REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL /APPELLATE JURISDICTION
& CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 562 of 2009

Samaj Parivartana Samudaya & Ors. ... Petitioner (s)

Versus

State of Karanataka & Ors. ... Respondent(s)

WITH

SLP (C) Nos.7366-7367 of 2010, SLP (C) Nos.32690-32691 of 2010, WP (Crl.) No.66 of 2010, SLP (C) Nos.17064-17065 of 2010, SLP (C) No.....(CC No.16829 of 2010), SLP (C) No.....(CC No. 16830 of 2010), WP (C) No.411 of 2010, SLP (C) No.353 of 2011 and WP (C) No.76 of 2012

J U D G M E N T

RANJAN GOGOI, J.

W.P. (C) No.562 of 2009

1. What should be the appropriate contours of this Court's jurisdiction while dealing with allegations of systematic plunder of natural resources by a handful of opportunists seeking to

achieve immediate gains? This is the core question that arises in the present proceeding in the context of mining of Iron Ore and allied minerals in the State of Karnataka.

2. Over exploitation, if not indiscriminate and rampant mining, in the State of Karnataka, particularly in the District of Bellary, had been purportedly engaging the attention of the State Government from time to time. In the year 2006, Justice U.L. Bhat Committee was appointed to go into the issues which exercise, however, did not yield any tangible result. Thereafter, the matter was referred to the Lokayukta of the State and a Report dated 18.12.2008 was submitted which, prima facie, indicated indiscriminate mining of unbelievable proportions in the Bellary district of the State. It is in these circumstances, that the petitioner- Samaj Parivartana Samudaya had instituted the present writ petition under Article 32 of the Constitution complaining of little or no corrective action on the part of the State; seeking this Court's intervention in the matter and specifically praying for the reliefs noted hereinbelow.

> "(A) To issue a Writ of mandamus or any other appropriate writ, order or direction, directing immediate steps be initiated by both the

Respondent States and the Union of India to stop all mining and other related activities in forest areas of Andhra Pradesh and Karnataka which are in violation of the orders of this Hon'ble Court dated 12.12.1996 in W.P (C) No 202 of 1995 and the Forest (Conservation) Act, 1980.

(B) To issue a Writ of mandamus or any other appropriate writ, order or direction, directing as null and void retrospectively all 'raising contracts' / sub leasing because which are in violation of the Mines and Minerals (Development and Regulation) Act, 1957 and initiate penal action against the violators.

(C) To issue a Writ of mandamus or any other appropriate writ, order or direction, directing the stoppage of all mining along the border and in forest areas in the Bellary Reserve Forest till a systematic survey of both the interstate border and the mine lease areas along the entire border is completed by the Survey of India along with a representative of the Lokayukta of Karnataka.

(D) To issue a Writ of mandamus or any other appropriate writ, order or direction, directing action against all the violators involved either directly or indirectly in illegal mining including

those named in the Report of the Lokayukta of Karnataka (Part-I).

(E) To issue a Writ of mandamus or any other appropriate writ, order or direction, directing the recovery of the illegal wealth accumulated through the illegal mining and related activities; and

(F) To issue a Writ of mandamus or any other appropriate writ, order or direction, directing null and void notification No. CI 33 MMM 1994 dated 15.3.2003 and other related notifications/orders dereserving lands for mining operations."

3. The writ petition was entertained and the Central Empowered Committee (hereinafter for short "the CEC") was asked to submit a report on the allegations of illegal mining in the Bellary region of the State of Karnataka. The very initial order of this Court is dated 19.11.2010 and was restricted to six mining leases granted in favour of M/s. Bellary Iron Ore Pvt. Ltd., M/s. Mahabaleswarapa & Sons, M/s. Ananthapur Mining Corporation and M/s. Obulapuram Mining Company Pvt. Ltd. What followed thereafter is unprecedented in the history of Indian environmental jurisprudence. It is neither necessary nor

feasible to set out the series of Reports of the CEC and the various orders of the Court passed from time to time. Rather, a brief indication of the core Reports of the CEC and the main orders passed by the Court will suffice to understand what had happened so to enable the Court to unravel the course of action for the future.

4. The initial Reports submitted by the CEC in response to the orders of the Court having indicated large scale illegal mining at the cost and to the detriment of the environment, a stage came when by order dated 29.7.2011 a complete ban on mining in the district of Bellary was imposed. Extension of the said ban was made in respect of the mining operations in the districts of Tumkur and Chitradurga by order dated 26.8.2011. As the materials placed before the Court (including the Report of the Lokayukta dated 18.12.2008) indicated large scale encroachment into forest areas by leaseholders and ongoing mining operations in such areas without requisite statutory approval and clearances, a Joint Team was constituted by this Court by order dated 6.5.2011 to determine the boundaries of initially 117 mining leases which number was subsequently extended to 166 by inclusion of the mines in Tumkur and

Chitradurga districts. The result of the survey by the Joint Team revealed a shocking state of depredation of nature's bounty by human greed. Objections of the lease holders to the survey came early and were subjected to a re-examination by the special team itself under orders of the Court dated 23.9.2011 in the course of which 122 cases were re-examined and necessary corrections were effected in 33 cases. Thereafter, the CEC submitted its Report termed as the "Final Report" dated 3.2.2012 which is significant for two of its recommendations. The first was for categorization of the mines into three categories, i.e., 'A', 'B' and 'C' on the basis of the extent of encroachment in respect of the mining pits and over burden dumps determined in terms of percentage qua the total lease area. The second set of recommendations pertained to the conditions subject to which reopening of the mines and resumption of mining operations were to be considered by the Court. A set of modified recommendations along with a set of detailed guidelines for preparation and implementation of Reclamation and Rehabilitation Plans (R & R) were also submitted to the Court by the CEC on 13.3.2012. Before the relevant extracts from the Reports of the CEC dated 3.2.2012

and 13.3.2012 are noticed, to make the discussion on the Report of the Joint Team complete it will be necessary to note that in terms of the order dated 10.2.2012 of the Court, 66 representations were considered by the CEC out of which only 4 were found tenable. Accordingly, corrections were made in respect of the said four leases which corrections, however, did not involve any change of category. The CEC placed the cases of two lease holders i.e. M/s. V.S. Lad & Sons and M/s. Hothur Traders for consideration of the Court as to whether the said two leases placed in Category "C" needed upgradation to Category "B" in view of the minimal violation committed by them and the circumstances surrounding such violations.

5. We may now proceed to notice the relevant part of the two Reports of the CEC dated 3.2.2012 and 13.3.2012, as referred to hereinabove.

> "**IV. CLASSIFICATION OF LEASES IN DIFFERENT CATEGORIES ON THE BASIS OF THE LEVEL OF ILLEGALITIES FOUND.**
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> 27. The CEC, based on the extent of illegal mining found by the Joint Team and as appropriately modified by the CEC in its Proceeding dated 25th January, 2012 and after considering the other relevant information has

classified the mining leases into three categories namely "Category-A", "Category-B" and "Category-C".

28. The "Category-A" comprises of (a) working leases wherein no illegality/marginal illegality have been found and (b) non working leases wherein no marginal/illegalities have been found. The number of such leases comes to 21 & 24 respectively.

29. "Category-B" comprises of (a) mining leases wherein illegal mining by way of (i) mining pits outside the sanctioned lease areas have been found to be up to 10% of the lease areas and/ or (ii) over burden/waste dumps outside the sanctioned lease areas have been found to be up to 15% of the lease areas and (b) leases falling on interstate boundary between Karnataka and Andhra Pradesh and for which survey sketches have not been finalized. For specific reasons as mentioned in the statement of "Category-B" leases, M/s. S.B. Minerals (ML No. 2515), M/s. Shantalaxmi Jayram (ML No. 2553), M/s. Gavisiddeshwar Enterprises (ML No. 80) and M/s. Vibhutigudda Mines (Pvt.) Ltd. (ML No. 2469) have been assigned in "Category-B". The numbers of such leases in "Category-B" comes to 72.

30. The "Category-C" comprises of leases wherein (i) the illegal mining by way of (a) mining pits outside the sanctioned lease area have been found to be more than 10% of the lease area and/or (b) over burden/waste dumps outside the sanctioned lease areas have been

found to be more than 15% of the lease areas and/or (ii) the leases found to be involved in flagrant violation of the Forest (Conservation) Act and/or found to be involved in illegal mining in other lease areas. The number of such leases comes to 49.

RECOMMENDATIONS (as modified by CEC by its Report dated 13.3.2012. Items 1 to IV of the Report dated 3.2.2012 stood replaced by Items A to I of the Report dated 13.3.2012 which are reproduced below along with Items V to XIV of the initial Report dated 3.2.2012).

(A) the findings of the Joint Team and as modified after careful examination by the CEC may be accepted and directed to be followed by the concerned authorities and the respective leases, notwithstanding anything to the contrary. The boundaries of the mining leases should accordingly be fixed on the ground.

(B) a ceiling of 25 Million Metric Tonnes (MMT) for total production of iron ore from all the mining leases in District Bellary may be prescribed. A ceiling of 5 MMT for production of iron ore from all the mining leases in Districts Chitradurga and Tumkur together may be prescribed;

(C) the proposed "guidelines for the preparation of the R&R Plans" may be approved by this Hon'ble Court and the prescriptions/provisions of the R&R Plans, prepared as per these guidelines, may be directed to be followed by the respective lessees and the concerned authorities;

(D) the iron ore which becomes available should be used for meeting the iron ore requirement of the steel plants and associated industries located in Karnataka and also of those plants located in the adjoining States which have been using the iron ore from the mining leases located in these Districts. Exports, outside the country, should be permissible only in respect of the material which the steel plants and associated industries are not willing to purchase on or above the average price realized by the Monitoring Committee for the corresponding grades of fines/lumps during the sale of about 25 MMT of the existing stock of iron ore. Similarly, the iron ore produced by the beneficiation plants after processing should also not be permitted to be exported outside the country;

(E) the sale of the iron ore should continue to be through e-auction and the same should be conducted by the Monitoring Committee constituted by this Hon'ble Court. However, the quantity to be put up for e-auction, its grade, lot size, its base/floor price and the period of delivery will be decided/provided by the respective lease holders. The Monitoring Committee may permit the lease holders to put up for e-auction the quantities of the iron ore planned to be produced in subsequent months. The system of sale through the Monitoring Committee may be reviewed after say two year;

