

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
PUBLIC INTEREST LITIGATION WP NO. 3 OF 2018

The Goa Foundation,
through its Secretary,
Dr. Claude Alvares,
having Regd. Office at
Room No.7, above Mapusa Clinic,
Mapusa, Goa 403 507.

..... Petitioners.

versus

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

2. The Secretary to the Government
of Goa (Mines), Secretariat,
Porvorim, Goa 403 521.

3. Department of Mines & Geology,
through its Director,
Menezes Braganza Bldg.,
Panaji, Goa 403 001.

4. Directorate General of
Mines Safety, through its Director,
Goa Region, Fatorda,
Margao, Goa 403 601,

5. Regional Controller of Mines,
Indian Bureau of Mines,
Fatorda, Margao Goa 403 601.

6. Vedanta Ltd.,
through its Chief Operating Officer,
Sauvick Mazumder,
having its Office at Sesa Ghor,
20 EDC Complex,
Patto, Panaji Goa.

7. V.M. Salgaocar & Brother Pvt. Ltd,
a Company incorporated under the
Provisions of the
Companies Act, 1956,
having its registered Office at
Salgaocar House, Off.
Dr. Francisco Luis Gomes Road,
Vasco-Da-Goa 403 802.

8. Shivanand V. Salgaocar,
Chairman & Managing Director,
s/o. late V.M. Salgaocar,
having office at Salgaocar House,
Off. Dr. Francisco Luis Gomes Road,
Vasco-Da-Goa 403 802.

9. Fomento Resources Pvt. Ltd.,
having its office at 325,
second floor, Casa Del Sol, Casa III,
next to Goa Marriot,
Miramar 403 001.

10. Mr. Ambar Timblo,
residing at Ocean Heights,
Dona Paula-Goa 403 004

11. Sociedade De Fomento

Industrial Pvt. Ltd.,
having office at Villa Flores,
Erasmoo Carvalho Road,
Margao, Goa 403 601,
represented herein through its
Director Partha Banerjee,
residing at Caranzalem, Goa 403 002.

12. Mr. Partha Banerjee,
residing at Adwalpalkar,
Caranzalem, Goa 403 002.

13. Board of Trustees of
the Port of Mormugao,
a body corporate constituted
under the Major Port Trust
Act, 1963 and having its Office at
Headland, Sada-Goa,
through its Law Officer Grade II,
and duly constituted attorney,
Santosh Anand Naik, a
aged 52, Indian National,
r/o. Vasco Da Gama,
Mormugao, Goa 403 803,

14. V.M. Salgaocar Sales International,
having its registered Office at
Salgaocar House,
Off. Dr. Francisco Luis Gomes Road,
Vasco-Da-Goa 403 802.

15. M/s. Minescape & Kadar Ores
Pvt. Ltd., represented hereby its
authorised signatory,
Mr. Edgar De Souza,

Minescape, M.G. Road,
Panaji, Goa 403 001.

16. M/s. Minescape Minerals
Pvt. Ltd., represented hereby its
authorised signatory
Ashok Antonio Cotta,
M.G. Road, Panaji, Goa

17. Chowgule & Company Pvt. Ltd.,
Chowgule House,
Mormugao Harbour, Goa 403 803.

..... Respondents.

Ms. Norma Alvares with Ms. Anamika Gode, Advocates for the
Petitioner.

Mr. Dattaprasad Lawande, Advocate General with Mr. Deep
Shirodkar, Additional Government for Respondents No. 1 to 3.

Mr. Mahesh Amonkar, Central Government Standing Counsel for
Respondents No. 4 and 5

Mr. S.S. Kantak, Senior Advocate with Mr. Abhijit Gosavi, Advocate
for Respondent No. 6.

Mr. D.J. Pangam with Ms. N. Pimenta, Advocates for Respondents
No. 7, 8 and 14.

Mr. Parag Rao with Ms. Swati Kamat and Ms. Shambhavi Rao,
Advocates for Respondents No.9 to 12.

Mr. Y.V. Nadkarni with Mr. N. Noronha, Advocates for Respondent
No. 13.

Mr. S.S. Kantak, Senior Advocate with Mr. Nikhil Vaze, Advocate for
Respondent No. 15.

Mr. Prasad Dhakephalkar, Senior Advocate with Mr. Nikhil Vaze, Advocate for Respondent No.16.

Mr. S.D. Lotlikar, Senior Advocate with Ms. M. Prabhuchodnekar, Advocate for Respondent No.17.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

***Reserved on : 27 April 2018
Pronounced on : 4 May 2018***

JUDGMENT: (Per N.M. Jamdar, J.)

Rule. Rule made returnable forthwith. Respondents waive service. Taken up for final disposal.

2. On 7 February 2018, the Supreme Court of India disposed of appeals dealing with the issue of renewal of the 88 mining leases in the State of Goa. The Supreme Court held that the 88 mining leases had expired in the year 2007, and they could not have been renewed. After delivering an elaborate decision declaring the invalidity of these leases, the Supreme Court issued certain directions. One such direction in exercise of power under Article 142 of the Constitution of India was as under:

6. The mining lease holders who have been granted the second renewal in violation of the decision and directions of this Court in Goa Foundation are

given time to manage their affairs and may continue their mining operations till 15th March 2018. However, they are directed to stop all mining operations with effect from 16th March, 2018 until fresh mining leases (not fresh renewals or other renewals) are granted and fresh environmental clearances are granted.

In the impugned decision dated 21 March 2018, the State of Goa has construed this direction as a full liberty to such mining lease holders to carry out excavation of ore till 15 March 2018, pay royalty on the same and transport it any time after 15 March 2018. According to the Petitioner, this is against the indulgence granted by the Supreme Court, as time was granted only to arrange the affairs, meaning thereby all activities, including transportation, must end by 15 March 2018. Though the issue appears to be narrow, since the exercise under Article 142 will have to be understood in the context in which the Judgment was rendered, it is necessary to narrate the background which led to the decision on 7 February 2018.

3. Prior the year 1961, Goa was under the Portuguese Rule. The then Portuguese Government had granted certain mining concessions in perpetuity to concessionaires. After liberation of Goa, the mining activity was governed by the Mines and Minerals (Development and Regulations) Act, 1957 (MMDR Act) when it was so made applicable to the State of Goa. The Goa, Daman and

Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987 came into effect on 20 December 1961, declaring that every mining concession will be deemed to be a mining lease granted under the MMDR Act. The challenge to the Abolition Act was taken to the Apex Court. Leave was granted in the special leave petition. Around this time, numerous complaints were received regarding indiscriminate mining of iron ore and manganese ore in contravention of the provisions of the MMDR Act, the Forest (Conservation) Act, 1980, the Environment (Protection) Act, 1986. Taking cognizance of these complaints, the Central Government appointed a Commission headed by Justice M.B. Shah, Retired Judge of the Supreme Court. The Commission was to, *inter alia*, inquire into and determine the nature and extent of mining, trade and transportation of the iron ore, to inquire into the overall impact of such mining in terms of destruction of forest wealth, damage to the environment, prejudice to the livelihood and other rights of tribal people, forest dwellers and others. The Commission visited Goa, issued notices and carried out an inquiry. The Report of Justice Shah Commission was tabled in the Parliament. The State of Goa, on 10 September 2012, suspended all mining operations in the State of Goa with effect from 11 September 2012. The transportation of iron ore was banned. Show cause notices were issued and the environmental clearances granted to the mines in the State of Goa

were directed to be kept in abeyance.

4. Goa Foundation, the Petitioner herein, filed a writ petition in public interest, based on the findings in the Report of Justice Shah Commission. On 5 October 2012, the Supreme Court issued notices. While issuing notices, the Supreme Court ordered that till further orders all mining operations in the leases identified in the Justice Shah Commission Report and transportation of iron ore and manganese ore from those leases, whether lying at the mine-head or stockyards, shall remain suspended as recommended in the Report. The Lessees had also filed Petitions in this Court, High Court of Bombay at Goa, for quashing the Report of Justice Shah Commission as illegal. The writ petitions were transferred, to be heard along with the hearing of the writ petition filed by Goa Foundation.

5. On 11 November 2013, the Supreme Court directed inventory of the excavated mineral ore lying in different mines, stockyards, jetties, ports in the State of Goa and the sale of inventoried mineral ores by e-auction and the sale proceeds to be kept in fixed deposits. By an interim order dated 11 November 2013, the Supreme Court constituted an Expert Committee to conduct a macro-EIA to ascertain what should be the ceiling of annual excavation of iron ore from the State of Goa. These directions were issued keeping in mind the principles of Sustainable

Development, Inter-Generational Equity and other factors.

6. The Petition of Goa Foundation and the transferred petitions were disposed of by the Supreme Court on 21 April 2014, in the decision *Goa Foundation vs. Union of India and ors.*, reported in (2014) 6 SCC 590 (*Goa Foundation-I*). The Supreme Court rejected the challenge to the Report of Justice Shah Commission. The Supreme Court then proceeded to consider whether the leases held by the mining lessees have expired. The Supreme Court, after considering the Mineral Concession Rules, the provisions of MMDR Act, the Provisions of Abolition Act and other relevant statutory provisions, held that the deemed mining leases of the lessees expired in Goa on 22 November 1987 under Section 5(1) of the Abolition Act and the maximum 20 years renewal period of the deemed mining leases in Goa expired on 22 November 2007. The Supreme Court categorically rendered a finding that the leases had expired on 22 November 2007. The Supreme Court then considered whether dump can be kept beyond the lease area. The Supreme Court considered the aspect of distance from the national parks and wild life sanctuaries from the mining areas. The Supreme Court referred to the decision in *T.N. Godavarman Thirumulpad vs. Union of India*, reported in (2010) 13 SCC 740. The Supreme Court took note of the fact that process of issuance of notification

under the Environment (Protection) Act 1986 prohibiting the mining activity in Eco-sensitive zone was initiated. After considering the aspect regarding Rules 37 and 38 of the Mineral Concessions Rules, the Supreme Court took note of the Report of the Central Empowered Committee regarding ineffective control on transportation and production in the State of Goa. A cap was fixed on the minimum mining extraction in a year and the recommendations of the Expert Committee regarding the Goan Iron Ore Permanent Fund were accepted. The Supreme Court disposed of *Goa Foundation-I* case holding that the leases had expired on 22 November 2007 and the State Government was directed to decide as a matter of policy in what manner the mining leases are to be granted. It was made clear that the constitutionality and legality of the decision would be subject to power of judicial review. Directions were issued to the Ministry of Environment, the Pollution Control Board and final orders were passed in respect of the e-auction conducted pursuant to the interim order.

7. The State of Goa had also announced the draft Goa Mineral Policy on 21 August 2012. The policy acknowledged that there were illegalities and irregularities and during the relevant period, the State had witnessed the peak of chaotic and unregulated mining without any concern for the fragile ecology and environment

of the State or for the general well being of the average Goan. It was acknowledged that the State had witnessed reckless exploitation without any concern for sustainability. It was also emphasized that the minerals are a finite and non-renewable resource and while permitting its extraction, the State will have to tread cautiously, promoting a sustainable extraction regime to facilitate systematic, scientific and planned utilization of mineral resources and to streamline mineral based development of the State, keeping in mind the protection of environment, health and safety of the people.

8. In the meanwhile Writ Petitions were filed in the High Court of Bombay at Goa by several mining lease holders praying for consideration of their applications for second renewal of the mining leases or for grant of mining leases on second renewal. By that time, the Supreme Court had delivered the decision in *Goa Foundation-I* case. The High Court disposed of the writ petition by its Judgment and Order dated 13 August 2014. The decision referred to as *the Lithoferro* case. The High Court held that the decision of the Supreme Court in *Goa Foundation-I* did not place an impediment on the State of Goa and it, in fact, casts an obligation on the Government of Goa to consider all applications for renewal under Section 8(3) of the MMDR Act. The High Court held that the expression 'fresh leases' in the decision of *Goa Foundation-I* will have to be construed as an affirmation of the law that the renewal of a

lease is also a fresh grant. The High Court directed the State of Goa to execute lease deeds in favour of the lease holders who had already paid the stamp duty and for those who had not paid the stamp duty; the State of Goa was directed to decide their renewal applications. The State of Goa decided not to challenge this order and renewed the leases. Challenging the *Lithoferro* decision and the renewal of leases, the Goa Foundation filed Special Leave Petitions in the Supreme Court.

9. These appeals were disposed of by the Supreme Court on 7 February 2018. This decision is referred to as *Goa Foundation-II*. The Supreme Court prefixed the discussion by making strong observations regarding the rampant exploitation of the natural resources in iron ore mining sector. It then took a review of the events that led to *Goa Foundation-II* case. The Supreme Court referred to Expert Appraisal Committee's Report, impact on illegal mining on the environment, Mining Leases Policies. The Supreme Court quoted substantially from the Policy of 2014 and also referred to the Budget Speech given by the Honourable Minister for Finance. The Supreme Court noted that on 12 January 2015, the President of India had promulgated the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 which became public knowledge on 5 January 2015 and the State of Goa undertook

renewal of 88 mining leases in a hurry, perhaps because of the Ordinance. Considering this background, the Supreme Court posed certain questions for its consideration. The Supreme Court analyzed the decision in *Goa Foundation-I* and that the leases had expired on 22 November 2007 and the mining operations thereafter carried out by the mining lease holders were illegal. It noted that the intention of the Court was to end the sordid chapter of illegal mining by the lease holders and start on a clean slate. The Supreme Court then referred to an order passed in I.A. No.86 of 2014 filed by *M/s. Bandekar Brothers Private Ltd.* The decision of the High Court in *Lithoferro* was considered and the Supreme Court held that the High Court misunderstood and incorrectly appreciated the decision in *Goa Foundation-I* and the understanding by the High Court of the decision in *Goa Foundation-I*, was totally incorrect. The Supreme Court held that there was no question of grant of renewal, and mandated that there can only be fresh leases according to law. It then considered the aspect as to whether the State of Goa should have auctioned the mining leases. The Supreme Court observed that the State of Goa showed undue haste, gave impression that it was willing to sacrifice the rule of law for the benefit of the mining lease holders. The Supreme Court adverted to the environmental clearances and held that the environmental clearances were mandatory and the grant of environmental clearances by the Ministry of Environment,

notwithstanding several and various violations at the behest of the State of Goa, was without application of mind, and the exercise of lifting the abeyance order on 20 March 2015 was held to be void and contrary to *Goa Foundation-I*. The Supreme Court held that the lease holders must obtain fresh environmental clearances. The Supreme Court emphasized that the issue impacting society should be looked at holistically and overall perspective is necessary. The Supreme Court held that the course of action mandated in *Goa Foundation-I* was not adopted by the State of Goa and the Judgment of the High Court in *Lithoferro* proceeded on an incorrect interpretation. The environmental clearances were also held to be in contravention of the decision in *Goa Foundation-I* and they were held as void. The Renewals granted to 88 mines were quashed. In view of the discussions, the following conclusions/ directions were issued in the Judgment dated 7 February 2018.

