

(2022) 10 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No. 417 Of 2021, 206, 255, 257, 258, 259, 260, 261, 262, 263, 264, 265, 318, 320, 326, Of 2022, 1111, 1115, 1129, 1134, 1146, 1147, 1148, 1156, 1160, 1164, 1165, 1166, 1299 Of 2022 (F), Miscellaneous Civil Application No. 146, 147 Of 2022, Ci

Lithoferro, A Partnership Firm, Having Office At Khalap
Chambers And Others

APPELLANT

Vs

Director Of Mines And Geology, Government Of Goa And
Others

RESPONDENT

Date of Decision : 07-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 141
Minerals (Other Than Atomic And Hydro Carbons Energy Minerals) Concession Rules, 2016 — Rule 12(1)(gg), 12(1)(h), 12(1)(hh)
Supreme Court Rules, 2013 — Order 47 Rule 2
Bonded Labour System (Abolition) Act, 1976 — Section 4, 4(1), 5, 5(2)
Commission Of Enquiry Act, 1952 — Section 3
Mines And Minerals (Development And Regulation) Act, 1957 — Section 8, 8A, 8A(3), 8A(6), 8(3), 8(5), 8(6), 10B
Goa, Daman And Diu Mining Concessions (Abolition And Declaration As Mining Leases) Act, 1987 — Section 4(1), 14
Arbitration And Conciliation (Amendment) Act, 2015 — Section 8A

Citation : (2022) 10 BOM CK 0041

Hon'ble Judges : Sandeep K. Shinde, J; R. N. Laddha, J

Bench : Division Bench

Advocate : Abhishek Manu Singhvi, Parag Rao, Swati Kamat Wagh, Yashraj Singh Deora, Amit Bhandari, Avishkar Singhvi, Sowmya Drago, Meghana Naik, Noorie Sawant, Akhil Parrikar, Darius Khambata, Rafiq Dada, Gopal Jain, Erach Kotwal, H.D. Naik, P. Gaykar, Subodh S. Kantak, Ninad Laud, Athnain Naik, Abhijit Gosavi, V. Dhond, Preetam Talaulikar, Pravin Faldessai, Raviraj Chodankar, Somnath Karpe, Abhishek P. Sawant, Anand Shirodkar, Devidas J. Pangam, Shivdutt P. Munj, Siddhesh Patkar, Maria Simone Judith Correia, Deep Shirodkar, Suhas Parab, Geetesh Shetye, Shubham Priolkar, Neehal Vernekar, Sapna Mordekar, Tukaram Gawas, Vishwadh Sardessai, Susan Linhares, Prashil Arolkar, Sulekha Kamat, Norma Alvares, Om D'Costa, A.F. Diniz, Ryan Menezes, Gina Almeida, Nigel Fernandes, Stephanie Alvares, S.D. Lotlikar, Sailee Kenny, Shivan Dessai, M. Viegas, Aniroodh Sardesai, Nathan Vaz, Neha Shirodkar

Final Decision : Dismissed

Judgement

Sandeep K. Shinde, J

1. Heard learned Counsel for the parties.
2. Rule. Rule made returnable forthwith. Heard finally by consent of parties.
3. All these Petitions can be disposed of by this common judgment. Facts are by and large common. On behalf of the petitioners, heard Dr. Abhishek Manu Singhvi, learned Senior Counsel, Mr. D.J. Khambata, learned Senior Counsel, Mr. Rafiq Dada, learned Senior Counsel, Mr. Subhodh S. Kantak, learned Senior Counsel and Mr. A.F. Diniz, learned Senior Counsel. All other advocates have adopted arguments of these Counsel. Ms. Norma Alwares, learned Counsel argued on behalf of the Respondents-Goa Foundation, in all Petitions and Mr. Devidas Pangam, learned Advocate General argued on behalf of State of Goa.

PETITIONERS' CASE :

4. The predecessors of the petitioners were granted " mining concessions", in perpetuity by the Portuguese Regime. The Division Bench in the case of Vassudeva Madeva Salgaocar Vs. Union of India & Others, 1985 (1) Bom. C.R. 36 held that "mining concessions" were not mining leases within the meaning of the Mines and Minerals (Development and Regulation) Act, 1957 (" MMDR Act", for short). The Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987, was enacted on 23.05.1987 ("Abolition Act", for short). Section 4 of the Abolition Act, abolished the mining concessions and declared that, with effect from 20th December, 1961 (appointed Date), every mining concession will be deemed to be a mining lease granted under the MMDR Act and the provisions of the MMDR Act, save as otherwise provided will apply to such mining leases. Petitioners's case is that after expiry of six months' lease, within the meaning of Section 5(2) of the Abolition Act, they were granted full-fledged mining lease (Not Renewal) for twenty years, from November, 1987 to November 2007. That lease was renewed (Second Renewal) by the State Government on 2nd January, 2015; however, renewal was quashed and set aside by the Hon'ble Supreme Court vide judgment dated 07.02.2018 in Goa Foundation Vs. Sesa Sterlite Limited & Others, (2018) 4 SCC 218 (For short, GF-II). Pending GF-II Petition in the Supreme Court, there has been legislative amendment to the MMDR Act, by Amendment Act of 2015 with effect from 12th January, 2015. That by virtue of Section 8A of the Amendment Act, 2015, the lease period of the Petitioners' mining has been extended upto period ending 31st March, 2020 or period of 50 years from the date of "grant of lease", i.e. upto, 2037, whichever is later. The provisions of Amendment Act has been interpreted by the Hon'ble Supreme Court in the case of, Common Cause Vs. Union of India & Others, (2016) 11 SCC 455, whereby, the lease holder would have the benefit of treating original lease periods as of 50 years. Petitioners are claiming this benefit. They would assert that, they were granted original mining

lease under the MMDR Act and Rules, in November 1987 and it was first full-fledged lease in "Form-K" (prescribed in Rules). The petitioners dispute and deny that the "deemed lease" under Section 4(1) of the Abolition Act from the appointed date i.e. 20.12.1961 was "grant of mining lease" as per MMDR Act and Rules. Thus, their claim is, in terms of provisions of sub-section (5) and (6) of Section 8 of the Amendment Act, 2015, they are entitled for treating lease period as of 50 years from 1987 to 2037 and not from 20.12.1961. The petitioners therefore seek declaration that the lease period of the petitioners stand extended upto the year 2037, plus shut down period and seek to quash notice dated 04.05.2022 issued under Rule 12(1)(h) of the Minerals (other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2015.