(F) 90% of the sale price (excluding the royalty and the applicable taxes) received during the e-auction may be paid by the buyer directly to the respective lease holders and the balance 10% may be deposited with the Monitoring Committee alongwith the royalty, FDT and other applicable taxes/charges;

(G) The responsibility of the Monitoring Committee will be (a) to monitor the implementation of the various provisions/prescriptions of the R&R Plans, (b) to ensure strict compliance of the conditions on which the environment clearance, the approval under the Forest (Conservation) Act, 1980 and the other statutory approvals/clearances have been accorded, (c) to ensure that the mining is undertaken as per the approved Mining Plan, (d) to ensure that the ceiling on annual production fixed for the lease does not exceed, (e) to ensure that the safety zone is maintained around the lease area and in respect of the clusters of mining leases around the outer boundary of such cluster of mining leases and (f) to ensure compliance of the other applicable condition/provisions. Any lease found to be operating in violation of the stipulated conditions/provisions should be liable for closure and/or termination of the lease;

(H) the present Members of the Monitoring Committee should continue for a period of next two years; and

(I) in the larger public interest the mining operations in the two leases of M/s. NMDC may be permitted to be continued. However, it will be liable to deposit penalty/compensation as payable for the mining leases falling in "Category-B"

(V) In respect of the mining leases falling in "CATEGORY-B" (details given at Annexure-R-10 to this Report) it is recommended that:

i) the R&R Plan, under preparation by the ICFRE, after incorporating the appropriate changes as per the directions of this Hon'ble

Court, should be implemented in a time bound manner by the respective lessees at his cost. In the event of his failure to do so or if the quality and/or the progress of the implementation of the R&R Plan is found to be unsatisfactory by the Monitoring Committee or by the designated officer(s) of the State of Karnataka, the same should be implemented by the State of Karnataka through appropriate agency(ies) and at the cost of the lessee;

ii) for carrying out the illegal mining outside the lease area, exemplary compensation/ penalty may be imposed on the lessee. It is recommended that:

a) For illegal mining by way of mining pits outside the leases area, as found by the Joint Team, the compensation/ penalty may be imposed at the rate of Rs. 5.00 crore (Rs. Five Crore only) for per ha. of the area found by the Joint Team to be under illegal mining pit; and

b) For illegal mining by way of over burden dump(s) road, office, etc. outside the sanctioned lease area, the compensation/ penalty may be imposed @ Rs. 1.00 crores (Rs. One Crores only) for per ha. of the area found to be under illegal over burden dump etc.

iii) Mining operation may be allowed to be undertaken after (a) the implementation of the R& R Plan is physically undertaken and is found to be satisfactory based on the pre-determined parameters (b) penalty/ compensation as decided by this Hon'ble Court is deposited and (c) the conditions as applicable in respect of "Category-A" leases are fulfilled/followed;

iv) In respect of the seven mining leases located on/nearby the interstate boundary, the mining operation should presently remain suspended. The survey sketches of these leases should be finalized after the interstate boundary is decided and thereafter the individual leases should be dealt with depending upon the level of the illegality found; and

v) Out of the sale proceeds of the existing stock of the mining leases, after deducting :

a) The penalty/compensation payable;

b) Estimated cost of the implementation of the R& R Plan; and

c) 10% of the sale proceeds to be retained by the Monitoring Committee for being transferred to the SPV

d) The balance amount, if any, may be allowed to be disbursed to the respective lessees.

(VI) In respect of the mining leases falling in "CATEGORY-C" (details are given at annexure-R-11 to this Report) it is recommended that (a) such leases should be directed to be cancelled/determined on account of these leases having been found to be involved in substantial illegal mining outside the sanctioned lease areas (b) the entire sale proceeds of the existing stock of the iron ore of these leases should be retained by the Monitoring Committee and (c) the

implementation of the R&R Plan should be at the cost of the lessee;

(VII) the area of the mining leases falling in the "Category-C", after cancellation of the mining leases may be directed to be allotted/assigned through a transparent process of bidding to the highest bidder (s) from amongst the end users. The floor price for this purpose should be fixed on the basis of the market value of the permissible annual production of the iron ore during the period of the agreements/lease period. The iron ore produced from such mines should be used for captive use only and no sale/export will be permissible. The detailed schemes in this regard should be prepared and implemented after obtaining the permission of this Hon'ble Court;

(VIII) the mining leases owned by the M/s. MML should be operated by it. Alternatively, the agreements for mining operations and supply of the iron ore should be entered into by it through a transparent process and on the basis of the market value of the mineral and without any hidden subsidy. The detailed scheme in this regard should be prepared and implemented after obtaining permission of this Hon'ble Court.

(IX) A Special Purpose Vehicle (SPV) under the Chairmanship of Chief Secretary, Government Karnataka and with the senior officers of the concerned Departments of the State Government as Members may be directed to be set up for the purpose of taking various ameliorative and mitigative measures in Districts Bellary, Chitradurga and Tumkur. The additional resources mobilized by (a) allotment/ assignment of the cancelled mining leases as well as the mining leases belonging to M/s. MML, (b) the amount of the penalty/ compensation received/ receivable from the defaulting lessee, (c) the amount received/ receivable by the Monitoring Committee from the mining leases falling in "Category-A" and "Category-B", (d) amount received/ receivable from the sale proceeds of the confiscated material etc., may be directed to be transferred to the SPV and used exclusively for the socio-economic development of the area/local population, infrastructure development, conservation and protection of forest, developing common facilities for transportation of iron ore (such as maintenance and widening of existing road, construction of alternate road, conveyor belt, railway siding and improving communication

system, etc.). A detailed scheme in this regard may be directed to be prepared and implemented after obtaining permission of this Hon'ble Court;

(X) Out of the 20% of sale proceeds retained by the Monitoring Committee in respect of the cleared mining leases falling in "Category-A", 10% of the sale proceeds may be transferred to the SPV while the balance 10% of the sale proceeds may be reimbursed to the respective lessees. In respect of the mining leases falling in "Category-B", after deducting the penalty/compensation, the estimated cost of the implementation of the R&R Plan, and 10% of the sale proceeds to be retained for being transferred to the SPV, the balance amount, if any, may be reimbursed to the respective lessees;

(XI) no new mining leases, including for which Notifications have already been issued, will be granted without obtaining permission of this Hon'ble Court;

(XII) the pending applications for grant of mining leases in Ramgad and Swamimalai Block in District Bellary and for which the NOC's were earlier issued will stand rejected;

(XIII) the confiscated iron ore pertaining to the cancelled stock yards will be sold by the Monitoring Committee and the sale proceeds will be retained by the Monitoring Committee;

(XIII) the Monitoring Committee may be authorized to sell low grade/sub grade iron ore to Cement Plants, Red Oxide and other similarly placed industries. It may also be authorized to supply iron ore required for construction of nuclear plants at the rates mutually agreed between the Monitoring Committee and the concerned authorities provided no middle man is involved; and

(XIV) the Monitoring Committee may be authorized to utilize up to 25% of the interest received by it for engaging reputed agencies for the monitoring of the various parameters relating to mining."

6. As previously noticed, the CEC in its Report dated 13.3.2012 had set out in detail the objectives of the Reclamation and Rehabilitation (R&R) plans and the guidelines for preparation of detailed R & R plans in respect of each mining lease. The origins of the idea (R & R plans) are to be found in an earlier Report of the CEC dated 28.7.2011. As the suggestions

of the CEC with regard to preparations of R & R plans for each mine is crucial to scientific and planned exploitation of the mineral resources in question it will be necessary for us to notice the said objectives and the detailed guidelines which are set out below. In this connection it would be worthwhile to take note of the fact that the guidelines in question have been prepared after detailed consultation with different stakeholders including the Federation of Indian Mineral Industries (FIMI) which claims to be the representative body of the majority of the mining lessees of the present case.

"**II. BROAD OBJECTIVES/PARAMETERS OF R&R PLANS**

8. The broad objectives/parameters of the R&R Plans would be:

(i) to carry out time bound reclamation and rehabilitation of the areas found to be under illegal mining by way of mining pits, over burden/waste dumps etc. outside the sanctioned areas;

(ii) to ensure scientific and sustainable mining after taking into consideration the mining reserves assessed to be available within the lease area;

(iii) to ensure environmental friendly mining and related activities and complying with the

standards stipulated under the various environmental/mining statutes e.g. air quality (SPM, RPM), noise/vibration level, water quality (surface as well as ground water), scientific over burden/waste dumping, stabilization of slopes and benches, proper stacking and preservation of top soil, sub grade mineral and saleable minerals, proper quality of internal roads, adequate protective measures such as dust suppression/control measures for screening and crushing plants, beneficiation plants, provision for retention walls, garland drains, check dams, siltation ponds, afforestation, safety zones, proper covering of truck, exploring possibility of back filling of part of over burden/waste dumps in the mining pits, sale/beneficiation of sub grade iron ore, water harvesting, etc.

(iv) for achieving (ii) and (iii) above, fixation of permissible annual production; and

(v) regular and effective monitoring and evaluation.

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VI. PROVISIONS/PRESCRIPTIONS OF THE LEASE WISE R&R PLANS

14. The leasewise R&R Plans will provide for the specific provisions/prescriptions as dealt with hereunder:

(A) REGARDING AREA FOUND BY THE JOINT TEAM TO BE UNDER ILLEGAL MINING

15. The area under illegal mining pits should be filled up with the existing over burden/waste dumps preferably the illegal dumps. Appropriate soil and moisture conservation measures will be provided and such areas will be afforested with indigenous species.

16. The reclamation and rehabilitation works will be carried out even if such areas are found to be having mineral reserves.

17. In respect of area under illegal over burden/waste dumps, wherever environmentally feasible the over burden/waste dumps will be removed and disposed of scientifically within the lease area of the encroacher.

18. In other cases, the illegal over burden/waste dumps will be stabilized by:

(a) modifying the gradient of the lump
(b) construction of retaining walls,
(c) construction of gully plugs
(d) construction of garland drains
(e) geo-metric/geo-matting of dumps
(f) afforestation, and
(g) other soil and moisture conservation measures,

19. However, in respect of the mining pits falling within the area of the other sanctioned leases, specific lease-wise

prescription/provision will be made depending upon the ground situation.

(B) REGARDING PERMISSIBLE ANNUAL PRODUCTION

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 over burden/waste dumps, sub grade 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).

