; and

(iv) to inquire into the overall impact of such mining, trade transportation and export done illegally or without lawful authority, in terms of destruction of forest wealth, damage

to the environment, prejudice to the livelihood and other rights of tribal people, forest dwellers and other persons in the mined areas, and the financial losses caused to the Central and State Governments.

3. The Commission shall also recommend remedial measures to prevent such mining, trade, transportation and export done illegally or without lawful authority."

6. The Justice Shah Commission visited Goa and issued notices under Section 4 of the Commissions of Inquiry Act, 1952 calling for information from the authorities concerned and the lessees and submitted its interim report on 15-3-2012 to the Ministry of Mines, Union of India. On 7-9-2012, the Justice Shah Commission Report on Goa was tabled in Parliament along with an Action Taken Report of the Ministry of Mines and on 10-9-2012 the State Government of Goa passed an Order suspending all mining operations in the State of Goa with effect from 11-9-2012. Pursuant to this Order of the State Government, on 11-9-2012 and 12-9-2012 the District Magistrates of the State of Goa banned transportation of iron ore in their respective districts and the Director of Mines and Geology ordered for verification of mineral ore which was already extracted. On 13-9-2012, the Director of Mines and Geology, Government of Goa issued show-cause notices to 40 mining leases. On 14-9-2012, the Ministry of Environment and Forests of the Union of India also directed that all

environmental clearances granted to mines in the State of Goa be kept in abeyance.

7. On the basis of findings in the Report of the Justice Shah Commission on illegal mining in the State of Goa, Goa Foundation has filed Writ Petition (C) No. 435 of 2012 as public interest litigation praying for directions to the Union of India and the State of Goa to take steps for termination of the mining leases of lessees involved in mining in violation of the Forest (Conservation) Act, 1980, the Mines and Minerals (Development and Regulation) Act, 1957, the Mineral Concessions Rules, 1960, the Environment (Protection) Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 as well as the Wild Life (Protection) Act, 1972. Goa Foundation has prayed that a direction be issued to the respondents to prosecute all those who have committed offences under the different laws and are involved in the pilferage of State revenue through illegal mining activities in the State of Goa including the public servants who have aided and abetted the offences. Goa Foundation has also sought for appointment of an independent authority with full powers to take control, supervise and regulate mining operations in the State of Goa and to ensure the implementation of the laws. Besides, the aforesaid main reliefs, Goa Foundation has also prayed for some incidental and consequential reliefs.

8. On 5-10-2012, this Court issued notice in Goa Foundation v. Union of India to the respondents and

directed the Central Empowered Committee (for short "CEC") to submit its report on the writ petition and also directed that till further orders, all mining operations in the leases identified in the report of the Justice Shah Commission and transportation of iron ore and manganese ore from those leases, whether lying at the mine-head or stockyards, shall remain suspended, as recommended in the report of the Justice Shah Commission.

9. Different mining lessees of the State of Goa and the Goa Mining Association also filed writ petitions in the Bombay High Court, Goa Bench for a declaration that the report of the Shah Commission is illegal and for quashing the findings in the Report of the Justice Shah Commission and also for quashing the Order dated 10-9-2012 of the Government of Goa suspending mining operations in the State of Goa and the Order dated 14-9-2012 of the Ministry of Environment and Forests, Government of India, directing that the environmental clearances granted to the mines in the State of Goa be kept in abeyance. These writ petitions have been transferred to this Court for hearing along with the hearing of Writ Petition (Civil) No. 435 of 2012 filed by Goa Foundation.

10. The writ petitions and the transferred cases were heard during September, October and November 2013. On 11-11-2013 an order was passed by this Court directing that the inventory of the excavated mineral lying ores in different mines/stockyards/jetties/ports in the State of Goa made by the Department of Mines and Geology of

the Government of Goa be verified and thereafter the whole of the inventoried mineral ores be sold by e-auction and the sale proceeds (less taxes and royalty) be retained in separate fixed deposits (lease-wise) by the State of Goa till the Court delivers the judgment in these matters on the legality of the leases from which the mineral ores were extracted. The Court has also directed that this entire process of verification of the inventory, e-auction and deposit of sale proceeds be monitored by a Monitoring Committee appointed by the Court. By the said order dated 11-11-2013, this Court also constituted an Expert Committee to conduct a macro-EIA study on what should be the ceiling of annual excavation of iron ore from the State of Goa considering its iron ore resources and its carrying capacity, keeping in mind the principles of sustainable development and intergenerational equity and all other relevant factors. On 11-11-2013 the case was also reserved for judgment.”

16. Upon considering the submissions, Their Lordships in Goa Foundation-I held thus :

“87. In the result, we declare that:

87.1. The deemed mining leases of the lessees in Goa expired on 22-11-1987 and the maximum of 20 years renewal period of the deemed mining leases in Goa expired on 22-11-2007 and consequently mining by the lessees after 22-11-2007 was illegal and hence the impugned Order dated 10-9-2012 of Government of Goa and the impugned Order dated

14-9-2012 of MoEF, Government of India are not liable to be quashed.

87.2. Dumping of minerals outside the leased area of the mining lessees is not permissible under the MMDR Act and the Rules made thereunder.

87.3. Until the order dated 4-8-2006 of this Court is modified by this Court in IA No. 1000 in *T.N. Godavarman Thirumulpad v. Union of India*, there can be no mining activities within one kilometre from the boundaries of national parks and sanctuaries in Goa.

87.4. By the order dated 4-12-2006 in *Goa Foundation v. Union of India*, this Court has not prohibited mining activities within 10 kilometres' distance from the boundaries of the national parks or wildlife sanctuaries.

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."

17. After the declaration and directions in Goa Foundation-I, some controversy arose as the State of Goa granted second renewals to the mining lease holders. It was one of the contention of the petitioners in Goa Foundation-II that the State of Goa was obliged to grant fresh mining leases in accordance with law and not second renewals to the mining lease holders. The observations of Their Lordships in Goa

Foundation-II which also contains reference to the observations in Goa Foundation-I are significant, which read thus :

“1. Rapacious and rampant exploitation of our natural resources is the hallmark of our iron ore mining sector coupled with a total lack of concern for the environment and the health and well-being of the denizens in the vicinity of the mines. The sole motive of mining leaseholders seems to be to make profits (no matter how) and the attitude seems to be that if the rule of law is required to be put on the backburner, so be it. Unfortunately, the State is unable to firmly stop violations of the law and other illegalities, perhaps with a view to maximise revenue, but without appreciating the long- term impact of this indifference. Another excuse generally put forth by the State is that of development, conveniently forgetting that development must be sustainable and equitable development and not otherwise.

2. Effective implementation and in some instances circumvention of the mining and environment related laws is a tragedy in itself. Laxity and sheer apathy to the rule of law gives mining leaseholders a field day, being the primary beneficiaries, with the State being left with some crumbs in the form of royalty. For the State to generate adequate revenue through the mining sector and yet have sustainable and equitable development, the implementation machinery needs a tremendous amount of strengthening while the law enforcement machinery needs strict vigilance.

Unless the two marry, we will continue to be mute witnesses to the plunder of our natural resources and left wondering how to retrieve an irretrievable situation.