5. To appreciate Petitioner's case, we deem it appropriate to narrate facts relating to mining in Goa:

(A) SUSPENSION OF MINING OPERATIONS IN GOA WITH EFFECT FROM 11.09.2012-GENESIS OF JUDGMENTS IN GOA FOUNDATION VS. UNION OF INDIA & OTHERS, (2014) 6 SCC 590 (GF-1) AND DIRECTIONS ISSUED THEREIN:

Government of India had received information about rampant exploitation of natural resources in Mining Sector in the State of Goa. Whereafter, it appointed Justice M.B. Shah, Former Judge of the Supreme Court as Commission of Enquiry under Section 3 of Commission of Enquiry Act, 1952. Based on the Report submitted by Commission of Enquiry, the Government of Goa, passed an order dated 10th September, 2012 suspending all mining operations in the State of Goa with effect from 11th September, 2012. The Ministry of Environment and Forests of Government of India (MoEF) also, kept in abeyance the environment clearances granted to 139 Mines in the State of Goa by an order dated 14th September, 2012. Subsequent to Reports, submitted by Justice M.B. Shah, PIL was filed by Goa Foundation in the Supreme Court being Writ Petition (C) No. 435 of 2012, (hereinafter called as "GF-I"), praying for directions to the Union of India and State of Goa, to take steps for termination of mining leases of lessees, involved in mining in violation of various statutes. So also, various Petitions came to be filed in Bombay High Court, by several mining leaseholders challenging the reports of Justice M.B. Shah and consequent order dated 10th September, 2012 passed by the Government of Goa, suspending all mining operations. All those pending Petitions were transferred to the Supreme Court and heard alongwith PIL filed by the Goa Foundation. Pending Petitions, vide order dated 05.10.2012, the Hon'ble Supreme Court of India banned all mining and transport operations in all iron ore mines in Goa and further by judgment and order dated 21st April, 2014 in Goa Foundation Vs. Union of India & Others, (2014) 6 SCC 590 (GF-I), held that;

(a) The deemed mining leases of the lessees in Goa expired on 22nd November, 1987 and the maximum period (20 years), of Renewal of the deemed Mining leases in Goa has also expired on 22nd November 2007, thus, mining by the lessees in Goa after 22nd November, 2007 was illegal.

(b) The order dated 10th September, 2012 of the Government of Goa suspending mining operations in the State of Goa and order dated 14th September, 2012 of Ministry of Environment and Forests (MoEF) suspending the environmental clearances granted to the mines in the State of Goa which have been impugned in the Writ Petitions in Bombay High Court, Goa Bench cannot be quashed by this Court.

(c) All Iron Ore and the Manganese Ore leases had expired on 22nd November, 2007 and any mining operations carried out by the mining leaseholders, after that date was illegal.

(d) The order dated 10th September, 2012 of the Government of Goa and the order dated 14th September, 2012 of MoEF, will have to continue till decisions are taken by the State Government to grant fresh leases and decisions are taken by MoEF, to grant fresh environmental clearances for mining operations.

(e) So, far as second renewal of mining lease, it was held that "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, and the same should be in conformity with the constitutional provisions.

(f) That, it is for the State of Goa to decide, as a matter of policy, as in what manner, mining leases are to be granted in future and the decision taken by the State Government would be subject to judicial review.

6. As such, the order dated 10th September, 2012 of the Government of Goa suspending mining operations and order dated 14 th September, 2012 of the MoEF, Government of India, directing environmental clearances granted to mines in the State of Goa to be kept in abeyance, were held proper and as such, not interfered with.

7. Pursuant to direction (f) above, Goa Mineral Policy 2013 was framed. Whereafter, several mining leaseholders filed Writ Petitions in the Bombay High Court praying either for consideration of their Applications for second renewal of mining lease (emphasis supplied) or for grant of mining lease on second renewal, as per mining policy. The High Court, heard those Writ Petitions and by its judgment dated 13th August, 2014 in M/s Lithoferro Vs. State of Goa and other connected petitions, 2014 SCC Online Bom 997, directed the State of Goa to execute the lease-deeds in favour of leaseholders, who had already paid stamp duty pursuant to orders of Government in accordance with Goa Mineral Policy, 2013, then, placed before the Supreme Court in Writ Petition (Civil) No. 435/2012 (GF-I) and subject to conditions laid down by the Apex Court, in the said Writ Petitions. The next direction was that, the petitioners/leaseholders who have not paid the stamp duty, the State of Goa shall decide their renewal applications under Section 8(3), expeditiously as possible, and preferably within a period of three months.

8. Thereafter, the Goa Government decided to grant second renewal to 88 mining

leases.

9. The order of the High Court and decision to grant second renewal to 88 mining leases was a subject matter of challenge in GF-II.

10. The issue arose for consideration in GF-II was, the meaning and intention of the Court, while issuing directions in GF-I, in context of grant of "fresh leases" for mining projects.

(B) DIRECTIONS IN JUDGMENT IN GOA FOUNDATION-II:

11. That while deciding the challenge to the second renewal of 88 mining leases, the Hon'ble Supreme Court in Goa Foundation-2, issued the following directions :

(i) That, in terms of the decision, declaration and the directions in Goa Foundation-1, the State of Goa was obliged to grant fresh mining leases in accordance with law and not second renewals of the mining leaseholders. (emphasis supplied).

(ii) The second 88 renewals of 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 interest of mineral development.

(iii) The decision was taken only to augment the revenues of the State, which was outside the purview of Section 8(3) of MMDR Act.

(iv) The second renewal of the mining leases granted by the State of Goa, were liable to be set aside and accordingly quashed.