21. Presently the permissible annual production would be decided for the next five years subject to review/modification in any of the following situation:

(a) change in the assessed mineral reserves/resources because of subsequent exploration carried out and incorporated in the modified mining plan/scheme and approved by the IBM;

(b) identification of additional area for the disposal of the over burden/waste dumps and incorporated in the approved mining plan/scheme (preferably by way of back filling of mined out pits); and

(c) creation of additional physical infrastructure such as railway sidings, conveyors, wagon tipplers, wagon loaders (to remove/reduce transportation bottlenecks).

(C) STABILIZATION OF THE EXISTING OVER BURDEN/WASTE DUMPS AND SUB GRADE IRON ORE DUMPS AND PLAN FOR ACTIVE OVER BURDEN/WASTE DUMP

22. This will include the total area of the dump(s), present gradient, planned gradient, provision for retaining wall(s), benches, final gradient, volume of over burden/waste dump that may be stored, afforestation, use of geo-matting/geo-textile, garland drains and other soil and moisture conservation/protective measures;

23. The design will vary from mine to mine and within the mine from dump to dump. The prescription will also vary between old dumps and active dumps. The slope of 27 degree provided in the environment clearance may not be feasible for dumping on steep hill slopes.

24. The ultimate objective of the dump design/protective measure would be to ensure that the slopes are stable, are not vulnerable to erosion and to provide for adequate protective measures to capture/control run off:

(D) MINING PITS

25. In respect of the mining leases where the shape and design of the mining pits differ substantially from those provided in the approved mining plan and /or found to be in gross violation of the approved design,

mining will be permissible based on rectification as required by the concerned statutory authority (viz. DGMS). Similarly, gross violations under other Acts/Rules, if any, will need to be rectified (as required by the relevant statutory authorities).

(E) SOIL AND MOISTURE CONSERVATIONS, AFFORESTATION AND OTHER MEASURES

26. The R&R plan would inter alia provide for:

(i) broad design/specification for

(a) garland drains
(b) retaining walls
(c) check dams
(d) gully plugs and/or culverts (if required)
(e) geo textile/geo matting of dumps
(f) afforestation in the safety zones
(g) afforestation in peripheral area, road side, over burden dumps and other areas

(ii) dust suppression measures at/for loading, unloading and transfer points, internal roads, mineral stacks etc.

(iii) covered conveyor belts (if feasible) – such as down hill conveyor, pipe conveyor etc.

(iv) specification of internal roads,

(v) details of existing transport system and proposed improvements

(vi) railways siding (if feasible)

(vii) capacity building of personnel involved in the mining and environmental management

(viii) rain water harvesting

(F) TIME SCHEDULE

27. Time schedule for implementation of various prescriptions will be provided.

(G) MONITORING MECHANISM

28. Monitoring mechanism, including predetermined parameters to assess the successful implementation of the various provision/prescriptions of the R&R Plan will be provided. The Monitoring Committee will be responsible for monitoring the implementation of the prescription/provisions of the R&R Plans."

7. The recommendations of the CEC dated 13.3.2012 in respect of Items A to I were accepted by the Court by its order dated 13.4.2012.

8. The next significant event that had occurred in the catalogue of relevant occurrences is the order of the Court dated 3.9.2012 permitting reopening of 18 category 'A' mines subject to the conditions spelt out in the said order which broadly were to the effect that mining shall be to the extent of the annual production as applicable to each mine determined by the CEC in

its Report dated 29.8.2012 and further subject to the following conditions:

> "(I) compliance with all the statutory requirements;
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> (II) the full satisfaction of the Monitoring Committee, expressed in writing, that steps for implementation of the R & R Plan in the leasehold areas are proceeding effectively and meaningfully, and
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> (III) a written undertaking by the leaseholders that they would fully abide by the Supplementary Environment Management Plan (SEMP) as applicable to the leasehold area and shall also abide by the Comprehensive Environment Plan for Mining Impact Zone (CEPMIZ) that may be formulated later on and comply with any liabilities, financial or otherwise, that may arise against them under the CEPMIZ.
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> (IV) The CEC shall, upon inspection, submit a report to this Court that any or all the stated 18 "Category A" mine owners have fully satisfied the above-mentioned conditions. Further, it shall be reported that the mining activity is being carried on strictly within the

specified parameters and without any violation."

9. The order of the Court dated 28.9.2012, laying down certain conditions "as the absolute first step before consideration of any resumption of mining operations by Category–'B' leaseholders" would also be required to be specifically noticed at this stage.

"I. Compensatory Payment

(a) Each of the leaseholders must pay compensation for the areas under illegal mining pits outside the sanctioned area, as found by the Joint Team (and as finally held by the CEC) at the rate of Rs.5 crores per hectare, and (b) for the areas under illegal overburden dumps, roads, offices, etc. outside the sanctioned lease area, as found by the Joint Team (as might have been finally held by the CEC) at the rate of Rs.1 crore per hectare.

It is made clear that the payment at the rates aforesaid is the minimum payment and each leaseholder may be liable to pay additional amounts on the basis of the final determination of the national loss caused by the illegal mining and the illegal use of the land for overburden dumps, roads, offices, etc. Each leaseholder, besides making payment as

directed above, must also give an undertaking to the CEC for payment of the additional amounts, if held liable on the basis of the final determination.

At the same time, we direct for the constitution of a Committee to determine the amount of compensatory payment to be made by each of the leaseholders having regard to the value of the ore illegally extracted from forest/non-forest land falling within or outside the sanctioned lease area and the profit made from such illegal extraction and the resultant damage caused to the environment and the ecology of the area.

The Committee shall consist of experts/officers nominated each by the Ministry of Mines and the Ministry of Environment and Forests. The convener of the Committee will be the Member Secretary of the CEC. The two members nominated by the Ministry of Mines and the Ministry of Environment and Forests along with the Member Secretary, CEC shall co-opt two or three officers from the State Government. The Committee shall submit its report on the aforesaid issue through the CEC to this Court within three months from today.

The final determination so made, on being approved by the Court, shall be payable by each of the leaseholders.

II. Guarantee money for implementation of the R&R plan in the respective sanctioned lease areas.

The CEC shall make an estimate of the expenses required for the full implementation of the R&R plan in each of the 63 'Category B' mines and each of the leaseholders must pay the estimated amount as guarantee for implementation of the R&R plans in their respective sanctioned lease areas and in the areas where they carried on illegal mining activities or which were used for illegal overburden dumps, roads, offices, etc. beyond the sanctioned lease area. In case, any leaseholder defaults in implementation of the R&R plan, it will be open to the CEC to carry out the R&R plan for that leasehold through some other proper agency from the guarantee money deposited by the leaseholder. However, on the full implementation of the R&R plan to the complete satisfaction of the CEC and subject to the approval by the Court, the guarantee money would be refundable to the leaseholder.

III. In addition to the above, each leaseholder must pay a sum equivalent to 15% of the sale proceeds of its iron ore sold through the Monitoring Committee as per the earlier orders of this Court. In this regard, it may be stated that though the amicus suggests the payment @ 10% of the sale proceeds, having regard to the overall facts and circumstances of the

case, we have enhanced this payment to 15% of the sale proceeds.

Here it needs to be clarified that the CEC/Monitoring Committee is holding the sale proceeds of the iron ores of the leaseholders, including the 63 leaseholds being the subject of this order. In case, the money held by the CEC/Monitoring Committee on the account of any leaseholder is sufficient to cover the payments under the aforesaid three heads, the leaseholder may, in writing, authorize the CEC to deduct from the sale proceeds on its account the amounts under the aforesaid three heads and an undertaking to make payment of any additional amount as compensatory payment. On submission of such authorization and undertaking, the CEC shall retain the amounts covering the aforesaid three heads and pay to the concerned leaseholder the balance amount, if any. It is expected that the balance amount, after making the adjustments as indicated here, would be paid to the concerned leaseholder within one month from the date of submission of the authorization and the undertaking.

In the case of any leaseholder, if the money held on his account is not sufficient to cover the aforesaid three heads, he must pay the deficit within two months from today.

> IV. The R&R plans for the aforesaid 63 'Category B' mines may be prepared as early as possible, as directed by orders of this Court dated April 13, April 20 and May 05, 2012, and in case where the R&R plan is already prepared and ready, the leaseholder may take steps for its comprehensive implementation, both within and outside the sanctioned lease area, without any delay."

10. The number of "B" Category mines though mentioned as 72 in the CEC Report dated 3.2.2012, reference to the figure of 63 in the above extracted part of the Court's order dated 28.9.2012 is on account of placing of the 7 mines located on the inter-State border (Karnataka-Andhra Pradesh) in a special category (B1) and the cases of two leases i.e. M/s S.B. Minerals (ML No.2515) and M/s. Shanthalakshmi Jayaram (ML No.2553) [tentatively placed by CEC in Category 'B'] before the Court for orders as to their appropriate categorization. The issue of the seven (7) mines on the Karnataka – Andhra Pradesh border and the two (2) mines in respect of which appropriate categorization which is to be decided is being dealt with in another part of the present order.

11. The latest Report of the CEC dated 15.2.2013 indicating the present status of preparation and implementation of the lease wise R& R plans and resumption of mining operations by Category 'A' and Category 'B' mines and the compliance of the preconditions for opening of Category 'B' mines will also require specific notice, which recommendations are extracted below.

"**RECOMMENDATIONS**

15. In the above background the following recommendations are made for the consideration of this Hon'ble Court :

(i) This Hon'ble Court may consider extending its order dated 3rd September, 2012, by which mining operations were permitted to be resumed in 18 "Category-A" mining leases, to all "Category-A" mining leases;

(ii) This Hon'ble Court may consider permitting the resumption of the mining operations in "Category-B" mining leases subject to the conditions as applicable for the resumption of the mining operations in the "Category-A" mining leases and compliance of the following additional conditions :

(a) In compliance of this Hon'ble Court's order dated 28th September, 2012 the lessees will be required to pay, if not already so done, compensation for the area under illegal mining pits, illegal over burden dumps, roads, offices etc. undertake to pay the additional compensatory amounts, if held liable, guarantee money for implementation of the R&R Plans and deposit of 15% of the

sale proceeds of the existing iron ore sold by the Monitoring Committee; and

(b) Before starting the mining operations the implementation of the R& R Plans for the areas found under illegal mining pits, illegal over burden dumps, etc. will be completed/nearing completion to the satisfaction of the Monitoring Committee; and

(iii) the CEC/Monitoring Committee may be authorized to remove and sell through e-auction the sub grade iron ore available in the existing over burden dumps in and around the lease areas subject to the condition that such removal and sale is not likely to have significant adverse impact on the existing tree growth/vegetation and/or stability of the over burden dumps. The Monitoring Committee may be authorized to retain the entire sale proceeds in respect of the dumps located outside the sanctioned and presently valid lease areas for the purpose of transfer to the SPV for the implementation of the Comprehensive Environment Plan for Mining Impact Zone (CEPMIZ)."