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

4. Acting on this information, the Government of India appointed Justice M. B. Shah, a former Judge of this Court as a Commission of Inquiry under Section 3 of the Commissions of Inquiry Act, 1952 by a Notification dated 22-11-2010. The terms of reference of the Commission for the State of Goa were as follows:

"2. The terms of reference of the Commission shall be-

(i) to inquire into and determine the nature and extent of mining and trade and transportation, done illegally or without lawful authority, of iron ore and manganese ore, and the losses therefrom; and to identify, as far as possible, the persons, firms, companies and others that are engaged in such mining, trade and transportation of iron ore and manganese ore, done illegally or without lawful authority;

(ii) to inquire into and determine the extent to which the management, regulatory transportation, trade and export of such

ore, done illegally or without lawful authority, and the persons responsible for the same;

(iii) to inquire into the tampering of official records, including records relating to land and boundaries, to facilitate illegal mining and identify, as far as possible, the persons responsible for such tampering; and

(iv) to inquire into the overall impact of such mining, trade, transportation and export, done illegally or without lawful authority, in terms of destruction of forest wealth, damage to the environment, prejudice to the livelihood and other rights of tribal people, forest dwellers and other persons in the mined areas, and the financial losses caused to the Central and State Governments.

3. The Commission shall also recommend remedial measures to prevent such mining, trade, transportation and export done illegally or without lawful authority."

5. Justice Shah visited Goa and after calling for and receiving information from the authorities concerned as well as the mining leaseholders, he submitted a report on 15-3-2012 and another on 25-4-2012 to the Ministry of Mines in the Government of India. The reports were tabled in Parliament on 7-9-2012 along with an Action-Taken Report and as a result, the Government of Goa passed an order dated 10-9-2012 suspending all mining operations in the State with effect from 11-9-2012. The Ministry of Environment and Forests (MoEF) of the Government of India acted similarly and kept in abeyance the environmental clearances granted to 139 mines (actually 137 mines - there is some duplication) in the State of Goa by an order dated 14-9-2012.

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

7. Similarly, several mining leaseholders preferred writ petitions in the Bombay High Court for a declaration that the reports given by Justice Shah are illegal and also for quashing the orders dated 10-9-2012 and 14-9-2012 whereby mining operations were suspended and environmental clearances were kept in abeyance. The writ petitions filed in the High Court were transferred to this Court for hearing along with WP (C) No.435 of 2012.

8. This Court heard all these matters and rendered its decision in Goa Foundation v. Union of India on 21-4-2014. Among other conclusions arrived at, it was held by the Court that all the iron ore and manganese ore leases had expired on 22-11-2007. Consequently, any mining operation carried out by the mining leaseholders after that date was illegal. It was also held that all the mining leaseholders had enjoyed a first deemed renewal of the mining lease and for a second renewal an express order was required to be passed in view of and in terms of Section 8(3) of the MMDR Act. For a second renewal of the mining lease, it was held that the State Government must apply its mind and record reasons for renewal being in the interest of mineral

development and the necessity to renew the mining lease. Any decision taken by the State Government should also be in conformity with the constitutional provisions. The decision taken by the State of Goa to grant a mining lease in a particular manner or to a particular party could be examined by way of judicial review. It was also held that the orders dated 10-9-2012 and 14-9-2012 are not liable to be quashed and that they would continue till decisions are taken to grant fresh leases and fresh environmental clearances for mining projects.” (emphasis supplied)

18. The Supreme Court in Goa Foundation-II concluded thus :

“154 - In view of our discussion, we arrive at the following conclusions:

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

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

154.3. The second renewal of the mining leases granted by the State of Goa was unduly hasty, without taking all relevant material into consideration and ignoring available relevant material and therefore not in the interests of mineral development. The decision was taken only to

augment the revenues of the State which is outside the purview of Section 8(3) of the MMDR Act. The second renewal of the mining leases granted by the State of Goa is liable to be set aside and is quashed.

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

154.5. The decision of the Bombay High Court in Lithoferro v. State of Goa (and batch) (2014 SCC Online Bom 997) giving directions different from those given by this Court in Goa Foundation is set aside.

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

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

fresh mining leases. The exercise should be completed by the State of Goa and the Ministry of Environment and Forest as early as reasonably practicable.

154.8. The State of Goa will take all necessary steps to ensure that the Special Investigating Team and the Team of Chartered Accountants constituted pursuant to the Goa Grant of Mining Leases Policy, 2014 give their reports at the earliest and the State of Goa should implement the reports at the earliest, unless there are very good reasons for rejecting them.

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

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

19. The State of Goa, therefore, now had to proceed with the auction of the ore (‘e-auction ore’), which was already extracted; and secondly, initiate the process of issuing fresh mining leases (allotment of blocks) in accordance with the directives of the Supreme Court as per law.

20. What is in issue in this PIL are the problems caused by bulk transport of minerals (iron ore) through mining villages in the mining zone of Goa that have plagued village communities in the past. The petitioner expects the Government to accept their rights to a clean, healthy and pollution free environment as the primary consideration which should guide them while granting transport permissions to the mining companies/transporters of the minerals, rather than the commercial interests of the project proponent/transporters. The grievance is that though statutory provisions are in place to regulate such operations, they are grossly inadequate and worse still poorly implemented. The submission is that poor implementation of norms lead to road deaths, insufferable dust pollution, destruction of roads and water delivery infrastructure, occupation of the road by heavy vehicles from dawn to dusk resulting in the degeneration of quality of life in the villages. It is submitted that with a fresh regime of mining now commencing, it was necessary that the transportation Rules ought to have been comprehensively re-examined especially in the context of findings of the two-year study of environmental impacts of mining done by the Dhanbad Institute of Mines, by the Ministry of Environment. According to the petitioners there is no scientific study of the village routes for sustainable transport before granting the permissions. Thus, it is vehemently urged that the transportation of the ore by means of trucks/tippers will not only disturb the peace and

tranquillity of the villages but seriously affect the safety of the villagers apart from increased pollution which will have an adverse effect on the health of the villagers.

21. As indicated earlier, learned Advocate General submitted that so far as village Mayem is concerned, the grievance is worked out as no transportation will be permitted from this village. It is further submitted that there are adequate safeguards in place in the form of rules, notifications, under the EP Act and also SOPs have been issued pursuant to the interim orders passed by this Court providing for adequate safety measures for safeguarding life and property of the villagers apart from addressing environmental concerns expressed.

22. We completely agree with learned Counsel for the petitioners, that there is bound to be heavy increase of transportation through the village roads as the materials on record indicate. However, in balancing the conflicting rights, we must bear in mind the observations of the Supreme Court in the matter in **Rajeev Suri vs. Delhi Development Authority & Ors.**(supra). Their Lordships made significant observations for striking a just balance between two competing environmental and development concerns. Paragraph 519 to paragraph 528 reads thus :

“519. Indubitably, environment and development are not sworn enemies of each other. It would be an anomalous approach to consider environment as a hurdle in development and vice versa. The entities like EAC and NGT are created to strike a just balance between two competing interests and a time-tested principle of striking this balance is timely invocation of mitigating environmental measures amidst a development activity. True that mere application of certain mitigating measures may not alleviate environmental concerns in all matters and in some circumstances, the project is simply incomprehensible with the environment. But as long as a legitimate development activity can be carried on in harmony with the idea of environmental protection and preservation including sustainable development, the Courts as well as expert bodies should make their best endeavour to ensure that harmony is upheld and hurdles are minimised by resorting to active mitigating measures.