(v) The mining leaseholders who have been granted second renewal in violation of their decision and direction of this Court in GF-1 are given time to manage their affairs and may continue their mining operations till 15th March, 2018. However, they were 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.

12. Pending GF-II before the Hon'ble Supreme Court, on 12th January 2015, Union of India promulgated the Mines and Minerals (Development and Regulation) Ordinance, 2015, which added inter-alia, Section 8 to MMDR Act. Whereafter, on 26th March, 2015, Mines and Minerals (Development and Regulation) Amendment Act, 2015 (MMDR Act, 2015 Amendment Act) was passed substituting the MMDR Amendment Ordinance, which reads as under:

"(8. Periods for which mining leases may be granted or renewed.?(1) The provisions of this section shall apply to minerals specified in Part A of the First Schedule.

(2) The maximum period for which a mining lease may be granted shall not exceed thirty years:

Provided that the minimum period for which any such mining lease may be granted shall not be less than twenty years.

(3) A mining lease may be renewed for a period not exceeding twenty years with the previous approval of the Central Government.]

[8-A. Period of grant of a mining lease for minerals other than coal, lignite and atomic minerals.?(1) The provisions of this section shall apply to minerals other than those specified in Part A and Part B of the First Schedule.

(2) On and from the date of the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (10 of 2015), all mining leases shall be granted for the period of fifty years.

(3) All mining leases granted before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 shall be deemed to have been granted for a period of fifty years.

(4) On the expiry of the lease period, the lease shall be put up for auction as per the procedure specified in this Act.

(5) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2030 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(6) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for other than captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2020 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(7) Any holder of a lease granted, where mineral is used for captive purpose, shall have the right of first refusal at the time of auction held for such lease after the expiry of the lease period.

(8) Notwithstanding anything contained in this section, the period of mining leases, including existing mining leases, of Government companies or corporations shall be such as may be prescribed by the Central Government.

(9) The provisions of this section, notwithstanding anything contained therein,

shall not apply to a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, for which renewal has been rejected, or which has been determined, or lapsed.]”

13. This amendment brought about several far reaching changes in MMDR Act. The provisions of Section 8 of MMDR Act, came to be interpreted by the Hon’ble Supreme Court in Common Cause Vs. Union of India & Others, (2016) 11 SCC 455, the Hon’ble Supreme Court as under:

“The regime introduced to sub-section (5) and (6) of Section 8, provides for three contingencies where benefits have been extended to leaseholders whose lease period had been extended by a renewal.

(i) Firstly, for a leaseholder whose renewal period had expired before 12th January, 2015 and the leaseholder had moved an application for renewal atleast 12 months before the leaseholder’s existing lease was due to expire and whose application has not been considered and rejected, the lease period would stand extended upto 31st March, 2030/31st March, 2020 (in case of captive/non-captive mines respectively). Additionally, a leaseholder whose period of renewal would expire after 12th January, 2015 but before 31st March, 2030/31st March, 2020, the lease period would stand extended upto 31st March, 2030/31st March, 2020 in case of captive/non-captive mines respectively).

(ii) Secondly, where the renewal of mining lease already extends to a period beyond 31st March, 2030/31st March, 2020 in case of captive/non-captive mines respectively), the lease period of such leaseholders would continue upto the actual period contemplated by the renewal order and

(iii) Thirdly a leaseholder, would have the benefit of treating the original lease period as of 50 years.

Out of the above three contingencies provided under sub-section (5) and (6) of Section 8-A, the contingencies as would extend the lease period farthest would enure to the benefit of the leaseholder.”

14. In the background of above facts, rulings in GF-I, GF-II, Common Cause and Amendment Act 2015, petitioners are claiming that, irrespective of direction in GF-II, by virtue of Section 8 of MMDR Act, as interpreted in Common Cause (Supra), they are eligible and entitled to treat the original lease period, as being of 50 years, to be reckoned from 23rd November 1987 upto the year 2037.

15. Thus, Petitioners initially filed a Representation requesting Directors of Mines and Geology, Government of Goa to execute lease extension deed in their favour till 2037. Whereafter in May, 2022, the Petitions have been filed seeking following reliefs;

“a. Mandamus or directions commanding Director of Mines and Geology to decide their representation;

b. Declare, that by virtue of Section 8 of the MMDR Act, they are eligible and

entitled to treat the original lease period as being 50 years, to be reckoned from 23rd November, 1987 upto the year 2037, plus shut-down extension period.

c. Quash and set aside the impugned notice dated 4th May, 2022 issued under Rule 12(1)(hh) of the MCR Rules, 2016.”

16. This batch of Writ Petitions includes some of those, 88 leaseholders, whose leases were renewed for second time by the State; but such renewals were set aside by the Hon'ble Supreme Court in Goa Foundation-II. We will refer those Petitions as Petitions of 1st Category. Whereas second category of Petitioners are mining leaseholders whose applications for second renewal, as per State Mining Policy, 2013 were not renewed, but kept pending, and later renewed only upto '2020'. Writ Petitions No. 326/2022, 318/2022 and 320/2022, fall in second category.

SUBMISSIONS OF PETITIONERS :

17. Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing for the petitioners in Petitions, submitted that;

(i) The 50 years period under Section 8-A(3) of the MMDR Act, in its application to erstwhile mining concessions must be reckoned, from 23rd November, 1987 and not from 20th December, 1961 (i.e. appointed date) under Section 4(1) of the Abolition Act.

(ii) The contention of respondent-Goa Foundation, that the tenure under Section 8-A(3) must be reckoned from the appointed date under Section 4(1) of the Abolition Act, is untenable.

(iii) Goa Foundation-I [(2014) 6 SCC 590] cannot govern the applicability of Section 8A of the MMDR Act.

(iv) Goa Foundation-II [(2018) 4 SCC 218], does not in any manner consider, deal, comment or pronounce on Section 8A.

(v) The suffix to Section 8-A(6) only implies that, other statutes also need to be complied with.