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

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

3. The second renewal of the mining leases granted by the State of Goa was unduly hasty, without taking all relevant material into consideration and ignoring

available relevant material and therefore not in the interests of mineral development. The decision was taken only to augment the revenues of the State which is outside the purview of Section 8(3) of the MMDR Act. The second renewal of the mining leases granted by the State of Goa is liable to be set aside and is quashed.

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

*5. The decision of the Bombay High Court in **Lithoferro v. State of Goa** (and batch) giving directions different from those given by this Court is set aside.*

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

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

Ministry of Environment and Forest as early as reasonably practicable.

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

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

10. After the decision of the Supreme Court was rendered on 7 February 2018, the Government of Goa had to take a decision on its implications. A note was put up by the Chief Secretary on 16 February 2018 in respect of the order passed by the Supreme Court. It stated that all mining leases in Goa have been closed from 15 March 2018. It was felt necessary by the Chief Secretary that there was a need for an upfront clarity. Consultation with the Department of Environment, Pollution Control Board and the Mining Department was necessary to ensure a framework to confirm the closure of all prohibited activities by 15 March 2018. It was stressed

that the continuation of these activities post 15 March 2018 should not develop into surreptitious window to undercut the restraint of the Supreme Court. The Chief Secretary alluded to the time frame allowed for the winding down and financial implications. Further measures were accordingly directed.

11. On 6 March 2018, the Director of Mines and Geology issued certain instructions in the light of the decision in *Goa Foundation-I* to the Deputy Director of Mines and Geology and the technical staff. The directions were regarding inspection and identification of stacks. One of the directions was that no transportation shall be allowed after 6 p.m. on 14 March 2018 from the leases. The movement of e-auctioned cargo from working leases was stopped from 7 March 2018, at least till 16 March 2018 to be allowed to be transported after necessary safeguards in place.

12. On 12 March 2018, the Director of Mines passed another order. He referred to *Goa Foundation-II* and the order dated 6 March 2018 stopping transportation by 14 March 2018 and moving out machinery by 15 March 2018. He then referred to his meeting with lease holders association and their request to allow mining operations till 15 March 2018. The Director accordingly modified his earlier order and continued the mining operations till 15 March 2018. He stated that the transportation outside lease hold area

will be allowed till 7 p.m. of 15 March 2018 as transportation beyond 7 p.m. was not allowed in the State of Goa.

13. A meeting took place on 13 March 2018 in the chamber of the Secretary (Mines) Goa. The meeting was attended by the Regional Controller of Mines, India Bureau of Mines, representatives from Pollution Control Board, Forest Department and the Director of Mines and Geology. The minutes of the meeting record that all transportation activities from leases in the State of Goa have been stopped till a legal opinion sought with regard to transportation of extracted ore from the leasehold areas beyond 15 March 2018. The Secretary (Mines) directed a report in respect of production and transportation and also expressed concern towards safety measures. The minutes were prepared by the Director of Mines. On 15 March 2018, the Director of Mines issued a communication to lease holders to continue to take security measures and arrangement till necessary security arrangements are made to ensure that no ore from lease area is subjected to theft being property of the State Government. Similar communications were issued to the Police Authorities.

14. On 21 March 2018, a meeting was called by the Principal Secretary to the Chief Minister, holding charge of the Chief Secretary on that date, to take stock of the situation. Meeting was attended by the Director General of Police, Secretary (Mines),

Collectors, other representatives from Police Department, Indian Bureau of Mines and the Director (Mines). In this meeting, the Principal Secretary to the Chief Minister, acting as the Chief Secretary on that date, referred to an opinion given by the Advocate General that, transportation of royalty paid ore taken out of leasehold areas, could continue. The Director of Mines agreed and stated that transparent mechanism will be put in place. Other decisions regarding water pumping were taken on that date. The minutes of the meeting were prepared by the Director of Mines and Geology. The opinion of the Director of Mines as reflected in the orders dated 6 March 2018 and 12 March 2018 and the meeting dated 13 March 2018, thus stood modified, and based on the legal opinion, it was decided by the State Government to permit transportation beyond 15 March 2018 of the ore which was extracted till 15 March 2018 and on which royalty was paid. On 16 March 2018, the Director of Mines again wrote to the lease holders regarding pumping of water from mining leases for drinking water, agriculture, horticulture and safety measures.

15. Around this time, news reports had highlighted the problems due to heavy transportation of the ore. High level of pollution was reported due to enhanced activity of transportation as per reports of the Pollution Control Board showing that particulate

matter has exceeded permissible level by 60 to 100 per cent. Some of the newspapers wrote about the concern expressed by the parents of their wards missing the examinations due to high level of transport activity. It appears that Goa State Pollution Control Board in some of the cases, declined to grant Consent to Operate after 15 March 2018. The Petitioner wrote to the Director of Mines on 21 March 2018 and pointed out that the transportation post 15 March 2018 is against the decision of the Supreme Court. Since this was not heeded to, the present Petition was filed.

16. The Petition was mentioned for urgent circulation on 26 March 2018 to be taken up on 28 March 2018. Advance notice was given to the State Government. The State was represented and so also the Central Government Authorities. It was argued by the Petitioners that transportation activity is going at a frantic pace in view of the decision of the State of Goa on 21 March 2018, and the ore which otherwise belongs to people is being allowed to be taken away. It was urged that this activity is permitted by the State Government in contravention of the order of the Supreme Court and contrary to the mandate of Article 144 of the Constitution of India. The Court was of the opinion that it must immediately look into the issue of transportation. The Court opined that an ad interim order was necessary as, if it was not granted, the irretrievable situation would

occur. An ad interim order was passed on 28 April 2018, which is reproduced as under :

" Leave to amend to renumber the prayer clauses is granted. The Amendment to be carried out forthwith.

2. By this Petition, which is moved in public interest, a declaration is sought that all Mineral Ore transported in Goa from mining areas, including outside the lease area from 16 March 2018 belongs to the State of Goa and is a public resource. A direction is also sought to quash and set aside the decision of the State of Goa reflected in the Minutes dated 21 March 2018, allowing transportation of minerals post 15 March 2018 and further consequential directions regarding recovery of the amounts earned from the transport and sale of minerals and deposit the same in the Goan Iron Ore Permanent Fund. As and by way of an interim relief, the Petitioner has prayed for a direction to the State Government for immediate suspension of transport of all minerals related to the mining activity of 88 leaseholders and take possession of the lease areas and to take safety measures.

3. This Petition is filed pursuant to the decision of the Apex Court in Special Leave to Appeal (Civil) No.32138 of 2015 in The Goa Foundation vs. M/s. Sesa Sterlite Ltd. & Ors.. By Judgment dated 7 February 2018, the Apex Court had allowed Appeal and had issued the following directions :

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

renewals to the mining lease holders.

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

3. The second renewal of the mining leases granted by the State of Goa was unduly hasty, without taking all relevant material into consideration and ignoring available relevant material and therefore not in the interests of mineral development. The decision was taken only to augment the revenues of the State which is outside the purview of Section 8(3) of the MMDR Act. The second renewal of the mining leases granted by the State of Goa is liable to be set aside and is quashed.

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

5. The decision of the Bombay High Court in Lithoferro v. State of Goa (and batch) giving directions different from those given by this Court in s set aside.

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

environmental clearances are granted.

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

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

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

4. It is the grievance of the Petitioner that inspite of the mandate of the Apex Court to cease all mining activities by 16 March 2018 and the mandate to the leaseholders to arrange their affairs by 15 March 2018, the State Government, through the impugned decisions, is permitting the said leaseholders to transport the minerals ostensibly on the ground that it has been stored outside

the leasehold areas. According to the Petitioner it is in violation of the Judgment of the Apex Court, and under the guise of transport, unchecked activities may go on. It is also contended that the leaseholders themselves are kept incharge of the Mines, inspite of their leases having been expired as far back as in the year 2007, on the ground that their presence is necessary for safety of mines. It was contended that since the action of the State Government in permitting transport of the minerals is in breach of the Judgment of the Apex Court, the same should be stopped immediately. It is contended that on 6 March 2018, the Respondent had issued an order that no transportation shall be allowed after 6.00 p.m. of 14 March 2018 from the leases which are granted second renewals, however, subsequently, a meeting was held by the Secretary to the Chief Minister on 21 March 2018, who stated to have been holding charge of the Chief Secretary on that day, wherein various liberties were granted to the leaseholders, including allowing transportation.

5. The learned Advocate General submitted that the Judgment of the Apex Court does not contemplate the transportation aspect and it is restricted only to mining operations which have been defined under the Mines and Minerals (Development and Regulation) Act, 1957. The learned Advocate General submitted that a detailed reply to the Petition would be filed. It is the contention of the State that the State is permitting transport of only that mineral which is stored outside the leasehold areas and on which royalty is paid. To which, it is contention of the learned Counsel for the Petitioner that the Rules envisage storage of the mineral within the leasehold area alone, to be transported directly to the end user or designated places.

6. Since, we are dealing with a contention that the State is in breach of the Judgment of the Apex Court, it is our duty to carefully examine the matter from all angles, lest the Judgment of the Apex Court is breached. We will, therefore, require an affidavit of the

Chief Secretary, if it is the stand of the State Government that permitting an activity, as the State has done through the impugned orders and the minutes, is not in breach of the Judgment of the Apex Court. We, in fact, inquired with the learned Advocate General as to whether the Director of Mines and Geology, who is present in the Court, would take a responsibility for this decision by filing an affidavit since the Minutes of the Meeting are signed by him, we were informed that he will have to take instructions from the State Government and he was not ready to take the responsibility. Thus, we do not have any commitment of any Officer that the actions of the State Government are in consonance with the Judgment of the Apex Court. It is in this context that we have to decide the course of action till the affidavit in reply is filed by the State Government.

7. A copy of the Judgment passed by the Apex Court is placed before us during the course of hearing. From the various passages of the decision of the Apex Court, which we reproduce herein below, anguish and strong concern expressed by the Apex Court in respect of the environment is abundantly clear. We are unable to agree with the contention of the learned Advocate General that the Judgment of the Apex Court must be construed narrowly, only on the aspect of renewal of mining leases and not on environmental perspective. The observations of the Apex Court herein below make it clear that the Apex Court has expressed grave concern about the

impact of mining activities on the environment in Goa. The Apex Court observed thus:

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

2. Effective implementation and in some instances circumvention of the mining and environment related laws is a tragedy in itself. Laxity and sheer apathy to the rule of law gives mining lease holders a field day, being the primary beneficiaries, with the State being left with some crumbs in the form of royalty. For the State to generate adequate revenue through the mining sector and yet have sustainable and equitable development, the implementation machinery needs a tremendous amount of strengthening while the law enforcement machinery needs strict vigilance. Unless the two marry, we will continue to be mute witnesses to the plunder of our natural resources and left wondering how to retrieve an irretrievable situation.

X X X X X

81. As far as the environment, the fragile ecology of Goa and the well-being of the average Goan and the rule of law is concerned, the Mineral Policy categorically states that the State had witnessed, from 2006-07 till 2011-12 the peak of chaotic and unregulated mining without any concern for the fragile ecology and environment of the State or for the general well-being of an average Goan. Surely, all this cannot be ignored or brushed aside particularly since the exploitation of mineral resources for five years had no element of social or public purpose, no concern for society and no regard for the environment and the laws.

(ii) Vishwanath Anand Expert Appraisal Committee

82. A reading of the report of the EAC is disturbing and acutely highlights the damage to the environment and ecology by the mining lease holders. The complete indifference by all concerned is evident from a careful reading of the report. We propose to refer to and quote in extenso the 'summary of observations' and the 'concluding remarks' from the report of the EAC since they are self explanatory: ..

X X X X X X

83. The report of the EAC reveals that there is not a single environment related or mining related law or legal requirement that was not violated by one or the other mining lease holder. Quite clearly, the rule of environmental law in Goa had gone with the wind.

X X X X X X

138. We must emphasise that issues impacting society are required to be looked at holistically and not in a

disaggregated manner. An overall perspective is necessary on such issues including issues that impact on the environment and the people of a community or a region or the State. It is for this reason that it is necessary to look at them broadly otherwise if that broader perspective is lost everyone will be a loser and no one will be a real beneficiary. One or two violations here and there may be wished away as inconsequential, but multiple violations by several persons can result in serious problems. As the novelist and philosopher Ayn Rand had said: We can evade reality, but we cannot evade the consequences of evading reality. Therefore, there is no doubt that the Mineral Policy, the Grant of Mining Leases Policy, the amendment to the MMDR Act, the report of the EAC and the report of the Expert Committee must be considered in the larger context of constitutionalism, the rule of law, environmental jurisprudence as well as the fundamental right of the people of Goa to have clean air and protection of the fragile ecology. Governance cannot and should not be carried out de hors the interests of the people and some uncomfortable decisions may be inevitable for balancing the equities.

X X X

8. The transportation of the minerals, in the manner it is done in Goa, of this magnitude, which is sought to be permitted by the State Government, prima facie, would affect the fragile ecology and the well-being of average Goan upon which the Apex Court has stressed. In our respectful reading of the Judgment, we prima facie find that when the Apex Court mandated the leaseholders to cease all mining operations and “arrange their affairs”, means deleterious effect must end by 15 March 2018. Therefore, we are of the prima facie opinion that when

the Apex Court mandated the leaseholders to arrange their affairs by 15 March 2018, it contemplated ceasing of all forms of activities relating to mining which would have an impact on the environment. The State is unable to show us from the Judgment of the Apex Court that the Apex Court had expressly permitted actual Ore extraction activity till midnight of 15 March 2018 and thereafter has permitted transportation to continue indefinitely, irrespective of what impact it will have on the environment. The apprehension of the Petitioner that under the guise of transportation, with the connivance of the Officer, malpractices may ensue, cannot be said to be unwarranted. We note that the Director of Mines and Geology, on 6 March 2018, had directed that no transportation shall be permitted after 14 March 2018 and subsequently, in a meeting held by the Secretary to the Chief Minister, acting as the Chief Secretary, on 21 March 2018, relying on the opinion of the Advocate General, it was decided to allow transportation of royalty paid ore outside the leasehold areas after 16 March 2018.

9. We will consider this matter, in detail, after the reply of the Chief Secretary is received. In our respectful reading of the Judgment of the Apex Court, we prima facie feel that permitting the activities as envisaged by the impugned orders will be in breach of the Judgment of the Apex Court. Once we reach this prima facie conclusion, till further course of action is decided, after pleadings are completed, it is our duty to ensure that the State does not commit any breach of the Judgment of the Apex Court.

10. The learned Advocate General states that Reply will be filed within two weeks. To enable the Chief Secretary

to file reply, we defer the hearing to 18 April 2018. Reply to be filed within two weeks, rejoinder, if any, within a period of one week. We also expect response from the State Government and other Respondents as regards other aspects raised in this Petition regarding the issue of safety and restoration measures, considering the impending monsoon season.