520. The principle of sustainable development and precautionary principle need to be understood in a proper context. The expression “sustainable development” incorporates a wide meaning within its fold. It contemplates that development ought to be sustainable with the idea of preservation of natural environment for present and future generations. It would not be without significance to note that sustainable development is indeed a principle of development, it posits controlled development. The primary requirement underlying this principle is to ensure that every development work is *sustainable*;

and this requirement of sustainability demands that the first attempt of every agency enforcing environmental rule of law in the country ought to be to alleviate environmental concerns by proper mitigating measures. The future generations have an equal stake in the environment and development. They are as much entitled to a developed society as they are to an environmentally secure society.

521. By the Declaration on the Right to Development, 1986, the United Nations has given express recognition to a right to development. Article 1 of the Declaration defines this right as:

“ i. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”

522. The right to development, thus, is intrinsically connected to the preservice of a dignified life. It is not limited to the idea of infrastructural development, rather, it entails human development as the basis of all development. The jurisprudence in environmental matters must acknowledge that there is immense interdependence between the right to development and the right to natural environment.

523. In *International Law and Sustainable Development*, Arjun Sengupta in the chapter “*Implementing the Right to Development*” [*International Law and Sustainable Development*

— *Principles and Practice* (Publisher : Martinus Nijhoff, Edn. 2004) p. 354.] ” notes thus:

“... Two rights are interdependent if the level of enjoyment of one is dependent on the level of enjoyment of the other...”

The concern of the regulatory agencies is to weed out the unsustainable from the development plan and to parallelly ensure that the right to development is not trumping upon any other right. Sengupta further notes:

“... There is an improvement in the right to development only if at least one of the constituent rights improves and no other right deteriorates or is violated, which means the right to development conforms to the principle of the indivisibility of human rights...
[*International Law and Sustainable Development — Principles and Practice* ”

524. The precautionary principle duly mandates that all agencies of the State, including Courts, must make their best endeavour to ensure that precaution is instilled in the process of development. The very requirement of prior EC is born out of this need for precaution. It is a manifestation of the precautionary principle in India and if development work is carried out in furtherance of prior EC and such EC is not vitiated by illegality, it would be a case of proper adherence with the precautionary principle.

525. In matters of balancing between competing environmental and development concerns, the Court has to be project-specific. In environmental matters, even one fact here or there may have the effect of attributing a totally distinct character to the project and accordingly, the scope of judicial review may vary. This sentiment is best reflected in the following words of Professor Schotland [D.C. Circuit Judicial

Conference, *Environmental Protection : Law and Policy*, 2nd Edn. (Cambridge : Cambridge University Press, 2007) p. 122.] who proposed ranking of standards of judicial review according to strictness:

“3. ... I have always thought of scope of review as a spectrum, with de novo at one end, with unconstitutionality at the other end, and in between a number of what I will call “mood-points” or degrees of judicial aggressiveness or restraint, such as preponderance of the evidence, clearly erroneous, substantial evidence on the whole record, scintilla of evidence, abuse of discretion and last, right next to or even into unconstitutionality, arbitrary and capricious. And since these are only “mood-points”, there is considerable room within each for difference.”

526. The proper balance of judicial review in environmental matters in a constantly developing society is a matter of great debate across all jurisdictions. In *Ethyl Corpn. v. Environmental Protection Agency* [*Ethyl Corpn. v. Environmental Protection Agency*, 426 US 941 (1976). Ed. : Cert. denied in *Ethyl Corpn. v. Environmental Protection Agency*, 426 US 941 (1976) against *Ethyl Corpn. v. Environmental Protection Agency*, 541 F 2d 1 (DC Cir 1976).] , the observations of Wright, J. present a just balance. He observed thus:

“There is no inconsistency between the deferential standard of review and the requirement that the reviewing court involve itself in even the most complex evidentiary matters; rather, the two indicia of arbitrary and capricious review stand in careful balance. The close scrutiny of the evidence is intended to educate the court. It must understand enough about the problem confronting the agency to comprehend the meaning of the evidence relied upon and the evidence discarded; the questions

addressed by the agency and those bypassed; the choices open to the agency and those made. The more technical the case, the more intensive the court's effort to understand the evidence, for without an appropriate understanding of the case before it the court cannot properly perform its appellate function. ...”

527. Wright, J. in *Ethyl Corporation* [*Ethyl Corpn. v. Environmental Protection Agency*, 426 US 941 (1976). **Ed.** : Cert. denied in *Ethyl Corpn. v. Environmental Protection Agency*, 426 US 941 (1976) against *Ethyl Corpn. v. Environmental Protection Agency*, 541 F 2d 1 (DC Cir 1976).] then notes the need for realising the limits of judicial function thus:

“But the function must be performed with conscientious awareness of its limited nature. The enforced education into the intricacies of the problem before the agency is not designed to enable the court to become a superagency that can supplant the agency's expert decision-maker. To the contrary, the court must give due deference to the agency's ability to rely on its own developed expertise. The immersion in the evidence is designed solely to enable the court to determine whether the agency decision was rational and based on consideration of the relevant factors. It is settled that we must affirm decisions with which we disagree so long as this test is met....”
(emphasis supplied)

528. They must always look for a careful balance when two equally relevant interests compete with each other. The task may not be easy, but is the only reasonable recourse. For the proper application of these principles, the first and foremost thing to be kept in mind is the nature of the project. In the present case, the subject project is an independent building and construction project wherein one-time

construction activity is to be carried out. It is not a perpetual or continuous activity like a running industry. It is absolutely incomprehensible to accept that a project of this nature would be unsustainable with the needs and aspirations of future generations. Furthermore, the increase in footprint is not shown to be substantial and the inclusion of new Members of Parliament after the delimitation exercise is anyway going to lead to an inevitable increase in footprint (floating though) that cannot be countenanced as a concern here.”

23. We have therefore to look for a careful balance when two equally relevant interests compete with each other. At this juncture itself, we may refer to the MCA No. 239 of 2024 filed by Vedanta Limited. Shri Janak Dwarkadas submitted that Vedanta Limited has been granted Environmental Clearance (EC) to the project for Block – I, Bicholim Mineral Block and Block VII-Cudnem Mineral Block. It is submitted that the EC is granted after following a detailed procedure laid down under the EP Act and the Rules framed thereunder. Our attention is invited to the Notification dated 14.09.2012 published by the Ministry of Environment, Forest and Climate Change, which provides for requirements of prior environmental clearances for matters falling under category 'A' of the Schedule. Shri Dwarkadas submitted that the Expert Appraisal Committee comprises of domain experts. It is submitted that rigorous conditions are imposed in the EC. It is further submitted that transportation is a mechanism

provided under the Expert Appraisal Committee (EAC) regime. It is submitted that the EAC comprises of persons who are outstanding environmental policy experts with wide expertise in the relevant development sector. It consists of only professionals and experts fulfilling the qualifying criteria provided by the notification. It is submitted that a detailed procedure is prescribed for appraisal. A procedure is conducted for public hearing. It is thus submitted that before granting EC, it has to pass the muster of the stringent provisions of the EP Act and the Rules framed therein.