(vi) Order dated 9th July, 2021 in Review Petition (C) No. 18447 and other connected matters as well as order dated 7th September, 2021 in SLP (C)-2911 of 2019, do not in any manner consider, deem, comment or pronounce on Section 8, nor can it be considered as a precedent under Article 141 of the Constitution of India.

(vii) Notice dated 4th May, 2022 under Rule 12(1)(hh) of Minerals Concession Rules, 2016 is premature and unsustainable in law.

18. Supplementing Dr. Singhvi's submissions, Mr. D.J. Khambata, learned Senior Counsel for the petitioners formulated following questions for consideration;

(a) that reference to "grant of such lease" in Section 8-A(6) of the MMDR Act,

1957 must mean, the "first grant of full-fledged" lease under MMDR Act and Rules AND, thus;

(b) transitory deemed lease (23rd May, 1987 to 22nd November, 1987) under Section 4(1) read with Section 5 of the Abolition Act can be said to be, "such a lease"

(b) Whether deeming fiction created under Section 4(1) of the Abolition Act can be extended beyond its purpose and applied to the provisions of Section 8 of MMDR Act ?

19. Mr. A.A. Deniz, learned Senior Counsel adopted submissions of Mr. Singhvi and Mr. Khambata and in addition thereto submitted that, directions contained in Paragraph 154.1 of the judgment in GF-II makes it clear that grant of "fresh leases" would be in accordance with law i.e. M.M.D.R. Act. Consequently, such fresh leases have to be granted by auction upon expiry of earlier lease period, which according to learned Counsel is extended till... 2020 or 2030, whichever is the longest extension.

SUBMISSIONS OF GOA FOUNDATION AND THE STATE:

20. On the other hand, Ms. Norma Alwares, learned counsel for the Goa Foundation and Mr. Devidas Pangam, learned Advocate General for the State of Goa made following submissions;

(a) That order dated 4.5.2022 under Section 12(1)(hh) of MCR Rules, 2016 was issued pursuant to specific direction of the Hon'ble Supreme Court in its' order dated 13.10.2020 for valid, cogent reasons and, therefore, this Court cannot interfere with it nor could injunct the State from its' implementation. Reliance was placed on the order dated 13.10.2020 in Chowgule 2020 SCC Online Supreme Court 830.

(b) Though conclusions and directions in GF-II were concerning the second renewal of mining leases, yet, since these conclusions and directions were based on declarations and decisions in GF-I and being issued post 2015 MMDR Amendment Act, petitioners cannot claim that MMDR Amendment, 2015, has wiped out the base of the GF-I judgment and/or that the Hon'ble Supreme Court was unaware of the 2015 Amendment Act. Reliance was placed on paragraph 113, 121 and 124 of the Judgment in GF-II.

(c) The declaration in Paragraph 87.1 of judgment in GF-I, is conclusive in the sense, the Hon'ble Supreme Court concluded that the mining leases in Goa expired on 22.11.1987 and maximum of 20 years renewal period of deemed leases expired on 22.11.2007 and consequently, mining by lessees after 22.11.2007 was illegal. Thus, once held that renewal of leases expired in 2007, petitioners cannot claim extension of leases based on 2015 Amendment Act.

(d) The directions in GF-I effectively closed the option of both renewal and extension of term of mining leases.

(e) The directions to grant fresh lease in GF-I was deliberate and conscious decision distinct and different, from granting of second renewal of expired leases in other States and, therefore, Goa has not been discriminated.

(f) The Supreme Court has held that date of commencement of concession lease was 20.12.1961; first renewal of 20 years was from 27.11.1987 and expired on 27th November, 2007 and, therefore, as the date of commencement of Goa Mining Leases, has already been interpreted in GF-I, the issue as to when full-fledged mining lease has been granted cannot be gone into.

(g) 2015 Amendment has not nullified or obliterate declaration and the directions issued by the Supreme Court in GF-1.

(h) The batch of Petitions are merely round two of Vedanta Petition, in-as-much as representation of M/s. Vedanta- one of the Mining Lease-Holders, demanding 50 years lease tenure from 1987 was rejected by the Goa Government and Writ Petition No.1005 of 2019 against the order rejecting the representation was dismissed by the High Court. The appeal against that order was dismissed by the Supreme Court. Therefore, present petitions do not deserve consideration.

(i) Mr. Pangam, learned Advocate General, objected to maintainability of Petitions in view of the order dated 9.6.2021 passed by the Hon'ble Supreme Court in Review Petitions filed by Vedanta and the State contending that Review Petitions were rejected not only on the ground of limitation alone but on merits as well. The learned Advocate General would largely rely on the grounds urged in Review Petitions (Filed by the State), wherein review was sought on the grounds founded on 2015 Amendment Act to MMDR. Mr. Pangam, the learned Advocate General, relied on the averments in the affidavit-in-reply filed by Joint Secretary of Mines.

21. Heard learned Counsel for the parties extensively. Following contentious issues, arise for our consideration;

(a) Whether, the order dated 9th July, 2021 of the Hon'ble Supreme Court in Review Petition (C) No. 18447 of 2019 and connected matters, and order dated 07th September, 2021 in SLP (C) No. 2911/2019 in M/s. Vedanta Ltd. and anr. consider, deal, comment or pronounce on Section 8A of the MMDR Act ?

(b) Whether, deemed mining lease under Section 4(1) of the Abolition Act, 1987, was 'grant of mining lease', within the meaning of MMDR Act in favour of the petitioners-mining concessioners w.e.f. 20th December 1961 (appointed day), although, deed was not executed and registered in "Form-K" prescribed under the MCR Rules ?

(c) Whether, lease executed after expiry of transitory deemed lease, was "first grant of full-fledged lease" ?

(d) Whether, deemed lease under Section 4(1) of the Abolition Act, was limited in time, and had a life for a transitory period, between the date of presidential

ascent to the Abolition Act (23rd May, 1987) till 23rd November, 1987 i.e. for a period of six months ?

(e) Whether, provisions of Section 14 of the Abolition Act 1987, which inserted third proviso to sub-section (1) of Section (4) of the MMDR Act, 1987, excludes the application of MMDR Act to the "transitory deemed mining lease", granted under Section 4(1) of the Abolition Act, 1987 ?