Thus the CEC in its Report dated 15.2.2013 had recommended resumption of mining operations in the remaining category 'A' mines subject to the conditions already imposed by this Court in its order dated 3.9.2012 and also for reopening of Category 'B' mines subject to the same conditions and

additionally the preconditions recommended by the CEC and approved by this Court by its order dated 28.9.2012.

12. The above main features contained in the various Reports of the CEC and the orders of this Court apart, there are certain incidental and supplementary matters which may be conveniently noticed now.

13. The first is with regard to investigations in respect of alleged criminal offences by lessees which have been ordered by this Court to be investigated by the CBI. As investigations have already been ordered by this Court and such investigations would necessarily have to follow the procedure prescribed by law we do not wish to delve upon the same save and except to say that each of such investigation shall be brought to its logical conclusion in accordance with law and any aggrieved party would be entitled to avail of all legal remedies as may be available.

14. The second supplementary issue that can be conveniently dealt with at this stage is with regard to sale of the existing stock of Iron Ore which is mainly the yield of illegal mining. The Court had ordered disposal of such accumulated Iron Ore by the process of e-auction through a Monitoring Committee

constituted by order of this Court dated 23.9.2011. From time to time this Court had directed certain payments to be made to the Monitoring Committee e.g. by way of 10% of sale proceeds; on account of compensatory payments etc. By order dated 28.9.2012, this Court had constituted a Special Purpose Vehicle (for short 'SPV') on the suggestion of the learned Amicus Curiae. The purpose of constitution of the SPV, it may be noticed, is for taking of ameliorative and mitigative measures as per the "Comprehensive Environment Plans for the Mining Impact Zone" (CPEMIZ) around mining leases in Bellary, Chitradurga and Tumkur. By the order dated 28.9.2012, the Monitoring Committee was to make available the payments received by it under different heads of receivables to the SPV.

15. The above facts would have relevance to the future of the mining operations in the State as the continuance of this Court's orders for sale of the Iron Ore by the process of e-auction by the Monitoring Committee after recommencement of mining operations on the same terms and conditions and also the continuance of the SPV would be required to be considered by us. It would also be convenient to take note of the fact that as per the CEC's Report dated 15.2.2013 sale of almost the entire

quantity of illegally extracted Iron Ore has been effected through the Monitoring Committee and the sub-grade Iron Ore lying in dumps in and around several lease areas may not have adequate commercial potential. Besides removal thereof for sale, in many cases, may also give rise to environmental problems in as much as removal of such dumps may constitute a hazard to the stability of the dumps which have been in existence for many years. Permission for sale of sub-grade iron ore, only when the same is commercially viable and removal thereof from the dumps is an environmentally safe exercise, has been sought by the CEC in its last Report dated 15.2.2013. We do not find any impediment in accepting the recommendations of the CEC in the Report dated 15.2.2013 in respect of removal and sale of sub-grade Iron Ore. Similarly, we do not find any difficulty in continuing our previous orders permitting sale of iron ore to be mined after resumption of operations through the Monitoring Committee on the same terms and conditions as presently in force.

16. The supplementary and the collateral issues, which we must emphasize are not to be understood to be low either in priority or importance because of the nomenclature used,

having been dealt with by us in the manner indicated above we may now come to what can be conveniently referred to as the central issues that confront the Court in the present case. In this regard notice must be had to the large number of interlocutory applications (IAs) filed basically questioning the sanctity of the survey carried out by the Joint Team constituted by this Court, the findings arrived at and the categorization of the leaseholders into the three different categories. Such objections in the main have come from leaseholders who have been put in Category 'C' (except in few isolated cases seeking a change from Category 'B' to 'A') for which Category of mines the recommendation of the CEC is one of closure. The challenge is on twin grounds of lack of procedural fairness and inherent defects in the technical part of the exercise of survey besides apparent legal fallacies in the process of determination of the allegedly encroached mining area. Denial of adequate opportunity to associate and coordinate with the survey process, notwithstanding the possible adverse effects of the findings of survey on the legal rights of the lease holders, is the backbone of the challenge on ground of procedural fairness. On the other hand, alteration of the lease area either by shifting or reducing

the same; ignoring concluded judicial orders determining boundary disputes between adjacent lease holders; taking of land use for dumps as mining operations requiring a mining license for the land so used or forest clearances under the Forest Conservation Act, 1980 (in case of such use of forest land) and above all the change of boundaries demarcated decades back by adoption of the Total Station Method instead of a repeat survey by following the same Conventional Method (chain method) are the common threads in the arguments advanced to challenge the technical part of the survey.

17. The categorization of the allegedly offending leases on the basis of percentage of the alleged encroachment qua the total lease area is contended to be constitutionally fragile and environmentally self-defeating. A leaseholder with a more expansive lease area, inspite of committing a larger encroachment, may still fall below the percentage adopted as the parameter so as to place him in a more favourable category, say Category 'B', as compared to a small lease where the area encroached, though small, falls in a less favourable category, say "C" because the percentage of encroachment exceeds the prescribed parameters. The recommendation of the CEC with

regard to categorization and the actions proposed on that basis as well as the suggested parameters for drawing up the R& R plans and the preconditions to be fulfilled by Category 'A' and 'B' leaseholders for recommencement of mining operations has also been assailed by questioning the credibility of the CEC as an institution and the prolonged continuance of its members which, according to the leaseholders, have the tendency of effectuating unbridled powers.

18. Relying on the provisions of the Mines and Minerals (Development & Regulation) Act, 1957; Forest (Conservation) Act, 1980 and Environment (Protection) Act, 1986 (hereinafter referred to as "MMDR Act", "FC Act" and "EP Act" respectively) it is argued that each of the statutes contemplate a distinct and definite statutory scheme to deal with the situations that have allegedly arisen in the present case. To resolve the said issues it is the statutory scheme that should be directed to be followed and resort to the powers of this Court under Article 32 read with Article 142 of the Constitution, when a statutory scheme is in existence, would be wholly uncalled for. Specifically, it has been pointed out that none of the conditions that are required to be fulfilled by Category 'A' leaseholders and none of the compulsory

payments contemplated for Category 'B' leaseholders for recommencement of operation are visualized in any of the statutory schemes. Insofar as Category 'C' leaseholders are concerned, it is contended that cancellation, if any, has to be in accordance with the statute which would provide the lease holder with different tiers of remedial forums as compared to the finality that would be attached if any order is to be passed by this Court. In this regard, several earlier opinions of this Court, details of which will be noticed in the discussions that follow, had been cited at the bar to persuade us to take the view that we should desist from exercising our powers under the Constitution and instead relegate the parties to the remedies provided by the statute.

19. We may now proceed to deal with the issues arising in proper sequential order.

ISSUE NO.1

Credibility of the CEC

20. A scathing attack has been made against the CEC on behalf of one of the lessees represented by Shri Dushyant A. Dave, learned senior counsel. It is contended that the said

authority has virtually become a law unto itself making recommendations which is in defiance of both law and logic. Assumption of unguided, unbridled and absolute powers has been attributed to the CEC. The implicit trust of this Court in the said body has been misutilised requiring a review by this Court with regard to the continuance of the said body or at least in respect of a change in its present composition, it is argued.

21. The CEC was first constituted by the Court by its order dated 9.5.2002 as an interim body until creation of the statutory agency contemplated under the provisions of Section 3 (3) of the EP Act. Thereafter by a Notification dated 17.9.2002 published in the Gazette of India the constitution of the Central Empowered Committee (CEC) for a period of 5 years was notified indicating its composition together with the extent of its powers and duties. It transpires from the Court's order dated 7.9.2007 that an issue with regard to the correctness of the extent of empowerment of the said body made by Notification dated 17.9.2002 was raised on behalf of the Union of India, whereafter, on the suggestions of the Attorney General for India, this Court by its order dated 14.12.2007 had determined the extent of powers of the CEC in the following terms :

"1. In supersession of all the previous orders regarding constitutions and functioning of the Central Empowered Committee (hereinafter called the "Empowered Committee") is constituted for the purpose of monitoring and ensuring compliance with the orders of this Court covering the subject matter of forest and wild life and related issues arising out of the said orders.

2. The Committee shall exercise the following powers and perform the following functions:

(i) to monitor the implementation of this Court's orders and place reports of non-compliance before the Court and Central Government for appropriate action.

(ii) to examine pending Interlocutary Applications in the said Writ petitions (as may be referred to it by the Court) as well as the reports and affidavits filed by the States in response to the orders passed by the Hon'ble Court and place its recommendations before the Court for orders

(iii) to deal with any applications made to it by any aggrieved person and wherever necessary, to make a report to this Court in that behalf;

(iv) for the purposes of effective discharge of powers conferred upon the Committee under this order; the Committee can:-

(a) call for any documents from any persons or the government of the Union or the State or any other official;

(b) undertake site inspection of forest area involved;

(c) seek assistance or presence of any person(s) or official(s) required by it in relation to its work;

(d) co-opt one or more persons as its members or as special invitees for dealing with specific issues;

(e) co-opt, wherever feasible, the Chief Secretary or his representative and Principal Chief Conservator of Forests of the State as special invitees while dealing with issues pertaining to a particular state;

f) to suggest measures generally to the State, as well as Central Government, for the more effective implementation of the Act and other orders of this Court.

(v) to examine and advise/recommend on any issue referred to the Committee."

22. As the period of five years mentioned in the Notification dated 17.9.2002 had expired and the terms of reference to the body had been redetermined by this Court, perhaps, a fresh notification should have been issued which was not forthcoming. It is in such a situation that the CEC had continued to function under orders of the Court submitting its reports from time to time in various environmental issues

pending before this Court. It is on consideration of such Reports that the Court has been passing its orders from time to time.

23. In the circumstances enumerated above, questions concerning the credibility of the CEC are absolutely unfounded, particularly in the absence of any materials to substantiate the apprehensions, if not allegations, that have been leveled. The said body has been performing such tasks as had been assigned by this Court by its orders passed from time to time. The directions on the basis of which the CEC had proceeded and had submitted its Reports are within the framework of the terms of reference of the CEC as determined by this Court by order dated 14.12.2007. Needless to say, acceptance of the recommendations made by the CEC on the basis of which orders of the Court are formulated is upon the satisfaction of the Court. We, therefore, close the issue by holding the contentions made to be wholly untenable.