24. It is already indicated by us that we are not examining the challenge to the EC hence we refrain from expressing any opinion to the legality or otherwise of the EC. In appropriate proceedings, such challenge can be gone into. We also make it clear that what is being recorded by us are the assurances accepted by Vedanta in the matter of transportation. We may not be understood to mean that we have examined the legality and propriety of the conditions for transport in the EC and the Consent to Operate ('CTO' for short). The challenge to these conditions in the EC and the CTO regarding the transport and the measures incorporated is kept open for consideration in appropriate proceedings before the appropriate forum as and when a proper challenge to the EC as well as the CTO is made.

25. Shri Dwarkadas was at pains to point out that Vedanta's consent to operate incorporates all the safeguards necessary to ensure that the competing rights of the villagers regarding their safety and environmental concern are properly balanced with that of the right of the project proponent to carry mining operations pursuant to the valid EC. Shri Dwarkadas submitted that Vedanta's affidavit dated 17.06.2024 provides for measures of safeguards to prevent pollution under CTO. On instructions, Shri Dwarkadas submits that Vedanta shall be strictly complying with all conditions of transportation mentioned at serial nos. 13 to 24 of the CTO.

26. The CTO has been granted by the GSPCB under Section 25/26 of the Water (Prevention & Control of Pollution) Act, 1974 and under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981 and Authorization under Rule 6(i) of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules 2016, as amended thereafter. In the EC granted to Vedanta Limited, we find that during the site inspection, certain observations were made by the sub-committee. The observations at item 4 and the reply of the project proponent thereon are relevant, reading thus :

“4. The Project Proponent needs to bypass the public road and also to explore the possibility of increasing the capacity of the truck so as to reduce the no. of trips. The EAC opined that the Project

Proponent needs to revisit the traffic load by considering the cycle time and waiting time. The Project Proponent needs to submit the action plan for strengthening the road and for converting the unpaved road into concrete road.

The Project Proponent submitted the map showing the transportation route comprising of dedicated road corridor and public road. The total travel distance upto Jetty is 5.48 kms (4.54 km dedicated road and 0.94 km MDR-20 Public Road). Traffic load and effective distance between two trucks are as follows :-

S.No.	Transportation working days	Quantity (In TPA)	Tonnes/Day	Trips per day	Mode of transport
1	237	30,00,000	12658	1205	Road
	Total trips per day			1205	

The road width details for various segments are as follows :

Dedicated Road corridor	
3.31 km	1.23 km
12-15 mts wide Road	7 mts wide Road

Further, the Project Proponent submitted the following details :

- Capacity of truck is 10.5 tons as per directives of Dept. Of Mines & Geology, Goa.

- ii. Total Handling per day is 12658 tons/day
- iii. Transportation timings are 6.00 a.m. to 7.00 am, 8.00 a.m. to 12.45 pm and 2.00 p.m to 5.45 pm. Therefore, the effective transportation time is 9.30 hrs.
- iv. Per Hour Handling is : 1332 tons/hour
- v. No. of vehicles per Hour (One Way): 127 vehicles
- vi. No. of Vehicles per Hour (to and fro) : 254 vehicles
- vii. The Speed of vehicle is 25 KMPH and the lead distance is 5.48 kms.
- viii. The time taken for 5.48 km is 13.15 mins for each truck and loading time is 1 min, weighment time at both source location is 2 min, Tarpaulin tying and untying time is 2 min, unloading time 1 min and waiting time 10 min.
- ix. Each truck length is 15'.5" (4.58 m)
- x. Distance from truck to truck is 5 m both side – 10 m
- xi. Each vehicle occupies a min. distance of 14.58 m = ~ 15 m
- xii. The length of road is 5.48 Km = 5480
- xiii. No. of vehicle which can travel on this road for one side = $5480/15=365$, However we would be plying only 127 trucks hence effective distance between two vehicles is 43 m.

The Project Proponent submitted the following mitigation measures for transportation :

- i. Public road is hot mixed and same will be maintained.
- ii. Dedicated road is proposed to be hot mixed in phased manner.
- iii. Entire Dedicated transportation route is surrounded by thick Green Belt

- iv. Transportation vehicles shall be properly maintained to minimize the exhaust emission.
- v. Regular tests shall be carried out to check exhaust emission and PUC certification of transportation vehicles at prescribed interval.
- vi. Transportation trucks will be loaded with prescribed capacity and covered with tarpaulin before leaving mines premises.
- vii. Overloading of the material will be avoided.
- viii. Regular monitoring of the emission levels.
- ix. Over speeding of Vehicle will not be allowed.
- x. Traffic Marshalls shall be provided for regulating movement of vehicles as well as for safety of persons.
- xi. Training will be given to all drivers about safe driving.
- xii. Regular water sprinkling by means five hired water tanker of 10kL capacity on haul road and loading points will be carried out.
- xiii. Used of fixed dust suppression system on haul roads
- xiv. Installation of two wheel washed system (one each at the exit of the dedicated road and jetty exit respectively.
- xv. Manual and mechanised machines for road sweeping.
- xvi. Washing of mine exit points/Junctions (Mayem, Pilgao and Jetty exit area) after transportation hours/at night with water tanker having pipe arrangements
- xvii. Underpass proposed at Mayem junction to prevent interface with public.”

27. By way of a note submitted at the time of hearing, a summary of major compliances ensured by Vedanta are as under:

CTO CONDITION	COMPLIANCE	STATUS
13	The mining unit shall install online noise monitoring station approved by USEPA, TUV or CPCB, CSR or MCERTs at the transportation route near sarmanas in consultation with the Board and connect the same to the Board server within one month of receipt of this Consent and submit compliance report to the Board.	24 x 7 real time online monitoring station connected with GSPCB has been set-up
14	The mining unit shall install CCTV Camera at exit gate from mine towards the jetty to monitor if the trucks are properly covered with tarpaulin before exit and should	Installed Camera shall give the status of compliance by Trucks to GSPCB

	be connected online to GSPCB, within one month of receipt of this Consent to Operate	
16	The trucks/tippers engaged in transportation of ore shall have with atleast six inches free board after filling the cargo box to avoid spillage	This shall be complied with
17	All trucks/tippers engaged in the transportation of ore shall be covered with tarpaulin and the tarpaulin shall be properly fastened to the cargo box ensure the ore does not get air borne or spill on the road.	
20	The mining unit shall provide wheel washing facility for the ore transport vehicles shall be provided at the	Wheel Washing System already set-up

	exit point of the mine	
23	The mining company should submit details regarding transportation of ore mentioning Source, Destination, Qty., No. Of trips (tipper trucks), Route (names of villages through which transportation takes place), Remarks	This shall be complied with

28. Shri Dwarkadas submitted, on instructions, that Vedanta is bound by the aforesaid conditions and the mitigating measures provided for transportation. Furthermore, even the CTO has provided for conditions for transportation mentioned at serial nos. 13 to 24. In the affidavit dated 17.06.2024 filed by Vedanta, it is assured that all the conditions pertaining therein will be strictly adhered to. Statements in the affidavit and the assurances aforementioned are accepted as an undertaking to this Court.

