

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

**O.A. NO. 112 OF 2012 &
M.A. NO.786/2014 IN O.A. NO. 112/2013
AND
O.A. NO. 51/2012 &
M.A. NOs. 270/2014 & 517/2014 IN O.A. NO. 51/2012
AND
O.A. NO. 52/2012 &
M.A. NOs. 512/2013 & 717/2014 IN O.A. NO. 52/2012
AND
O.A. NO. 54/2012 &
M.A. NOs.528/2013 & 520/2014 IN O.A. NO. 54/2012
AND
O.A. NO. 55/2012 &
M.A. NOs. 518/2013 729/2014 IN O.A. NO. 55/2012
AND
O.A. NO. 57/2012 &
M.A. NOs. 514/2013 & NO. 519/2014 IN O.A. NO. 57/2012
AND
O.A. NO. 58/2012 &
M.A. NOs. 532/2013, 597/2013 & 739/2014 IN O.A. NO. 58/2012
AND
O.A. NO. 68/2012 &
M.A. NOs.516/2013 & 741/2014 IN O.A.NO. 68/2012
AND
O.A. NO. 71/2012 &
M.A. NOs. 517/2013 & 719/2014 IN O.A. NO. 71/2012
AND
O.A. NO. 112/2012 &
M.A. NOs.510/2013 & 726/2014 IN O.A. NO. 112/2012
AND
O.A. NO. 113/2012 &
M.A. NO.732/2014 IN O.A. NO. 113/2012
AND
O.A. NO. 114/2012 &
M.A. NO.523/2013 IN O.A. NO. 114/2012
AND
O.A. NO. 115/2012 &
M.A. NOs.511/2013 & 723/2014 IN O.A. NO. 115/2012
AND
O.A. NO. 116/2012 &
M.A. NOs.531/2013 & 596/2013 IN O.A. NO. 116/2012
AND
O.A. NO. 117/2012 &
M.A. NO.521/2013 IN O.A. NO. 117/2012
AND
O.A. NO. 118/2012 &
M.A. NO.534/2013 IN O.A. NO. 118/2012**

AND
O.A. NO. 119/2012 &
M.A. NOs. 522/2013 & 736/2014 IN O.A. NO. 119/2012
AND
ORIGINAL APPLICATION NO. 120/2012
AND
ORIGINAL APPLICATION NO. 121/2012
AND
O.A. NO. 122/2012 &
M.A. NO.525/2013 IN O.A. NO. 122/2012
AND
O.A. NO. 123/2012 &
M.A. NOs.535/2013 & 738/2014 IN O.A. NO. 123/2012
AND
O.A. NO. 124/2012 &
M.A. NO.533/2013 IN O.A. NO. 124/2012
AND
O.A. NO. 125/2012 &
M.A. NO.513/2013 IN O.A. NO. 125/2012
AND
ORIGINAL APPLICATION NO. 126/2012
AND
ORIGINAL APPLICATION NO. 127/2012
AND
O.A. NO. 128/2012 &
M.A. NOs.515/2013 & 718/2014 IN O.A. NO. 128/2012
AND
ORIGINAL APPLICATION NO. 129/2012
AND
O.A. NO. 130/2012 &
M.A. NOs.520/2013 & 722/2014 IN O.A. NO. 130/2012
AND
O.A. NO. 131/2012 &
M.A. NO.529/2013 IN O.A. NO. 131/2012
AND
O.A. NO. 132/2012 &
M.A. NO.524/2013 IN O.A. NO. 132/2012
AND
O.A. NO. 133/2012 &
M.A. NOs. 536/2013 & 740/2014 IN O.A. NO. 133/2012
AND
O.A. NO. 134/2012 &
M.A. NOs. 527/2013 & 721/2014 IN O.A. NO. 134/2012
AND
O.A. NO. 135/2012 &
M.A. NOs. 526/2013 IN O.A. NO. 135/2012
AND
O.A. NO. 136/2012 &
M.A. NOs. 509/2013 & 724/2014 IN O.A. NO. 136/2012
AND
O.A. NO. 137/2012 &

**M.A. NOs. 519/2013 & 735/2014 IN O.A. NO. 137/2012
AND
ORIGINAL APPLICATION NO. 61/2013
AND
ORIGINAL APPLICATION NO. 62/2013
AND
ORIGINAL APPLICATION NO. 63/2013
AND
ORIGINAL APPLICATION NO. 64/2013
AND
ORIGINAL APPLICATION NO. 65/2013
AND
ORIGINAL APPLICATION NO. 66/2013
AND
O.A. NO. 67/2013 &
M.A. NO.733/2014 IN O.A. NO. 67/2013
AND
ORIGINAL APPLICATION NO. 68/2013
AND
ORIGINAL APPLICATION NO. 69/2013
AND
ORIGINAL APPLICATION NO. 70/2013
AND
O.A. NO. 71/2013 &
M.A. NO.530/2013 IN O.A. NO. 71/2013
AND
ORIGINAL APPLICATION NO. 72/2013
AND
ORIGINAL APPLICATION NO. 73/2013
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ORIGINAL APPLICATION NO. 74/2013
AND
ORIGINAL APPLICATION NO. 75/2013
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ORIGINAL APPLICATION NO. 76/2013
AND
ORIGINAL APPLICATION NO. 77/2013
AND
ORIGINAL APPLICATION NO. 78/2013
AND
O.A. NO. 133/2014 &
M.A. NO.743/2014 IN O.A. NO. 133/2013
AND
O.A. NO. 134/2013 &
M.A. NO.714/2014 IN O.A. NO. 134/2013
AND
ORIGINAL APPLICATION NO. 192/2013
AND
ORIGINAL APPLICATION NO. 193/2013
AND
ORIGINAL APPLICATION NO. 194/2013**

AND
O.A. NO. 195/2013 &
M.A. NO.744/2014 IN O.A. NO. 195/2013
AND
ORIGINAL APPLICATION NO. 196/2013
AND
O.A. NO. 197/2013 &
M.A. NOs.516/2014 & 518/2014 IN O.A. NO. 197/2013
AND
O.A. NO. 198/2013 &
M.A. NOs.518/2014 & 725/2014 IN O.A. NO.198/2013
AND
ORIGINAL APPLICATION NO. 199/2013
AND
ORIGINAL APPLICATION NO. 200/2013
AND
ORIGINAL APPLICATION NO. 201/2013
AND
O.A. NO. 202/2013 &
M.A. NO.713/2014 IN O.A. NO. 202/2013
AND
O.A. NO. 203/2013 &
M.A. NO.683/2014 IN O.A. NO. 203/2013
AND
ORIGINAL APPLICATION NO. 204/2013
AND
O.A. NO. 205/2013 &
M.A. NO.515/2014 IN O.A. NO. 205/2013
AND
O.A. NO. 206/2013 &
M.A. NO.728/2014 IN O.A. NO. 206/2013
AND
ORIGINAL APPLICATION NO. 207/2013
AND
ORIGINAL APPLICATION NO. 208/2013
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ORIGINAL APPLICATION NO. 209/2013
AND
ORIGINAL APPLICATION NO. 210/2013
AND
ORIGINAL APPLICATION NO. 211/2013
AND
O.A. NO. 212/2013 &
M.A. NO.742/2014 IN O. A. NO. 212/2013
AND
O.A. NO. 213/2013 &
M.A. NO.731/2014 IN O.A. NO. 213/2013
AND
ORIGINAL APPLICATION NO. 214/2013
AND
ORIGINAL APPLICATION NO. 215/2013

AND
ORIGINAL APPLICATION NO. 216/2013
AND
O.A. NO. 217/2013 &
M.A. NO.715/2014 IN O.A. NO. 217/2013
AND
O.A. NO. 218/2013 &
M.A. NO.746/2014 IN O.A. NO. 218/2013
AND
ORIGINAL APPLICATION NO. 219/2013
AND
ORIGINAL APPLICATION NO. 220/2013
AND
ORIGINAL APPLICATION NO. 221/2013
AND
O.A. NO. 222/2013 &
M.A. NO.720/2014 IN O.A. NO. 222/2013
AND
O.A. NO. 223/2013 &
M.A. NO.716/2014 IN O.A. NO. 223/2013
AND
ORIGINAL APPLICATION NO. 224/2013
AND
ORIGINAL APPLICATION NO. 225/2013
AND
ORIGINAL APPLICATION NO. 226/2013
AND
O.A. NO. 227/2013 &
M.A. NO.727/2014 IN O.A. NO. 227/2013
AND
O.A. NO. 231/2013 &
M.A. NO.737/2014 IN O.A. NO. 231/2013
AND
O.A. NO. 232/2013 &
M.A. NO.745/2014 IN O.A. NO. 232/2013
AND
ORIGINAL APPLICATION NO. 233/2013
AND
O.A. NO. 234/2013 &
M.A. NO.734/2014 IN O.A. NO. 234/2013
AND
O.A. NO. 235/2013 &
M.A. NO.730/2014 IN O.A. NO. 235/2013