ISSUE NO.2

Exercise of jurisdiction under Article 32/142 of the Constitution on the basis of the facts revealed by Reports of the CEC i.e. large scale damage to the forest wealth of the country due to illegal mining on an unprecedented scale vis-à-vis resort to remedies under the provisions of Mines and Minerals (Development and Regulation) Act, 1957, Forest

(Conservation) Act, 1980 and Environment (Protection) Act, 1986

24. On the above issue the short and precise argument on behalf of the leaseholders is that the provisions of each of the statutory enactments, i.e., the MMDR Act, FC Act and EP Act prescribe a distinct statutory scheme for regulation of mining activities and the corrective as well as punitive steps that may be taken in the event mining activities are carried out in a manner contrary to the terms of the lease or the provisions of any of the statutes, as may be. The argument advanced is that as the statutes in question contemplate a particular scheme to deal with instances of illegal mining or carrying on mining operations which is hazardous to the environment, the CEC could not have recommended the taking of any step or measure beyond what is contemplated by the statutory scheme(s) in force. It is argued that it will not be proper for this Court to act under Article 32 and to accept any of the said recommendations which are beyond the scheme(s) contemplated by the Statute(s). In other words, what is sought to be advanced on behalf of the leaseholders is that no step should be taken or direction issued by this Court which will be contrary to or in conflict with the

provisions of the relevant statutes. Several judgments of this Court, which are perceived to be precedents in support of the proposition advanced, have been cited in the course of the arguments made.

25. On the other hand, the learned Amicus Curiae, Shri Shyam Divan, has submitted that the present is a case of mass destruction of the forest wealth of this country resulting not only in a plunder of scarce natural resources but also causing irreparable ecological and environmental damage and degradation. The learned Amicus Curiae has submitted that the extent of illegal mining that had happened in the three districts of the State of Karnataka is unprecedented. The relevant data compiled by different bodies has been placed by the learned Amicus Curiae to indicate that in the Bellary-Hospet region the annual production of Iron Ore had increased from 12.4 MMT in the year 2001-02 to 44.39 MMT in the year 2008-09. The then Chief Minister of the State had made a statement on the floor of the legislative assembly on 9.7.2010 that 30.49 MMT of illegal Iron Ore has been exported from the State of Karnataka between 2003-04 to 2009-10 valued at approximately Rs. 15,245 crores. In the year 2009-10 alone the total quantity of illegal Iron Ore

exported stood at 12.9 MMT. During the inspection carried out by the Indian Bureau of Mines in December, 2009 it was found that not a single mining lease was operating without violating the provisions of the MMDR Act and the FC Act. In an affidavit filed by the official Respondents in a writ petition registered and numbered as W.P. No. 14551/2010 before the Karnataka High Court it was stated that between November, 2009 and February, 2010 (i.e., within a period of four months) 35.319 lakh MT of illegal Iron Ore was received at Belekeri and Karwar ports, for movement of which for a period of about 4 months 2986 trucks were required to undertake the journey every day in both directions i.e., to the ports and thereafter back.

26. According to Shri Divan, the present is a case of mass tort resulting in the abridgment of the fundamental rights of a large number of citizens for enforcement of which the writ petition has been filed under Article 32. Shri Divan has submitted, by relying on several decisions of this Court, that in a situation where the Court is called upon to enforce the fundamental rights and that too of an indeterminate number of citizens there can be no limitations on the power of Court. It is the satisfaction of the Court that alone would be material. Once

such satisfaction is reached, the Court will be free to devise its own procedure and issue whatever directions are considered necessary to effectuate the Fundamental Rights. The only restriction that the Court will bear in mind is that its orders or directions will not be in conflict with the provisions of any Statute. However, if the statute does not forbid a particular course of action it will be certainly open for the Court under Article 32 to issue appropriate directions. According to the learned Amicus Curiae in the present case none of the recommendations of the CEC is inconsistent or contrary to any statutory provision. They are at best supplemental to the existing provisions seeking to achieve the same end through a procedure which may be somewhat different. The justification for this, according to the learned Amicus Curiae, lies in the extraordinary situation that had occurred in the present case.

27. At this stage, very briefly, the statutory scheme under the three enactments in question may be taken note of. Under the provisions of the MMDR Act the State Government has been provided with the power of termination of licenses or mining leases in the interest of regulation of mines and minerals (Section 4A) whereas under Section 5, power has been conferred

not to grant mining leases in certain specified situations. The Rule making power under Section 23C extends to framing of Rules by the State Government to prevent illegal mining, transportation and storage of minerals and to provide for checking and inspection of the mining lease area. The Karnataka (Prevention of Illegal Mining, Transportation and Storage of Minerals) Rules, 2011 has been notified on 5th February, 2011. Under the Mineral Concession Rules, 1960, the expression "illegal mining" has been explained in Rule 2(iia). The aforesaid Rules also contemplate that while determining the extent of illegal mining the area granted under the lease will be deemed to have been held by the holder of the license under lawful authority. Under the provisions of the EP Act, closure, prohibition or regulation of industry, operation or process is contemplated, whereas under the provisions of the FC Act prior approval of the Central Government for use of forest land for non forest purpose is mandatory. The question that has been raised on behalf of the leaseholders is whether the aforesaid provisions under the different statutes should be resorted to and the recommendations made by the CEC including closure of

Category-"C" mines should not commend for acceptance of this Court.

28. In ***Bandhua Mukti Morcha*** *Vs.* ***Union of India & Ors.*** (1984) 3 SCC 161, this Court had the occasion to consider the nature of a proceeding under Article 32 of the Constitution which is in the following terms :-

> "**32. Remedies for enforcement of rights conferred by this Part**.
>
> (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
>
> (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
>
> (3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
>
> (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution."

29. The issue before the Court was one of release/freedom of an indeterminate number of citizens from bonded labour and was taken up by the Court by registering a letter addressed to a Hon'ble Judge of this Court to the above effect as a writ petition under Article 32. In the above context this Court in para 13 of its order observed as follows :

> **"13.** But the question then arises as to what is the power which may be exercised by the Supreme Court when it is moved by an "appropriate" proceeding for enforcement of a fundamental right. The only provision made by the Constitution-makers in this behalf is to be found in clause (2) of Article 32 which confers power on the Supreme Court "to issue directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for enforcement of any of the fundamental rights". It will be seen that the power conferred by clause (2) of Article 32 is in the widest terms. It is not confined to issuing the high prerogative writs of habeas corpus, mandamus, prohibition, certiorari and quo warranto, which are hedged in by strict conditions differing from one writ to another and which to quote the words spoken by Lord Atkin in *United Australia Limited* v. *Barclays Bank Ltd. [(1941) A.C. 1]* in another context often "stand in the path of justice clanking their mediaeval chains". But it is much wider and includes within its matrix, power to issue any directions, orders or writs which may be appropriate for enforcement of the fundamental right in question and this is made amply clear by the inclusive clause which refers to *in the nature* of habeas corpus, mandamus, prohibition, quo warranto and certiorari. It is not only the high prerogative writs of mandamus, habeas corpus,

prohibition, quo warranto and certiorari which can be issued by the Supreme Court but also writs *in the nature* of these high prerogative writs and therefore even if the conditions for issue of any of these high prerogative writs are not fulfilled, the Supreme Court would not be constrained to fold its hands in despair and plead its inability to help the citizen who has come before it for judicial redress, but would have power to issue any direction, order or writ including a writ in the nature of any high prerogative writ. This provision conferring on the Supreme Court power to enforce the fundamental rights in the widest possible terms shows the anxiety of the Constitution-makers not to allow any procedural technicalities to stand in the way of enforcement of fundamental rights. The Constitution-makers clearly intended that the Supreme Court should have the amplest power to issue whatever direction, order or writ may be appropriate in a given case for enforcement of a fundamental right. But what procedure shall be followed by the Supreme Court in exercising the power to issue such direction, order or writ? That is a matter on which the Constitution is silent and advisedly so, because the Constitution-makers never intended to fetter the discretion of the Supreme Court to evolve a procedure appropriate in the circumstances of a given case for the purpose of enabling it to exercise its power of enforcing a fundamental right. Neither clause (2) of Article 32 nor any other provision of the Constitution requires that any particular procedure shall be followed by the Supreme Court in exercising its power to issue an appropriate direction, order or writ. The purpose for which the power to issue an appropriate direction, order or writ is conferred on the Supreme Court is to secure enforcement of a fundamental right and obviously therefore, whatever procedure is necessary for fulfilment of that purpose must be permissible to the Supreme Court."

This Court also found that it would be justified to depart, in a proceeding under Article 32, from the strict adversarial procedure and the principles embodied in the Code of Civil Procedure and the Indian Evidence Act and in this regard observed as under:

> "...We do not think we would be justified in imposing any restriction on the power of the Supreme Court to adopt such procedure as it thinks fit in exercise of its jurisdiction, by engrafting adversarial procedure on it, when the Constitution-makers have deliberately chosen not to insist on any such requirement and instead, left it open to the Supreme Court to follow such procedure as it thinks appropriate for the purpose of securing the end for which the power is conferred, namely, enforcement of a fundamental right."

Insofar as the practice of appointing commissions for collection of basic facts to enable the Court to adjudicate the issues concerning violation of fundamental rights is concerned it would be necessary to extract the following observations recorded by this Court in para 14 in the case of ***Bandhua Mukti Morcha*** (supra).

> **"14**...It is for this reason that the Supreme Court has evolved the practice of appointing commissions for the purpose of gathering facts and data in regard to a complaint of breach of a fundamental right made on behalf of the weaker sections of the society. The report of the Commissioner would furnish prima facie evidence of the facts and data gathered by the

> Commissioner and that is why the Supreme Court is careful to appoint a responsible person as Commissioner to make an enquiry or investigation into the facts relating to the complaint. It is interesting to note that in the past the Supreme Court has appointed sometimes a District Magistrate, sometimes a District Judge, sometimes a professor of law, sometimes a journalist, sometimes an officer of the Court and sometimes an advocate practising in the Court, for the purpose of carrying out an enquiry or investigation and making report to the Court because the Commissioner appointed by the Court must be a responsible person who enjoys the confidence of the Court and who is expected to carry out his assignment objectively and impartially without any predilection or prejudice. Once the report of the Commissioner is received, copies of it would be supplied to the parties so that either party, if it wants to dispute any of the facts or data stated in the report, may do so by filing an affidavit and the court then consider the report of the Commissioner and the affidavits which may have been filed and proceed to adjudicate upon the issue arising in the writ petition. It would be entirely for the Court to consider what weight to attach to the facts and data stated in the report of the Commissioner and to what extent to act upon such facts and data."