29. This Court by an Order dated 22.04.2024, directed the GSPCB to file an affidavit pursuant to the inspection carried out and place a status report on record. So far as Vedanta is concerned, the route applied for permission was NSP-1, Top-NBP Junction-NBP-Matwada Junction-Sarmanas jetty. As directed by DMG, the Board officials inspected the site along with unit representative on 03.05.2024. Following were the recommendations for pollution control safeguard:

“Recommendations for pollution control safeguard

- The truck/tippers engaged in transportation of ore shall have sufficient free board after filling the cargo box to avoid spillage.
- All trucks/tippers engaged in the transportation of ore shall be covered with tarpaulin and the tarpaulin shall be properly fastened to the cargo box to ensure the ore does not get air borne or spill on the road.
- In case of break down of loaded trucks/tippers unloading of ore at the road side shall be strictly avoided.
- The roads within mining lease areas shall be sprinkled with water to suppress dust pollution.
- Spillage of ore on the public roads shall be removed immediately on occurrence.
- The mining company should make suitable arrangement for sweeping of roads affected due to transportation of iron ore.
- The mining firm should manage the daily trips in staggered manner in consultation with DMG, so that traffic congestion is avoided at major junctions.
- The Board shall carry out monitoring along the route through the Ministry of Environment, Forests and Climate

Change approved lab and monitoring charges shall be recovered from the transporters/mining firms as per actual. The Transportation/mining firms shall pay an advances of Rupees Three lakhs towards the monitoring charges.

- The Department of Mines to provide the transportation route for enabling the Board to identify suitable monitoring locations. The Department may also ensure power supply for the monitoring stations.
- Speed of ore carrying trucks should be controlled by online GPS monitoring done by DMG through its authorized agency.
- Road sweeping machines may be jointly/severally developed in hotspot areas/ stretches.
- The shoulders of the mining transport roads may be tarred whenever needed.
- DMG may ensure maintenance of public road in the mining area with respect to repair of potholes/widening of roads whenever necessary.
- The Operator is required to carry out manual wheel washing in order to clean the wheels of the trucks and subdue dust arising out of it whenever wheel washing stations are not installed.
- In case the air quality standards are breached the transport frequency should be reduced and the transporters to be levied polluter pays penalty.

Permission can be granted to above mentioned route.”

30. Shri Dwarkadas submitted that the Project Proponent-Vedanta is accepting all these safeguards and assures this Court on instructions that the conditions will be strictly followed and implemented. The learned Advocate General as well as learned Counsel for the implementing agencies assures that the monitoring will be strict and

effective and not an eye wash. We accept these assurances as undertaking to this Court.

31. It is submitted by Shri Dwarkadas that in any case the transportation of Vedanta is through a dedicated corridor and not through village roads. The stretch of 0.9 kms though not a part of dedicated corridor is not a village road. Learned Senior Advocate submitted that they are even willing to provide for additional safeguards for this non-village/Major District Road of 0.9 kms by deployment of traffic marshals to avoid congestion and inconvenience to the public at large on arrival of the ferry. Whether to accept these additional safeguards is something which the DMG and transport authorities shall look into and take an informed decision depending on the ground conditions.

32. MCA No.1416/2024, is an intervention filed by Shri Shankar Chandrakant Jalmi and others in Vedanta's application. Upon hearing Mr. Frias, learned Counsel for the interveners, we are satisfied that the grievance about the road being illegally constructed through the lands of the interveners cannot be made a subject matter of this PIL Petition as and by way of an intervention application. It is for the Applicant-intervener to resort to appropriate remedies available in law. If any authority is required in support of this view, we may refer to the decision of the Supreme Court in **Saraswati Industrial Syndicate**

Ltd. vs. Commissioner of Income Tax, Haryana, Rohtak⁷. In paragraph 12, Their Lordships held that the only purpose of granting an intervention application is to entitle the intervener to address arguments in support of one or the other side. Keeping all contentions open with liberty to avail of appropriate remedies in accordance with law, the intervention application is disposed of.

33. Let us now examine the measures and safeguards provided for transportation of 'e-auction ore'. A meeting was convened by DMG along with the Officials of GSPCB, Transport Department, Police Department, Stakeholders, Transporters, Panchayat Representatives on 29.01.2024 at 3.30 p.m. It was decided that the DMG and GSPCB should mutually devise a Standard Operating Procedure (SOP) for grant of route approvals for transportation of ore through village roads. The Standard Operating Procedure (SOP) for grant of route approvals for transportation of ore through village roads, reads thus :

“1. The transporter will first approach the Directorate of Mines and Geology for approval of the route of transportation. In their application they shall indicate the approximate width of the road and facts about number of houses along the route and availability of alternate route. The Directorate of Mines and Geology will examine the applications and decide upon the route to be allowed for transportation. Upon such approval, the transporter

will apply to the GSPCB for setting up monitoring stations on the route. After the GSPCB sets up the stations, the transporter will then apply to the DMG for transit permits, which shall be accordingly decided by DMG.

2. The transporter upon receiving transit permit shall ensure that all conditions of transportation are adhered and complied. All trucks shall be registered with the Department and fitted with GPS.

3. GEL shall continuously monitor Vehicle speed and any Violation (above 40 km/hr) shall entail penalty i.e. Trucks shall be blocked for 3 days and further as per the Order dated 26/04/2016.

4. On the Bhumija Potal GEL through VTS System shall ensure that the total number of trips shall be restricted per Operator on the route to min 20 and maximum 40 per hour.

5. The road congestion shall be monitored by GEL on Bhumija Ore Monitoring System on a real time basis and accordingly trips shall be restricted.

6. Intimation about permitted transport shall be made to SP. North, SP. South and SP Traffic informing them that transporter has to strictly follow the Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013, Order of the Directorate of Mines & Geology dated 26/04/2016, check whether the above conditions are followed by the Transporters and monitor the same.

7. The timing of the Ore Transportation along the designated route should be from 8.00 am to 1.00 pm

with a break from 1.00 pm to 2.00 pm and then transportation can continue from 2.00 pm to 5.45 pm from the source location.

8. GEL should ensure that no trip sheets are generated beyond the prescribed time so that transportation of Ore happens only within the specified time.”

34. Apart from the aforesaid, there are in place “The Goa (Prevention of Illegal Mining Storage and Transportation of Minerals) Rules 2013, published in the Official Gazette, of the Government of Goa, dated 17.10.2013. Rule 17 under Chapter V deals with Regulation of Transport and Extraction. The Regulation provides for various stipulations regarding transporting the ore. These Rules shall be scrupulously followed and measures provided effectively monitored. Rule 23 provides for reasonable restrictions on transport reading thus :

“23. Reasonable Restriction on Transport.- The Government shall have power to impose reasonable restrictions, such as, restricting the number of carriers to be permitted for transport of mineral, fixing the maximum number of years for using carriers for mining transport, deciding a cut off date after which the carrier registered with Transport Department shall not be registered for transportation of the mining ore or any other similar restriction that may be necessary to ensure smooth

flow of traffic in the State, to counter congestion on State roads, for public safety, to regulate damage to ecology and environment of the State due to haphazard movement of trucks or vehicles or due to any other mode of transport authorized to carry ore including barges.”

35. Our attention is also invited to the instructions containing route safety in the matters concerning transportation on road issued by the DMG on 26.04.2016. The instructions are for strict compliance by the truck owners, machinery owners, leaseholders, traders, end users, etc. These instructions are issued in exercise of powers under the Goa (Prevention of illegal Mining, Storage and Transportation of Minerals) Rules, 2013 and all other powers enabling in this behalf. The instructions are thus :

“INSTRUCTIONS CONCERNING ROAD SAFETY
IN MATTERS CONCERNING TRANSPORTATION
ON ROAD

Following instructions are issued to all Truck Owners, Machinery Owners, Leaseholders, Traders, Endusers, etc. for strict compliance in exercise of powers under the Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013 and all other powers enabling in this behalf:

1. Since Hon'ble Supreme Court of India in Writ Petition No. 435/2012 in order dated 21/04/2014 directed the State Government to strictly enforce the Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013, as such in exercise of power under Rule 17(10) of Goa (Prevention of Illegal Mining, Storage and

Transportation of Minerals) Rules, 2013, the speed limit for vehicles used for transportation of minerals is fixed at 40 km/hr.