(f) Whether, judgments in Goa Foundation-I (5th October 2012) and Goa Foundation-II (7th February, 2018), consider, comment or pronounce on Section 8A of the MMDR Act, which came to be amended on 26.03.2015 ?

(g) Whether Amendment Act of 2015 has rendered the declaration and directions in GF-I inoperative ?

(h) Whether by virtue of Section 8A of the Amendment Act, 2015, the lease period of Petitioners' mine has been extended upto period ending 31st March, 2020 or the period of 50 years from the date of grant, 1987 upto 2037.

DISCUSSION- REASONS :

22. To start with, since the Respondent-Goa Foundation and the State have objected to maintainability of the Petitions, in view of the order/s passed in earlier round of litigation concerning the same issue and such orders being not interfered with by the Hon'ble Supreme Court, we deem it appropriate to address this issue first. In case we hold that, it is second round of litigation, we shall not address the other issues.

23. It is not in dispute that the second renewals of mining leases granted by the State of Goa were quashed by the Supreme Court by its judgment dated 7.2.2018 in GF-II. Resultantly, mining lease holders were granted time to manage their affairs and continue their mining operations till 15.3.2018, i.e., for a period of five weeks. However, they were directed to stop mining operations with effect from 16.3.2018 until fresh mining leases (Not fresh renewals) are granted. Whereafter, M/s. Vedanta Limited, one of the mining lease holders, whose second renewal was quashed, had filed representation dated 29.10.2019, requesting the Government of Goa, that in terms of Section 8A(3) of the MMDR Act (As amended with effect from 12.1.2015) to extend their mining lease from 1987 to 2037, i.e., for a period of 50 years. The State Government vide response dated 19.11.2019 expressed inability to consider representation, in view of the specific directions of the Hon'ble Supreme Court in GF-II, inter-alia that all mining operations were directed to stop with effect from 15.3.2018 until, fresh mining leases (Not fresh renewals or other renewals) are granted and fresh environmental clearances are granted. Thus, realising that unless directions issued in GF-II are modified, benefit of amended provisions of Section 8A of the MMDR Act cannot be availed, M/s. Vedanta alike Petitioners, and the State, both, sought review of judgment dated 7.2.2018 in GF-II. Accordingly, Review Petitions were filed.

24. Pending Review Petitions, but after rejection of representation by the State, M/s. Vedanta challenged rejection order before this Court in Writ Petition 1005 of 2019. The primary contention of M/s. Vedanta, was that provision of Section 8A(3) of the MMDR Act are quite clear and in terms thereof, the State Government was obliged to amend the lease. The next contention was that in terms of provisions of Section 8A (3) of the MMDR Act, decision of the Hon'ble Supreme Court in GF-II would not preclude the State in considering the request of the Petitioners, as-much-as, in the said judgment, there was no discussion on the scope and import of provisions of Section 8A(3) of the MMDR Act, although there may have been some reference to provisions of the MMDR Amendment Act, 2015. In support, M/s. Vedanta relied on the judgment of the Supreme Court dated 4.4.2016 in the case of Common Cause 2016 (11) SCC 455 which interpreted scope and applicability of Section 8A.

25. The Division Bench of this Court upheld the rejection order of the State and dismissed the Writ Petition No.1005 of 2019 filed by Vedanta on the following grounds:

(I) The State was bound by clear directions issued by the Hon'ble Supreme Court in the case of GF-II, to stop all mining operations with effect from 16.3.2018 until fresh mining leases are granted;

(ii) That, when decision in GF-II was delivered, the provisions of Section 8A(3) of the MMDR Act or for that matter entire 2015 Amendment Act by which such provision was introduced, were already in force and thus, it will not be appropriate to entertain the petition;

(iii) The Hon'ble Supreme Court in its judgment in GF-II having made specific reference to 2015 Amendment.

26. Therefore, Bench opined, it would not be appropriate to go into the issue of sub-silento or for that matter per-incuriam, especially when State has already filed Review Petitions before the Hon'ble Supreme Court in respect of judgments in GF-II AND last reason was that petitioners did not bother to implead Goa Foundation, a party to the Petition. Thus, vide order dated 25.11.2019, Vedanta' Writ Petition was dismissed.

27. Therefore, it could be seen, that Petition of one of the mining lease holders seeking extension of mining lease period from 1987 to 2037 pursuant to amended provision of Section 8A(3) of the MMDR Act, was not found favour with. Petitioners herein are seeking identical reliefs.

28. Anyhow, Special Leave Petition against the order dated 25.11.2019 in WP No.1005 of 2019, filed by Vedanta, was dismissed by the Hon'ble Supreme Court on 7.9.2021, having found no merit in the SLP.

29. The order of the Hon'ble Supreme Court dated 7.9.2021 reveals that alongwith SLP of Vedanta, Writ Petition (C) No. 21 of 2022 filed by one of the mining leaseholders, was also heard. However, the said Petition was withdrawn

with liberty to pursue remedy available in law before the High Court. Though leave was granted to withdraw the petition, Hon'ble Supreme Court did not express opinion on maintainability of such petition. We may note here that copy of the said Writ Petition (No.21/2022) was not produced before us for perusal.

30. Now we will advert to endeavours of M/s. Vedanta and the State, seeking review of judgment in GF-II. Review was sought because, in view of directions therein, State could not have extended benefit of Section 8A to Mining Lease-holders. It be noted that, four Petitions filed by Vedanta and two petitions by the State of Goa, seeking review of the judgment in GF-II were dismissed by the Hon'ble Supreme Court on 9.7.2021, not only on the ground of limitation alone but on merits as well. We deem it appropriate to reproduce the observations in paragraph-2 of the order; which speak for itself about, as to the conduct of the Petitioners therein;

"2. In accordance with Rule 2 of Order XLVII of the Supreme Court Rules, 2013, an application for review of a judgment has to be filed within thirty days of the date of the Judgment or order that is sought to be reviewed. No cogent grounds have been furnished for the delay between 20 and 26 months by the two parties in filing their applications for review. The Judges comprising the two-judge bench in Goa Foundation II, Justices Madan B. Lokur and Deepak Gupta, retired from this Court on 30 December 2018 and 6 May 2020, respectively. The State of Goa preferred its four review petitions in the month of November 2019, after Justice Madan B. Lokur's retirement, while Vedanta Limited preferred its four review petitions in the months of August, 2020, right after Justice Deepak Gupta's retirement. Such practise must be firmly disapproved to preserve the institutional sanctity of the decision making of this Court. The review petitioners were aware of the decision of this Court."

