

(2013) 11 SC CK 0003

In the Supreme Court Of India

Case No : Writ Petition (C) No. 435 of 2012 with W.P. (C) No. 99 of 2013, W.P. (C) No. 184 of 2013, T.C. No. 136 of 2013 (Arising out of T.P. (C) No. 8 of 2013) , T.C. No. 133 of 2013 (Arising out of T.P. (C) No. 230 of 2013) , T.C. No. 131 of 2013 (Arising out of

Goa Foundation

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2013) 14 SCALE 20 : (2013) 6 SCC 738

Hon'ble Judges : Surinder Singh Nijjar, J;Fakkir Mohamed Ibrahim Kalifulla, J;A.K. Patnaik, J

Bench : Full Bench

Advocate : Prashant Bhushan

Final Decision : Dismissed

Judgement

1. On 05.10.2012, this Court while issuing notice in the Writ Petition had directed that till further orders all mining operations in the leases identified in the Shah Commission's Report and transportation of Iron Ore and Manganese Ore from the mines and stockyards in the State of Goa shall remain suspended, as recommended in the Commission's Report. In the course of hearing of the Writ Petition and all other connected matters, we were informed by the learned Advocate General of the State of Goa, Mr. Atmaram N.S. Nadkarani, through his written arguments, that presently approximately 11.48 million tons of excavated mineral ores are lying in different mines and stockyards in the State of Goa, of which inventory has been fully taken by the Department of Mines and Geology. Government of Goa. Mr. Nadkarani submitted that these excavated mineral ores cannot be put back and if these are allowed to remain in the mines/stockyards, the environment would be polluted and, therefore, the excavated mineral ores should be allowed to be transported as early as possible, now that the Goa (Prevention of Illegal Mining. Storage and Transportation of Minerals) Rules, 2013

have been framed and notified.

2. Mr. Prashant Bhushan, Learned Counsel for the Petitioner, submitted that the excavated mineral ores lying in the mines/stockyards in the State of Goa may be allowed to be transported, but should not be allowed to be exported and instead may be sold by e-auction to local industrial consumers in the country, who need Iron Ore for their industries. Mr. Krishnan Venugopal, Learned Counsel for some of these steel industries from Karnataka (interveners) submitted that the excavated iron ores be sold to these steel industries in Karnataka, which have run out of iron ores for their steel plants.

3. Mr. Harish Salve, Amicus Curiae, on the other hand, submitted that:

(a) A Committee (on the pattern of Monitoring Committee constituted for Karnataka) may be constituted by this Hon"ble Court and made responsible for (i) verification of the already mined mineral available at the mining head, jetties etc. (ii) sale of mineral through e-auction (iii) receipt of sale proceeds along with applicable royalty, taxes and other charges (iv) release of sold mineral with appropriate checks and balances (v) keeping the sale proceeds excluding the applicable taxes, royalty etc (to be deposited by the Monitoring Committee with the concerned authorities) in the designated account(s) in nationalized bank and (vi) any other issues related with verification of mineral, e-auction, release of mineral, receipt of money and related matter.

(b) the sale proceeds/export proceeds retained by the Monitoring Committee may be released only after a final decision regarding legality of the iron ore is taken and after deducting the value of the illegally removed mineral from the over burdened dumps etc., and after obtaining permission by this Hon"ble Court; and

(c) the Monitoring Committee may comprise (a) a senior officer of the Mines Department, nominated by the Chief Secretary Goa, not below the rank of Joint Secretary to the Government of India (ii) Dr. U.V. Singh, Member, Monitoring Committee for Karnataka, and (iii) Addl. PCCF, Regional Office, MoEF, Bangalore.

4. After considering these submissions, we direct that the inventory of the excavated mineral ores lying in different mines/stockyards/jetties/ports in the State of Goa, made by the Department of Mines and Geology of the Government of Goa will first be verified and thereafter the whole of the inventorised mineral ores will be sold by e-auction and the sale proceeds (less taxes and royalty) will 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. This entire process of verification of the inventory, e-auction and deposit of sale proceeds in fixed deposits will be monitored by a Monitoring Committee comprising (1) a Senior Officer of the Mines Department nominated by Chief Secretary, Government of Goa, not below the rank of a Joint Secretary to the Government of India, (2) Dr. U.V. Singh, Additional Principal Chief Conservator of Forests, Karnataka Forest Department,