11. In the meantime, there shall be an ad interim relief in terms of the bracketed portion of prayer clause (d), which reads thus:

“Pending hearing and final disposal of this petition, a direction to the State Government to order an immediate suspension of transport of all minerals related to the mining activity of 88 leaseholders.....”

12. All parties to act on duly authenticated copy of this order”

17. On the same day evening, applications were moved by various applicants mining lease holders and others and there being Court holidays for four days, the applications were taken up for urgent hearing on the next day on a court holiday. It was pointed out to us by the Applicants that the State Government has stopped transportation of all ore stacked at the jetty to be put in the barges and from the barges to the ship. An application was also filed by the Mormugao Port Trust stating that unless the ore on the jetty was cleared and barges were unloaded, the functioning of the Port would

be affected. It was also pointed out that there were barges in the mid-sea which could not load the ore on the ship in view of the prohibitory order. The State justified its position in oral arguments that since the Rules of transportation include movement from jetty to barge and from barge to ship and since transportation was not permitted by the ad interim order, the barges were not allowed to unload. The Court held that *prima facie* opinion was already rendered that no transportation was permitted by the Supreme Court after 15 March 2018, the ad interim relief would have to be continued. The applicants had first sought a limited relief of permitting the barges to be unloaded and once it was made clear that the ad-interim order could not be varied, the applicants argued for vacating the interim order and they were heard at length. Both, the Port Trust and the mining companies, projected before us an emergent situation, but in the circumstances, this Court had no option but to continue the ad-interim order. The applications made by the mining companies for intervention were allowed and their prayer for vacating the interim relief was rejected by the order dated 29 March 2018 and the interim order was continued. At their request, the date of hearing was changed from 18 April 2018 to 11 April 2018.

18. Special Leave Petitions were filed challenging both the

interim orders, i.e. 28 March 2018 and 29 March 2018. Apex Court disposed of the Petition (s) for Special Leave to Appeal (C) Nos. 8483-8484/2018 on 4 April 2018, by the following order :

"UPON hearing the counsel the Court made the following

O R D E R

Exemption from filing C/C of the impugned judgment granted.

We have heard learned counsel for the parties at some length.

It is categorically stated by learned counsel for the petitioners that the iron ore which is sought to be loaded on the vessels in the Port area in Goa is royalty paid and it was removed and brought to the jetties on or before 15th March, 2018.

Under these circumstances, we are of the view that the iron ore which is royalty paid and which is lying on the jetties on or before 15th March, 2018 should be permitted to be loaded on the barges and on the vessels so that they can be transported to their destinations.

The State of Goa will ensure and confirm that only that iron ore is loaded which is royalty paid and which is lying in the jetties on or before 15th March, 2018.

Insofar as the other issues are concerned, since the matter is already pending in the High Court, we do not propose to deal with them and leave it to the High Court to adjudicate.

The special leave petitions are disposed of."

19. By this order, the Supreme Court permitted the iron ore

which was royalty paid and which was lying on the jetty on or before 15 March 2018 to be loaded on barges and the vessels to be transported to their destination. The State of Goa was directed to ensure and confirm that only that iron ore is loaded which was royalty paid and which was lying on the jetty on or before 15 March 2018. As regards the ore which was royalty paid and lying on the jetty after 15 March 2018, no order was passed. As regards the other issues, since matter was pending in the High Court, the Supreme Court left the matter to be decided by this Court.

20. After the order was passed on 4 April 2018 by the Apex Court, the Petition appeared on board on 11 April 2018. On 11 April 2018, the State sought adjournment to file reply and therefore, matter was adjourned for hearing to 18 April 2018. Other applications for intervention were allowed and the parties were permitted to be joined as the Respondents. At the joint request of the parties, the matter was taken on urgent basis. The Petition was placed on board on 24 April 2018 for final disposal, in view of the ensuing summer vacation to the High Court from 4 May 2018, and was accordingly heard from 24 April on day to day basis.

21. The Petitioners have filed rejoinder, State Government has filed affidavit in reply, so also the Respondents mining companies and others. The learned Counsel for the parties relied upon the

summary of their oral arguments, apart from advancing oral arguments.

22. It is the contention of Ms. Alvares for the Petitioner that the impugned decision proceeds on a perverted interpretation of *Goa Foundation-II*, as it was never the intention of the Supreme Court to permit excavation of mineral after holding that it is illegal, and the phrase 'mining operations' cannot include excavation. The Supreme Court gave time to the mining lease holders only to arrange the affairs, which means transportation of ore, till 15 March 2018 and therefore the decision dated 21 March 2018 is bad in law and such ore is a public property. Mr. Lawande, the learned Advocate General supported the decision taken by the State Government on 21 March 2018 that the mining operations, including excavation, were permitted till 15 March 2018 and since royalty was paid on the ore excavated till 15 March 2018, it belongs to the mining lease holders and thereafter could be transported post 15 March 2018. The mining lease holders through Mr. Dhakephalkar, Mr. Kantak and Mr. Lotlikar, Senior Advocates, supported the decision of the State Government. Mr. Pangam and Mr. Rao appearing for some of the Respondents, styled as traders, also supported the decision of the State Government. There are other issues regarding mines safety and correctness of the figures, which we will deal with later. The Petition

having been brought before us in public interest by the Petitioner, we will have to see what reliefs we should grant. We would now briefly outline the contentions advanced on the first and the main issue.

23. The contention of the Petitioner is as follows : The decision of the Supreme Court will have to be read in wider perspective. The decision in *Goa Foundation-II* is a continuation of the decision in *Goa Foundation-I*. The decision in *Goa Foundation-II* is a severe indictment of the manner in which mining was done in Goa and of collusion between the mining companies and the State Government. The Supreme Court itself has indicated in the Judgment how these issues are to be decided and how a broader outlook is necessary. The object of the Supreme Court decision was to put an end and start on a clean slate. The State Government is making efforts to go back to the scenario stopped by the Supreme Court. In *Goa Foundation-II*, the declaration is that there was no right vested in the lease holders from 22 November 2007 and the renewal was contrary to the decision of *Goa Foundation-I*. Absolute closure was directed by the Supreme Court. It was not contemplated to intensify the activity and continue. There are no valid leases and no lease area. The environmental clearance was set aside and thus the order keeping the environmental clearance in abeyance was revived. The loss to the exchequer was almost to the

tune of more than 1000 crores. After concluding on the legality of the mining leases in this manner, the Supreme Court granted time to wind down. When the lease is terminated, normally six months time is granted, but it had already expired and could not have been continued. Time till 15 March 2018 was granted only for settlement of affairs. Instead of closing down, the activity was increased. There is no reference whatsoever in the impugned decision as to what the Supreme Court meant by granting time to manage the affairs. The mining operations can only be legal operations. The Supreme Court did not intend to permit illegal mining without any permissions. The interpretation of State Government emphasized in the affidavit that the mine owners had right to extract ore till 15 March 2018, is entirely incorrect. The note of the Chief Secretary dated 16 March 2018 and the orders passed by the Director of Mines on 6 March 2018, 16 March 2018 and the minutes of meeting of 13 March 2018 indicate no transportation was permitted after 15 March 2018. It is in the meeting of 21 March 2018 that a decision is taken by the State. The legal requirement for carrying out valid mining is provided in Section 4 of the MMDR Act. There was no mining lease in 2007 and mining cannot be permitted when there was no valid lease. The valid environmental clearance is needed under the Environment Protection Act for every mining activity which admittedly the mining leases holders did not possess. The proviso to

the Mines and Mineral (Development and Regurgitation) Removal of Difficulties Order 2017, issued under section 24(1) of the MMDR Act, provides that no mining activity shall commence unless and until applicant obtains environmental clearance, as laid down under the Environment Protection Act and the Rules. The revival of environmental clearance to the mining lease was struck down, and the order keeping the environmental clearance in abeyance was restored. Therefore, on 7 February 2018, the mining lease holders had no environmental clearance. The Goa State Pollution Control Board had revoked the Consent to Operate on 16 March 2018. This Consent to Operate specifically referred to the order passed by the Director of Mines and Geology dated 12 March 2018 and did not grant permission and revoked the consent. A letter was issued by the Director of Mines to the Pollution Control Board on 1 March 2018 regarding permissions to carry out mining activity upto the cap specified and to which the Board replied that it did not consider any consent or amending any Consent to Operate in respect of any mining unit under Water and Air Acts. The State Government being a guardian of the public resources should not construe the decision of the Supreme Court to permit illegal mining to the fullest extent. The emphasis on the word 'mining operations' to be taken literally, is incorrect. There was no issue in *Goa Foundation-II* as to what is the exact meaning of mining operations, as it was not the controversy.

The Supreme Court in I.A.No.86/2014 in the case of *M/s. Bandekar Brothers Pvt. Ltd.*, had not permitted any dilution of the embargo placed in *Goa Foundation-I*. The words 'mining operations' are used as a reference to mining activity and transportation is also a part of mining activity. Chapter III of the Mineral Conservation and Development Rules, 2017 deals with the 'Mining Operations and provides for various activities such as abandonment of mines, mine closure, modification of mine closure and responsibility of holders of mining leases. Therefore mining operation is a wide term. Even otherwise, transportation is integral part of mining operations, more particularly in the State of Goa. Section 4(1) read with Section 4(1)(a) of the MMDR Act clearly establishes this position. The State was under obligation to consider the decisions in *Goa Foundation-I and II* and the decision in *Common Cause vs. Union of Indian & ors.*¹. There cannot be mining without any transportation nor transportation without mining. Once the Supreme Court was aware that environmental clearances were suspended, did not intend to permit the leases. Extraction is not the whole and sole of the mining activity, which also includes closure and winning of the ore has to be done as per law. Various petitions have been filed in this Court in respect of pollution caused by mining and transportation activity. The data

¹ (2016) 11 SCC 455

provided by the State itself shows that excessive transportation activity took place and trucks had exceeded their permissible quantity in a rush to extract as much as possible till 15 March 2018. When the Supreme Court granted five weeks time, it did not contemplate an all out extraction of the ore till 15 March 2018 and transportation at any time thereafter.

24. Response of the Advocate General of the State of Goa is thus: the decision dated 21 March 2018 is as per *Goa Foundation-II*. The Supreme Court specifically permitted mining operations till 15 March 2018. Supreme Court was aware that the leases had come to an end and there was no environmental clearance yet permission was granted. When the Supreme Court uses a term in the statute, it must be given the same meaning as in the statute. There is no prayer in the Petition that the extraction is illegal and no declaration is sought and a submission can not be based on the intention of the Judgment. There is no finding that the leases granted were illegal, especially after the order passed by the High Court in *Lithoferro*. Therefore, leases were valid till they were set aside on 7 February 2018. There is no finding that the leases were never granted. There is no finding that the leases from 2015 to 2018 were illegal. The Supreme Court was aware that the mining activity will have to be abruptly stopped and therefore, continued its operation by taking a

conscious decision under Article 142 of the Constitution of India. All that the Supreme Court did in *Goa Foundation-II* was to set aside the decision in *Lithoferro* and the State Government, and that there was no declaration that it was null and void. No other question arose for consideration. The Supreme Court expressly permitted mining activity without any fetters till 15 March 2018. The term 'mining operations' has been defined in Section 3 (d) of the MMDR Act and this phrase used in the Judgment in *Goa Foundation-II* will have to be understood accordingly. If the contention of the Petitioner is accepted, it will amount to modification of the order of the Supreme Court. It will not be permissible to include the word 'transportation' in the words 'mining operations'. The Petitioner has used mining operation and mining activity interchangeably and the Petitioner cannot contend that the Supreme Court used a particular word in loose sense. Section 4(1) and Section 4-1A of MMDR Act show that transportation and mining operations are totally different. Transportation outside lease area has nothing to do with mining operations. Section 3(d), Section 13 and 23 (c) show that transportation, mining activity, mining related activity are clear and distinct terms under the Act and the Supreme Court was conscious of the same. *Goa Foundation-II* does not include various directions that were issued in the final interim orders passed in *Goa Foundation-I* case, clearly indicating that the Supreme Court never

intended that *Goa Foundation-II* judgment to have same effect as *Goa Foundation-I*. Once the royalty is paid, the ore belongs to the lease holders and once it goes out of the lease area on payment of royalty, it can be transported. The Supreme Court was conscious of this fact and it did not consciously direct, nor held that the excavation was illegal from 2015 to 2018. Section 23, read with Section 3(b), uses the word 'means' and the connotation of phrase 'means' has been explained by the Supreme Court in two decisions i.e. in the case of *Bharat Co-op. Bank (Mumbai) Ltd. vs. Co-operative Bank Employees Union*,² and *Bhagwan Dass vs. State of U.P. & ors.*,³. The charge that there was large scale extraction post 7 February 2018 is entirely incorrect. As per the total extraction permitted of 20 MT per year, 3.1 MT per month is the quota, and from 7 February 2018 to 15 March 2018, 2.2 MT was extracted, which is less than 3.1 MTs. While for the same period last year, it was 5.5 MTs. The transportation and storage rules which have been framed under Section 23(c) of MMDR Act. Rule 14(2), list out what is permissible. The order passed by the Supreme Court on 4 April 2018 clearly permits transportation of the ore on which royalty is paid. Therefore the order passed by State Government taking a view that transportation is permitted of the royalty paid ore post 15 March 2018, is correct. The contention of the Petitioners that this

² (2007) 4 SCC 685

³ (1976) 3 SCC 784,

ore belongs to the State, is entirely incorrect and it belongs to the mining lease holders and the Petition is thoroughly misconceived.