IN THE MATTER OF (O.A. NO. 112 OF 2012):

Goa Paryavaran Savrakshan Sangharsh Samitee
Through its President,
Mr. Bruno Rodrigues,
Having its office at S-1, Renuka Residency,
Behind KTC Bus Stand, Fatorda,

Margao Goa 403 601

.....Applicant

Versus

1. M/s H.L. Nathurmali,
Rizvi Chambers, 3rd Floor,
Caetano Albuquerque Road,
Panjim Goa 403 001
 2. Mr. Digambar Vasant Kamat,
S/o Vasant Kamat,
Ex-Chief Minister of the State of Goa,
Of Major age, r/o 1st Floor,
Sanrit Apartments, Malbhat,
Margao, Goa 403 601
 3. Mr. Pratap Singh Rauji Rao Rane,
S/o Rauji Rao Rane,
Ex-Chief Minister of Goa,
Of major age, r/o Golden Acres Kulan,
Sanquelim, Bicholim Goa 403 505
 4. The State of Goa
Through its Chief Secretary
Secretariat, Porvorim,
Badez, Goa 403 521
 5. Ministry of Environment & Forest,
Govt. of India, (F.C. Division)
Through its Secretary,
Parvayaran Bhavan,
CGO Complex, Lodhi Road,
New Delhi – 110 003
-Respondents

AND

ORIGINAL APPLICATION NO. 134 OF 2013

IN THE MATTER OF:

Goa Paryavaran Savrakshan Sangharsh Samitee
Through its President,
Mr. Bruno Rodrigues,
Having its office at S-1, Renuka Residency,
Behind KTC Bus Stand, Fatorda,
Margao, Goa 403 601

.....Applicant

Versus

1. M/s. Sociedade Timblo Irmaos Ltd.
Through its Chairman
Post Box No. 31, Margao, Goa 403 601

2. Mr. Avdoot Timblo
Chairman, Fomento Group of Companies
Fomento Resources, having office
At Hotel Cidade de Goa,
Vainguinim, Dona Paula, Goa
3. Mr. Digambar Vasant Kamat S/o Vasant Kamat,
Ex-Chief Minister of the State of Goa, Of major age,
R/o 1st Floor, Sanrit Apartments, Malbhat,
Margao, Goa 403 601
4. Mr. Pratap Singh Rauji Rao Rane S/o Rauji Rao Rane,
Ex-Chief Minister of The State of Goa, Of major age, R/o
Golden Acres Kulan, Sanquelim, Bicholim Goa 403 505
5. The State of Goa
Through its Chief Secretary
Secretariat, Porvorim, Badez, Goa 403 521
6. Ministry of Environment & Forest,
Govt. of India, (F.C. Division)
Through its Secretary,
Parvayaran Bhavan, CGO Complex, Lodhi Road,
New Delhi – 110 003

.....Respondents

Counsel for Applicant in all 1 to 97

Mr. S.M. Walawaikar, Mr. Amit Kumar Singh and Mr. Upendra Yogesh, Advocates for Applicant in all 1 to 97 applications.

Counsel for Respondents

Mr. Vishwendra Verma and Mr. Vikas Malhotra, Advocates for Respondent No. 1 in Original Application No. 112/2013 (M.A No. 786/2014)

Mr. Vishwendra Verma, Advocates for Respondent No. 1 in all matters.

Mr. Huzefa Ahmadi, Sr. Adv. Mr. Ninad Laud, Mr. Karan Mathur and Mr. Rohan Sharma, Advocates for Respondent No. 1 in Original Application No. 114/2012 & M.A.No.523/2013 and Original Application No. 115/2012 & M.A.No.511/2013 & .A.NO.723/2014 and Original Application No. 118/2012 & M.A.No.534/2013 and Original Application No. 119/2012 & M.A.No.522/2013 & M.A.NO.736/2014 and Original Application No. 122/2012 & M.A.No.525/2013 and Original Application No. 123/2012 & M.A.No.535/2013 & M.A.NO.738/2014 and Original Application No. 128/2012 & M.A.No.515/2013 & M.A.NO.718/2014 and Original Application No. 130/2012 & M.A.No.520/2013 & M.A.NO.722/2014 and Original Application No. 133/2012 & M.A.No.536/2013 & M.A.NO.740/2014 and Original Application No. 134/2012 & M.A.No.527/2013 & M.A.NO.721/2014 and

Original Application No. 136/2012 & M.A.No.509/2013 & M.A.NO.724/2014 and Original Application No. 137/2012 & M.A.No.519/2013 & M.A.NO.735/2014 and Original Application No. 64/2013 and Original Application No. 71/2013 & M.A.No.530/2013 and Original Application No. 197/2013 & M.A.No.516/2014 & M.A.No.518/2014 and Original Application No. 231/2013 & M.A.NO.737/2014 and Original Application No. 233/2013 and Original Application No. 234/2013 & M.A.NO.734/2014 and Original Application No. 235/2013 & M.A.NO.730/2014.

Mr. Sumit Kumar Siddharth and Mr. Ishaan George, Advocates for Respondent No. 1 in Original Application No. 196/2013

Mr. Arvind Gupta, Advocate for Respondent No. 1 in Original Application No. 113/2012 & M.A.NO.732/2014 and Original Application No. 67/2013 & M.A.NO.733/2014 and Original Application No. 207/2013 and Original Application No. 225/2013

Mr. Dhruv Mehta, Sr. Adv. with Mr. Yashraj Singh Deora and Ms. Shreya Agrawal, Advocates for Respondent No.1 in Original Application No. 134/2013 & M.A.NO.714/2014.

Mr. E.R. Kumar, Mr. Sunit Goyal and Mr. Kshatrshal Raj, Advocates for Respondent No. 1 in Original Application No. 54/2012 & M.A.No.528/2013 & M.A.No.520/2014 and Original Application No. 125/2012 & M.A.No.513/2013 and Original Application No. 131/2012 & M.A.No.529/2013 and Original Application No. 132/2012 & M.A.No.524/2013 and Original Application No. 192/2013 and Original Application No. 199/2013 and Original Application No. 200/2013 and Original Application No. 204/2013 and Original Application No. 208/2013 and Original Application No. 210/2013 and Original Application No. 211/2013 and Original Application No. 214/2013 and Original Application No. 215/2013 and Original Application No. 220/2013 and Original Application No. 224/2013.

Mr. Avneesh Garg and Mr. Ishan Khanna, Advocates for Respondent No. 1 in Original Application No. 58/2012 M.A.No.532/2013 , M.A No.597/2013 & M.A.NO.739/2014 and Original Application No. 116/2012 (M.A.No.531/2013 & M.A No.596/2013

Mr. Rajesh Kumar, Advocate for Respondent No. 1 in Original Application No. 219/2013

Ms. Vithika Garg, Advocate for Respondent No. 1 & 2 in Original Application No. 52/2012 & M.A.No.512/2013 & M.A.NO.717/2014 and Original Application No. 55/2012 & M.A.No.518/2013 & M.A.NO.729/2014 and Original Application No. 71/2012 & M.A.No.517/2013 & M.A.NO.719/2014

Mr. Siddharth Bhatnagar, Mr. Sidharth Mohan and Mr. Rahul Arya, Advocates for the State of Goa in all matters (Item No. 1 to 96)

Ms. Surekha Raman, Advocate for Respondent No. 1 in Original Application No. 57/2012 & M.A.No.514/2013 & M.A.No.519/2014 and Original Application No. 68/2012 & M.A.No.516/2013 & M.A.NO.741/2014 and Original Application No. 113/2012 & M.A.NO.732/2014 and Original Application No. 117/2012 & M.A.No.521/2013 and Original Application No. 124/2012 & M.A.No.533/2013 and Original Application No. 129/2012 and Original Application No. 135/2012 & M.A.No.526/2013 and Original Application No. 62/2013 and Original Application No. 63/2013 and Original Application No. 65/2013 and Original Application No. 66/2013 and Original Application No. 68/2013 and Original Application No. 72/2013 and Original Application No. 73/2013 and Original Application No. 74/2013 and Original Application No. 76/2013 and Original Application No. 78/2013 and Original Application No. 134/2013 & M.A.NO.714/2014 and Original Application No. 193/2013 and Original Application No. 194/2013 and Original Application No. 206/2013 & M.A.NO.728/2014 and Original Application No. 217/2013 & M.A.NO.715/2014 and Original Application No. 222/2013 & M.A.NO.720/2014 and Original Application No. 227/2013 & M.A.NO.727/2014 and Original Application No. 232/2013 & M.A.NO.745/2014.