2. The upper speed limit is applicable to the trucks registered with department irrespective of the facts whether it is involved in transportation of minerals or is driven for any other purpose. The speed limit shall be applicable to all such registered vehicles throughout the State of Goa and throughout the year so that confidence is reposed in the citizen that such vehicles shall not endanger the lives of other commuters on road.

3. The software with the help of VTS device fitted on transportation vehicles shall automatically debar all the trucks found to be exceeding the speed limit for the period mentioned as under:

- (1) 1st Violation: Debarred upto 1 day
- (2) 2nd Violation: Debarred upto 3 days
- (3) 3rd Violation: Debarred upto 7 Days
- (4) 4th Violation: Debarred upto 10 days
- (5) 5th Violation: Debarred upto 15 days
- (6) 6th Violation: Debarred upto 30 days
- (7) 7th Violation: Debarred upto 60 days
- (8) 8th Violation: Debarred upto full season

4. If in exigency situation if the truck exceeds limit beyond 40 km/hr. upto 50 km/hr., it shall not be treated as wilful violation of the speed limit. For this purpose any increase in speed of vehicle above 40 km/hr. up to 60 second at a time shall be presumed to be such exigency and shall not be treated as wilful violation of speed limit.

5. The list of violators shall be displayed on the website in the late evening of the same day or on next day.

6. It shall be the duty of the Leaseholder/Trader/end User, Transportation Contractors etc. not to employ such debarred vehicles' for any activities concerning Major Minerals like using such vehicles for internal movements within lease or jetty or storage points.

7. If the debarred vehicle is used for transportation of the minor minerals like sand, laterite stones, rubbles, murram etc. during when it was debarred, such vehicle may be made liable for exorbitant fines' so also person who employed such vehicles.

8. Since debarring of trucks is done by use of software, the Social Status, Political Status or Economical Status either of the truck owner or driver shall not influence either monitoring or process of debarring trucks.

9. The registration of vehicles with the department is voluntary, as such once registered with the department, the owner and driver of the truck or machinery shall be governed by provisions of the MMDR Act, 1957 and rules made therein, so also administrative instructions issued by Department from time to time.

10. Irrespective of financial arrangements or other commercial decision with regards to employing of vehicle between Lease Holders, traders and endusers etc. and owner of vehicles or machinery, the department shall take serious note if any attempt by owner of vehicle or through others' to illegal stop the transport. The department reserves the right to take stern action against such person if they are found to have stopped or abated legal transportation in accordance with law which is authorised by this department.

11. The department shall monitor all the vehicles registered with it throughout the year, as such VTS device of all the vehicles registered with department shall be active throughout the year irrespective of the fact whether it is mining season or otherwise.

12. The choice of vehicles to be used for transportation concerning the particular lease holder, traders or end users shall be exclusively left to the choice of lease holders, traders or end users. As such mere registration of vehicle with department shall not give any rights to any of the vehicle owner

to get business of transportation as a matter of right from the department/lease holder, end user etc.

13. The vehicle engaged for one lease hold area/end user shall be expressively barred for undertaking transportation or other allied activities for other lease holder/end user on the same day.

14. The time for transportation of minerals though starts from 6 a.m. to 10 p.m. the same may be modified from time to time at different locations' taking into accounts the usage of infrastructure facilities by members of public, so also all school going children etc.

15. To decongest the roads it is hereby ordered that there shall be equal way bridges at loading and unloading points.

16. Proper care shall be taken by the owner and driver of the vehicle to cover the minerals with turpentine etc. so that no wastage of mineral takes place at the same time dust pollution is avoided.

17. The Lease Holders or transportation contractors, end users shall ensure that before vehicles leaves their premises, the tyres of the vehicles are washed properly so that dust pollution on the road due to tyres 'can be avoided.

18. The trucks owners shall ensure that speedometer of vehicles are in good condition so as to enable the driver to control the speed of the vehicle and drive within the speed limit.

19. When any violation shall be noticed, the message of debarring of the truck shall be sent to all the owners/drivers on mobile numbers provided by them to department for over speeding. The duration for which they are debarred shall be intimated by auto generated SMS and when such message is received, it shall be the duty of such owner/driver not to use vehicle for any mining related activity during such period, any wilful defines of such instruction shall be solely attributed to such owner/driver and

employing of such debarred vehicle shall be liable for further grievous action both monitory and otherwise.

20. In case when vehicle registered with the department meets with an accident, it shall be presumed to be at fault and strict action shall be initiated against such vehicle. It shall be the duty of the vehicle owner to prove his innocence.

21. It is hereby clarified that whenever the old vehicles shall be replaced, they shall be replaced with new vehicles of capacity of at least 15 tons.

The above instructions are issued not only for implementation of the Goa (Prevention of illegal Mining, Storage and Transportation of Minerals) Rules, 2013 but also for honouring directions of the Hon'ble Supreme Court of India. The said action is initiated so that confidence is reposed in the minds of general public that the transportation of ore is not only in compliance with legal requirements but also keeping in mind safety of the general public, which is of paramount importance.

Since actions are initiated by the help of software with electronics monitoring devices there is no scope of human intervention for favouring any person or against any person as such should be taken into right spirit so that necessary corrective majors are taken.

Place: Panaji

sd/-
(Prasanna A.

Acharya)

Dated: 26th April, 2016. Director of Mines & Geology

(emphasis supplied)

36. The underlined portion of the instructions is significant. DMG is conscious of the directions of the Supreme Court. It also has in mind safety of the general public. As far as back as in 2016, the need

was felt to use software to do away with the scope for any human intervention. As experts concerned with the safety of citizens, adopting modern technology, upgrading software should be routine. To this end, we expect the DMG and GSPCB to be proactive. The suggestions of learned Counsel for the petitioners which we have dealt with in the later part of this judgment assumes relevance and need to be seriously looked into. As an expert body, we expect the DMG and GSPCB to examine these suggestions and depending on the scientific study enforce them if found useful.

37. In respect of transportation of 'e-auction ore', vide Corrigendum dated 06.06.2023, the DMG has imposed the following restrictions on traffic movement on different transportation routes. Such restrictions read thus:

CORRIGENDUM

Subject: Transportation of Ore

This Department vide Memorandum No.03/66/2023/Major/Mines/194 dated 05/04/2023 had put restriction on number of trips per hour to avoid traffic congestion on village roads. This restriction stands amended to the extent given below:

The traffic movement on different transportation routes will be monitored by Goa Electronics Limited on real time basis and the number of trips will be staggered between

20 trips to 40 trips per hour depending on the traffic congestion on the roads.

Sd/-

(Dr. S. Shanbhogue)
Director & Ex-officio Joint Secretary

38. Now we come to OM dated 29.10.2014 issued by the Ministry of Environment, Forests and Climate Change, as regards the impact of mining activities on habitations-issues related to the mining Projects wherein habitations and villages are the part of mine lease areas or habitations and villages are surrounded by the mine lease area. The said OM provides thus :

OFFICE MEMORANDUM

Subject: Impact of mining activities on Habitations-Issues related to the mining Projects wherein Habitations and villages are the part of mine lease areas or Habitations and villages are surrounded by the mine lease area- Regarding.