31. In the backdrop of the above facts, point for consideration is, Whether, order dismissing SLP of M/s. Vedanta against the order dated 25.11.2019 in Writ Petition No. 1005 of 2019 and orders dismissing Review Petitions of the State and M/s. Vedanta on merits would impede this Court from examining petitioner's claim seeking grant of lease for 50 years in terms of Section 8A(3) of the Amended M.M.D.R. Act. To answer this point, we shall in brief see, grounds on which review of judgment in GF-II was sought.

32. Mr. Pangam, learned Advocate General for the State of Goa, has drawn our attention to paragraph nos.18 and 19 of the State's affidavit-in-reply. These two paragraphs reproduce grounds taken up and urged in the Review Petitions; which were as follows;

"(i). The judgment and order dated 7/2/2018 in GF- II did not consider amended Section 8A(6) of the MMDR Act, 1957 by which original lease period of mining leases has been extended, across the country; however, by virtue of judgment in GF-II in the State of Goa benefits of provisions of Section 8A(6) have not been extended. Thus, mining lease-holders in the State of Goa are discriminated

against the lease-holders in the rest of the Country.

(ii). that the directions of the Hon'ble Supreme Court to execute fresh leases in terms of the Judgment and order dated 7/2/2018 in GF-II has potential to cause uncertainty, in as much as, the rights and fate of the erstwhile Concession Holders which were converted into the Mining Leases by virtue of the Goa, Daman and Diu Mining Concession (Abolition and Declaration of Mining Leases) Act, 1987 are pending before the Hon'ble Supreme Court in various Appeals including the Civil Appeal No.1413/1998 and there is likelihood in a conflicting decision, if fresh Leases are granted as per the Judgment and Order dated 7/2/2018.

(iii) Though validity of Abolition Act has been upheld but held to be prospective in nature, it will definitely have an impact of providing a term the existing Lease Deed for a duration of 50 years, starting from 1987 and thereby ending only in the year 2037.....' "

33. Thus, review of judgment in GF-II was sought on the ground that though benefit of Section 8A(6) of the MMDR Act has been extended to mining lease holders across the country, the State of Goa has been excluded from its purview. The next ground was, as to likely effect and impact of pending Civil Appeal No. 1143 of 1998 against the judgment of the High Court upholding the validity of the Abolition Act and further, having not considered the interim order dated 12.1.1998 passed therein. Thus, the State was apprehending every likelihood in conflicting decisions if fresh leases are granted as per the judgment and order dated 7.2.2018.

The very arguments were made by Mr. Kantak, learned Senior Counsel, appearing for some petitioners.

34. It is thus obvious, that reliefs sought in the batch of petitions, are primarily and principally founded on and referable to the provisions of the MMDR Act as amended in 2015, benefit of which is to be extended to them. Identical grounds were urged in the Review Petitions filed by the State and in the SLP of M/s. Vedanta. Paragraph no.15 of Mr. Hawaldar's Affidavit in SLP of M/s. Vedanta, reiterates the same. Still, the order in the Review Petitions show, that dismissal of petition was not, only on the ground of limitation but on merits as well. No doubt the orders rejecting the Review Petitions do not express its' adjudication either on the point of fact or law. Therefore, Dr. Singhvi, learned Counsel argued that, as review has been dismissed by the order in limine, it cannot be treated to be a judgment or precedent applicable in-rem nor it is a precedent under Article 141 of the Constitution of India and, thus, it cannot hinder the High Court in deciding the petitions on merits. Reliance was placed on the ruling of the Supreme Court in Kunhaymed v. State of Kerala 2006 SCC 359. In the said case, it was held that mere rejection of Special Leave Petition does not take away jurisdiction of the Court, Tribunal or Forum whose order forms the subject matter of the Petition for Special Leave, to review its own order, if grounds for exercise

review jurisdiction are shown to exist. However, herein M/s. Vedanta had not approached this Court for seeking review of order dated 25.11.2019, after rejecting its' SLP on 7.9.2021. Therefore, order of Division Bench of this Court in Writ petition No.1005 of 2019 has attained the finality and concluded the issue raised therein. Any how, issues in the Petition of M/s. Vedanta, were similar to issues in the batch of Petitions at hand. Therefore, as a matter of propriety and judicial discipline, we cannot re-open the concluded issues, which have attained the finality.

35. At any rate, in the course of the arguments, Ms. Norma Alwares, learned counsel appearing for the Goa Foundation, has placed on record orders passed in Writ Petition No.649 of 2015, 736 of 2015 and 737 of 2015. The Writ Petition No.649 of 2015 was filed by M/s. H.L.Nathurmali, a mining lessee. This Writ Petition is still pending for consideration, before the Division Bench of this Court. Although a copy of this Writ Petition has not been placed on record for our perusal, it appears from the order dated 28.8.2015 passed therein, that petitioner in the said Writ Petition contended that in terms of the legislative amendment to Section 8A, lease period of the petitioner's mine has been extended upto the 31st March, 2020 or the period of 50 years i.e. upto 2037, and therefore, entitled not only to continue to carry on the mining operations but also entitled to remove the ore extracted earlier and lying dumped over the lease area. The contention/arguments of the petitioner, were rejected by the Division Bench of this Court. The Bench rejected this argument, having found that prima-facie, Amendment Act of 2015 does not contain any provision beginning with non-obstante clause, which removed the base of the judgment of the Supreme Court rendered in GF-I on 21.4.2015. Although the observations were prima-facie, nevertheless the fact remains, that this Court was of the consistent view that Section 8A of the Amendment Act, 2015 has not nullified or obliterate the declaration and the conclusion of the Supreme Court in the Judgment in GF-I.