Ms. Surekha Raman, Advocate for Respondent No. 2 in Original Application No. 112/2012 & M.A.No.510/2013 & M.A.NO.726/2014

Mr. Sudeep Dey, Advocate for Respondent No. 1 in Original Application No. 112/2013 (M.A No. 786/2014)

Mr. Bhavanishankar V. Gadnis, Advocate for B Dr. Prafulla R. Hede For Respondent No. 1 in Original Application No. 51/2012 & M.A.No.270/2014 & M.A.No.517/2014

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice (Dr.) P. Jyothimani (Judicial Member)

Hon'ble Dr. D.K. Agrawal (Expert Member)

Hon'ble Dr. G.K. Pandey (Expert Member)

Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Reserved on: 8th December, 2014

Pronounced on: 13th January, 2015

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1. Whether the judgment is allowed to be published on the net?
 2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

By this Judgment, we shall dispose of all 96 connected Original Applications, as the following common question of law, based on similar facts with identical prayers arise for consideration of the Tribunal:

Whether on the settled canons of law, including that of judicial propriety, should this Tribunal at all, exercise its jurisdiction in terms of Section 15 read with Section 18 of the National Green Tribunal Act, 2010, in view of the judgment of the Hon'ble Supreme Court in the case of *Goa Foundation v. Union of India and Ors.*, (2014) 6 SCC 590?

2. The applicant is a society registered under Registration No. 360 of 2012 with the State of Goa and is an association of socially spirited persons who are residents of the State. They have a serious concern for the environment and ecology of the State of Goa. The members of the Executive Committee of the applicant association claims to be serving the public in their own chosen field of activities, with the aim and objectives to protect the eco-system and the environment of the State of Goa and they take actions to prevent damage to the environment of Goa.

Facts

3. For the purposes of convenience and keeping in view the fact that there is complete commonality of facts in all these applications, it is not required of us to notice facts of each of the above Original

Applications. We would be referring to the facts and documents of Original Application Nos. 112 of 2013 and 134 of 2013 in the matter of *Goa Paryavaran Savrakshan Sangharsh Samitee v. Sh. Rajaram Poiguinkar & Ors.* and *Goa Paryavaran Savrakshan Sangharsh Samitee v. M/s Sociedade Timblo Irmaos Ltd. & Ors.*, respectively.

4. The Goa Paryavaran Savrakshan Sangharsh Samitee (for short 'the Samitee') has filed both these applications through their President Mr. Bruno Rodrigues. The applicants claimed that they are residents of State of Goa and are concerned with various aspects of environment of the State. It is averred by them that the State of Goa was ruled by Portuguese. Keeping in view the mineral wealth of the State, in 1940 and even thereafter, the Portuguese earmarked 500 distinct sites that were rich in minerals. It was announced and declared that all these 500 sites were available on leases/concessions, for extraction of different ores/minerals from the said marked places, against payment of royalties. A number of people from Goa and surrounding areas applied for and obtained such concessions/leases. However, because of unavailability of technology and machineries, the extraction was done manually. The extraction was low, totalling to around One Lakh metric ton per year (MTPA). Respondent No. 1 had procured mining lease of 85.85 hectares in village Harvalem in Bicholim Taluka, North Goa and Environmental Clearance was also accorded by the Ministry of Environment, Forest and Climate Change (for short 'the MoEF) vide their letter dated 16th April, 2007. The Government of Goa also

wanted to encourage the mining industry in the State and for that purpose permissions were granted. However, these permissions lacked in appropriate conditions being imposed for carrying on such activity including the condition requiring clearance even under the Wild Life (Protection) Act, 1972. Respondent No. 1 in utter disregard and in absence of such mandatory requirement caused serious damage by extracting huge quantity of iron ore. In a short duration of 5 years, Respondent No. 1 extracted around 10 lakhs metric tons of iron ore worth Rs 625 crores not only from the lease area, but even by criminally trespassing, the area around the said mining lease granted to Respondent No. 1.

5. The applicant is seeking restoration of extensive damage of the environment and forest area in the 'Buffer Zone', close to one of the eco-sensitive Wild Life Sanctuaries, caused by Respondent No. 1 and other respondents in all other connected applications. It is the case of the applicant that the State of Goa being a small State, measuring total geographical area of about 3702 sq. kms., any environmental damage to any part of the State of Goa shall adversely affect the environment of the whole State and shall cause serious environmental damage to the residents of Goa.

6. According to the applicant, Respondent No. 1 did clandestine mining and export of the minerals for huge sums. He has caused great environmental damage to the mines lease area in Goa and the adjoining areas. Applicant also relies upon the judgment of the Hon'ble Supreme Court in the case of Goa Foundation (supra) to

state that it is the liability of the respondent to restore the environment and ecology.

7. The applicant has also relied upon and referred to the exhaustive report submitted by Hon'ble Justice M.B. Shah Commission in the case of *Goa Foundation* (supra), which found serious irregularities and illegalities in allotment of mine leases and extraction of minerals from the various lease sites. The conditions imposed under the Environmental and other Clearances of the leases had also not been adhered to. The Hon'ble Judge observed:

“It is further stated here that in the past there was “Single File System” wherein file initiates at the office of the Director of Mines and gets final approval from Hon'ble Minister concerned including the Hon'ble Chief Minister after passing through the Secretary (Mines). It is amply clear that the Hon'ble Minister of Mines and Hon'ble Chief Minister were well aware about non-compliance of conditions and other illegalities/irregularities happening in the mining sector. Complaints regarding water pollution, natural streams, rivers, ponds, agriculture destruction and failure of horticulture crops are well known to the entire administration. But no inspection has been carried out resulted into fear-free environment which has caused loss to the ecology, environment, agriculture, ground water, natural streams, ponds, rivers, biodiversity, etc.”

8. It is also the case of the applicant that Respondent No. 1 and all respondents in the connected applications have violated the conditions of the Environmental Clearances granted to them and also that of the Air Pollution Act, 1981, the Water Pollution Act, 1974, Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986. The applicant has also made allegations against Ex Minister and Chief Minister that they have abused their power and have colluded with the respondents in illegal extraction

and export of minerals from the State of Goa. The applicant claimed that there has been immense and irreversible environmental damage caused, due to plunder of iron ore or other minerals in various villages where these mines have been identified. A large quantity of extracted mine is lying in the form of dumps in and around the mining area. These dumps themselves are causing threat to the environment. Though the Shah Commission was not fully equipped with latest techniques to determine the quantum of damage, but even the estimated figure of nearly Rs. 35000 crores stated is much on the lower side. It is further submitted that the application is purely based on facts and since the factual matrix may not have been examined by the Hon'ble Supreme Court in exercise of its jurisdiction under Article 32 of the Constitution, the applicant has therefore invoked the jurisdiction of this Tribunal. On the above facts, the applicant has prayed for the following reliefs:

- “(a) The Hon'ble Tribunal be graciously pleased to order the Respondent Nos. 1, 2 & 3 jointly and severally to restore all the damaged property with its greenery to its originality as it was originally covered under the mining concession/lease of T.C. No. 59/53 and also the further damaged land encroached by the Respondent No. 1 beyond the said mining concession;
or alternatively,
- (aa). The Respondent Nos. 1, 2 & 3 jointly and severally be ordered to pay an amount of Rs. **1250** crores (Rupees One Thousand Two Hundred Fifty Crores only) or such other appropriate amount at this Hon'ble Tribunal deems fit and proper towards the restoration of damaged environment/ecology of the said village area/damaged property of T.C. No. 59/53 to the respondent State of Goa and or such amount be ordered to be credited to the Environment Relief Fund.