30. In ***M.C. Mehta*** *Vs.* ***Union of India & Ors.*** (1987) 1 SCC 395, this Court not only reiterated the view adopted in ***Bandhua Mukti Morcha*** (supra) but also held that the power under Article 32 would be both injunctive as well as remedial and the power to grant remedial relief, naturally, would extend to a wide range of situations and cannot be put in a straight jacket formula.

31. ***M.C. Mehta*** *Vs.* ***Union of India & Ors.*** (2009) 6 SCC 142 is a case which would disclose a very proximate connection with the case in hand. In the aforesaid case this Court was called upon to answer the question as to whether in view of the provisions of Section 4A of the MMDR Act (noticed earlier) it would be appropriate to exercise the power under Article 32 read with Article 142 in order to suspend mining operations in the Aravali Hills. The said question was required to be gone into by the Court in the context of the specific materials placed before it to show that indiscriminate mining resulting in large scale environmental degradation had occurred. In the above context, the contents of the paragraphs 41 to 45 of the judgment in the case of ***M.C. Mehta*** (supra) would be relevant:-

> **"41.** On the legal parameters, Shri Diwan and Shri Venugopal, learned Senior Counsel and Shri S.K. Dubey, learned counsel, submitted that where law requires a particular thing to be done in a particular manner, it must be done in that manner and other methods are strictly forbidden. In this connection, it was urged that when Section 4-A postulates formation of an opinion by the Central Government, after consultation of the State Government, in the matter of cancellation of mining leases in cases of environmental degradation, the power needs to be exercised by the State Government upon receipt of request from the Central Government. According to the learned counsel, therefore, this Court cannot cancel the mining leases if there is alleged environmental degradation as submitted by the learned amicus curiae.

42. It was further submitted that measures under Section 3(2)(*v*) of the EP Act, 1986 to restrict areas in which industries shall or shall not be carried out can only be undertaken by the Central Government where it deems expedient to protect and improve the quality of environment. In fact, according to the learned counsel, when Aravallis Notification was issued on 7-5-1992 it was issued under Section 3(2)(*v*) by the Central Government. At that time, the Central Government thought it fit not to place a complete ban but to permit the industries in the mining sector to carry on its business/operations subject to restrictions enumerated in the said notification.

43. It was lastly submitted that the recommendations of CEC to impose a complete ban on mining, particularly in cases where environmental clearances are obtained would amount to an exercise of power outside the 1957 Act and the Rules framed thereunder. That, this Court cannot exercise powers under Article 142 of the Constitution when specific provisions are made under various forest and environmental laws dealing with the manner and procedure for cancellation/termination of mining leases.

44. We find no merit in the above arguments. As stated above, in the past when mining leases were granted, requisite clearances for carrying out mining operations were not obtained which have resulted in land and environmental degradation. Despite such breaches, approvals had been granted for subsequent slots because in the past the authorities have not taken into account the macro effect of such wide-scale land and environmental degradation caused by the absence of remedial measures (including rehabilitation plan). Time has now come, therefore, to suspend mining in the above area till statutory provisions for restoration and reclamation are duly complied with,

> particularly in cases where pits/quarries have been left abandoned.
>
> **45.** Environment and ecology are national assets. They are subject to intergenerational equity. Time has now come to suspend all mining in the above area on sustainable development principle which is part of Articles 21, 48-A and 51-A(*g*) of the Constitution of India. In fact, these articles have been extensively discussed in the judgment in [*M.C. Mehta case (2004) 12 SCC 118*] which keeps the option of imposing a ban in future open."

The issue is not one of application of the above principles to a case of cancellation as distinguished from one of suspension. The issue is more fundamental, namely, the wisdom of the exercise of the powers under Article 32 read with Article 142 to prevent environmental degradation and thereby effectuate the Fundamental Rights under Article 21.

32. We may now take up the decisions cited on behalf of the leaseholders to contend that the power under Articles 32 and 142 ought not to be exercised in the present case and instead remedies should be sought within the relevant statutes. The sheet anchor is the case of ***Supreme Court Bar Association*** *Vs.* ***Union of India and Another*** reported in (1998) 4 SCC 409. We do not see how or why we should lie entrapped within the confines of any of the relevant Statutes on the strength of the

views expressed in ***Supreme Court Bar Association*** (supra). The observations made in para 48 of the judgment and the use of words "ordinarily" and "are directly in conflict" as appearing in the said paragraph (underlined by us) directly militates against the view that the lease holders would like us to adopt in the present case.

> **"48.** The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is *necessary for doing complete justice* "between the parties in any cause or matter pending before it". The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by "ironing out the creases" *in a cause or matter before it.* Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute-settling. It is a "problem-solver in the nebulous areas" [see *K. Veeraswami* v. *Union of India (1991) 3 SCC 55)]* but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be *controlled* by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise *may come directly in conflict* with what has been expressly provided for in a statute dealing expressly with the subject."

33. Even if the above observations is understood to be laying down a note of caution, the same would be a qualified one and can have no application in a case of mass tort as has been occasioned in the present case. The mechanism provided by any of the Statutes in question would neither be effective nor efficacious to deal with the extraordinary situation that has arisen on account of the large scale illegalities committed in the operation of the mines in question resulting in grave and irreparable loss to the forest wealth of the country besides the colossal loss caused to the national exchequer. The situation being extraordinary the remedy, indeed, must also be extraordinary. Considered against the backdrop of the Statutory schemes in question, we do not see how any of the recommendations of the CEC, if accepted, would come into conflict with any law enacted by the legislature. It is only in the above situation that the Court may consider the necessity of placing the recommendations made by the CEC on a finer balancing scale before accepting the same. We, therefore, feel uninhibited to proceed to exercise our constitutional jurisdiction to remedy the enormous wrong that has happened and to provide adequate protection for the future, as may be required.

ISSUE NO.3

Sanctity of the process of survey undertaken by the Joint Team constituted by this Court's order dated 6th May, 2011 and the determination of the boundaries of the leases on the basis of the said survey.

34. The above issue will require examination from two perspectives. The first is the fairness of the procedure adopted in carrying out the survey and the second is with regard to acceptability of the technical part of the survey process. In so far as the fairness of the procedure adopted is concerned it is on record that notice of the dates proposed for survey of a particular lease was intimated to the lease holder well in advance to enable the lease holder or his representative to be present at the site while the survey is conducted. The field survey was done by 7 teams consisting of one surveyor each from the Karnataka Forest Department, Karnataka Mines and Geological Department, Karnataka Revenue Department and a representative of the National Institute of Technology, Surathkal. The field survey undertaken by each team was supervised by the Joint Team constituted by this Court. During the field survey, the representative of the concerned lessees were present and the Mahazars (Panchnamas) for each day's survey were prepared

incorporating the details of the survey carried out. The said Panchnamas were signed by, apart from the Government representatives and the representative of the National Institute of Technology, Surathkal, also by the concerned lessee or their representatives. The readings recorded during the field survey were shared with the concerned lessees or their representatives and before finalizing the survey sketches the concerned lessees or their representatives were given a personal hearing. After the field survey was completed, in terms of the order of the Court dated 23.9.2011, the representations filed by the leaseholders against the findings of the Joint Team were reconsidered by the Joint Team and personal hearing was afforded to 122 lease holders. On the basis of the said hearings, necessary corrections were made in respect of 33 number of leases. Thereafter, the final Report of the CEC dated 3.2.2012 was submitted to the Court. In terms of the Court's order dated 10.2.2012, the CEC again considered the representations filed by as many as 66 lease holders. The findings of the Joint Team in respect of 4 leases were modified by the CEC though the said modification did not result into any change of categorization. Two representations, one filed by M/s. V.S. Lad & Sons and another by M/s. Hothur

Traders have been placed before the Court for appropriate orders [issue is being dealt with separately] whereas the rest of the representations were rejected by the CEC. In the above facts, procedural fairness in the process of survey carried out by the Joint Team is writ large and there can be no room for any doubt so as to question the sanctity of the survey process on the above stated ground.

35. This will require the Court to go into the details of the technical aspect of the survey which was conducted by the Joint Team. The consideration of the details of the survey undertaken, naturally, has to be in the backdrop of the multifold complaints that have been raised on behalf of the leaseholders in the several IAs filed. As already noted, on a very broad plane, the complaints in this regard are that the Joint Team has ignored judicial orders passed in respect of boundaries between neighbouring/adjacent leases; reduction of the area of the lease provided in the lease deed/lease sketch; shifting of the lease area to a new location as a result of the survey. Specifically, objections have been raised to the effect that overburden dumps in different areas have been taken into account to come to the finding that mining had been carried out in such areas without necessary clearances under the

FC Act (in case of forest areas) or in the absence of mining leases in respect of such areas (non forest areas) though the activity in question i.e. dumping does not amount to mining operations under the MMDR Act.

36. A consideration of the documents submitted by the learned Amicus Curiae and those submitted on behalf of the State of Karnataka would go to show that in carrying out the survey, the Joint Team had encountered some serious difficulties. The same may be enumerated below:-

i) the sanctioned lease sketch did not have any reference point(s) and with reference to which the location of the lease can be decided;

ii) there is mis-match between the location(s) of the reference point(s) on the ground vis-à-vis the details of such reference points(s) provided in the lease sketches;

iii) the reference point(s) have been destroyed/altered on the ground;

iv) the Survey and Demarcation sketch does not tally with the lease sketch; and

v) there is inherent defect in the lease sketch."