36. Thus, it could be seen from the above-referred orders, either passed by this Court in Writ Petitions and/or by the Hon'ble Supreme Court either in Special Leave Petition and/or in Review Applications, that the mining leaseholders-petitioners therein were seeking extension of mining lease period from 1987 to 2020 or 2037, in view of amended provisions of Section 8A(3) of the MMDR Act, however, such petitions were not entertained, but dismissed on merits. Therefore, all said and done, consistent view of this Court is, that;

- (i) the deemed mining leases in Goa expired on 22.11.1987;
- (ii) the maximum 20 years renewal period of deemed mining leases in Goa expired on 22.11.1987;
- (iii) Consequently, mining by lessees after 22.11.2007, was illegal; and
- (iv) that mining shall not be permitted until fresh leases (not fresh renewals or other renewals)

. We, therefore, concur with order dated 25.11.2019 passed by the Co-ordinate Bench in Writ Petition No. 1005 of 2019 filed by M/s. Vedanta. In fact, when M/s. Vedanta's petition was rejected, State's application seeking review of judgment in GF-II was pending. However, since Review Petition has been dismissed on merits as well, directions in GF-II to stop mining operations until fresh mining leases are granted, have been re-inforced, which binds us. We, therefore, refrain ourselves from examining Petitioners' plea founded on the amended provisions of Section 8A(3) afresh.

37. Apart from that, it could be seen that MMDR Ordinance was issued on 12.1.2015. The judgment in Common Cause was delivered in April, 2016; whereas judgment in GF-2 was rendered in February, 2018. The Hon'ble Supreme Court by the judgment in GF-II directed to stop all mining operations with effect from 16th March, 2018 until fresh mining leases are granted. The petitioners were not party to the Review Petitions. Although, it was argued that, order in Review was not order in-rem, then nothing prevented petitioners to file petitions soon after the judgment in Common Cause, that was delivered in 2016. However, well informed Petitioners were waiting for outcome of Review Petitions filed by the State. It was only after, rejection of Review Petitions and SLP of M/s. Vedanta, other mining leaseholders have approached this Court. Admittedly, petitions were filed in the year 2022 without any pleadings on delay. Therefore, Ms. Alwares for the Goa Foundation has rightly argued, that the delay and the latches are insurmountable and are not justifiable. We agree with her submissions.

38. Petitioners have argued that, neither Judgment in GF-II, nor orders, seeking its review (filed by the State and another mining leasehold) deal or comment or pronounce on Section 8A of M.M.D.R. Act and thus it cannot hinder the High Court in deciding the petition on merits. We do not agree with this submission for more than one reason. Paragraph-113 of Judgment in GF-II refers to ordinance to amend M.M.D.R. Act, promulgated by President on 12th January, 2015. Although, the observations therein and in paragraph-121, 124 read with 126 were relating to undue haste with which State granted second renewals to 75 mining leases (out of which 31 mining leases) were renewed on 12.1.2015, a day on which amendment ordinance came into force) clearly shows Amendment Act, 2015 was before the Hon'ble Supreme Court. Infact, paragraph-43 of the judgment records that, the Hon'ble Supreme Court had referred to draft, mines and minerals (Development Regulation) Act, 2014 that was prepared on/or about on 16th November, 2014 and also response of Hon'ble Minister of Mines, to unstarred question to be answered in Lok Sabha on 8.12.2014. Thereafter, the Hon'ble Supreme Court referred to nature of proposed amendment relating to competitive bidding introduced under Section 10-B and, in subsequent paragraphs dealt with, as to how with undue haste State granted second renewals to mining leaseholders, after the amendments proposed to the M.M.D.R. Act, were placed in public domain by the Government of India. Therefore, petitioner's contention that observations in the judgment of GF-II

were, 'descriptive', in nature, does not impress nor convince us. Now, assuming that the Supreme Court did not specifically dealt with Section 8A of the M.M.D.R. Act in GF-II judgment, but could it be said that the Hon'ble Supreme Court, was oblivious of 2015 Amendment and provisions of Section 8A, when Review Petitions of the State and Special Leave Petition of M/s. Vedanta were dismissed. The answer is 'No'. Infact, Mr. Pangam, learned Advocate General has brought to our notice the grounds, urged in the Review Petitions, which were referable to Section 8A of the M.M.D.R. Act. Yet, the Hon'ble Supreme Court declined to review the directions in the judgment of GF-II. As such, it is evident from the judgment in GF-II and orders in review, that the Hon'ble Supreme Court, not simply referred to Amendment Act, 2015 but examined the provisions of the Draft Bill and nature of proposed amendment and thereafter concluded and upheld the directions in GF-I, that the State of Goa was obliged to grant fresh mining leases according to law and not second renewals of mining leases. It may also be noted that, judgment in GF-II not just reinforced the directions issued in GF-I, but in paragraph-154.6, held and directed the mining leaseholders to stop all mining operations until fresh mining and environmental clearances are granted. It is to be noted that, this direction not only restrained the State from granting "fresh renewals" but "other renewals" also. The expression "other renewals" is to be understood in the context of provisions of Section 8A of the M.M.D.R. Act. Thus, we hold the directions issued in GF-II which were post 2015 Amendment, hold the field and regulate the mining activity in the State of Goa.

39. In consideration of the facts above and for the reasons stated, we, deem it appropriate not to re-examine the issue of extending benefit to the petitioners, referable to Section 8A of M.M.D.R. Act. Accordingly, we dismiss all petitions, of first category.