Alternatively-

- (b) This Hon'ble Tribunal be graciously pleased to assess the actual damage that has been caused to the original property granted to the Respondent No. 1 under Mining concession/lease bearing T.C. 59/53 and further pleased to assess all such expenses and costs that may be incurred for its restoration to bring it to its originality and that amount of such assessed expenditure and or cost be ordered to be recovered from the Respondent Nos. 1, 2 and 3 jointly severally and for this matter the assessment of environmental damage and or damage to the said property be ordered to be done by **3D LASER** measurement equipments or the like.
- (c) This Hon'ble Tribunal upon recovering such amount may be pleased to order all such amount to be credited to the Environmental Relief Fund with a further specific direction quantifying the amount that to be spent on the restoration of all that damaged property that was originally covered under Mining concession/Lease T.C. No. 59/53 as well as the encroached part of the land aforesaid and the amount payable to each section of victims of the damage caused to the environment.
- (d) This Hon'ble Tribunal be further graciously pleased to order the Respondent No. 4 the State of Goa **to black list the Respondent No. 1** as the wilful environment destructors and the Respondent No. 1 shall be permanently forbidden to cause any activity directly and or indirectly of mining iron ore and or any kind of extraction of minerals from the soil of the State of Goa for any time in the future and that such information may be uploaded on the website of the concerned department of mines.
- (e) The Hon'ble Tribunal be pleased to consider this application under Order 33(3) of C.P.C. 1908 and exempt the paying of court fee over and above Rs. 1000/- as paid with this application in the event if this Hon'ble Tribunal pleases to hold that any excess amount of court fees is payable on this application.
- (f) The Hon'ble Tribunal be pleased to hold the Respondent No. 1 guilty of committing breach or violation of terms and conditions of Environment Clearance granted by the Respondent No. 5 by its letter No. J-11015/63/2006-IA.II(M) dated 16.04.2007(2006) and also that of the T.C. No. 59/53 granted by the Respondent No. 4 and consequently order the cancellation of the said EC as well as the T.C. No. 59/53.
- (g) Pending hearing and final disposal of this application, the Respondent No. 1, his agents and servants, etc. be restrained from doing any kind of

iron ore extraction in the area of T.C. 59/53 and be further restrained from any way interfering with the extracted iron ore stored in any stock yard or in leasehold are in whatsoever manner.

- (h) Pending hearing and final disposal of this application, the Respondent No. 4 State of Goa be directed to seize all the mined ore, machineries, equipments of mining at the said mining T.C. No. 59/53 and all that iron ore stacked in the leasehold area and all stock yards or any other place by the Respondent No. 1 either in a form of running ore or dumps at the said mine or otherwise and that all such iron ore illegally extracted and or extracted causing environmental damage and or without permissions of the concerned departments as prescribed under the Wild Life Protection Act and or in violation of EC permits shall be attached and sold in public auction and that the proceeds of such sale shall be ordered to be appropriated for restoration of the damaged environment and for providing reliefs to the victims of such environmental damage.
- (i) Ad-interim ex-parte relief in terms of prayer clause (h) above, be granted.
- (j) Any other relief as deemed fit and or such other order and or orders as deemed fit and proper in the circumstances of this case be given/passed.”

9. In Original Application. No. 134 of 2013, the applicant has prayed for the similar reliefs against respondents M/s Sociedade Timblo Irmaos Ltd. & Ors. The applicant have even prayed injunction orders directing the authorities to prepare a detailed *Panchanama* of the site of the said illegal mining, volume of iron ores lying at the site and/or stockyard of the mines of respondent no. 1 as well as that of related dumps. In this application, the applicant has also referred to the order of the Hon'ble Supreme Court dated 14th February, 2000, passed in Writ Petition (C) No. 202 of 1995 *viz. T.N. Godavarman Thirumulpad v. Union of India & ors.*, where the Hon'ble Supreme Court had strictly prohibited mining activities within a distance of 1 km. from the boundaries of

National Parks and Wild Life Sanctuaries, which subsequently, vide order dated 4th December, 2006, was declared to be 10 kms. Rest of the facts in all these cases are more or less similar and further a prayer is also made that the Respondent should be blacklisted from carrying on any mining activity. Even though the applicant has prayed for many reliefs, but, during the course of the arguments, the Learned Counsel appearing for the common applicant in all the 96 Original Applications made a statement that he does not press for any other relief, except that of restoration and compensation, falling within the ambit of Section 15 of the NGT Act. Thus, in all these applications we would be examining the question afore-referred in the backdrop of the statement made by the Learned Counsel appearing for the applicants.

10. To this petition, separate replies have been filed on behalf of State of Goa (Respondent No. 1). State of Goa has denied allegations made against the former Chief Minister, Minister and executive. The preliminary objections have been raised that the Hon'ble Supreme Court of India is examining the entire matter in the case of Goa Foundation (Supra) and, therefore, this Tribunal should not hear the present and all connected applications. Without prejudice to the above objections, it is stated that after the present Government has come into power, steps have been taken to completely stop the illegal mining in the State. Various Government Officers are stated to have been under suspension. The factum of illegal mining has not been disputed and it has been stated that the Public Accounts Committee had observed that such large scale illegal mining in the

State of Goa could not have taken place without the active support of the people in power is not possible. According to the affidavit filed by the Director of Mine and Geology, Government of Goa, it was a known fact that there was a scam of illegal mining which was indicated in the Report of Hon'ble Justice Shah. Also, these mining activities were stopped and orders to that effect have been issued by the State and Central Government. Concessions in fact, were neither acceptable nor recognised as per the affidavit of the Central Government. However, they have prayed for rejection of the application on the ground of the judgment of the Hon'ble Supreme Court in the case of *Goa Foundation* (supra). According to the private respondents, Indian Government has permitted them to sell iron ore but not other segregated mineral components, driven out of the segregation process. Private respondents have also referred to various methods and mechanisms which, according to them, have helped in the progress of proper mining and utilisation of side products. However, in the reply affidavit, the allegations with regard to illegal mining, breach of conditions besides other allegations, have not been specifically disputed.

11. Thus, the applicant is primarily raising the issue in regard to the mine dumps being there within and outside the leased area and that the Tribunal should issue directions in that regard. The other prayer relates to restoration of the damage done to the environment and ecology in the mined area and that the respondents in all these applications should be directed to pay compensation of Rs.1250 Crores or such other amount as the Tribunal may determine.

12. According to the applicant, illegal and unauthorised mining has caused serious damage to the environment and this fact stands completely established in the Hon'ble Justice Shah Commission Report as well as the judgment of the Supreme Court in the case of *Goa Foundation* (supra). Furthermore, even the replies filed by the State do not dispute this fact. It is the case of the applicant that the damages had not been claimed before the Supreme Court and thus, all these questions are to be examined and determined by the Tribunal for the first time. To demonstrate the extent of illegal mining, it is claimed by the applicant that to export one tonne of iron ore, the miner has extracted five tonnes of minerals. Since majority of the extracted iron had been exported, however the remaining are lying as dumps and thus, there has been huge damage to the ecology and environment in the State of Goa. The respondents have primarily raised the issue in relation to the jurisdiction of the Tribunal to entertain this application. It is their contention that the matter has substantially and materially been adjudicated by the Supreme Court in the case of *Goa Foundation* (supra), a matter which still remains pending and there would be complete overlapping of proceedings before the Supreme Court and this Tribunal, if the present application is decided by the Tribunal. The applicant, while refuting this contention, has contended that the present application is neither barred by the principle of *res judicata*, nor is there any overlapping of proceedings, in the event this Tribunal decides to consider this application on merits.

13. Before we proceed to deal with the rival contentions raised before us, it is necessary for us to notice as to how these matters were argued on the preliminary issue. On the applications filed by the applicant, notice was issued on 6th May, 2013 and parties were directed to maintain *status quo*. During the pendency of the proceedings before the Tribunal, M.A. No. 1020 of 2013 and 472 of 2014, were filed by the respondents praying that the proceedings of the main application and connected matters be stayed or kept in abeyance. These applications came to be dismissed vide order of the Tribunal dated 3rd September, 2014 and directions were issued stating that proceedings in all these applications would continue. This order was passed by a Five Member Bench of the Tribunal. Thereafter, various proceedings took place and arguments were heard at considerable length. Vide order dated 19th August, 2014, a Bench of the Tribunal observed that the purpose of 'Sustainable Development' could be served, if the application for granting permission to commercially exploit the overburden is considered positively by the Department of Mines. However, before issuing any restrictions, the Bench felt that a comprehensive affidavit should be filed by Respondent No. 1 in relation to the plans for commercially exploiting the overburden, generated in the mines and steps that would be taken by respondent no. 1 to restore the exhausted mined area. It was observed that appropriate orders would be passed on the next date.