37. To overcome the said difficulties, before the commencement of the actual survey, a pre-survey examination was undertaken to identify the boundary pillars, rock marks, revenue points etc. as shown in the lease sketch. This was done with the help of the

government staff as well as the representative of the concerned lessee. Instead of measuring the length of each arm of the lease sketch by using the conventional engineering scale and instead of measuring the angle by using a protractor, the original lease sketch was scanned and the digitized so that the length of each arm and the angles could be precisely measured. Thereafter survey was undertaken by use of the Total Station Method, which, undoubtedly, is the state of the art technology with room for negligible error. A temporary control point was identified keeping in view the visibility of the maximum number of boundary points from the identified control point. Thereafter, the distance between the control point and the visible boundary points were measured and recorded in the instrument which uses an infra-red ray. The instrument was shifted to another temporary control point and in a similar manner the distance between the said control point and remaining boundary points were measured. After completing the reading of all the points the margin of error for the instrument was determined (which was virtually negligible). Thereafter the data from the total station was downloaded on a computer using the autocadd software for preparation of the survey sketch. The survey sketch so prepared

was superimposed on the digitized lease sketch to ascertain the encroachment if any. Also, the details of the survey sketch was superimposed on the satellite imageries to further verify the correctness of the process of survey undertaken. A manual calculation of the lease areas was also undertaken to compare with the calculation of the lease areas as per the digitized lease sketch. The difference between the two measurements in case of 34 number of 'C' category leases is less than +/- 05ha. The relevant details in this regard which are available in the compilation of documents submitted by the State of Karnataka would be illuminating and are, therefore, indicated below:

S.No.	Name of the Lessee	M.L. No.	Sanctioned area in Ha	Area as per manual calculation in Ha	Areas as per digitized sketch in Ha	Difference between Manually calculated area & Digitised area
1	2	3	4	5	6	7
1	J.M. VRISHVENDRAYYA	2173	3.36	3.348	3.54	0.19
2	VEEYAM PVT. LTD	2615	20.23	20.196	20.04	-0.16
3	AMBIKA GHORPADE	2354	4.95	4.495	4.84	0.35
4	MYSORE MANGANESE COMPANY	2603	3.24	3.07	3.16	0.10
5	HOTHUR TRADERS	2313	21.11	22.117	21.61	-0.51
6	M. DASHARATHA RAMI REDDY	2560	19.95	19.59	19.46	-0.13
7	BHARAT MINES AND MINERALS	2245	26.20	23.3	24.47	1.17
8	ASSOCIATED MINING COMPANY	2434	10.12	10.03	10.14	0.11
9	B.R. YOGENDRANATH SINGH	2186	13.00	16.592	15.89	-0.70

10	LATHA MINING CO. (D. NARAYANA)	958	4.05	4	3.93	-0.07
11	CANARA MINERALS	2635	11.34	12.12	11.52	-0.60
12	THANGA VELU & OTHERS	2585	60.70	62.28	60.92	-1.36
13	TRADING MINING COMPANY	1732	5.26	5.31	5.45	0.14
14	SRI. N. MANZOOR AHMED	1324/ 2616	15.97	15.65	15.71	0.06
15	SMT KAMALA BAI	1442	13.45	13.02	13.44	0.42
16	SUDARSHAN SINGH (MAHALAKSHMI MINERALS)	2579	8.09	8.37	8.11	-0.26
17	RAMGAD MINERALS AND MINING PVT LTD	2451	24.28	24.23	24.04	-0.19
18	TRIDENT MINERALS	2315	32.27	31.606	32.43	0.82
19	ALLUM VEERABHADRAPPA	2436	28.07	23.553	24.53	0.98
20	KANHAYALAL DUDHERIA	2563	30.76	28.73	30.09	1.36
21	ADARSHA ENTERPRISES	2369	3.03	2.91	2.98	0.07
22	MATHA MINERALS	1975/ 2600	129.5	125.5	129.16	3.66
23	S.B. MINERALS	2393	40.47	40.67	40.38	-0.29
24	KARNATAKA LIMPO	2650	6.07	6.94	6.47	-0.47
25	ANJANA MINERALS	2519	4.55	4.5	4.53	0.03
26	DECCAN MINING SYNDICATE (P) LTD	2525	19.02	17.015	17.43	0.41
27	P. ABUBAKAR	2183	14.00	13.756	13.85	0.09
28	LAKSHMI NARAYANA MINING COMPANY	2487	105.22	103.06	86.18	-16.88
29	KAMALA BAI	2187	23.47	23.43	23.71	0.28
30	MYSORE STONEWARE PIPES AND POLTERIES (P)LTD.	2521	122.72	118.3	122.65	4.35
31	TEJA WORK	2353	4.85	4.74	4.83	0.09
32	RAJAPURA MINES	2190	93.74	89.62	91.7	2.13
33	H.G. RANGANGOWDA	2148	60.70	60.3	60.66	0.36
34	NIDHI MINING PVT. LTD.	2433	31.84	29.195	29.49	1.30
35	S.B. MINERALS	2550	44.52	38.819	39.40	0.58
36	MILANA MINERALS (LAKSHMI & CO.)	1842	99.56	95.556	99.55	3.99
37	DEEP CHAND KISHANLAL	2348	125.45	128.546	124.92	-3.63
38	THUNGABHADRA MINERALS LTD.	2365	125.58	135.04	163.74	-4.46
39	THUNGABHADRA MINERALS LTD.	2366	33.97	33.16		
40	M SRINIVASULU	2631	74.86	78.565	75.14	-3.43
41	M. CHANNAKESHAVA	2566	7.85	8	7.57	-0.43

	REDDY (SRI LAKSHMI NARASHIMHA MINING CO.					
42	SPARK LINE MINING CORPORATION	2567	4.86	4.93	4.86	-0.07
43	MINERAL MINERS AND TRADERS	2185A	46.13	44.11	44.42	0.31
44	MYSORE MINERALS LTD.	995	33.60	82.2	32.89	-49.31
45	V.S. LAD & SONS	2290	105.06	98.12	100.54	2.42
46	KARTHIKEYAS MANGANESE	2559	27.23	27.236	26.71	-0.53
47	G RAJSHEKAR	2229	129.49	127.83	127.42	-0.41
48	RAMA RAO PAOL	2621	28.34	26.33	33.80	7.47
49	SMT RAZIA KHANUM	2557/ 1575	12.58	12.0578	12.54	0.48

38. The participation of the lessee or his representative through out the process of survey by the Joint Team; the details of the manner of conduct of the actual process of survey delineated above; the use of the state of the art technology; the composition of the Joint Team entrusted with the responsibility of the survey and the constitution of the 7 teams that conducted the field survey under the supervision of the Joint Team; the two stages of re-verification of the findings of the survey in the light of the objections raised by the lease holders under orders of this Court dated 26.9.2011 and 10.2.2012 and the corrections made on the basis thereof can leave no doubt as to the credibility of the findings of the survey conducted under the orders of the Court. True it is that we cannot claim to be experts; but we need not be to see what is *ex facie* evident. Therefore, notwithstanding the

protracted arguments advanced on behalf of lease holders and the large scale reference to sketches, maps and drawings filed before this Court by the said lease holders, we are satisfied that all complaints and grievances must fade away in the light of the survey undertaken by the Joint Team and the events subsequent thereto. It would also be significant to take note of the fact that in the written submission on behalf of the Federation of Indian Mineral Industries (FIMI), in the opening paragraph it has been stated as under.

> "The applicant submits that FIMI has full faith in the integrity and fairness of the survey done by the Joint Team and recommended by CEC. FIMI is in full agreement with the recommendations made by CEC with regard to Categories A and B and the directions issued by this Hon'ble Court. FIMI is simultaneously of the view that instead of cancellation of Category 'C' mining leases, these may be directed to make appropriate compensatory afforestation payment, undertake R&R work as per R& R Plan prepared by ICFRE and approved by CEC and after successful completion and implementation of R&R Plan, they should be allowed to recommence mining operations in such leases."

39. We make it clear that we have not understood the above statement as an admission on the part of the Federation and it is on a consideration of the totality of the facts placed before us that we accept the findings of the survey conducted by the Joint Team constituted by the orders of this Court and the boundaries of each of the leases determined on that basis. We further direct that in supersession of all orders either of the authorities of the State or Courts, as may be, the boundaries of leases fixed by the Joint Team will henceforth be the boundaries of each of the leases who will have the benefit of the lease area as determined by the Joint Team. All proceedings pending in any court with regard to boundaries of the leases involved in the present proceeding shall stand adjudicated by means of present order and no such question would be open for re-examination by any body or authority.

40. Before proceeding to the next issue we would like to observe that the contention urged on behalf of some of the lessees that dumping of mining waste (overburden dumps) do not constitute operations under Section 2(d) of the MMDR Act is too naive for acceptance. The wide terms of the definition contained in Section 2(d) of the MMDR Act encompasses all such activity within the

meaning of expression "mining operations". Use of forest land for such activity would require clearance under the FC Act. In case the land used for such purpose is not forest land the mining lease must cover the land used for any such activity.

ISSUE NO.4

Acceptability of the Recommendations of the CEC with regard to (i) categorization, (ii) Reclamation and Rehabilitation (R&R) Plans, (iii) Reopening of Category 'A' and 'B' mines subject to conditions, (iv) Closure/reopening of Category 'C' mines and (v) future course of action in respect of Category 'C' mines if closure thereof is to be ordered by the Court

41. In the light of the discussions that have preceded sanctity of the procedure of laying information and materials before the Court with regard to the extent of illegal mining and other specific details in this regard by means of the Reports of the CEC cannot be in doubt. Inter-generational equity and sustainable development have come to be firmly embedded in our constitutional jurisprudence as an integral part of the fundamental rights conferred by Article 21 of the Constitution. In enforcing such rights of a large number of citizens who are bound to be adversely affected by environmental degradation, this Court cannot be constrained by the restraints of procedure. The CEC which has been assisting the Court in various

environment related matters for over a decade now was assigned certain specified tasks which have been performed by the said body giving sufficient justification for the decisions arrived and the recommendations made. If the said recommendations can withstand the test of logic and reason which issue is being examined hereinafter we will have no reason not to accept the said recommendations and embody the same as a part of the order that we will be required to make in the present case.

(i) <u>Categorization</u>

42. The issue is whether categorization on the basis of percentage of the encroached area qua the total lease area is an arbitrary decision. Arbitrariness in the adoption of a criteria for classification has to be tested on the anvil of Article 14 and not on the subjective notions of availability of a better basis of classification. The basis suggested i.e. total encroached area has the potential of raising questions similar to the ones now raised on behalf of the lease holders. This is on account of the lack of uniformity in the areas covered by the different leases in question. The test, therefore, ought not to be what would be a 'better' basis for the categorization for that would introduce subjectivity in the process; the test is whether categorization on

the basis adopted results in hostile discrimination and adoption of the criteria of percentage has no reasonable nexus with the object sought to be achieved, namely, to identify the lessees who have committed the maximum violations and damage to environment. Viewed from the aforesaid perspective, the categorization made does not fail the test of reasonableness and would commend for our acceptance.