The Ministry has been receiving mining proposals wherein the habitations and villages are part of mine lease areas or habitations and villages are surrounded by the mine lease area.

2. To discuss the impact of mining activities on habitations and to develop a code of practice on these issues, a meeting was held under the Chairmanship of Shri M.S. Nagar, Chairman EAC (Non Coal Mining Sector) on 23.06.2014. After detailed deliberations by the Experts, the following suggestions were made as part of mitigation

measures to avoid adverse impact of mining operations in the case of such habitations/villages:-

a) The Project Authority shall adopt Best Mining Practice for the given mining conditions. In the mining area, adequate number of check dams, retaining walls/structures, garland drains and settling ponds should be provided to arrest the wash-off with rain water in catchment area.

b) The natural water bodies and or streams which are flowing in and around the village should not be disturbed. The Water Table should be nurtured so as not to go down below the pre-mining period. In case of any water scarcity in the area, the Project Authorities have to provide water to the villagers for their use. A provision for regular monitoring of water table in open dug well located in village should be incorporated to ascertain the impact of mining over ground water table.

c) The illumination and sound at night at project sites disturb the villages in respect of both human and animal population. Consequent sleeping disorders and stress may affect the health in the villages located close to mining operations. Habitations have a right for darkness and minimal noise levels at night. The Project Proponents (PPs) must ensure that the

biological clock of the villagers is not disturbed by orienting the floodlights/masks away from the villages and keeping the noise levels well within the prescribed limits for day/night hours.

d) The Project Authority shall make necessary alternative arrangements, where required, in consultation with the State Government to provide alternate arrangements for livestock grazing. In this context, Project Authority should implement the directions areas for the Hon'ble Supreme Court with regard to acquiring grazing land. The sparse trees on such grazing ground, which provide mid-day shelter from the scorching sun should be scrupulously guarded against felling, lest the cattle abandon the grazing ground or return home by noon.

e) Where ever blasting is undertaken as part of mining activity, the Project Authority shall carry out vibration studies well before approaching any such habitats or other buildings to evaluate the zone of influence and impact of blasting on the neighbourhood. Within 500 meters of such sites vulnerable to blasting vibrations, avoidance of use of explosives and adoption of alternative means of mineral extraction, such as ripper/dozer combination/rock breakers/surface miners etc. should be seriously considered and practiced

wherever practicable. A provision for monitoring of each blast should be made so that the impact of blasting on nearby habitation and dwelling units could be ascertained. The covenant of lease deed under Rule 31 of MCR 1960 provides that no mining operations shall be carried out within 50 meters of public works such as public roads and buildings or inhabited sites except with the prior permission from the Competent Authority.

f) Main haulage road in the mine should be provided with permanent water sprinklers and other roads should be regularly wetted with water tankers fitted with sprinklers. Crusher and material transfer points should invariably be provided with Bag filters and or dry fogging system. Belt- conveyors should be fully covered to avoid air borne dust.

g) The Project Authority shall ensure that the productivity of agricultural crops is not affected due to mining operations. Crop Liability Insurance Policy has to be taken by the PP as a precaution to compensate for any crop loss. The impact zone shall be 5km from the boundary of mine lease area for such insurance policy. In case, several mines are located in a cluster, the Associations of owners of the cluster mines, formed inter-alia, to sub-serve such an

objective, shall take responsibility for securing such Crop Liability Policy.

h) In case any village is located within the mining leasehold which is not likely to be affected due to mining activities during the life of mine, the Expert Appraisal Committee (EAC) should consider the proposal of Environmental Clearance (EC) for reduced mining area. The Mining lease may be executed for the area for which EC is accorded. The mining plan may also be accordingly revised and required stipulations under the MMDR Act, 1957 and MCR, 1960 met.

i) Transportation of the minerals by road passing through the village shall not be allowed. A 'bypass' road should be constructed (say, leaving a gap of at least 200 meters) for the purpose of transportation of the minerals so that the impact of sound, dust and accidents could be mitigated. The PP shall bear the cost towards the widening and strengthening of existing public road network in case the same is proposed to be used for the Project. No road movement should be allowed on existing village road network without appropriately increasing the carrying capacity of such roads.

j) Likewise, alteration or re-routing of foot paths, pagdandies, cart roads, and village infrastructure/public utilities or

roads (for purposes of land acquisition for mining) shall be avoided to the extent possible and in case such acquisition is inevitable, alternative arrangements shall be made first and then only the area acquired. In these types of cases, Inspection Reports by site visit by experts may be insisted upon which should be done through reputed Institutes.

k) As CSR activities by Companies including the Mining Establishments has become mandatory up to 2% of their financial turn-over, Socio Economic Development of the neighborhood Habitats could also be planned and executed by the PPs more systematically based on the 'Need based door to door survey' by established Social Institutes/Workers on the lines as required under TOR. "R&R Plan/compensation details for the Project Affected People (PAP) should be furnished. While preparing the R&R Plan, the relevant State/National Rehabilitation & Resettlement Policy should be kept in view. In respect of SCs/STs and other weaker sections of the society in the study area, a need based sample survey, family-wise, should be undertaken to assess their requirements, and action programmes prepared and submitted accordingly, integrating the sectoral programmes of line departments of the State Government. It may be clearly brought out whether the

village located in the mine lease area will be shifted or not. The issues relating to shifting of Village including their R&R and socio-economic aspects should be discussed in the EIA report."

3. The matter was examined in the Ministry and accordingly, it has been decided that the above mentioned conditions at para-2 (a-k) may be included as a condition of Environmental Clearance letter to mitigate the adverse impact of mining operations in the case of such habitations/villages.

4. This issues with the approval of Competent Authority." (emphasis supplied)

39. It is therefore not as if transportation of the ore through village roads is completely prohibited as fairly submitted by the learned Counsel for the petitioner. Moreover, the aforesaid SOPs/measures are put in place to mitigate the adverse impact of mining operations in the case of such habitations/villages. Learned Counsel for the petitioners fairly submitted that the spirit of the OM dated 29.10.2014 is imbibed in the SOPs issued by the authorities from time to time. The safeguards imposed by way of SOPs, instructions, Rules and Regulations before and after filing of the PIL accords with the spirit of the OM dated 29.10.2014. These measures be strictly implemented.

40. Learned Counsel for the petitioners made a fervent plea that the number of trips per hour be reduced and that there should be real time monitoring about the impact of pollution caused as a result of such transport. Learned counsel submitted that so far as transport is concerned, as a result of this Court's intervention, the SOP was evolved jointly by the DMG and the GSPCB. Learned Counsel submitted that the timing of ore transportation should be from 9.00 a.m. instead of 8.00 a.m. to 1.00 p.m. as per the SOP condition no.7. It is submitted that time period of 8.00 a.m. to 9.00 a.m. is the peak time for people travelling, large number of children going to school, etc. It is submitted that heavy truck movement is dangerous for human safety and it would seriously impede and inconvenience the day to day travel of a large number of people during this period from 8.00 a.m. to 9.00 a.m. It is then submitted that the total number of trips be restricted to the minimum or less than 20 trucks per hour and not the upper cap of 40 trucks per hour. It is submitted that no technical study has been carried out for the capacity of village roads and the figure proposed in the SOP is an adhoc figure not backed by data. The constant movement of the trucks would be hazardous for the locals. It is requested that the total number of trips ought not to be higher than 20 (load) trips per hour.