14. M.A. No. 611 of 2014 was filed praying for issuance of directions to implement the order of the Tribunal dated 19th August,

2014. This Application came up for hearing before the Tribunal on 30th October, 2014 and a Bench consisting of Three Members of the Tribunal by a detailed Order dismissed the M.A. No. 611 of 2014. The Bench was of the opinion that the Expert Committee appointed by the Hon'ble Supreme Court has been directed to deal with all the aspects related to this matter and is, thus, seized of the matter. Therefore, it observed that the implementation of order dated 19th August, 2014, cannot be directed and it will be appropriate to await the final Order of the Hon'ble Supreme Court, therefore, declining to give any relief to the applicants. Thereafter, in the Original Application, another application being M.A. No. 786 of 2014 was filed, praying for clarification of the order dated 3rd September, 2014, passed by the Tribunal and that the proceedings in all these cases should continue. Furthermore, it was averred that the Order dated 3rd September, 2014 was passed by a larger Bench and a smaller Bench could not pass a conflicting or varying order.

15. This application was heard on 25th November, 2014, by a Five Member Bench of the Tribunal. Then, with the consent of the Learned Counsels appearing for the parties, all connected matters were directed to be listed along with the M.A. No. 786 of 2014. All the matters were listed and again with the consent of the Learned Counsels appearing for all the parties, all the matters were heard on merits, as a preliminary objection (as already noted above), was raised by the Respondents, that the Tribunal should not exercise its jurisdiction in the facts and circumstances of the present case, keeping in view the judgment of the Hon'ble Supreme Court in the

case of *Goa Foundation* (supra). Therefore, it was prayed that M.A. No. 786 of 2014 had become infructuous and therefore, should be dismissed as such. The matter was heard on merits.

Discussion on merits

16. As is evident from the above rival contentions, the entire controversy in the present case revolves upon the scope of the directions issued under, the judgment of the Hon'ble Supreme Court in the case of *Goa Foundation* (supra). It cannot be disputed that the Hon'ble Justice Shah Commission's Report was the subject matter of scrutiny before the Hon'ble Supreme Court of India. In paragraph 5 of the judgment, the Hon'ble Supreme Court has noticed the background leading to the appointment of Hon'ble Justice Shah Commission under Section 3 of the Commissions of Enquiry Act, 1952 (for short 'Act of 1952'). After noticing the Terms of Reference for the Commission, the Hon'ble Supreme Court dealt with the findings recorded in the Report submitted by the Commission. After holding in paragraph 14 that the Court cannot direct prosecution of mining lessees on the basis of findings in the report of Hon'ble Justice Shah Commission, as they had not been given the opportunity to be heard or produce affidavits, in terms of Sections 8(b) and 8(c), respectively, of the Act of 1952, still the Court observed as follows:

“We will however, examine the legal and environmental issues raised in the Report of the Justice Shah Commission and on the basis of our findings on these issues consider granting the reliefs prayed for in the writ petition filed by Goa Foundation and the reliefs prayed for

in the writ petitions filed by the mining leases, which have been transferred to this Court.”

17. The above dictum of the Supreme Court clearly postulates that in relation to the issues afore-indicated, the Hon’ble Supreme Court has considered the effect of Hon’ble Justice Shah Commission’s Report. Considering the contentions of the lease holders, in relation to dumping of mining waste outside the lease area, the Hon’ble Supreme Court, while noticing that the lands are located in the forest area where non-forest activity (such as mining) is prohibited, without prior permission of the Central Government, by virtue of Section 2 of the Forest (Conservation) Act, 1980, held that dumping of mining waste, even on private lands would necessarily require the permission of the Central Government. On this issue, the Supreme Court concluded as under:

“We therefore do not find any merit in the contention of the learned counsel for the lessees that they can dump mining waste outside the leased area.”

Having dealt with the above aspect, the Hon’ble Supreme Court then proceeded to substantially deal with the aspect of the extent of damage caused to the environment in Goa by mining and what measures are required to be taken to ensure intergenerational equity and sustainable development. After noticing the contention of the parties and referring to the findings recorded in the Report of the Hon’ble Justice Shah Commission, the Hon’ble Supreme Court discussed the issue and recorded the findings as follows:

“68. After considering the aforesaid submissions of learned counsel for the parties, we took the view that a Committee

of Experts must conduct a macro EIA study and propose ceiling of the annual excavation of iron ore from the State of Goa, considering its iron ore resources and its carrying capacity and keeping in mind the principles of sustainable development and intergenerational equity and all other relevant factors. Accordingly, by orders dated 11.11.2013 and 18.11.2013, we constituted an Expert Committee comprising Professor C.R. Babu (Ecologist), Dr. S.D. Dhiman (Geologist/Hydrogeologist), Professor B.K. Mishra (Mineralogist), Professor S. Parameshwarappa (Forestry), Shri Parimal Rai (Nominee of the Ministry of Environment and Forests, Government of India). This Expert Committee has submitted an interim report dated 14.03.2014. In this report, the Expert Committee has indicated that the economy of Goa depends on tourism and iron ore mining, besides agriculture, horticulture and minor industries, but in recent years, while there has been increase in the growth rate in tourism and mining, there has been a decline in the growth rate of agriculture and fishing.

69. The Expert Committee has in particular highlighted the damage that has been done by increase in the production of iron ore through mining to the environment in Goa in the following words:

“The production of iron ore has jumped from 14.6 million tons in 1941 to 41.17 million tons in 2010-11. In 1980’s the production was about 10 MT/annum. The quantum jump in iron ore production in Goa was essentially due to steep rise in exports of fines and other low grade ore of 42% Fe content to China. This has led to massive negative impacts on all ecosystems leading to enhanced air, water, and soil pollution affecting quality of life across Goa. This is evident by three important reports i.e. (i) Area wide Environmental Quality Management (AEQM) Plan for the Mining belt of Goa by Tata Energy Research Institute, New Delhi and Goa (1997) and it was submitted to the Directorate of Planning, Statistics, and Evaluation, Government of Goa, (ii) Environmental and Social Performance Indicators and Sustainability Markers in Minerals Development Reporting progress towards improved Ecosystem Health and Human Well-being, Phase-III by TERI and International Development Research Centre, Ottawa, Canada (2006) and (iii) the Regional Environmental Impact Study of iron ore mining in Goa region sponsored by MoEF, New Delhi (2014) by Indian School of Mines. Besides the above three main Reports, a number of scientific research papers on the impact of iron ore mining on the environment and ecology of diverse ecosystems were published by scientists working at Goa university

and NIO.

These reports and publications substantiates that the mining, particularly the enhanced level of annual production contributed to adverse impacts on the ecological systems, socio economics of Goa and health of people of Goa leading to loss of ecological integrity. This is due to enhanced levels of pollutants, particularly RSPM and SPM, sedimentation of materials from dumps and iron ore in rivers, estuaries and shallow depth (20m) of sea water, agricultural fields, high concentration of Fe and Mn in surface waters and their bioaccumulation.”

The Expert Committee has also studied the sustainability of iron ore mining in the Goa and after analyzing the existing data from TERI report, 1997, ISM, Dhanbad Report, 2013, Pollution Control Board, Goa (Annual Report) and relevant literature relating to sustainability and after adopting the Folchi method has given the opinion that mining at the rate of 20 to 27.5 million tons per annum appears sustainable in the State of Goa.

77. Regulatory and monitoring measures enforced by the Departments of Mines and Geology, the Goa State Pollution Control Board and the Regulator appointed by the Central Government under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 cannot, however, restore entirely the environment that is damaged in course of mining operations. The Expert Committee has, therefore, recommended that a permanent fund for inter-generational equity and sustainability of mining for all times to come named as “Goan Iron Ore Permanent Fund” be created and an expert group may be constituted by the State for working out the details of this fund. Mr. Harish Salve, learned Amicus Curiae, submitted that as the lessees of mining leases earn out of the sale proceeds of the iron ore excavated by them, they should be directed to contribute 10% of the sale proceeds of all iron ore excavated in the State of Goa and sold by them towards the Goan Iron Ore Permanent Fund. He cited the judgment of this Court in *Samaj Parivartana Samudaya and Ors. v. State of Karnataka and Ors.* (supra) in which this Court has similarly directed for creation of a Special Purpose Vehicle out of 10% of the sale proceeds of the ore sold by e-auction. There is a lot of force in the aforesaid submission of Mr. Salve.