25. The Mining leaseholders adopted the arguments of the State Government and advanced their contentions as regards the decision of the State Government and the Supreme Court. The arguments of the lease holders were on the same lines as the State Government, meaning thereby that the words mining operations used by the Supreme Court in paragraph 149(6) will have to be given the meaning as per the statute. They contended: The leases were granted in perpetuity. The mining activity was continued after liberation of Goa. All aspects were considered in *Goa Foundation-II* and the cap of fixing quantity ore extraction per year, was established. All that the Supreme Court held in *Goa Foundation-II* is that the renewals were bad in law and fresh leases had to be granted. There was nothing further. There was no direction regarding auction or any restriction on transportation, which were the specific directions in *Goa Foundation-I* in the interim and final orders. Therefore, whenever a specific order was to be passed, the Supreme Court had directed so. It is for the first time in *Goa Foundation-I* that the position of law was made clear regarding deemed renewal, as can be seen by the decision of Supreme Court in *Common Cause vs. Union of India & Ors.*,⁴ and therefore, there was

⁴ (2016) 11 SCC 455

no declaration in *Goa Foundation-II* that the renewal is void. In *Goa Foundation-I*, the Supreme Court made a specific distinction between mining and transportation because they have been separately defined. Stockyards, stocking, mining and transportation have different connotations. After the royalty has been paid, the mining lease holders became owners thereof. The decision of the Supreme Court in case of *M/s. Bandekar* is an order specifically passed in the context therein. In the present case, Supreme Court has specifically permitted mining operations, which is a term occurring in MMDR Act, and once the Court uses a phrase occurring under the statute, it must be construed as having a meaning under the statute. This position is made clear in decision in the case of *Gajraj Singh and ors. vs. State of UP. and ors.*⁵, and *Hamdard (WAKF) Laboratories vs. Dy. Labour Commissioner and Ors.*⁶ The decision in *Goa Foundation-II* does not state that there is no right in the mining lease holders after 2007. The decision of the Calcutta High Court in *Industrial Fuel Marketing Co. and Ors. vs. Union of India and ors.*,⁷ shows that the extraction and storing in stockyard is different. No contention based on cancellation of Consent to Operate by the Pollution Control Board, is averred in the Petition, or in the rejoinder. The Petition will have to be taken as it is filed. The

⁵ (2001) 5 SCC 762

⁶ (2007) 5 SCC 281

⁷ AIR 1985 Cal 143

Petition is restricted only to transportation after 15 March 2018. Mineral Concession Rules, 1960, Rule 2(ix) indicates what is illegal mining. Even the statement of object and reasons for amendment and incorporation of Section 4-1A in the MMDR Act shows that transportation and mining operations are different. The direction in paragraph 149 (6) is a direction to the lease holders and not *qua* the ore. The Petitioner's own interpretation is that all activities are permitted till 15 March 2018, as can be seen in paragraphs 1, 22, and 30 of the Petition. The Petitioner for the first time made a representation on 21 March 2018. If there was such large scale activity why there was no reaction from the Petitioner. There are no proper pleadings, incorrect and irresponsible submissions are being made in the Petition, such as paras 1, 17, 26 and even a PIL litigant, is subject to the same rules of pleadings as laid down by the Supreme Court in *State of Madhya Pradesh vs. Narmada Bachao Andolan & anr.*⁸ The entire argument of the petition is based on the premise that the word 'transportation' is included in 'mining operations', and the Supreme Court has not used the words 'mining activity', but 'mining operations'. Therefore, the decision of the State in permitting transportation after 15 March 2018 is correct. This position is concluded in view of the order passed on 4 April 2018. Some of the Respondents who have styled themselves as Traders, have

8 (2011) 7 SCC 639.

contended that they are not lessees and they have legitimately purchased the ore and they should be permitted to transport the same.

26. Though the learned Counsel for the parties have advanced elaborate arguments on the position of law, according to us, the controversy lies in a narrow compass. The purport of paragraph 149(6) in *Goa foundation-II* has for consideration, because of the decision of the State Government. It is the legality of this decision that we will have to consider. It is not that this Petition is filed by the Petitioner simplicitor seeking to restrain the mining lease holders from transporting, with the State being a neutral party in the dispute. On 21 March 2018, the State took a positive decision in favour of the Respondents to allow transportation after 15 March 2018. The discussion is restricted to the subject of the ore from 88 mining leases and the ore not covered by the order passed by the Supreme Court on 4 April 2018.

27. First we will analyse the approach of the State Government and what were the various options. It is important to understand the background in which the decision was taken. The decision was taken on 21 March 2018; just about two months after the Supreme Court in *Goa foundation-II* had severely castigated the Sate of Goa for siding with the mining companies at the cost of

health and well being of the Goans and at the cost of environment. The Supreme Court had placed on record its strong disapproval of the conduct of the State and mining lease holders, in the following words.

93. ..The only advantage that iron ore extraction gave to the State was in terms of royalty, but the larger benefit accrued to the private mining lease holder who could obtain a mining lease on renewal virtually free and without any social or welfare purpose. In other words, the State sacrificed maximizing revenue for no apparent positive reason, virtually surrendering itself to the commercial and profit making motives of private entrepreneurs and ignoring the interests of Goan society in general.

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104. In our opinion, in renewing the mining leases, the State of Goa completely ignored several relevant and important and significant factors giving the impression that the renewals were not quite fair or reasonable.

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106. Unfortunately, the undue haste in which the State acted gives the impression that it was willing to sacrifice the rule of law for the benefit of the mining lease holders and the explanation of satisfying the needs of some sections of society for their livelihood (after keeping them in the lurch for more than two years) was a mere fig leaf. The real intention of the second renewal was to satisfy the avariciousness of the mining lease holders who were motivated by profits to be made through the exploitation of natural resources.

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108...it appears that to circumvent this rather uncomfortable policy, the State pressed the accelerator on the renewal of mining leases from December 2014 onward to benefit mining lease holders. So much so that in respect of 5 mining leases, the State overstepped the law and granted a second renewal in early January 2015 to some entities without even waiting for any approval or deemed approval of the mining plan from the Indian Bureau of Mines or any other authority.

109...The State of Goa perhaps anticipated this in view of the publication of the draft Mines and Minerals (Development and Regulation) Act, 2014 and therefore hurried into the second renewal of mining leases (notwithstanding the Grant of Mining Leases Policy) to defeat the introduction of the auction process....The sudden spurt of renewal of mining leases is beyond comprehension.

110...the State could have certainly waited for a few weeks more and taken an informed and reasoned decision on granting a second renewal to mining leases – but waiting for a few weeks could have led to an uncomfortable situation that would have compelled the State of Goa to auction the mining leases, hence the haste.

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114. What is unfortunate about the entire commercial activity of the mining lease holders is that there was no social or public purpose attached to the mining operations. There was one and only one objective behind the mining activity and that was profit maximization. The renewal of the mining leases would give considerable

profits to the mining lease holders well beyond the benefits that could accrue to the State or to the average resident of Goa....It was observed by Justice Khehar in Natural Resources Allocation that material resources of the country should not be dissipated free of cost or at a consideration lower than their actual worth. This was not kept in mind and mining leases were renewed for a small payment of stamp duty and royalty. It is therefore clear that the considerations that weighed with the State were not for the people of Goa but were for the mining lease holders.

115. With the mining lease holders violating virtually every applicable law or legal requirement, it is clear that the rule of law was not their concern. The list of violations and their variety was documented by the EAC and it makes for some very sad reading. To make matters worse, it was clearly mentioned in the Grant of Mining Leases Policy that a Special Investigating Team and a team of Chartered Accountants would look into all the violations but the State chose not to wait for any of the reports. There is no explanation for this.

116. In this background, there is little to suggest that the State considered the requirements of Section 8(3) of the MMDR Act in that the interests of mineral development was secondary while granting the second renewal of mining leases. The entire exercise undertaken by the State was a hasty charade, regardless of violations of the law by the mining lease holders, without any benefit to the Indian industry and without any concern for the health of the average Goan.

117.The urgency suddenly exhibited by the State therefore seems to be make-believe and motivated rather than genuine.

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119....These cannot be described as minor violations but were actually multiple violations in almost all cases. How could the State of Goa and MoEF overlook these recommendations and multiple violations?

(Emphasis supplied)

When the highest Court in the Court passed strictures, it was meant as a wakeup call for the State as how it should approach the issues surrounding mineral wealth in the State. These observations taken as guidance for further conduct, the State of Goa should not sacrifice maximizing revenue for no apparent positive reason, and surrender itself to the commercial and profit making motives of private entrepreneurs and ignoring the interests of Goan society in general. The State should not be a party to the avariciousness of the mining lease holders who are motivated by profits to be made through the exploitation of natural resources. The State should have considerations for the people of Goa and its fragile ecology and not for the mining lease holders alone. The health of the average Goan should be a priority. The State should not be satisfied only with some crumbs in the form of royalty to give up larger claims in favour of mining lease holders. Enforcing the Rule of Law, addressing the concerns of the citizens of Goa and following the orders of the Supreme Court, are more important than just focusing on earning revenue alone. These were the expectations voiced by the Supreme

Court from the State Government in *Goa foundation-II*.

28. The Director of Mines understood the purport of the *Goa foundation-II* as not permitting transportation after 15 March 2018 and passed an order on 6 March 2018 to that effect. It again modified the same on 12 March 2018. The Goa State Pollution Control Board was of the view that no transportation is permitted. The meeting held on 13 March 2018 by the Secretary (Mines) refers to stopping of transportation beyond 15 March 2018 and that a legal opinion has been sought on this aspect. As per the Government record itself, there was an uncertainty. One of the options open to the State Government in the circumstances was to move the Supreme Court for necessary modification/ clarification, since the order was passed under Article 142 . It was possible for the Respondents to seek extension of five weeks period. None of this was done, at least we are not informed of any such applications.

29. In this background, a meeting was convened by the In-charge Secretary on 21 March 2018. In this meeting, the State was expected to keep in mind the observations of the Supreme Court and consider various options. It was however decided, based on a legal opinion by the Advocate General, that paragraph 149(6) permits all mining operations including excavation, till the evening of 15 March 2018. It was opined that once mining companies paid royalty, the ore

belonged to them and they could thereafter store it at the stockyard, and transport it anytime thereafter, since it is their property. It was held therein that there is no impediment in stocking the ore outside the lease area. The relevant portion of the minutes is extracted as under:

"The Chief Secretary initially took stock of Law and Order situation in the State of Goa after closure of mining operations since today 16/03/2018 and expressed his happiness that situation on ground is peaceful.

The Chief Secretary then took stock of the details of production till 15/03/2018 and the stacks which are already moved out of Lease Hold Areas. He also asked Director, Mines and Geology as to how interest of the truckers, barge owners etc. could be protected till further necessary course of action is initiated. He also desired that the transportation of royalty paid ore taken out of lease hold areas could continue as Ltd. Adv. General has already opined that the transportation of royalty paid ore situated outside the Lease Hold areas can be carried out beyond 16/03/2018.

The Director informed that his Office was ready to allow transportation of ore beyond leasehold area infact the barges loadings from jetties is going on. However, the leaseholders themselves are in the process of filing submissions etc. because of which no transportation was carried out today on road.

Director assured Chief Secretariat that a most transparent mechanism shall be put in place and use of dynamic website of the department shall be used to provide real timed information with regards the details of

stock extracted/produced, the details of ore dispatched outside leasehold areas till 7.00 p.m. of 15/03/2018, so also the ore lying with the lease hold areas as on 15/03/2018.

The details of permits issued and other details shall also be made available to general public so that the ongoing transportation activities are seen to be carried out in conformity with order of Hon'ble Apex Court dated 07/02/2018."

There was no reference to the fact that time was granted by the Supreme Court to the lease holders only to 'arrange the affairs' and what was the meaning of that indulgence.

30. Free reign was given to the mining lease holders by the State without considering the important phrase in the order and without considering various facets of the matter. First and foremost being, whether since no transportation (till the ship) was allowed after 15 March 2018 as was the decision earlier, such non transported Ore will revert back to its original owner, that is the State and consequently to the people. Second, whether this Ore could be treated as a public property, taken possession of and sold, to raise revenue for the public purpose. Third, whether by focusing on the aspect of receipt of royalty, a pittance State was sacrificing the opportunity of maximizing revenue by selling the Ore, and whether the State should be satisfied only with *some crumbs* in the form of

royalty, and if it comes to a legal claim, royalty could be returned. Fourth, whether the State could, treating this ore as public property, transport it itself to give work to truck and barge owners. Fifth, whether the proceeds from the sale of such ore could be used to help the mining and transport workers affected by the closure. Sixth, whether its decision was keeping in mind the interest of the mining affected villages and the fragile ecology of Goa. Seventh, whether the State is again perceived as falling foul of the charge that State of Goa has only the mining lease holders' interest at heart.

31. Legal aspects apart, neither in the affidavit in reply, nor in the arguments we have been informed by the State as to what was the overriding public interest in adopting this interpretation in the meeting of 21 March 2018. The State has emphatically asserted that the mining lease holders have full right to extract ore till 15 March 2018, pay royalty and transport the ore anytime they wish, since they are the owners after royalty is paid. The right of the mining lease holders is the foundation of the decision dated 21 March 2018. The minutes of the meeting cursorily refer to work, truck and barge owners, but that is not the foundation of the State's case before us. Even otherwise, the State Government could have by itself employed the services of the very same barge and truck owners to transport the ore, giving them employment. But one track

approach was adopted, as if no other option in public interest was available.

32. We will now examine the conduct of the Respondents in view of the charge of the Petitioner that it was planned activity under the State patronage. We will revisit the scenario after 7 February 2018 to visualize how a commercial entity in such circumstances would behave, if it had no State backing. That time the Supreme Court had, in very strong words, held that mining lease holders had no right whatsoever. State was castigated for siding with the mining lease holders, and was expected to distance itself. The mining lease holders were given five weeks time to arrange their affairs. There was no hope of any extension beyond 15 March 2018. That time even the State authorities were not clear whether transportation is permitted after 15 March 2018. In fact, the Director of Mines on 6 March 2018 had specifically directed that no transportation shall be allowed after 15 March 2018. State's response itself showed ambiguity. In Goa, the ore is primarily excavated for export and it has to be brought to jetty to load it on the ships. It could be argued that non-transported ore will become public property and sold. This is the scenario the mining lease holders were placed in. Even when two interpretations are possible, a prudent business entity, who has no State support, would not take any risk. No application was made

for extension, nor any application was moved in the Supreme Court. The decision by the State Government was taken much beyond 15 March 2018 i.e. 21 March 2018. Then where from did the mining lease holders get their confidence to carry on full-fledged mining, when there was no prospect of transportation later?

33. Since the State had a doubt about the import of paragraph 149(6) as some of the Departments had taken a different view, any State Government who is recipient of strictures of the Supreme Court would, in such circumstances, tread carefully in the same subject matter, seek appropriate clarification and then proceed. Yet the State forged ahead, ignoring the vital words in the order of the Supreme Court.

34. Without the paragraph 149(6) of *Goa Foundation-I*, the Respondents would have no right whatsoever post 7 February 2018. In the impugned decision, the State has conferred full right on the Respondents. Having narrated the background in which the decision was taken on 21 February 2018, we now turn to the paragraph 149(6) of *Goa Foundation-I*.

35. The parties are at *ad idem* that the direction issued in paragraph 149(6) in *Goa Foundation-II* is an exercise by the Supreme Court under Article 142 of the Constitution of India.

The law declared by the Supreme Court under Article 141 *Goa Foundation-I and Goa Foundation II* is binding and is beyond debate before us. The Petitioners have emphasized on the use of the phrase '*manage their affairs*' while the State and the Respondents have emphasized on the words '*mining operations*'.

36. The extent of power under Article 142 has been expounded in various decisions of the Supreme Court. The summary of the law is that the Apex Court is entrusted with plenary power to pass such decree or make such order as is necessary for doing 'Complete Justice' in any cause or matter pending before it. It speaks not only of the matter, but also the cause. To understand what was the complete justice done in the cause before it, we will have to consider the totality of the circumstances.