WRIT PETITIONS NO : 326/2022, 318/2022 AND 320/2022, in Second Category :

40. Petitioners, in these petitions, herein were granted title of mining concession in perpetuity with other concessions in the State of Goa, which were abolished by Abolition Act, 1987 and were deemed mining leases. These petitioners, had applied for second renewal of lease on 13th October, 2006. However, their applications remained undecided as on 12th January, 2015, when Section 8A was incorporated by way of amendment in M.M.D.R. Act. Thereafter, The State of Goa, itself by order dated 27th September, 2016 passed deemed extension order, in view of Section 8A of MMDR Act, as interpreted by the Supreme Court in the case of Common Cause, 2011 SCC 455. Accordingly, the lease period was extended till 31st March, 2020. Thereafter, in October, 2021 petitioners sought extension of lease upto 2037, by relying on the legal opinion. In the meanwhile, M/s. Vedanta Limited, one of the lessees, represented the State to extend the lease from 1987 to 2037 i.e. for a period of 50 years in terms of Section 8A(3) of M.M.D.R. Act. The State Government expressed its' inability to consider the representation. Afterwhitch, M/s. Vedanta filed WP No.1005/2019. This Court dismissed the petition by order dated 25th November, 2019. M/s. Vedanta

preferred SLP No. 2919/2019. In the said SLP, Mr. Daulat Havaladar, Secretary (Mines and Geology), Government of Goa filed Affidavit on 16th March, 2020. Paragraph-15, of Affidavit, reads as under :

"I respectfully submit that from mining concessions which have been converted into leases in the year 1987, are entitled for benefit of amended Section 8A and such mining leases, are liable to be extended upto year 2037. I say that in view of directions of this Court contained in Goa Foundation-II, the State of Goa could not grant extension as claimed by the petitioner. (emphasis supplied)

. Thus to be noted, that the State of Goa (atleast upto March, 2020), was of the view, that the mining leaseholders were entitled to claim benefit of amended Section 8A of M.M.D.R. Act. The SLP of M/s. Vedanta was dismissed by the Hon'ble Supreme Court on 7th September, 2021. Therefore, it could be seen that, petitioners contention, that benefit of Section 8A(6) be extended to them upto the year 2037, was already canvassed by the State of Goa in its reply (para reproduced above), in the SLP of M/s. Vedanta, but was not considered and accordingly the petition was dismissed. In that view of the matter, the petitioner cannot raise and assert the similar claim, which has been rejected by the Supreme Court. Moreover, as stated above, M/s. Vedanta did not seek review of the order in WP-1005/2019. In consideration of these admitted facts, the contention of the petitioners, that, judgment in GF-II being the judgment in personam, binds only parties to GF-II and not applicable to the petitioners, is rejected. Even otherwise, finding in the GF-I, that maximum period (20 years) of renewal of deemed mining leases in Goa, has expired on 22nd November, 2007; which has been affirmed in GF-II, equally binds these petitioners. For these reasons, we decline to extend benefit of Section 8A of the M.M.D.R Act to these petitioners.

NOTICES UNDER RULE 12(1)(hh) OF RULES :

41. A common prayer in all the petitions is to quash and set aside a notice issued by Director of Mines and Geology under Rule

12 (1)(hh) of the Minerals Concession Rules. By this notice, petitioners were called upon to comply with the provisions of the said Rule within a period of one calendar month failing which further action would be initiated as deemed appropriate in terms of MMDR Act and the Rules.

42. In context of this prayer, it may be stated that, in terms of directions contained in paragraph no.154.6 in GF-II, mining leaseholders were granted time to manage their affairs, till 15th March, 2018. Yet, State of Goa, by decision dated 21st March, 2018 permitted the mining leaseholders to pay the royalty on mineral which was already mined till 15th March, 2018 and transport the same.

43. Aggrieved by the said decision, the Goa Foundation filed a Writ Petition No.3/2018 before the High Court of Bombay at Goa. In the said petition, an interim order dated 28th March, 2018 came to be passed, whereby

transportation of all minerals was suspended. As such, decision of State of Goa dated 21st March, 2018 permitting transportation of royalty paid iron-ore was quashed and set aside. The Division Bench, however, held that the State Government should take decision regarding ownership rights of excavated iron-ores, as custodian of mineral resources and regarding its power to take possession, to sell and dispose of and utilise proceeds for public purpose.

44. Aggrieved by the said order, Appeals/petitions were filed before the Hon'ble Supreme Court. While deciding these Appeals, provision of Rule 12(1)(gg) of the Rules were referred to. In terms of these Rules, on expiry of lease or termination, six months time is granted to lessee to remove all iron-ore material excavated during the currency of the lease, engines, machinery, plant, building, structures and conveniences which may have been erected, set-up or placed by the lessees in or upon the lease plants. Thus, taking overview of the matter, petitioners/mine leaseholders were directed to complete the transportation of mineral already excavated within six months. The time granted to transport the minerals expired on 30th July, 2020. However, during that time, since lockdown was imposed on 24 th March, 2020 due to pandemic, few lessees sought extension of time for six months w.e.f. 1st October, 2020 for transportation of minerals excavated by them before 15th March, 2018. The extension sought by lessees was opposed by Goa Foundation. One of the grounds was that, in terms of Rule 12(1)(hh) of the Minerals Concession Rules, 2016, mineral not removed within six months is liable to be confiscated to the Government. Thus, in consideration of the rival submissions, one of the issues was, whether State Government ought to have invoked Rule 12(1)(hh) of the said Rules, or not. This issue was answered in the case of Chougule-II, 2020 SCC Online SC 830, by order dated 13th October, 2020. Accordingly, (i) lessees were granted time upto the end of January, 2021 for the removal of minerals excavated or mined on/or before 15th March, 2018 subject to payment of royalty or other charges. The order dated 13th October, 2020 contains the following directions :

(i) if within the time stipulated above, lessees could not remove the mineral, Government shall invoke the power under Rule 12(1) (hh) of Mineral Concession Rules.

45. Pursuant to directions issued by the Supreme Court in Chougule-II, the State of Goa issued notices under Rule 12(1)hh). In consideration of above facts, since we have not extended the benefit of Section 8A of the MMDR Act to the petitioners, we reject the prayer to quash and set aside the notices issued under Rule 12(1)(hh) of the said Rules, then issued pursuant to order in Chougule-II.

46. For these reasons, all petitions are dismissed and the Rule is discharged. All applications in all petitions are disposed of.