41. So far as monitoring of ore transportation operation by GSPCB and DMG is concerned, learned Counsel for the petitioners submitted that the monitoring of ore transportation is proposed to be done under the new regime i.e. installation of monitoring stations along the ore transportation route, readings of air quality taken twice a week and averaged out for 24 hours and results obtained after six days. She submits that the use of 24-hour ambient air quality monitoring data for truck transport of ore is wholly inappropriate since the truck transport does not happen over a 24-hour period as is the case with an industrial unit working three shifts. Thus, while the actual transportation period in which air pollution levels are higher are approximately 8 hours only, these air pollution readings are merged into the readings captured over the period of 24 hours, which results in the air pollution levels being averaged out and almost always being within permissible limits on account of no major activity taking place in the balance 16 hours (i.e. of non transportation). According to learned Counsel, the average pollution level readings are thus deemed to be within the norms (Ambient Air Quality for Residential Areas). Learned Counsel for the petitioners suggested that, (a) the monitoring of air pollution needs to be done daily and exclusively within the ore transportation timings and (b) monitoring should be in the nature of real time, online monitoring, with the equipment linked with the PCB servers and Panchayat. Learned Counsel submitted that at present the

monitoring system neither indicates the true picture of dust pollution levels during ore transportation nor does it enable the Board to respond quickly by reducing the transport or shutting it down temporarily and more focused method is required to achieve proof of air pollution and most importantly, enable the Board to conduct what is actually “point source” monitoring. It is further submitted that while the movement and timing of trucks is already subject to real time monitoring online by the DMG, the measurement of pollution levels (in terms of PM10 and PM2.5) is available only six days after the actual events, due to outdated technology. Learned Counsel submitted that with the outdated system, the chance of policy intervention and quick action being taken against excessive pollution is ruled out.

42. Learned Counsel for the petitioners urged that the need of the hour is to ensure the updation of pollution monitoring technology to keep up with scientific advancements. According to her, Real Time monitoring of air pollution levels will enable the Pollution Control Board to swiftly take action in the event air pollution levels are breached on a particular day. The petitioner wants this Court to recommend to the Board to invest in and use low-cost air quality monitoring for dust pollution in village settlements and crowded roads in the forthcoming season itself, commencing September 2024. It is

submitted that the costs may be recovered from the transporter. It is submitted that the transportation of 'e-auction ore, which is actually never ending process will always be an ongoing phenomenon. Learned Counsel urged that the Board must take a proactive approach while entering a new phase of mining. It is submitted that trials of the new, low-cost electronic sensor-based air quality technologies (also used by Govt. Pollution Control Boards in Rajasthan, Maharashtra and - Karnataka) should be started during the monsoon itself, so that the difference between pure air and polluted air will be obvious, if pollution is generated by this activity. The low-cost systems suggested (or any other sensible equivalent) would enable the person at the monitoring station /P.C.B. officer to immediately shut down the activity or warn the transporter (and connected leaseholder), if the PM standards (100 for PM₁₀ and 60 for PM_{2.5}) are breached. This according to the learned Counsel would be similar to the real time action that the D.M.G. states it will take if the number of trucks deployed is in violation of the number permitted, or if stipulated speed levels are exceeded. The petitioners have provided details about some of the low cost air quality monitoring device which has been deployed in various cities. Learned Counsel suggested that 'ATMOS' real time Air Quality Monitoring Device, developed by the research team at IIT Kanpur is useful. The features of this device are :

- It enables real time monitoring of PM 1, PM 2.5 and PM 10 levels.
- The average cost per unit is Rs,30,000/-
- It has an inbuilt GPRS module and does not require additional WIFI/network setups.
- Monitoring data is transmitted real time and is accessible on an online dashboard.
- On a full charge, the device can monitor air levels for a period of 8 hours.

43. Pursuant to the orders passed by this Court, we find that the DMG and the GSPCB have suggested measures and put SOPs in place which are mitigating measures. We have no manner of doubt that the GSPCB and DMG will adopt a proactive approach in embracing modern technology which will go a long way in striking a just balance between two competing interests as the time tested principle of striking this balance is primary invocation of mitigating measures amidst such activity. We have no manner of doubt that the suggestions made by the learned Counsel for the petitioners which we find worth considering will be given due weightage. The GSPCB as an expert body should make best possible endeavor to ensure that harmony is upheld and hurdles for the citizens are minimised by resorting to active mitigating measures. The suggestions of the learned Counsel for the petitioners be given serious consideration by

the authorities. It is the primary duty of the expert agencies to ensure a right balance and we expect that a proactive approach be adopted in the best interest of the villagers.

44. The DMG and GSPCB to ensure that the measures aforesaid are strictly monitored and implemented in its true letter and spirit. Any violation be dealt with firmly.

45. We thus find from the materials that the expert bodies like GSPCB and the DMG have issued the SOPs and imposed necessary safeguards in the transportation of the 'e-auction ore'. It is not possible for us to substitute our opinion for that of the expert body like the GSPCB and DMG. The recommendations and decision of the DMG and GSPCB cannot be undermined in a light manner and due deference must be accorded to expert agencies when the decisions do not attract the taint of legal unjustness/infirmary. We, however, feel the need to record that the mitigating measures must be strictly observed by the project proponent/transport operators in letter and spirit during the transportation of the ore. They shall ensure regular monitoring. Any infraction be dealt with seriously. The suggestions made by the petitioners be given due weightage by the GSPCB and DMG. The GSPCB and the DMG should make every possible endeavour to strike a just balance in the conflict of competing interests by resorting to modern techniques amidst the transportation activity.

46. We find it necessary to direct that a proper study be carried out by preparing a report specific to each route permitted by DMG and GSPCB for transportation of ore through the villages on the basis of carrying capacity of each road. The DMG and GSPCB undoubtedly will have to consider the length of the route, number of houses/hamlets, situated on the route with the study of the population enroute, the details of schools or other such activities that may exist along the route apart from other factors while taking a decision on granting transport permission based on the carrying capacity set down for each route. This will accord with the spirit of the OM issued by the Ministry of Environment. The DMG and GSPCB shall, as far as possible, monitor the trucks on each route on Real Time basis, install CCTV cameras connected to DVR devices at Panchayat Ghars and/or public schools and/or the office of the GSPCB and DMG to enable the DMG/GSPCB and/or Panchayat officials or other designated officials to monitor and observe the movement of trucks carrying such ore along the route.

47. The DMG and GSPCB shall as far as possible install pollution monitoring devices of the nature that may upload information/data to the server of the DMG and GSPCB in Real Time to enable the Departments to monitor the air quality along the designated routes in Real Time and to arrest the movement of trucks, if required to bring air pollution to within permissible norms.

48. We reserve the liberty of the petitioners/any of the affected person or in public interest to approach this Court in case of difficulty in the implementation of the aforesaid measures, breach of any conditions or for any other genuine cause concerning the transport activity at any stage when necessary.

49. The PIL Writ Petition is disposed of in the above terms. No order as to costs.

VALMIKI MENEZES, J.

M. S. KARNIK, J.