37. Even while dealing with the law laid down under Article 141, it is settled that the judgment has to be read as a whole. Observations made in a judgment are not be read in isolation and out of context. A decision, it is trite, should not be read as a statute. The Court may not pick out a word or a sentence from the judgment divorced from the context.

38. The law laid down in *Goa Foundation-I and II* is clear that there cannot be a deemed renewal of the mining leases twice.

The leases, if had to be granted, will be fresh leases as per all rules, more particularity with the environmental clearances. The Supreme Court found that the decision of the State Government in granting renewal and the decision of the Bombay High Court in *Lithoferro* were contrary to the law laid down in *Goa Foundation-I*. Following are the relevant observations by Supreme Court in *Goa Foundation-II*:

"8. This Court heard all these matters and rendered its decision in Goa Foundation v. Union of India on 21st April 2014.¹ Among other conclusions arrived at, it was held by the Court that all the iron ore and manganese ore leases had expired on 22nd November, 2007. Consequently, any mining operation carried out by the mining lease holders after that date was illegal. It was also held that all the mining lease holders had enjoyed a first deemed renewal of the mining lease and for a second renewal an express order was required to be passed in view of and in terms of Section 8(3) of the MMDR Act. For a second renewal of the mining lease, it was held that the State Government must apply its mind and record reasons for renewal being in the interest of mineral development and the necessity to renew the mining lease. Any decision taken by the State Government should also be in conformity with the constitutional provisions. The decision taken by the State of Goa to grant a mining lease in a particular manner or to a particular party could be examined by way of judicial review. It was also held that the orders dated 10th September, 2012 and 14th September, 2012 are not liable to be quashed and that they would continue till decisions are taken to grant fresh leases and fresh

environmental clearances for mining projects.

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11. Notwithstanding this serious indictment of the pre-existing 'policy' for mining natural resources in Goa, the Mineral Policy did not address itself to the allocation or distribution of the natural resources in any of its 20 paragraphs and many sub-paragraphs. The topics dealt with in the Mineral Policy include objectives and parameters, sustainable mining and mineral conservation, mineral administration, regulation of mines and minerals, pollution and its social impact, and policy highlights. Some of the other topics dealt with in the Mineral Policy include capping, based on carrying capacity of public roads and to protect inter-generational equity, mines safety and rehabilitation of affected people, stakeholder participation (including corporate social responsibility), welfare and social responsibilities and establishment of Goa Minerals Development Fund etc.

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38. As the above quoted paragraph indicates, the Court was aware and conscious of the fact that the mining leases had expired on 22nd November, 2007 and the mining operations thereafter carried out by the mining lease holders was illegal. For this reason, the Court held that the suspension order passed by the State of Goa on 10th September, 2012 and the abeyance order passed by the MoEF on 14th September, 2012 did not require any interference.

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41. The Court was quite obviously aware that it was

concerned, inter alia, with the second renewal of mining leases and yet it chose to recount the factual situation, make a declaration and pass a direction without adverting to the possibility of a second renewal of a mining lease. The Court was also conscious that the mining lease holders had carried out indiscriminate and illegal mining for about five years (from November 2007 to September 2012) and had made profits out of the illegal mining. The Court, in our opinion, was rather charitable in not penalizing the mining lease holders for the illegal mining carried out by them. But be that as it may, quite clearly, the sequence of events from September 2012 onwards, the appointment of Monitoring Committee to dispose of the illegally mined ore, the declaration and direction unmistakably point to the intention of the Court to end the sordid chapter of illegal mining by the lease holders and start on a clean slate. Viewed in this perspective, we have no doubt that the Court really did intend the State of Goa to consider the grant of fresh leases in accordance with law.

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45. There is additional material to support the view that the Court had intended the State of Goa to grant fresh mining leases rather than grant a second renewal.

*

49. Unfortunately, the State of Goa was overtaken by events in that the High Court delivered its judgment in Lithoferro on 13th August, 2014 and while doing so, it misunderstood or incorrectly appreciated the decision of this Court in Goa Foundation and disagreed with the view of the State of Goa. While this Court had required the State of Goa to grant fresh mining leases and the

State of Goa was willing to comply with this direction, the High Court instead directed it to execute mining leases under Section 8(3) of the MMDR Act in respect of those who had paid the renewal fees or stamp duty. The High Court also directed the State of Goa to decide their pending second renewal applications within a period of three months keeping in mind the provisions of Section 8(3) of the MMDR Act (presumably after paying the renewal fees or stamp duty in terms of the Government order of 21st February, 2013). The understanding by the High Court of the decision of this Court in s totally incorrect.

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*56. That apart, as we have already noted above, the context and material on record disabuse the thought that the Court in **Goa Foundation** did not mandate the grant of fresh mining leases in accordance with law.*

*

*58. In our opinion, the direction in s quite clear and instead of considering the grant of a second renewal of the mining leases, the State of Goa was required to consider the grant of fresh mining leases. Therefore the decision of the State of Goa to grant a second renewal of the mining leases is erroneous, contrary to the decision in **Goa Foundation** and must be and is quashed.*

*

136. What is disturbing is that notwithstanding several and various violations, the MoEF granted environmental clearance to 72 mining leases. It seems to us that the MoEF acted without any application of mind in lifting

*the order placing all the environmental clearances in abeyance. Since the entire exercise carried out by the MoEF on 20th March, 2015 was mechanical, at the behest of the State of Goa, without due application of mind, without considering the multiple illegalities and irregularities committed by the mining lease holders or passing on the buck to the State of Goa and without considering relevant material such as the report of the EAC and the Expert Committee appointed by this Court, the exercise of lifting the abeyance order on 20th March, 2015 by the MoEF must be held void and as directed by the Court in **Goa Foundation** all the mining lease holders must obtain fresh environmental clearance for their mining project.*

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*148. As far as the SLPs are concerned (SLP (C) No. 32138 of 2015 and SLP (C) Nos. 32699-32727 of 2015) we set aside the judgment and order dated 13th August, 2014 of the High Court in view of our conclusion that the State of Goa was required to grant fresh licences in terms of the decision of this Court in **Goa Foundation**. The High Court proceeded on the erroneous basis that it could direct the State of Goa to grant a second renewal of the mining leases notwithstanding the direction in **Goa Foundation**.*

(Emphasis supplied)

39. One of the arguments on behalf of Respondents is that it is only after of *Goa Foundation-I* that it came to be known that in absence of express order, second renewal of mining lease would

expire. Even assuming so, it will not take the case any further, as of *Goa Foundation-I* itself was clear and what was before the Supreme Court in *Goa Foundation-II* was the breach of *Goa Foundation-I*. It was contended before us by the State and the Respondents that all that the Supreme Court did in *Goa Foundation-II* was to consider the legality of the order passed by the High Court in *Lithoferro* and the decision of the State, and nothing more. It is their contention that *Goa Foundation-II* is only on the law regarding renewal of leases and other broader issues are referred to only as a background. This contention of the State and the Respondents is totally incorrect. *Goa Foundation-II* arose because the State did not follow *Goa Foundation-I*. Both these decisions will have to be read together and not in isolation. *Goa Foundation-II* flowed from *Goa Foundation-I*. All the concerns expressed by the Supreme Court in *Goa Foundation-I* were reiterated and emphasized further in *Goa Foundation-II*. The Petitioners, in *Goa Foundation-II*, did not approach the Supreme Court to get law settled all over again. It went with a complaint that the State has not followed law laid down in *Goa Foundation-I*. The Supreme Court in *Goa Foundation-II* found it be so and declared that the entire action was contrary to *Goa Foundation-I*. It was thus not necessary to incorporate all the facets of *Goa Foundation-I* in the *Goa Foundation-II* Judgment.

40. The argument advanced by the Respondents that the

omission of various observations in *Goa Foundation-I* in *Goa Foundation-II* means the Supreme Court in *Goa Foundation-II* has consciously omitted the same, is entirely incorrect. In fact, in *Goa Foundation II*, the Supreme Court has made its disapproval of the State action of not following the law laid down in *Goa Foundation-I* very clear. Equally misplaced is the contention that the Supreme Court did not look at the broader aspect. In fact the position is to the contrary as the following observations would show:

" 1... Rapacious and rampant exploitation of our natural resources is the hallmark of our iron ore mining sector - coupled with a total lack of concern for the environment and the health and well-being of the denizens in the vicinity of the mines. ...Another excuse generally put forth by the State is that of development, conveniently forgetting that development must be sustainable and equitable development and not otherwise.

2. Effective implementation and in some instances circumvention of the mining and environment related laws is a tragedy in itself. Laxity and sheer apathy to the rule of law gives mining lease holders a field day, being the primary beneficiaries, with the State being left with some crumbs in the form of royalty. For the State to generate adequate revenue through the mining sector and yet have sustainable and equitable development, the implementation machinery needs a tremendous amount of strengthening while the law enforcement machinery needs strict vigilance. Unless the two marry, we will continue to be mute witnesses to the plunder of our natural resources and left wondering how to retrieve an

irretrievable situation.

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19. The Expert Committee submitted an Interim Report dated 14th March, 2014 to the Court after considering reports prepared by the Tata Energy Research Institute (TERI), New Delhi (1997); TERI and International Development Research Centre, Ottawa, Canada (2006); MoEF (2014); research papers prepared by the Goa University and the National Institute of Oceanography; Indian Institute of Technology (Indian School of Mines), Dhanbad (2013); Pollution Control Board, Goa (Annual Report) and other literature. It noted large-scale degradation of the environment in Goa due to mining operations.

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82. A reading of the report of the EAC is disturbing and acutely highlights the damage to the environment and ecology by the mining lease holders. The complete indifference by all concerned is evident from a careful reading of the report. We propose to refer to and quote in extenso the 'summary of observations' and the 'concluding remarks' from the report of the EAC since they are self explanatory:

“Summary of Observations

I. The absence of specific conditions highlighting the mandatory requirement to obtain prior approval of the Standing Committee of the NBWL [National Board for Wild Life] in the EC [Environmental Clearance] has led to misinterpretation of the legal requirement. There has been an inordinate delay of more than 5 years before effective action against defaulting units were initiated by the Ministry for non-compliance of the Hon'ble Supreme Court order dated 04.12.2006.

- II. *Out of 137 ECs, the requirement of obtaining approval of the Standing Committee of the NBWL under the W.L. (P) Act 1972 [Wild Life (Protection) Act] has not been complied with in 123 cases where the distances are less than 10 km from the nearest PA [Protected Area].*
- III. *In respect of 10 cases approval of the Standing Committee of the NBWL is not mandatory as the mine leases are located beyond 10 km from nearest PA.*
- IV. *Contrary to the directions of the Hon'ble Supreme Court dated 04.08.2006 in Writ Petition (Civil) No. 202/1995; ECs have been accorded to 41 mines located within 1 km from the nearest PA.*
- V. *In respect of 20 cases mine leases were renewed under MMDR Act, 1957 prior to grant of FCs [Forest Clearance].*
- VI. *In 29 cases, project proponents have furnished wrong information about distance from the nearest PAs.*
- VII. *Non-compliance of various EC conditions such as excess production/unauthorized dump mining/drawal of ground water without prior approval of CGWB/encroachment; have also been reported in respect of working mines.*

Concluding Remarks

A reading of our observations and recommendations would show that without exception, every proponent to whom an environment clearance was issued has either violated its conditions or has furnished information in the application which has been distant from the truth. There are basically two

types of violations; one that cannot be legally condoned and those that can be rectified with remedial measures. This is the reason why the committee has recommended that all ECs for mines located within one km from PAs should be revoked and in cases where untruthful information was furnished in the application for EC, such mines should not be allowed to reopen. In the case of those mines which have been closed for more than five years, their reopening has not been recommended without their applying de novo for a fresh environmental clearance as micro environmental conditions on the ground would have changed during the period they remained closed. However, when one looks at the manner in which the directives dated 04.08.2006 and 04.12.2006 of the Supreme Court have been implemented one cannot help but feel that there is the absence of a bridge mechanism within the Ministry to ensure and oversee that directives of the Courts are complied with due diligence and seriousness.

There are two factors which stand out; in some ECs as mentioned in this report, the condition was inserted that the project proponent should seek approval of the CWLW [Chief Wild Life Warden], in others it was stated that approval of the Competent Authority/Standing Committee of the NBWL should be obtained and in a third category no condition at all was imposed, even though some of these ECs pertain to the same meeting and timelines between 2005 and 2007. It is strange that concerned officials in the MOEF were not aware that other than the Standing Committee

of the NBWL no other person was authorised to grant the permission envisaged by the order dated 04.12.2006 of the Supreme Court. This is not to state that any discrepancy in the EC letter would absolve the project proponent from complying with the law of the land. This has resulted in creating ambiguity amongst many of the project proponents and it was not until 01.01.2009, that the MOEF issued a public notice clarifying the position. Considering that some of the project proponents may have been misguided by the ambivalence of the MOEF in not clearly delineating the legal position, it is suggested that in the case of those project proponents who did not conceal facts in their applications but did not apply for permission to the Standing Committee of the NBWL, their applications may be considered for being placed before the Standing Committee of the NBWL. However this can in no way be construed as a justification on the part of the project proponents for not complying with the requirements of the law. It must be noted for example that in those cases where mining has intersected the ground water, approval of the CGWB [Central Ground Water Board] had not been taken by the project proponents as was required by the EC. Similarly, there are cases where mining operations have taken place without obtaining a FC.

.....

As regards violations of the conditions of the ECs and where environmental damage has been caused, the concerned proponents should be made accountable and the MOEF should examine as to how some monetary damages can be levied

through due legal process based on the Polluter Must Pay principle, the proceeds of which could be used for environmental rehabilitation.

There are concerns about the carrying capacity of the area with regard to its ability to sustain the extent and quantum of mining that has taken place there. It is recommended that a carrying capacity study should be commissioned for the area, or if another study by a nationally recognised institution is coming to fruition the result of that should be acted upon. Such a study should also take into account the impact of mining on the hydrology of the region and the extent of pollution caused to surface and ground water. This study should be compared to the earlier 10 years baseline data to determine the impact of mining on the biodiversity and hydrology of the area in the last decade. Based on the finding of this, a specific policy for mining of iron ore in the region may be developed. Such a policy along with a proper control and monitoring mechanism is necessary in order to avoid a situation such as the one under question. It would hopefully also ensure that mining in this region is carried out in accordance with best sectoral practices using appropriately clean technologies.” [Emphasis supplied by us].

83. The report of the EAC reveals that there is not a single environment related or mining related law or legal requirement that was not violated by one or the other mining lease holder. Quite clearly, the rule of environmental law in Goa had gone with the wind.