78. We find from the report of the Expert Committee that the State of Goa heavily depends on iron ore mining for revenue as well as employment. The legislative policy behind the MMDR Act made by Parliament is mineral

development through mining. The State Government of Goa has also adopted the executive policy to encourage mining of minerals in Goa. Moreover, as Mr. Ravi Shankar Prasad, learned senior counsel appearing for 33 Panchayats, has submitted about 1.5 lakh people are directly employed in mining in Goa and large number of persons have taken bank loans and purchased trucks for transportation of iron ore. Hence, people who earn their livelihood through work in connection with mining will be seriously affected if mining is totally banned to protect the environment. We cannot, therefore, prohibit mining altogether, but if mining has to continue, the lessees who benefit the most from mining, must contribute from their sale proceeds to the Goan Iron Ore Permanent Fund for sustainable mining. Accordingly, in exercise of our powers under Article 32 read with Article 21 of the Constitution, we direct that henceforth 10% of the sale proceeds of iron ore excavated in the State of Goa and sold by the lessees must be appropriated towards the Goan Iron Ore Permanent Fund for the purpose of sustainable development and inter-generational equity and the State of Goa in consultation with the CEC will frame a comprehensive scheme in this regard and submit the same to this Court within six months.”

18. While dealing with the aspect of what measures should be taken by the State for creation of the fund and its utilisation for distinct and different purposes, the Hon'ble Supreme Court approved the recommendations of the Expert Committee, that a permanent fund should be set up for Intergenerational Equity and Sustainable Mining for all times to come, named as the 'Goan Iron Ore Permanent Fund'. The State of Goa in consultation with the CEC was directed to frame a comprehensive scheme in regard to utilisation of this Fund and the measures that are required to be taken in this regard. This Report was to be submitted within six months from the date of the order.

19. At this stage, purposefully, we may refer to the relevant paragraphs and various directions issued by the Hon'ble Supreme

Court, which would have a bearing on the matter in issue before us.

The same reads as under:

“86. The entire sale value of the stock of mineral ores sold by e-auction less the average cost of excavation, 50% of the wages and allowances and 50% of the storage charges to be paid to MPT is thus due to State Government which is the owner of the mineral ores which have been sold by e-auction. The State Government will set-aside 10% of this balance amount for the Goan Iron Ore Permanent Fund for the purpose of sustainable development and inter-generational equity. This entire exercise of calculating the average cost of extraction of ores to be paid to the mining lessees, 50% of the basic wages and dearness allowance to be paid to the workers, 10% of the balance amount towards the Goan Iron Ore Permanent Fund and the balance amount to be appropriated by the State Government will be done by the Director of Mines and Geology, Government of Goa, under the supervision of the Monitoring Committee. Till this exercise is over and the report of the Monitoring Committee is filed, the Monitoring Committee will continue and their members will be paid their remuneration allowances as directed in the order dated 11.11.2013.

87. In the result, we declare that:

87.1 The deemed mining leases of the lessees in Goa expired on 22.11.1987 and the maximum of 20 years renewal period of the deemed mining leases in Goa expired on 22.11.2007 and consequently mining by the lessees after 22.11.2007 was illegal and hence the impugned order dated 10.09.2012 of Government of Goa and the impugned order dated 14.09.2012 of the MoEF, Government of India are not liable to be quashed;

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

87.3 Until the order dated 04.08.2006 of this Court is modified by this Court in I.A. No.1000 in T.N. Godavarman Thirumulpad v. Union of India & Ors., there can be no mining activities within one kilometer from the boundaries of National Parks and Sanctuaries in Goa;

87.4. By the order dated 04.12.2006 in Goa Foundation v. Union of India, this Court has not prohibited mining activities within 10 kilometers distance from the boundaries of the National Parks or Wildlife Sanctuaries;

87.5. It is for the State Government to decide as a matter of policy in what manner mining leases are to be granted in future but the constitutionality or legality of the decision of the State Government can be examined by the Court in exercise of its power of judicial review.

88. And we direct that:

88.1. MoEF will issue the notification of eco-sensitive zones around the National Park and Wildlife Sanctuaries of Goa after following the procedure discussed in this judgment within a period of six months from today;

88.2 The State Government will initiate action against those mining lessees who violate Rules 37 and 38 of the MC Rules;

88.3 The State Government will strictly enforce the Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013;

88.4 The State Government may grant mining leases of iron ore and other ores in Goa in accordance with its policy decision and in accordance with MMDR Act and the Rules made thereunder in consonance with the constitutional provisions;

88.5 Until the final report is submitted by the Expert Committee, the State Government will, in the interests of sustainable development and intergenerational equity, permit a maximum annual excavation of 20 million MT from the mining leases in the State of Goa other than from dumps;

88.6 The Goa Pollution Control Board will strictly monitor the air and water pollution in the mining areas and exercise powers available to it under the 1974 Act and 1981 Act including the powers under Section 33A of the 1974 Act and Section 31A of the 1981 Act and furnish all relevant data to the Expert Committee;

88.7. The entire sale value of the e-auction of the inventorised ores will be forthwith realised and out of the total sale value, the Director of Mines and Geology, Government of Goa, under the supervision of the Monitoring Committee will make the following payments:

(a) Average cost of excavation of iron ores to the mining lessees;

(b) 50% of the wages and dearness allowance to the workers in the muster rolls of the mining leases who have not been paid their wages during the period of suspension of mining operations;

(c) 50% of the claim towards storage charges of MPT.

Out of the balance, 10% will be appropriated towards the Goan Iron Ore Permanent Fund and the remaining amount will be appropriated by the State Government as the owner of the ores;

88.8 The Monitoring Committee will submit its final report on the utilization and appropriation of the sale proceeds of the inventorised ores in the manner directed in this judgment within six months from today;

88.9 Henceforth, the mining lessees of iron ore will have to pay 10% of the sale price of the iron ore sold by them to the Goan Iron Ore Permanent Fund.

88.10 The State Government will within six months from today frame a comprehensive scheme with regard to the Goan Iron Ore Permanent Fund in consultation with the CEC for sustainable development and intergenerational equity and submit the same to this Court within six months from today; and

88.11. the Expert Committee will submit its report within six months from today on how the mining dumps in the State of Goa should be dealt with and will submit its final report within twelve months from today on the cap to be put on the annual excavation of iron ore in Goa.

89. With the aforesaid declarations and directions, Writ Petition (C) No.435 of 2012 is allowed. The Transferred Cases and IA filed by MPT as well as other IAs also stand disposed of. The interim order dated 05.10.2012 of this Court is vacated. These matters will be listed as and when the Monitoring Committee and the Expert Committee submit their final reports and the State Government submits the scheme for the Goan Iron Ore Permanent Fund. The parties shall bear their own costs.”

From the above findings recorded by the Hon'ble Supreme Court, it is clear that the Hon'ble Supreme Court has dealt with all the aspects of illegal and unauthorised mining in the State of Goa by the lessees, including, restoration of environment and ecology and with the extent of contribution to the revenues to be made by the lessees in the form of compensation or otherwise, to the 'Goan Iron Ore Fund' with reference to intergenerational equity and

sustainable development. Hon'ble Supreme Court has asked the Expert Committee to submit its report within six months before the Hon'ble Supreme Court. Dumping of minerals outside the leased area has been held to be illegal. MoEF has been directed to issue Notification of Eco-Sensitive Zones around the National Park and Wild Life Sanctuaries of Goa.

20. Till submission of the final report by the Expert Committee to the Hon'ble Supreme Court, the State Government has been directed to permit a maximum annual excavation of 20 million MT from the mining leases in the State of Goa other than from dumps. The Goa Pollution Control Board has also been directed to monitor air and water pollution in the mining areas.