In this regard, we may take note of two IAs (IA.No.74 of 2012 and I.A.No.4 of 2012) filed by Federation of Indian Mineral Industries which body claims membership of a vast number of the lessees involved in the present proceedings. In the aforesaid IAs, as already noticed in a different context, the Federation has unequivocally accepted the findings of the survey conducted by the Joint Team and the recommendation of the CEC in so far as categorization of the leases and the actions suggested for reopening of Category 'A' and 'B' mines along with other pre-conditions stipulated including the preparation of the R & R plans. The only caveat in this regard is in respect of category 'C' mines. The Federation had suggested that the said mines be also allowed to reopen subject to similar or even more stringent conditions and, alternatively, for reopening of 39 total out of the

total of 49 category 'C' mines by adoption of certain more liberal criteria than those recommended by the CEC. In the totality of the circumstances, we are of the view that the categorization suggested by the CEC in its Report dated 3.2.2012 should be accepted by us.

(ii) Conditions which have been suggested for opening of Category 'A' mines and additionally the R& R Plans for Category 'B' mines

43. The conditions subject to which Category 'A' and 'B' mines are to be reopened and the R&R Plans that have been recommended as a precondition for reopening of Category 'B' mines are essentially steps to ensure scientific and planned exploitation of the scarce mineral resources of the country. The details of the preconditions and the R&R plans have already been noticed and would not require a repetition. Suffice it would be to say that such recommendations are wholesome and in the interest not only of the environment and ecology but the mining industry as a whole so as to enable the industry to run in a more organized, planned and disciplined manner. FIMI was actively associated in the framing of the guidelines and the preparation of the R&R Plans. There is nothing in the preconditions or in the details of the R&R plans suggested which are contrary to or in

conflict or inconsistent with any of the statutory provisions of the MMDR Act, EP Act and FC Act. In such a situation, while accepting the preconditions subject to which the Category 'A' and 'B' mines are to be reopened and the R&R plans that must be put in place for Category 'B' mines, we are of the view that the suggestions made by the CEC for reopening of Category 'A' and 'B' mines as well as the details of the R&R plans should be accepted by us, which we accordingly do. This will bring us to the most vital issue of the case, i.e., the future of the Category 'C' mines.

44. The precise extent of illegal mining that took place in the three districts of Karnataka have been noted in detail in an earlier part of this order (para 23). The same, therefore, will not require any repetition. Illegal mining apart from playing havoc on the national economy had, in fact, cast an ominous cloud on the credibility of the system of governance by laws in force. It has had a chilling and crippling effect on ecology and environment. It is evident from the compilation submitted to the Court by the CEC that several of the Category 'C' mines were operating without requisite clearances under FC Act or even in the absence of a mining lease for a part of the area used for mining

operations. The satellite imageries placed before the Court with regard to environmental damage and destruction has shocked judicial conscience. It is in the light of the above facts and circumstances that the future course of action in respect of the maximum violators/polluters, i.e., Category 'C' mines has to be judged. While doing so, the Court also has to keep in mind the requirement of Iron Ore to ensure adequate supply of manufactured steel and other allied products.

45. Once the result of the survey undertaken and the boundaries of the leases determined by the Joint Team has been accepted by the Court and the basis of categorization of the mines has been found to be rational and constitutionally permissible it will be difficult for this Court to visualize as to how the Category 'C' mines can be allowed to reopen. There is no room for compassion; fervent pleas for clemency cannot have even a persuasive value. As against the individual interest of the 49 Category 'C' leaseholders, public interest at large would require the Court to lean in favour of demonstrating the efficacy and effectiveness of the long arm of the law. We, therefore, order for the complete closure of the Category 'C' mines and for necessary follow up action in terms of the recommendations of

the CEC in this regard, details of which have already been extracted in an earlier part of this order.

ISSUE NO.5

Other Miscellaneous/Connected Issues

46. We have noticed that by an order dated 2.11.2012 passed by this Court an embargo has been placed on grant of fresh mining licenses. In view of the developments that have taken place in the meantime and in view of the fact that we are inclined to accept the recommendations at Sl. Nos. VI and VII of the CEC's Report dated 3.2.2012 (Pg.56 of the Report), we do not consider it necessary to continue with the order dated 2.11.2012 in so far as grant of fresh leases are concerned.

47. In so far as settlement of the inter-state boundaries between the States of Andhra Pradesh and Karnataka is concerned, both the States have agreed to have the boundaries fixed under the supervision of the Geological Survey of India. In view of the agreement between the States on the said issue we permit the States to finalize the issue in the above terms. The operation of the 7 leases (Category B1) located on or near the inter-State boundary is presently suspended. Until the boundary issue

between the two States is resolved resumption of mining operations in the 7 leases cannot be allowed.

48. The CEC has provisionally categorised M/s. S.B. Minerals (ML No.2515) and Shanthalakshmi Jayaram (ML No.2553) in Category "B" though the encroached area under illegal mining pits has been found to be 24.44% and 23.62% respectively. According to the CEC, it is on account of "the complexities involved in finalizing the survey sketches and in the absence of inter-village boundary" that the said leases have been placed in Category "B" instead of Category "C". We cannot agree with the tentative decision of the CEC. On the basis of the findings of the survey and the categorization made, both of which have been accepted by the Court by the present order, we direct that the aforesaid two leases, namely, M/s. S.B. Minerals and M/s. Shanthalakshmi Jayaram be placed in Category "C". Necessary consequential action will naturally follow.

49. The CEC in its Report dated 28.3.2012 has placed the cases of M/s. V.S. Lad & Sons and M/s. Hothur Traders (placed in Category "C") for final determination by the Court. The CEC has reported that the encroachment by M/s. V.S. Lad & Sons is only in respect of the overburden dumps and exceeds the percentage

(15%) marginally, i.e., by 0.17% which could very well be due to the least count error used by the Joint Team. In so far as M/s. Hothur Traders is concerned the CEC in its Report dated 28.3.2012 has recorded that according to the lessee it has carried on its mining operation for the last 50 years in the lease area allotted to it which may have been wrongly identified in the earlier surveys and demarcations by taking into account a wrong reference point.

Having considered the facts on which the two lessees have sought upgradation from "C" to "B" Category we are afraid that such upgradation cannot be allowed. Both the lessees, in fact, accept the results of the survey by the Joint Team which findings have already been accepted by us.

50. In the result, we summarize our conclusions in the matter as follows:-

(1) The findings of the survey conducted by the Joint Team constituted by this Court by order dated 6.5.2011 and boundaries of the leases in question as determined on the basis of the said survey is hereby approved and accepted.

(2) The categorization of the mines ("A", "B" and "C") on the basis of the parameters adopted by the CEC as indicated in its Report dated 3.2.2012 is approved and accepted.

(3) The order of the Court dated 13.4.2012 accepting the recommendations dated 13.3.2012 of the CEC (in modification of the recommendations of the CEC dated 3.2.2012) in respect of the items (A) to (I) is reiterated. Specifically, the earmarked role of the Monitoring Committee in the said order dated 13.4.2012 is also reiterated.

(4) The order of the Court dated 3.9.2012 in respect of reopening of 18 Category "A" mines subject to the conditions mentioned in the said order is reiterated.

(5) The order of the Court dated 28.9.2012 in all respects is reiterated.

(6) The recommendations of the CEC contained in the Report dated 15.2.2013 for reopening of remaining Category "A" mines and Category "B" mines (63 in number) and sale of sub-grade iron ore subject to the conditions mentioned in the said Report are approved.

(7) The recommendations contained in paragraphs VI and VII (Pg. 56 to 57) of the CEC Report dated 3.2.2012 are accepted, meaning thereby, the leases

in respect of "C" Category mines will stand cancelled and the recommendations of the CEC (para VII Pg. 56) of Report dated 3.2.2012 with regard to the grant of fresh leases are accepted.

(8) The proceeds of the sales of the Iron Ore of the 'C' Category mines made through the Monitoring Committee will stand forfeited to the State. The Monitoring Committee will remit the amounts held by it on this account to the SPV for utilization in connection with the purposes for which it had been constituted.

(9) M/s. V.S. Lad & Sons, M/s. Hothur Traders, M/s. S.B. Minerals (ML No. 2515) and M/s. Shanthalakshmi Jayaram (ML No. 2553) will be treated as "C" Category mines and resultant consequences in respect of the said leases will follow.

(10) The operation of the 7 leases placed in "B" category situated on or nearby the Karnataka- Andhra Pradesh inter-State boundary will remain suspended until finalisation of the inter-State boundary dispute whereupon the question of commencement of operations in respect of the aforesaid 7 leases will be examined afresh by the CEC.

(11) The recommendations made in the paragraph VIII of the Report of the CEC dated 3.2.2012 (pertaining to M/s. MML, Pg.57) is accepted. The recommendations made in paragraphs IX, X, XII (in respect of confiscated iron-ore) XIII and XIV of the said Report dated 3.2.2012 (Pg. 57-60) will not require any specific direction as the same have already been dealt with or the same have otherwise become redundant, as may be.

(12) The recommendations made in paragraph XI (grant of fresh leases) and paragraph XII (in respect of pending applications for grant of mining leases) of the CEC's Report dated 3.2.2012 (Pg. 59) are not accepted. In view of the discussions and conclusions in para 44 of the present order, this Court's order dated 02.11.2012 placing an embargo on grant of fresh mining leases need not be continued any further. Grant of fresh mining leases and consideration of pending applications be dealt with in accordance with law, the directions contained in the present order as well as the spirit thereof.

(13) Determination of the inter-State boundary between Karnataka and Andhra Pradesh in so far as the same is relevant to the present proceedings, as agreed upon by the two States, be

made through the intervention of the office of Surveyor General of India.

51. We also direct that all consequential action in terms of the present order be completed with the utmost expedition. The writ application filed by Samaj Parivartan Samudaya and IAs shall stand disposed of in terms of our abovestated conclusions.

SLP (C) Nos.7366-7367 of 2010, SLP (C) Nos.32690-32691 of 2010, WP (Crl.) No.66 of 2010, SLP (C) Nos.17064-17065 of 2010, SLP (C) No.....(CC No. 16829 of 2010), SLP (C) No.....(CC No. 16830 of 2010), WP (C) No.411 of 2010, SLP (C) No.353 of 2011 and WP (C) No.76 of 2012

52. All these matters are de-tagged and directed to be listed separately.

.....J.
(Aftab Alam)

.....J.
(K.S. Radhakrishnan)

.....J.
(Ranjan Gogoi)

New Delhi;
April 18, 2013.