84. There was one extremely important requirement

relating to extraction of groundwater – that is clearance from the Central Ground Water Board - but even that was ignored. During the course of submissions, we were informed that there is plenty of groundwater available in Goa. However, what seems to have been overlooked is that with the intersection of groundwater levels with mining operations, the groundwater would get depleted much faster than expected or the quality of the groundwater would deteriorate. It is for this reason that MoEF insisted that clearance for drawal of groundwater must be taken from the Central Ground Water Board and care taken in respect of the intersection of groundwater level with mining operations (this happened in 46 cases). Unfortunately, no heed was paid to these requirements by the State of Goa or any of the mining lease holders and not one mining lease holder has any clearance (where required) from the Central Ground Water Board, or at least none was brought to our notice.

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113. The Mineral Policy clearly suggests that for a period of five years between 2006 and 2012 the mining lease holders committed various illegalities and irregularities in the mining process. This is an indication of their exploitative and rapacious attitude having little or no concern for the environment, the fragile ecology of Goa or even the health and well-being of the average Goan. This irreparable damage was being caused by the mining lease holders without any benefit to the domestic industry. Therefore, while the mining lease holders may have contributed virtually nothing to the domestic industry, they might have made considerable profits through exports and might have also benefited the foreign exchange reserves of the country, but the real-time damage to the quality of health and life of the

average Goan and damage to the environment and ecology of Goa is nevertheless incalculable or at least considerable – and export benefits cannot be weighed against health or the environment.

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119. Of the 13 mining leases renewed in November 2014, it is found that according to the State of Goa all of them are Category-I violators (except Geetabala M.N. Parulekar who is a Category-II violator). However, it was pointed out by learned counsel appearing on behalf of Goa Foundation that the report of the Vishwanath Anand EAC indicates that a recommendation was made to revoke the environmental clearance in respect of 6 mining lease holders; additionally, none of the mining lease holders had approval from the National Board for Wildlife (where required); all of them (except 2) had mined in excess of the permissible limit under the environmental clearance; all of them had indulged in dump mining; some of them were guilty of encroachments; in almost every case the mining activity intersected ground water level and none of the mining lease holders had permission for ground water withdrawal. These cannot be described as minor violations but were actually multiple violations in almost all cases. How could the State of Goa and MoEF overlook these recommendations and multiple violations?

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128. Faced with this material evidence before it, the Court took the view in **Goa Foundation** that fresh environmental clearances must be obtained. Unfortunately however, the State of Goa was more concerned with earning revenue rather than the health of

the people of Goa or enforcing the rule of law and therefore gave a complete go-bye to the directions of this Court and to the concerns of the citizens of Goa and requested the MoEF to lift the abeyance on the environmental clearances.

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138. We must emphasise that issues impacting society are required to be looked at holistically and not in a disaggregated manner. An overall perspective is necessary on such issues including issues that impact on the environment and the people of a community or a region or the State. It is for this reason that it is necessary to look at them broadly otherwise if that broader perspective is lost everyone will be a loser and no one will be a real beneficiary. One or two violations here and there may be wished away as inconsequential, but multiple violations by several persons can result in serious problems. As the novelist and philosopher Ayn Rand had said: We can evade reality, but we cannot evade the consequences of evading reality. Therefore, there is no doubt that the Mineral Policy, the Grant of Mining Leases Policy, the amendment to the MMDR Act, the report of the EAC and the report of the Expert Committee must be considered in the larger context of constitutionalism, the rule of law, environmental jurisprudence as well as the fundamental right of the people of Goa to have clean air and protection of the fragile ecology. Governance cannot and should not be carried out de hors the interests of the people and some uncomfortable decisions may be inevitable for balancing equities."

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41. The above observations of the Supreme Court reiterate the firmly established principles of Environmental Rule of Law in India. For last forty years, there has been a growing concern shown by the Courts and the Parliament to deal with the environmental hazards and the need to strike a balance and promote sustainable practices. The Courts have expounded various facets of Article 21 of the Constitution of India and the Parliament has enacted series of regulatory legislations. In *Goa Foundation-II*, the Supreme Court observed that *environmental rule of law in State of Goa has gone to the wind*. ‘Environmental rule of law’ is a refinement of the traditional notions of ‘rule of law’. It provides a framework of procedural and substantive rights and obligations that incorporate the principles of ecologically sustainable development. An overview of the evolution of the environmental rule of law in the country was taken by the Supreme Court in *Karnataka Industrial Areas Development Board v. C. Kenchappa*⁹, where the Supreme Court observed thus,

66. This Court, in Vellore Citizens' Welfare Forum v. Union of India [(1996) 5 SCC 647], acknowledged that the traditional concept that development and ecology are opposed to each other, is no longer acceptable. Sustainable development is the answer. Some of the salient principles of “sustainable development” as culled out from Brundtland Report and other international documents are intergenerational equity. This Court observed that “the precautionary principle” and “the

⁹ (2006) 6 SCC 371

polluter-pays principle” are essential features of “sustainable development”.

67. A nation's progress largely depends on development, therefore, the development cannot be stopped, but we need to control it rationally. No Government can cope with the problem of environmental repair by itself alone; people's voluntary participation in environmental management is a must for sustainable development. There is a need to create environmental awareness which may be propagated through formal and informal education. We must scientifically assess the ecological impact of various developmental schemes. To meet the challenge of current environmental issues, the entire globe should be considered the proper arena for environmental adjustment. Unity of mankind is not just a dream of the enlightenment but a biophysical fact.

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73. The need of the hour is inculcating a sense of urgency in implementing the rules relating to environmental protection which are not strictly followed. Its result would be disastrous for the health and welfare of the people.

74. The concept of sustainable development whose importance was the resolution of environmental problems is profound and undisputed.

75. Professor Ben Boer, Environmental Law, Faculty of Law, University of Sydney, New South Wales, Australia, in his article “Implementing Sustainability” observed as under:

“Strategies for sustainable development have been

formulated in many countries in the past several years. Their implementation through legal and administrative mechanisms is underway on a national and regional basis. The impetus for these strategies has come from documents such as the Stockholm Declaration of 1972, the World Conservation Strategy, the World Charter for Nature of 1982 and the report of the World Commission on Environment and Development, Our Common Future. The initiatives are part of a worldwide movement for the introduction of National Conservation Strategies based on the World Conservation Strategy. Over 50 National Conservation Strategies have been introduced over the past decade, all of which incorporate concepts of sustainable development. The document Caring for the Earth is the chief successor to the World Conservation Strategy.”

76. In the same article, Professor Boer further observed in the said article as follows:

“ ‘Sustainability’ is defined in Caring for the Earth as ‘a characteristic or state that can be maintained indefinitely’, whilst ‘development’ is defined as ‘increasing the capacity to meet human needs and improve the quality of human life’. What this seems to mean is ‘to increase the efficiency of resource use in order to improve human living standards’.

In Caring for the Earth, the term ‘sustainable development’ is derived from a rough combination of these two definitions:

Improving the quality of human life while living within the carrying capacity of supporting ecosystems.”

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(3) The public trust doctrine

83. The concept of public trusteeship may be accepted as a basic principle for the protection of natural resources of the land and sea. The public trust doctrine (which found its way in the ancient Roman Empire) primarily rests on the principle that certain resources like air, sea, water and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature should be made freely available to everyone irrespective of their status in life. The doctrine enjoins upon the Government and its instrumentalities to protect the resources for the enjoyment of the general public.

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86. Joseph L. Sax, Professor of Law, University of Michigan— proponent of the modern public trust doctrine— in an erudite article Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention [68(3) Mich. L. Rev. 471 at 473 (1970)] , has given the historical background of the public trust doctrine as under:

“The source of modern public trust law is found in a concept that received much attention in Roman and English law— the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasised. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private

owners. Second, while it was understood that in certain common properties— such as the seashore, highways and running water— ‘perpetual use was dedicated to the public’, it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government.”

87. The public trust doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the public trust doctrine imposes the following restrictions on governmental authority:

“Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses.”

88. The Supreme Court of California in National Audubon Society v. Superior Court of Alpine County [33 Cal 3d 419] observed as under:

“Thus, the public trust is more than an affirmation of the State's power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust....”

89. *In a recent case of Intellectuals Forum v. State of A.P. [(2006) 3 SCC 549] this Court has reiterated the importance of the doctrine of public trust in maintaining sustainable development.*

90. *The right to sustainable development has been declared by the UN General Assembly to be an inalienable human right (Declaration on the Right to Development, 1986).*

91. *Similarly, in 1992 Rio Conference it was declared that human beings are at the centre of concerns for sustainable development. Human beings are entitled to a healthy and productive life in harmony with nature. In order to achieve sustainable development, environmental protection shall constitute an integral part of development process and the same cannot be considered in isolation of it.*

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99. *In the Rio Conference of 1992 great concern had been shown about sustainable development. “Sustainable development” means “a development which can be sustained by nature with or without mitigation”. In other words, it is to maintain delicate balance between industrialisation and ecology. While development of*

industry is essential for the growth of economy, at the same time, the environment and the ecosystem are required to be protected. The pollution created as a consequence of development must not exceed the carrying capacity of the ecosystem. The courts in various judgments have developed the basic and essential features of sustainable development. In order to protect sustainable development, it is necessary to implement and enforce some of its main components and ingredients such as precautionary principle, polluter-pays and public trust doctrine. We can trace the foundation of these ingredients in a number of judgments delivered by this Court and the High Courts after the Rio Conference, 1992.

100. *The importance and awareness of environment and ecology is becoming so vital and important that we, in our judgment, want the appellant to insist on the conditions emanating from the principle of “Sustainable Development”:*

(1) We direct that, in future, before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment.

(2) We also direct the appellant to incorporate the condition of allotment to obtain clearance from the Karnataka State Pollution Control Board before the land is allotted for development. The said directory condition of allotment of lands be converted into a mandatory condition for all the projects to be sanctioned in future.

101. *This has been an interesting judicial pilgrimage for the last four decades. In our opinion, this is a significant*

contribution of the judiciary in making serious endeavour to preserve and protect ecology and environment, in consonance with the provisions of the Constitution.

102. Sustainable use of natural resources should essentially be based on maintaining a balance between development and the ecosystem. Coordinated efforts of all concerned would be required to solve the problem of ecological crisis and pollution. Unless we adopt an approach of sustainable use, the problem of environmental degradation cannot be solved.

103. The concept of sustainable development was propounded by the "World Commission on Environment and Development", which very aptly and comprehensively defined it as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". Survival of mankind depends on following the said definition in letter and spirit."

42. The mineral policy adopted by the State and as quoted in *Goa Foundation -II* also refer to these principles :

"... . Minerals are a finite and non-renewable natural resource and must be exploited wisely in the larger interest of the State. It is high time that the new Government that has received an unprecedented mandate from the people of Goa should take note that dependence on mining presents extreme externalities and the State has to tread cautiously promoting a sustainable extraction regime to facilitate systematic, scientific and planned utilization of mineral resources and to streamline mineral based development of the State,

keeping in view, protection of environment, health and safety of the people in and around the mining areas rather than race to bottom.”

43. Certain preliminary objections were raised by the Respondents and the State. It was contented on behalf of the Respondents that the Petitioner is guilty of delay and laches. It was contented that if such illegalities were continuing from 7 March 2018, then why the Petitioners made first representation on 21 March 2018, and there is delay and laches. There is no merit in this contention. Firstly, the decision which is impugned is of 21 March 2018. The Petition is filed on 26 March 2018. Even otherwise, when a Petition involving issues such as the one raised before us, we cannot simply refuse to look into it on the ground of couple of weeks' delay. Equally misplaced is an argument regarding irresponsible pleadings in the Petition. The judgment of the Supreme Court itself in *Goa Foundation-I* uses strong phrases to describe the conduct of the Respondents and the State Government. Both, the State and the Respondents, have criticized the Petitioner for taking different stands and have sought to point out certain 'admissions' from the Petitioner's pleadings. The Petitioner has moved this matter in public interest. There is no doubt that law of pleadings would apply to a public interest litigation as held by the Supreme Court in the case of *Narmada Bachao*, however, what we are concerned with is an interpretation of a direction of the Supreme Court. We cannot go by

pleadings of the parties alone to interpret the order. We have to look at the intrinsic indication in the judgment and the broader position of law in which the decision is rendered. Therefore, these minor points, according to us, are not material.

44. At the time of arguing for vacating the interim relief, and even now, an argument is advanced on behalf of the mining companies that the Petitioners have moved this Court alleging contempt of the orders of the Supreme Court and therefore we will have no jurisdiction and the Petitioners will have to approach the Supreme Court. This submission which was vehemently urged at the time of seeking vacation of the interim order, was faintly urged again at the time of hearing. There is no merit in this submission. In the case of *Vitushah Oberoi and ors. vs. Court of its Own Motion*¹⁰, relied upon to advance this proposition, the Division Bench of the High Court in Delhi had passed an order holding the contemnor, editors of a newspaper, guilty. The editors had written certain derogatory articles against the Chief Justice of India and were proceeded with by the High Court and it is in that context that the Apex Court made the observation regarding power of the High Court to punish for contempt of the Supreme Court. In the present case, we are concerned with two aspects, whether the State Government's decision to permit transportation post 15 March 2018 is correct in

¹⁰ (2017) 2 SCC 314

law and whether the State is carrying out its duties as per Article 144 of the Constitution of India. In any case, the Supreme Court, in the order dated 4 April 2018, has observed that the High Court will decide the issues in this writ petition.

45. With this background, we come to the paragraph 149(6), which is the crux of the matter. We reproduce the paragraph again for convenience.

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

46. The analysis of the above paragraph shows following facets: The direction is a consequence of a discussion. The discussion means all the observations, starting from the first word "rapacious". Mining lease holders have been granted second renewals in violation of the directions of the Supreme Court in *Goa Foundation-I*. Actions of the State are contrary to the law declared by the Supreme Court under Article 141, and there is the lack of environmental clearances. This class of mining lease holders are given time to manage their

affairs. They may continue mining operations till 15 March 2018. They will stop all mining operations with effect from 16 March 2018. The mining operations will resume only after fresh mining leases are granted and fresh environmental clearances are granted.

47. Both the phrases “manage their affairs” and “mining operations” have been used and they must be given their respective meaning. Manage their affairs is not a legal term, while mining operations is.

48. First we will consider the phrase "mining operations". Section 3(d) and Section 4 of the MMDR Act read thus :

3. Definitions.—*In this Act, unless the context otherwise requires,—*

...(d) “mining operations” means any operations undertaken for the purpose of winning any mineral;

*

4. Prospecting or mining operations to be under licence or lease.—(1) *[No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder]:*

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with terms and conditions of a

prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:

[Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, 6[the Atomic Minerals Directorate for Exploration and Research] of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited., a Government company within the meaning of 7[clause (45) of section 2 of the Companies Act, 2013 (18 of 2013), and any such entity that may be notified for this purpose by the Central Government]:]

[Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease mining concession or by any other name) in force immediately before the commencement of this Act in the Union territory of Goa, Daman and Diu.]

[(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.]

(2) [No reconnaissance permit, prospecting licence or mining lease] shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.