21. Upon preparing the inventory of the ore, the Government has been directed to make the payments as per direction 88.7, which requires that out of the balance remaining after payments of (a), (b) and (c) under that paragraph, 10 per cent of the sale price of the iron ore sold by them, will be appropriated towards the Goan Iron Ore Permanent Fund. The Monitoring Committee is to submit a comprehensive scheme to the Hon'ble Supreme Court within six months from the date of passing of the order while the Expert Committee was to submit a report as to how the mining dumps in the State of Goa should be dealt with. The final report was to be submitted within twelve months from the date of the order of the Hon'ble Supreme Court. While partially allowing the Writ Petition (C) No. 435 of 2012, the Hon'ble Supreme Court disposed of all the

Interim Applications, including the transferred cases. The matter is now directed to be listed as and when the Monitoring Committee and the Expert Committee submit their final reports. In this background, we do not find any substance in the submission of the applicants that the Hon'ble Supreme Court after pronouncing the judgment in the case of Goa Foundation (Supra) is *stricto sensu functus officio* and that no matter is pending before the Supreme Court for consideration any longer.

22. *Functus Officio* as understood in common and even legal parlance means a situation when a person has discharged his duty or whose office or authority is at an end. It also means an officer/Official body without further authority or legal competence because the duties and functions of the original commission have been fully accomplished (Wharton's Law Lexicon Dictionary 15th edition, 2012 and Black's Law Dictionary 9th edition, 2009).

23. It is evident that accomplishment of the matter *sub judice* before a Court or an Authority should be concluded. In other words, it must be finally disposed of by that Court or forum. For instance, a Civil Court would not become *functus officio* of the matter before pronouncement of a judgment in consonance with Order XX, Rule-1 of the Code of Civil Procedure, 1908 (for short 'CPC'). A *lis* between parties must come to an end leaving the parties to take recourse to an appellate or any other jurisdiction permissible under the prevalent law. Disposal of the case finally, be

it in any form in accordance with law is a prerequisite for applying the principle of *functus officio*.

24. From the above referred findings of the Hon'ble Supreme Court and particularly the directions contained in para-88 of the judgment in *Goa Foundation (supra)*, it is evident that the matter has not been finally disposed of by the Supreme Court as of yet. The Apex Court has not only asked the appointed Expert Committee to conduct a macro-EIA study and propose ceiling of the annual excavation of iron ore from the State of Goa, considering its iron ore resources and its carrying capacity and keeping in view the principles of sustainable development and Intergenerational Equity and all other relevant factors (emphasis supplied), but has specifically kept the matter pending before it and has directed filing of different reports within the prescribed period of six months or one year respectively. It has further directed the matter to be listed as and when the Expert Committee submits its final reports and the State Government submits the scheme for the Goan Iron Ore Permanent Fund. In other words, how this Permanent Fund is to be used, what will be the extent of mining; how would there be restoration of the damaged ecology and environment; are matters materially and directly *sub judice* before the highest court of the land and are to be dealt with by it, further appropriate directions in regard these matters are to be issued by the Hon'ble Supreme Court in future.

25. In the light of this, we do not propose to deal with these applications any further, as the issues raised before the Tribunal are squarely covered by the judgment of the Supreme Court in the case of “*Goa Foundation*” (supra) and are subject to further directions which the Hon’ble Supreme Court of India may pass in future.

26. Now, we come to the second limb of the submissions of the applicants. According to the applicants, the present application is not hit either by the principle of *res judicata* or of constructive *res judicata*. It is the contention of these applicants that neither the matters raised in these applications have been heard nor finally decided by the Hon’ble Supreme Court in the case of “*Goa Foundation*” (supra). The matters in relation to dumping and damages for restoration of environment and ecology are independent of the proceedings before the Hon’ble Supreme Court. This contention is seriously refuted by the Learned Counsels appearing for the respondents. According to them, firstly the very foundation of the issue raised in the present application is the same as that of the petition pending before the Hon’ble Supreme Court of India. Secondly, matters raised in this application were directly and substantially in issue before the Hon’ble Supreme Court which have been decided finally in the case of *Goa Foundation* (supra). Whatever matters remain, upon which the Expert Committee has been directed to submit its report, are still to be finally dealt with and decided by the Hon’ble Supreme Court. The Applicants have raised all the pleas before the Hon’ble Supreme Court but whatever

plea if at all they had not raised before the Supreme Court would be deemed to have been raised and rejected in terms of Explanation-IV to Section-11 of the CPC and therefore, present application cannot lie.

27. The Learned Counsels for the applicants advanced still another argument that the Permanent Fund established by the Hon'ble Supreme Court is intended to provide for intergenerational equity and sustainable development and does not cover restoration of the degraded environment and ecology in the mined areas. This argument is needed to be noticed, only to be rejected. The doctrine of Sustainable Development is a composite principle and takes within its ambit requirements of restoration of ecology and environment. It is not possible to give the doctrine of Sustainable Development such a restricted meaning that would result in eroding the very essence of the principles governing this doctrine. In fact, even the Precautionary Principle and 'Polluter Pays' Principle have been treated as necessary components of sustainable development. In the case of *Tirupur Dyeing Factory Association Vs. Noyyal river Ayacut Dars Protection Association & Ors.* (2009) 9 SCC 737, the Hon'ble Supreme Court observed that the 'Polluter Pays' Principle and Precautionary Principle itself have to be read with the doctrine of Sustainable Development. Normally, they are applied collectively depending upon the facts and circumstances of case. Restriction is an inbuilt fact of Sustainable Development and that itself serves the cause of Intergenerational Equity. Sustainable Development means the development that can take place and which can be sustained by

nature, ecology with or without mitigation. In such matters the required standard is the risk of harm to environment or to human health is to be decided in public interest according to a 'reasonable persons test'. Thus, we have no hesitation in rejecting the contentions of the learned Counsel appearing for the applicants.

28. It is not necessary for us to again refer to the relevant extracts of the judgment of the Supreme Court in the case of "*Goa Foundation*" (supra). Suffice it to notice that the Hon'ble Supreme Court had specifically dealt with the dumps of mining waste lying outside the leased area and had particularly noticed the findings of the Expert Committee in relation to dumping and damage resulting from illegal mining and its effect on environment and ecology, stating that the measures taken could hardly restore entirely the environment that has been damaged in the course of mining operations. The Apex Court created the 'Goan Iron Ore Permanent Fund' and issued various directions for its utilisation. It not only directed 10% of the sale price of iron ore excavated in the State of Goa to be contributed towards the Permanent Fund for future, but had also directed in para 88.7 that 10% out of the balance of the value of e-auction of the inventoried ores, existing as on that day, also to be appropriated towards this Permanent Fund. This sufficiently demonstrates that the matters raised by the applicants were subject matters of the petition before the Hon'ble Supreme Court of India and majority of such issues have already been decided. Whatever limited issues remain, they are obviously to be governed by the directions that the Hon'ble Supreme Court may

pass in future, as the matter is substantially and effectively pending before the Hon'ble Supreme Court. Another aspect that would fortify the view that we are taking, is that in the petitions filed by the applicants themselves before the Hon'ble Supreme Court, they had specifically raised the issue of damage to environment and ecology by unauthorised and illegal mining. In para 2.12 of the Writ Petition No. 435 of 2012, it was specifically stated by the applicants that vast environmental damage wreaked the natural environment of beautiful Goa, which should be halted and the areas should be rehabilitated. Without rehabilitating those devastated areas, no mining lease should be permitted to restart its mining operation. According to their Writ Petition, the recommendations of the Hon'ble Justice Shah Commission in relation to recovery of Rs. 35,000 Crores from the lessees parties concerned, were also prayed to be accepted by the Hon'ble Supreme Court. In the prayer clause of this Writ Petition No. 435/2012 amongst other reliefs, issuance of a specific direction was prayed, to direct official respondents to recover illegal wealth accumulated by the respondents lessees through illegal mining, for issuance of a writ of mandamus, directing respondents to restore and re-vegetate the area in accordance with established forestry practices and for the respondents to pay compensation for such repair, restoration and re-vegetation. All these reliefs amongst others, have either been specifically granted by the Hon'ble Supreme Court or their consideration has been deferred till submission of various reports in terms of the direction of the Hon'ble Supreme Court. In any case, if

some relief as prayed by the applicant in that Writ Petition, does not fall under any of these classes, then it would obviously mean that it is deemed to have been considered and rejected by the Hon'ble Supreme Court and therefore, the Applicant therefore cannot be permitted to re-agitate those issues or prayers before this Tribunal in the present application. May be, the principle of *res judicata* as contemplated under section 11 of the CPC would not apply *stricto sensu* to the reliefs claimed in this application, but, they are certainly hit by the principle of Constructive *res judicata*. The commonly applied principles of *res judicata* and constructive *res judicata*, as envisaged under Explanation-IV of Section 11 of the CPC, would certainly apply to the present case. Learned Counsels appearing for the respondents have relied upon the judgment of the Hon'ble Supreme Court in the case of "*M. Nagabhushana V. State of Karnataka*" (2011) 3 SCC 408, to contend that the matters which have been decided once cannot be permitted to be re-agitated, either on the principle of *res judicata*, constructive *res judicata* and/or the principle analogous thereto. However, we are not prepared to accept the contentions that the present application is an abuse of the process of the Tribunal. These applications might have been moved under the *bona fide* belief not realising that the matter is still subjudice before the Hon'ble Supreme Court as it has not been finally disposed of the cases.