who was a Member of the Monitoring Committee for a similar exercise in the case of sale of mineral ores from the State of Karnataka, and (3) Mr. Sheikh Naimuddin, Indian Revenue Services (Retired) and Former Member of the Central Board of Direct Taxes and Special Secretary to the Government of India, New Delhi. Mr. Sheikh Naimuddin (who has retired) will be entitled to a remuneration equivalent to the last pay drawn by him for the period he works as a Member of the Monitoring Committee and the other two Members will be paid their salary (as if they are on duty) during the period of their work as Members of the Monitoring Committee, The Members of the Monitoring Committee will also be entitled to all travel allowances as per actuals and daily allowances at the rates applicable to Secretary, Government of India, for their work as members of the Monitoring Committee and will be provided with secretarial assistance by the State Government of Goa. The remuneration and allowances of the Monitoring Committee will be paid by the State of Goa for the time being and will be reimbursed to the State Government of Goa out of the sale proceeds of the mineral ores after the judgment of this Court in this Writ Petition. The Monitoring Committee will ensure that the accounts of the sale of excavated ores for each lease is maintained and will submit an interim report by 15.02.2014.

5. In course of the arguments, Mr. Prashant Bhushan, Learned Counsel for the Petitioner, submitted that principles of sustainable development and inter-generational equity as part of the fundamental right under Article 21 of the Constitution of India require that a cap should be put on the annual excavation of iron ore from different mines in the State of Goa after taking into account the need to conserve the iron ore resources for future generations and the carrying capacity of the State of Goa for mining and transportation of mineral ores.

6. Mr. Nadkarni, learned Advocate General of the State of Goa, also referred to these principles in the Goa Mineral Policy, 2013 as notified in the Official Gazette of the Government of Goa published on 28.09.2013. Relevant portions of the Goa Mineral Policy, 2013 are extracted hereinbelow:

11. Capping: Based on carrying capacity of Public Roads and to protect inter-generational equity Capping: Until the road capacity improves there shall be a gross capping of 45 Million Tons per annum on the available transportation using public roads. Additional capacity without use of public road or using dedicated corridor will not form part of this capping.

* Inter-generational equity capping shall be decided by the State Government depending upon and pursuant to the report of the environmental audit/EIA study by NEERI. Until then the capacity of 20 Million Tons for fresh excavation and 25 Million Tons for dumps, shall be on ad hoc capacity.

* Such Capping shall be areawise and based on capacity of the road.

* Such road Capacity to be determined by a Committee to be headed by Principal Secretary (Mines).

7. Mr. Harish Salve, learned Amicus Curiae, similarly submitted that in order to ensure that mining is done with due regard to the sustainable development principles, this Court may consider a ceiling or a cap on the total amount of production of the iron ore from all the leases in the State of Goa.

8. We also find that in *Samaj Parivartana Samudaya and Ors. v. State of Karnataka and Ors.* (2013) 8 SCC this Court has held in Paragraph 20:

20. The permissible annual production for the mining lease would be based on:

- (a) the mineral reserves in the lease area;
- (b) area available for overburden/waste dumps, subgrade iron ore and other land uses;
- (c) existing transport facilities in relation to the traffic load of the mining lease; and
- (d) overall ceiling on the annual production from all the mining leases in the district (as dealt with earlier).

9. We are, therefore, of the view that a Committee of experts must conduct a Macro EIA Study on what should be the ceiling of annual excavation of iron ore from the State of Goa considering its Iron Ore resources and its carrying capacity keeping in mind the principles of sustainable development and inter-generational equity and all other relevant factors. For such Macro EIA Study, we constitute an Expert Committee comprising:

- 1. An ecologist
- 2. A geologist
- 3. A mineralogist
- 4. An expert on Forestry
- 5. A representative of Department of Mines, Government of Goa to be nominated by the Chief Secretary, Goa.
- 6. A representative of Ministry of Environment & Forests, Government of India to be nominated by the Secretary, Ministry of Environment & Forests, Government of India.

The names of the Members of the Expert Committee will be finalised on 18th November, 2013 when the matter will be listed for this limited purpose.

Each Member of the Expert Committee, who is not working in Government Department or Government Agency would be entitled to the last pay drawn by him and daily allowances at the rate applicable to Secretary, Government of India, and travel expenses as per actuals and will submit his bill to the Registry of this Court which will be paid out of the Ad-hoc CAMPA funds. The Expert Committee will also submit an interim report by 15.02.2014 on the ceiling/

capping to be prescribed for excavation of iron ore in Goa.

10. A copy of this order will be sent by the Registry to every member of the two Committees and after receipt of the interim reports of both the Committees in February, 2014, the matters will be listed in Court.

11. When the matters are listed in February 2014, the State of Goa and the Union of India will also produce in Court copies of the reports of NEERI and the Indian School of Mines, Dhanbad, respectively, to which the State of Goa and the Union of India have entrusted Environmental Impact Assessment study on mining in the State of Goa.

12. Affidavit filed on behalf of State of Goa and a Copy of the recent Notification issued by the Ministry of Environment & Forests. Government of India filed in course of the day be accepted as part of the records. The Writ Petitions and the connected matters are reserved for Judgment.