[(3) Any State Government may, after prior consultation with the Central Government and in accordance with the rule made under section 18, 11[undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not

already held under any reconnaissance permit, prospecting licence or mining lease].]"

In *Hamdard (WAKF) Laboratories vs Dy. Labour Commissioner & ors.*, *Gajraj Singh & ors. vs. State of U.P. & ors.*, *Bharat Co-operative e Bank (Mumbai) Ltd. vs Co-operative Bank Employees Union*, the Supreme Court has held that when the Court uses a term defined under a statute, it must carry the meaning as given in the statute. The term 'mining operations' is defined in Section 3(d) of the MMDR Act. Therefore, once the Supreme Court has used the words 'mining operations' in its order, unless contra intention is shown, it will have to be presumed that the Supreme Court meant mining operations as defined under Section 3(d) of the MMDR Act. But as in almost all legislations, MMDR Act prefixes definitions with words *unless the context otherwise requires*, which are significant. The context in which the phrase 'mining operations' was used is extremely material and cannot be wished away by the State and the Respondents. It was used not in normal circumstances of lawful mining but in the context of illegal mining, more so after 7 February 2018.

49. Further the matter does not rest at that. The crucial words are 'arrange their affairs'. We had passed detailed interim orders on 28 March 2018 and 29 March 2018. The same central

point, which is the interpretation of paragraph 149(6), was debated. Fundamentally argument of Petitioner, State and the Respondents remains the same, except with more details. Therefore, it is not for the first time that we are recording our interpretation of paragraph 149(6). We had clearly mentioned that according to us the entire exercise permitted was to arrange the affairs. We had observed thus :

"In our respectful reading of the Judgment, we prima facie find that when the Apex Court mandated the leaseholders to cease all mining operations and "arrange their affairs", means deleterious effect must end by 15 March 2018. Therefore, we are of the prima facie opinion that when the Apex Court mandated the leaseholders to arrange their affairs by 15 March 2018, it contemplated ceasing of all forms of activities relating to mining which would have an impact on the environment"

In fact when we had emphasized on this term in our interim order, we expected arguments from the State on how the words 'time to arrange their affairs', be construed. The State has chosen to put all its emphasis on the words 'mining operations' as if this was the only facet of Paragraph 149(6). Same is the position by the Counsel appearing for the Respondents. The arguments are advanced as if the words 'time to arrange their affairs' do not exist. The State and the Respondents have steered clear of explaining the purpose of the phrase "time to arrange their affairs". Elaborate arguments are

advanced, but the only emphasis is on the words 'mining operations'. The State and the Respondents want the sentence to read : *The mining lease holders .. ,.may continue their mining operations till 15th March, 2018* by omitting the words *.. are given time to manage their affairs*. Why the State is deleting these words from its consideration is not explained. That these words are meaningless, is also not argued. They are simply omitted from consideration. When the purport of a direction under Article 142 of the Constitution of India to do complete justice, is being debated, how can a party put forth its interpretation by omitting the most important word. Such interpretation would be obviously incomplete and fundamentally flawed.

50. Meaning of the direction in paragraph 149(6) will have to be thus ascertained considering the words used in the para, the judgment itself and the jurisprudence it invokes. The term "arrange their affairs" is not a legal term. Since the Respondents are business entities, arranging affairs means their business affairs. Dictionary meaning of 'Affairs' in business sense is a person's concern in trade or property. It is a wide term. It means all the concerns in respect of the business. The contentions advanced miss out the reasons and context for which the liberty was granted. In paragraph 149(6), the Supreme Court first gives time to arrange affairs, followed by the permission to

carry out mining operations. Grant of time and permission of an activity, are not be confused. Time is granted to arrange affairs, and to enable arranging the affairs, that a liberty is granted to carry out mining operations. It is a permission with a limited objective.

51. It is our respectful view that the Supreme Court was aware that when judgment was delivered on 7 February 2018 mining operations, including excavation, were going on. The Supreme Court was aware that the moment the judgment is pronounced, half way excavation activities could cease, instant the judgment is delivered. Once the Supreme Court pronounced that mining leases were granted in violation of its earlier binding decision, and there was no environmental clearance, the excavation could not in law, continue even for a second. The mining activity, including excavation, therefore had no basis in law to continue even for winding up the affairs. Therefore, the Supreme Court in the light of its earlier discussion and findings, inspite of holding continuation as illegal, exercised its power under Article 142 to permit mining operations , without which the time granted to arrange the affairs would have been of no effect. Thus, the liberty granted to carry out mining operations till 15 March 2018 was just a component of larger indulgence given by the Supreme Court to arrange the affairs within five weeks. But this was not a charter to continue excavation as if

nothing was wrong. This limited charter was given only to ensure that the mining leaseholders are able to arrange their affairs within five weeks. Though mining operations is a legal term, the context in which it was used by the Supreme Court was not the normal circumstances. It was used in an equity exercise. The State was expected to monitor the complete phasing out. The State was expected to ensure that the Respondents will manage their affairs within 5 weeks. The State should have issued a mandate that though the Supreme Court has used the words 'mining operations', it is only for winding up and not for full fledged mining activity, because basically such activity was illegal and is allowed only as an indulgence. Instead, the State chose to confer a complete and unfettered right on the Respondents. In our respectful reading of the judgment, and looking at the jurisprudence it invokes, we are of the respectful opinion that the Supreme Court did not permit such course of action.

52. The Respondents are commercial entities. When the Supreme Court had given them time of five weeks to manage their affairs, they had to do so. For any commercial entity who is facing a prospect of complete closure after five weeks and without knowing hope of any extension whatsoever, would first start winding down. It would take stock of its situation, settle accounts, remove the ore and

transport it. If the interpretation of the State and the Respondents is accepted that full-fledged mining excavation was permitted till 15 March 2018, then where is the time left to manage affairs thereafter. The most important phrase specifically used by the Supreme Court "time to arrange their affairs" would become meaningless. Therefore, when the Supreme Court permitted mining activity, of which excavation is an only part, it was permitted only in the limited sense to wind up or wrap up the entire affairs, without this liberty even finishing the half work would have been impossible, the moment the judgment was declared.

53. After the strictures at least, the Supreme Court expected the State to act as a guardian of the mineral resources and that the State would take a proactive stand ensuring that the mining owners wind up all their operations by 15 March 2018. State is not a private party to expect detailed directions to be issued to it, but it is enough for the State, when a broader policy is indicated, to take a cue. If the State had any doubt, appropriate course of action would have been to move the Apex Court for clarification.

54. Article 142 uses the word *complete justice*, not justice alone. The term 'Complete Justice' is much wider than justice to a party before it. Complete justice is for all. It has been held that the Supreme Court has inherent power and jurisdiction for dealing with

any exceptional situation in larger public interest, which builds confidence in the rule of law and strengthens democracy. The law is that when a limited indulgence is given under Article 142, it cannot be used to build an entire edifice and to create a right when none exists.

55. The State has consistently harped upon the receipt of royalty by it to justify transfer ownership of the ore in favour of the mining lease holders. According to the State, once royalty is paid and the ore is transferred out of the lease area, it becomes the property of the lease holder. What the State has omitted from consideration is that the situation post 7 February 2018, was not the usual lawful mining activity as envisaged under the Act, but it was being permitted under the indulgence of the Supreme Court, consequent to an exercise under Article 142. Paragraph 149(6) did not grant full and complete rights without any condition. The paragraph envisages a mechanism in equity with conditions. The Supreme Court did not grant full rights, but a conditional indulgence. The State is, however, only focusing on the right of the mining lease holders forgetting the conditions imposed. At the most, if it is permissible in law, the Respondents could ask for the royalty back from the State.

56. It was debated at great length whether the 'mining operations' would include transportation. The State and the

Respondents emphasized that Section 3(d) of the MMDR Act, Section 4 and 4(1)(a) of the MMDR Act and Rules framed under Section 23 (c) show that the mining and transportation are different. The Respondents relied upon the interim order passed in *Goa Foundation-I* to contend that when transportation had to be stopped, the Supreme Court had specifically so directed. On the other hand, the Petitioners have contended that Section 4 (1) and 4(1-A), read together, would show that transportation is an essential ingredient, more particularly in the State of Goa. The Petitioner also contended that if only mining operation permitted by the Supreme Court, which does not include transportation, how could transportation take place after 7 February 2018. We will refer to these submissions, since it was debated at great length before us, but according to us the crux is that the transportation facet was also included in the time given to arrange the affairs.

57. The data related to the transportation is placed before us by the State. It shows that 2.247 MMT was excavated after the judgment in *Goa Foundation-I*. 7.17 MMT was already excavated and was found in the leases. The 6.1 MMT was shifted out of the mining lease areas between 7 February and 15 March 2018. The figures of transportation have been placed before us by the Government. Approximately 6.1 MMT was transported during this

period by approximately 6000 trucks a day. On some days such as 3 March 2018 there were 21679 trips, on 9 March 2018 there were 25,092, on 10 March 2018 there were 25767, 12 March 2018 - 25842 on 13 March 2018, and 14 March 2018, 20842.

58. As regards the production and ore at the jetties, charts have been annexed to the Affidavit of the State. Charts annexed by the State Government show that for the financial year 2015-16, 7.25 MT was the production, for 2017-18 it was 10.58, from 1 April 2017 to 15 March 2018. Production from 7 February 2018 was 2.24 MT, transportation from 7 February 2018 was 6.13 MT, road transportation post 15 March 2018 from royalty cargo was 0.025MT, total productive lease post 15 March 2018 was 7.70 MT. The stock on the jetties stated at 3.13 MT as on 7 February 2018, as on 15 March 2018 it is 3.12 MT, and 2.90 on 28 March 2018. We have not been informed as to the position of 2.90 MTs lying on the jetties, whether the royalty is paid on that or not and whether this was treated as covered by the order passed by Supreme Court on 4 April 2018 and permitted to be transported. From the chart, it appears that it has not been so permitted. 0.04 MT is stated to be present on 15 March 2018 in plants and 0.04 on 28 March 2018 in the plots is stated as 0.71 on 15 March and 0.69 on 28 March 2018. The details of road transportation from plot to jetty post 15 March 2018 has

also been placed on record in respect of some of the organizations. The jetty stock details as on 7 February 2018, 15 March 2018 and 28 March 2018 have been also placed.

59. The Goa (Prevention of Illegal Storage and Transportation of Minerals) Rules, 2013 have been framed under Section 23(c) of the MMDR Act. It defines 'Carrier' to include barges. End-Users have been defined, Mineral has been defined, Mining Site has been defined, Transportation has been defined as carrying mineral from one place to another. Chapter II deals with Prevention of Illegal Mining. Chapter III deals with Sale, Export, Import and Transit of Ore. The storage of mineral is strictly regulated. It can be done at mine head stork yards, ports and jetties during transit. All traders who fail to produce necessary documentation will entail their mineral vesting in the Government. Transportation has been strictly regulated. Transportation includes from barges from the jetty to the vessel. Rule 23 postulates restrictions on transport. Chapter VI deals with establishment of check posts, barrier weighbridges in respect of minerals in transit. The scheme of these rules framed for the State of Goa, clearly indicates the manner in which mining activity is carried out in State of Goa and how transportation to the ship is an integral part of the mining activity in the State of Goa.

60. The meaning of 'Mining Operations' did not directly arise for consideration of the Supreme Court in *Goa Foundation II*. It is referred to in the exercise of Article 142. This phrase cannot be understood by focusing on the legal definition of 'Mining Operations' alone, but reading the judgment in the context it was rendered. Mineral excavated needs to be transported and there cannot any transportation without excavation nor excavation without transport. Supreme Court emphasized on the need to start a completely new chapter in State of Goa after 15 March 2018 on the basis of the principles laid down. The Supreme Court, when it granted five weeks to arrange the affairs, meant that all related and associated activity should come to an end. That transportation is an integral part of mining in Goa was clear to the Supreme Court. Ample material was placed before the Supreme Court regarding the interdependence of transport and excavation in the State of Goa. This material showed that iron ore from Goa is not suitable for the Indian industry due to the low Fe content and the high silica presence and is no value addition to the Indian industry and the iron ore was mined only for export – mainly to China and also to Japan. With a port in the vicinity, Goa iron ore was an attractive buy for the global market. The Supreme Court was informed that almost all the iron ore extracted in Goa is exported. Mineral policy itself indicates that the low grade of ore was competitive in global markets, because of low

cost of transportation. It is the transportation aspect that made the low grade ore viable. Thus, it was an integral part. When the Respondents had approached us for vacating the ad interim relief, it was sought to be urged on their behalf that the storing mineral is leading to recurring daily charges and the mineral must be exported as early as possible. It was thus clear that it is a usual practice to directly transport the ore and load it on the ship to save operational costs.

61. The Supreme Court had expressed serious environmental concern in *Goa Foundation-II*. It cannot be argued that the Supreme Court was unaware of the deleterious effect transpiration has in the State of Goa. The Supreme Court in *Goa Foundation-II* has repeatedly drawn attention to the need to address health and well being of the average Goan. The continuous transport of barges carrying ore disrupts the fishing activity, navigational channels and also has its impact on coastal and estuarine ecology. The thousands of daily trips of trucks cause air pollution. It is for this reason that even for transportation, clearances are required from the Environmental Regulatory Authority. Therefore the directions in *Goa Foundation-II* was to end this tenacious grip of unregulated environmentally hazardous mining activity in the State of Goa to be replaced by transparent, sustainable and environmental benign

mining activity. In *Goa Foundation-I*, the Supreme Court has discussed the environmental impact of both, production and transpiration, in detail. The Committees appointed had reported on the adverse impact of excessive transpiration of ore in the State of Goa in terms of air pollution and other ills. Therefore, it cannot be argued that in *Goa Foundation-II*, the Supreme Court made no reference whatsoever to the fact that transportation also causes environmental hazards and affects the health of average Goan. The report of the Justice Shah Commission was before the Supreme Court in both, *Goa Foundation-I* and *Goa Foundation-II* cases. These observations of the Commission regarding deleterious effect of transportation were before the Supreme Court in *Goa Foundation-II*. The Commission had observed in its report that the tribals/villagers are suffering adverse environmental effects of heavy transportation, their drinking water remains polluted and roads remains badly damaged/congested. It cannot be, therefore, said that ills of transportation and its effect on the average Goan and on the coastal ecology were not the concerns. Therefore, it is incorrect to contend that transportation component of the activity was never in contemplation of the Supreme Court in *Goa Foundation-II* or in paragraph 149(6). According to our respectful interpretation thus, when the Supreme Court mandated five weeks time for arranging the affairs, it meant completion of transportation as well.