29. Reliance is also placed upon another judgment of the Hon'ble Supreme Court in the case of *Forward Construction Company & Ors. V. Prabhat Mandal, Andheri & Ors.* (1986) 1 SCC 100, contending

that Explanation – IV to Section 11 of CPC applies to Public Interest Litigation as well. If a litigation which is bonafide and relates to a common interest of all concerned, is disposed, of a subsequent petition re-agitating the same or similar issue would not be maintainable and would be hit by the Principle of Constructive *res judicata*. These principles certainly have a bearing on the facts of the present case as already noticed by us above.

30. Learned Counsel appearing for the applicant, while referring to para 89 of the judgment of the Hon'ble Supreme Court in the case of "*Goa Foundation*" (supra), contended that applications have been filed before the Hon'ble Supreme Court by some respondents praying for stay of the proceedings before the NGT. Since these applications have been dismissed by the Hon'ble Supreme Court, therefore, the Original Applications before the Tribunal should be dealt with on merits. Further, the learned Counsel also relied upon a Division Bench judgment of Bombay High Court in the case of *M/s Lithoferro v. State of Goa and Ors.* (Writ Petition No. 210 of 2014), where the Bombay High Court while dealing with the question of termination /renewal of lease, had rejected the contention raised on behalf of the State that in view of the proceedings pending before the Hon'ble Supreme Court in Writ Petition No. 435/2012, the Bombay High Court should keep the proceedings in abeyance and ask the applicants to approach the Hon'ble Supreme Court. The Bombay High Court held as under:

“the Apex Court directed the Expert Committee to submit its final report within six months from the date of the

Judgment. The Supreme Court directed the State of Goa to submit the scheme with regard to the Goan Iron Ore Permanent Fund within six months from the date of the judgment. It is only for the aforesaid submission of the report and the scheme that the writ petition would be listed before the Supreme Court as directed by it.”

On this premise, the learned Counsel appearing for the applicant contends that the proceedings should continue, application be dealt with and decided on merits by the Tribunal and respondents be directed to seek clarification from the Supreme Court.

31. This contention of the Applicant is also without any substance. When the Hon'ble Supreme Court has pronounced the Judgment, obviously, all Interim Applications necessarily would come to an end. The applications that were required by the Hon'ble Supreme Court were for stay the proceedings before the Tribunal during the pendency of the Writ Petitions before the Hon'ble Supreme Court. Even otherwise this will not have any effect on the fate of the present applications since we have heard these applications on merits, with regard to the question of maintainability.

32. Firstly, we are unable to follow the view taken by the Bombay High Court that the matter before the Hon'ble Supreme Court is pending only for submission of reports. From the judgment of the Hon'ble Supreme Court in the case of "*Goa Foundation*" (supra) it is clear that the Hon'ble Supreme Court has called for various reports and scheme from the Government with the purpose of passing

further direction as may be required in the facts and circumstances of the case. As already held by us, the matter is still substantially, materially and effectively pending before the Hon'ble Supreme Court in relation to various aspects including, regulation of mining in State of Goa, the purpose for which the Permanent Fund is to be used and its extent and all other matters specifically covered under the directions contained in para 88 of the judgment. Another facet of this aspect is that the Bombay High Court was dealing with a very limited and different issue than the one that we have been called upon to determine in the present case.

33. We are also not in agreement with the contention of the applicant that the respondents should be directed to approach the Hon'ble Supreme Court of India for appropriate direction and/or clarification. Such an approach by the Tribunal has not found approval from the Hon'ble Supreme Court in various cases. We may refer only to the judgment of the Supreme Court in the case of *Indian Petrochemicals Corpn. Ltd. v. Shramik Sena*, 2001 (7) SCC 469 where the Supreme Court expressed its disapproval to the approach of the High Court in relegating the petitioner to the Hon'ble Supreme Court to seek clarification rather than deciding the matter on merits. The Supreme Court held as under:-

“8. We have perused the impugned order of the High Court. We are unable to appreciate the approach of the High Court. Even when it was faced with diametrically opposite (sic opposite) interpretation of the judgment of this Court, it was expected of the High Court to decide the case (Writ Petition) on merit according to its own interpretation of the said judgment. Instead the High Court after referring to rival contentions of the parties, in para 3, observed thus:

“In our view, the right course for the Petitioner will be to approach the Apex Court and to seek a clarification of the said order. Mr. Singhvi is agreeable to take necessary steps.”

In light of the above, there is no occasion for us to pass such a direction. In fact, we would recall the observation made by the Bench of the Tribunal in its order dated 30.10.2014. It is for the parties to take recourse of such remedy as may be available to them in accordance with law. In any case, all these contentions raised on behalf of the applicants have lost their meaning and significance, in as much as, we have already dealt with all these applications on merits and also with the preliminary issue raised before us that we recorded at the very opening part of the judgment.

34. Once we comprehensively consider the scope of the proceedings that are pending before the Hon'ble Supreme Court in furtherance to the directions issued in the case of “Goa Foundation” (supra) and the present application before the Tribunal, there is apparent and unquestionable overlapping of the proceedings. We have already taken a view that the questions raised in the present application are materially and substantially *sub judice* before the Hon'ble Supreme Court of India. Thus, it will not be appropriate for this Tribunal to venture into adjudication of the issues raised in the present application. Once the matter is directly or indirectly pending adjudication before the highest court of the land, it will not be appropriate for the Tribunal to proceed with the determination of the application, even if we were to accept the contention raised on behalf of the applicant. The clear mandate of ‘Judicial Propriety’

requires us to reject the contention raised on behalf of the applicant. Adherence to the Principle of 'Judicial Discipline' is one of the essential prerequisites of judicial administration. This Tribunal and in fact even other Courts are guided by the Principle of Judicial Discipline. Whenever, the Hon'ble Supreme Court states the law on the facts of a given case, or even otherwise, it shall bind all the Courts and the Tribunals within the territory of India. Keeping this principle in mind, it would not be appropriate for the Tribunal to venture into considering the merits or otherwise of the prayed reliefs. (Reference can be made to the judgement of the Supreme Court in the case of *Union of India v. Jaiswal Coal Company Limited and Ors.*, (1999) 5 SCC 733 and *C.N. Rudramurthy v. K. Barkathulla Khan and Others*, (1998) 8 SCC 275).

35. The applicants have specifically or impliedly raised issues which are directly and substantially in issue and were matter of adjudication before the Hon'ble Supreme Court or are covered under the directions contained in para-88 of the judgment in the case of *Goa Foundation* (supra) and its implementation. Thus, in our considered view, there is no occasion for the Tribunal to proceed any further with these applications on merits, as they are not maintainable and in any case, in view of the Principle of 'Judicial Propriety' it is not expected that the Tribunal would deal with the issues raised and prayers made in these applications any further or otherwise.

36. Ergo for the reasons stated above, we answer the question raised at the very outset of the Judgment in the negative and hold

that the Tribunal has no jurisdiction to entertain these applications. In any case, it will not be appropriate for this Tribunal to proceed with the hearing of these applications 'on merits' on the ground of 'judicial propriety'.

37. All these above Original Applications and Miscellaneous Applications are, therefore, dismissed while leaving the parties to bear their own costs.



सत्यमेव जयते

**Justice Swatanter Kumar
(Chairperson)**

**Justice P. Jyothimani
(Judicial Member)**

**Dr. D.K. Agrawal
(Expert Member)**

**Dr. G. K. Pandey
(Expert Member)**

**Mr. B.S. Sajwan
(Expert Member)**

New Delhi
13th January, 2015

NGT