62. Even though the State and the Respondents have sought to contend that all transportation activities have been monitored with transparent methodology and there is no adverse impact, it is difficult to believe this claim. It was one of the main planks of arguments advanced by the State at the time of interim order and even during the final hearing that all transportation has been strictly monitored in a most transparent manner. However the factors pointed out by the Petitioners show that massive transportation was taking place and the data is not put in public domain. The Petitioner has placed before us a screen shot taken from the website of Megasoft system which is stated to be the vehicle tracking system. The Screen shot from this website shows tracking of a barge with registered number *MV Fomento Versha*. It shows the movement, but the field regarding trip number and trip validity data, is not filled in. So all that this website shows is that some barge is moving somewhere, how much ore it is carrying cannot be ascertained. The Petitioners have stated that the Petitioners have 44 screen shots of 44 barges and trip against its name. It appears, therefore, that automated real time has been disabled when it was put in public domain at the relevant time. Response of the State to this charge, is peculiar. There is no denial by the State that the position shown in the screen shot is incorrect. The stand is that this may be so, but

Government has all the records. What is the use of having a system, which is supposed to be transparent, when it does not disclose the most vital data to the public. Therefore, the Petitioner is right in contending that no information is made accessible in public domain from which details of the ore transported can be ascertained. The Petitioner has also pointed out that the Megasoft system installed by the State to monitor overloading of trucks shows that many trucks had exceeded the average beyond the permissible limits during the relevant period. Therefore, there is no credible data in public domain to the extent of transportation. The claim of the State and the Respondents that everything should be left to the State in the matter of transportation as it has a full proof transparent system is difficult to accept.

63. The State and the Respondents have referred to the order passed by Supreme Court on 4 April 2018. After we had passed an order on 28 March 2018, we had heard the mining companies and the Port Trust on the next date. It was urged before us that the barges are stuck at mid sea because of the action taken by the Director of Mines pursuant to the ad interim order and the ships have stopped process of loading the ore midway. The Port Trust had urged that this is causing congestion at the port. An emergent situation was therefore portrayed before us. It was stated that there is

ore both, brought before 15 March 2018 to the jetty, and after 15 March 2018 to the jetty and State has all the records of movement of the ore. It was stated that an online real time data is uploaded from which the entire movement of transport can be easily tracked. State had pointed out to us that Transportation Rules framed under Section 23 (c) of MMDR Act defines transportation as from barge to the vessel also. Therefore we had not vacated the ad interim order. In the order dated 4 April 2018, the Supreme Court permitted iron ore on which royalty is paid which is lying on jetty on or before 15 March 2018, to be loaded on the vessels. The order dated 4 April 2018 is regarding the ore which is lying on the jetties on or before 15 March 2018. The State and Respondents have not argued what would be the implication of the order dated 4 April 2018 in respect of the ore on which royalty was paid, but lying on the jetty after 15 March 2018. We are not informed that by order date 4 April 2018 all ore from 88 leases on which royalty is paid has been allowed to be transported by the Supreme Court irrespective of the date of it lying on the jetty. We are not informed why the ore, on which royalty is paid and lying on the jetty after 15 March 2018, has not been allowed. If it was allowed, obviously nothing was left for us to decide on the aspect of transportation.

64. Some of the Respondents have addressed us on the

premise that they are traders who had legitimately purchased ore from the companies. Firstly, we have to see whether they are bonafide purchasers, assuming transportation is possible by them. The judgment in *Goa Foundation-II* was widely known in State of Goa. As regards Respondent No.14 is concerned, we are informed that it is a partnership firm, the Director of respondent No.7, the mining leaseholder is a partner of Respondent No.14. Respondent No.14 who is sought to be projected as an innocent trader, is nothing but a close entity of respondent No.7-mining leaseholder. It was argued on behalf of respondent No.9 that it is a trader and it has purchased ore on which royalty is paid and therefore, it cannot be stopped from transportation. It is not categorically asserted that it has no connection whatsoever with the lease holders. The order of the Supreme Court cannot be nullified in this manner by creating a maze of interrelated entities. The non-transportable ore becomes public property. Then no right will accrue to the traders. They may have a remedy in Contract Law against the Sellers. The document which is shown to us by respondent No.9 shows that it is to be shipped from the jetty onward. The permit shows that it is stacked outside the lease area before 15 March 2018, but it does not show on what date it was brought to the jetty.

65. As a result of the discussion on import of paragraph

149(6) therefore, it is clear that the Supreme Court granted leave to carry out mining operations only in aid and to enable the Respondents to arrange their affairs within five weeks. When the Supreme Court meant arrange their affairs, it included transportation including loading up to the ship to be exported and all other associated activities. The interpretation placed by the State Government that the transportation was permitted post 15 March 2018 on a royalty paid ore is, thus, incorrect and is contrary to the directions in paragraph 149(6). The order passed by the Supreme Court on 4 April 2018, being under Article 142, will apply only to the Appellants in those cases before the Supreme Court and to the extent specified there in. The decision of State dated 21 March 2018, will have to be set aside. The State will have to take a decision considering the legal position that such ore in question will revert back to the State and steps will have to be taken considering the same as public property. Obviously it can be transported as a public property.

66. This brings us to the second topic, which is the safety of the mines. It is one of the prayers of the Petitioners to direct the Director of Mine Safety, Indian Bureau of Mines and the Director of Mines to take steps to take safety measure in view of the oncoming monsoon season. It is the contenting of the Petitioners that there is

no clarify as to who is responsible for the safety of the mines and the people adjacent to the mines. The Director of Mines had stated that the State Government will have to take the responsibility, so also the Indian Bureau of Mines. The State Government claims that it does not have necessary equipments and man power and therefore, the erstwhile lease holders should be made responsible. The Petitioner states that the mines are on hill sides. There could be mine collapse, affecting the people and property and monsoon now just more than six weeks away, and the situation is emergent. The argument on behalf of the mining companies is that they will abide by the directions on this aspect. In the affidavit filed by the State, the Chief Secretary has referred to safety aspects. It is stated that the lease holders have been directed on 12 March 2018 to abide by the directions of the Director of Mines and Geology. The directions for pumping of water were also given to the leaseholders and it is not practicable for the State to look after the safety operations. It is stated that Government of Goa has no manpower, machinery and technical experts to carry out the activities. It is stated that erstwhile lease holders who were granted right over the land can continue safety operations. The Petitioners have taken exception to keep the mining leaseholders as in-charge of safety operations, on the ground that they cannot be permitted to be kept in-charge having no right.

67. The situation is indeed serious. The State Government has simply thrown up its hand stating that it does not have the machinery, equipments or personnel to take care of the mines. The Director General of Mines Safety has stated that it is the responsibility of the State Government. The State Government has currently chosen option of directing the erstwhile mining lease holders to carry out the safety operations. The Petitioners have pointed out to us that mining lease holders are not always obeying the directions of the Government. We do not have satisfactory answer from the State as to how it is going to enforce the directions given to the mining lease holders if they failed to take the measures as directed. However, at the same time, we cannot direct the State Government to dismantle the existing safety measures that they have put in place, as we do not have any credible data and viable alternative solution placed before us. We simply cannot dismantle the current measures, though unsatisfactory, for lack of any better alternative. Neither the petitioners nor the State have presented before us a credible alternative. But we do feel that the present arrangement of directing the mining lease holders to carry out safety measures during monsoon is fraught with various perils and cannot not be effective. The Petitioners in the arguments have suggested that at least there should be a meeting between Indian Bureau of Mines, the Director General of Mines Safety, Goa and the State to

find out the solution. For lack of any material before us, the only direction that we can give is that the Indian Bureau of Mines, the Director General of Mines Safety, Goa and Chief Secretary should hold an immediate meeting with the concerned Officers and draw a plan of action in respect of the safety measures in the light of the coming monsoon. The Chief Secretary will invite the necessary Senior Officers from the Police Department, Department of Forests, Department of Revenue, etc. and take collective decision in the matter. We trust and hope that collective wisdom of these officers will be able to find a suitable solution and the mechanism for the issue of the safety of the Mines, which might reach proportions if not attended to during the oncoming monsoon. Money from the sale of the ore can be used for safety operations.

68. Now we come to the third issue. That is the data maintained by the State of Goa in respect of the mines. In the meeting of 21 March 2018, the Director of Mines had assured that most transparent mechanism will be put in place, dynamic website shall be used to provide real time information with regard to details of the stock extracted and produced to track the movements. The same stand is reiterated in the affidavit filed by the Chief Secretary that the State has all the accurate data of all movements of ore and an accounting system has been developed by the Department of Mines.

It is stated that the models have been developed adhering to the Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013. In the affidavit of the State, it is emphasized that this system provides full proof data with public disclosure. We have observed earlier, vital data is missing from the website during the relevant period. It appears that automated real time system was disabled when it is put in public domain for the period in question. In principle, the State asserts transparency, but when it comes to implementing it in reality, it doesn't seem to be living up to its own standards. One of the concomitants of the Public Trust Doctrine is that a citizen has a right to seek, receive, and disseminate information in respect of the activities that adversely affect the environment. The Supreme Court in *Tirupur Dyeing Factory Owners Assn. v. Noyyal River Ayacutdars Protection Assn.*,¹¹ has recognized this as a long established principle.

27. In case in spite of stringent conditions, degradation of environment continues and reaches a stage of no return, the Court may consider the closure of industrial activities in areas where there is such a risk. The authorities also have to take into consideration the macro effect of wide-scale land and environmental degradation caused by absence of remedial measures. The right to information and community participation for protection of environment and human health is also a right which flows from Article 21 [vide Bombay

¹¹ (2009) 9 SCC 737

Dyeing & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group [(2006) 3 SCC 434 : AIR 2006 SC 1489] , T.N. Godavarman Thirumulpad v. Union of India [(2002) 10 SCC 606] , Research Foundation for Science Technology National Resource Policy v. Union of India [(2005) 10 SCC 510] , N.D. Jayal v. Union of India [(2004) 9 SCC 362 : AIR 2004 SC 867] , M.C. Mehta v. Kamal Nath [(2002) 3 SCC 653 : AIR 2002 SC 1515] and Susetha v. State of T.N. [(2006) 6 SCC 543 : AIR 2006 SC 2893]].

It is in this background that we have to take note of the disparity pointed out by the Petitioners in their written submissions between the data published by the Indian Bureau of Mines and the data of the State Government, as under :

<i>Divergent production figures for Iron Ore Production (MMT)</i>		
	<i>DMG/Goa Govt.</i>	<i>IBM (P.687)</i>
<i>2015-16</i>	<i>7.26</i>	<i>1.74</i>
<i>2016-17</i>	<i>20</i>	<i>8.9</i>
<i>2017-18</i>	<i>10.59 (of which 6.1 MMT removed from leases between 7.2.2018-15.3.2018 and 2.247 MMT excavated during the same period.</i>	<i>5.44 (excluding January 2018 for which figures are not available with petitioner.)</i>

The only response of the State to this position is that the data of the State Government is correct. Nothing more. This is obviously not a satisfactory explanation. More particularly so, since the State

Government does not seem to be consistent in uploading complete critical data in the public domain for scrutiny. This disparity cannot be ignored and will have to be examined. The Indian Bureau of Mines (IBM) is a government organization under the Department of Mines, engaged in promotion of conservation, scientific development of mineral resources and protection of environment in mines. Its function is to collect, collate data and organize into a database and take steps to publish and disseminate the same. The duties of the IBM clearly indicate that it is an authority in respect of maintenance of data of mines. We, therefore, find it necessary that IBM examines the above position and take corrective steps. The Controller General of IBM will have to direct a team of senior level officer to examine the above disparity in data and publish a report in the public domain. Needless to state that we have not drawn in any final conclusions in respect of the disparity and the IBM, while conducting an inquiry will give full opportunity to the State and receive inputs from the public spirited organizations and citizens.

69. Thus, the decision of the State Government dated 21 March 2018 is based solely on the assumption that the mining lease holders have full right to carry out mining operations without any fetters till 15 March 2018, pay royalty upon the ore so excavated, become owners thereof and transport the same any time after 15

March 2018. The decision taken by the State of Goa is omitting the most crucial words 'arrange their affairs' in paragraph 149(6) of *Goa Foundation-II* and instead enlarging the scope of the words mining operations, as if it was the only object of the order passed by the Supreme Court, is bad in law. In *Goa Foundation-II* the mining lease holders were held to have no right whatsoever and were only given time to arrange their business affairs by 15 March 2018. The mining operations, which otherwise could not have been continued after 7 February 2018, were permitted only to arrange the affairs. The time was granted only to arrange the business affairs, which meant transportation to be completed by 15 March 2018. The State was expected to monitor the complete phasing out. The State was expected to ensure that the Respondents manage their affairs within 5 weeks. The State should have issued a mandate that though the Supreme Court has used the word mining operations it is only for winding up and not for full fledged mining activity, because basically such activity was illegal. The State while taking the impugned decision simply omitted crucial words from the permission granted by the Supreme Court and focused only on the rights of the mining lease holders readily relinquishing its own claim over the ore. The State did not explore various options available to it after claiming its own ownership to utilize the proceeds for public benefit. Undue focus was given on receipt of royalty which was pittance compared to

what was lost by the State. Paragraph 149(6) is a an equity exercise under Article 142. Its interpretation must be commensurate with the jurisprudence and the level at which the Supreme Court has invoked the foundational doctrines of environmental law and the complete justice that was sought to be achieved. In our respectful opinion, the Supreme Court did complete justice in public interest and not only in the private interest of the Respondents-mining companies. It did complete justice, including the well being of average Goan and the ecology of Goa. This conditional indulgence was in furtherance of object of starting on clean slate and freeing the State of Goa once for all from the ills associated with unregulated mining, including transportation. The Supreme Court had expected the State Government to keep the interest of average Goans and its ecology at the forefront. The State should have considered that the transportation of ore in Goa also has an impact on the health of average Goans and the fragile ecology. When the Supreme Court meant arrange the business affairs by 15 March 2018, it meant all the activities including transportation. The mining operations and excavation if any post 7 February 2018 were illegal and permitted only within the ambit of paragraph 149(6) and therefore, mere payment of royalty could not override the condition of completing transportation before 15 March 2018. The ore which is not be transported post 15 March 2018 in law, would belong to the State

Government and consequently to the people, since the State is owner of the mineral resources as a custodian thereof. The State has to take fresh decision, take possession of the non transportable ore as above and use the sale proceeds for the public benefit. The order passed by the Supreme Court on 4 April 2018 being under Article 142, pertains to the Appellants before it and applies to such ore of those Appellants which is royalty paid and brought to the jetty on or before 15 March 2018. The interim order in respect of transportation will therefore have to continue as a final order, in respect of the ore not covered by the order passed by the Supreme Court dated 4 April 2018 in respect of the Appellants therein. The so called traders will have no right in such ore since it vests in the State and they can get their right established in the Civil Court against those from whom they have stated to have purchased the ore. The State Government having failed to consider these legal positions, the decision will have to be set aside and the State would have to take a decision in the light of what is discussed in this Judgment . The State has option to sell such ore treating it as public resource and use the proceeds for welfare measures. As regards safety of the mines, the State Government will have to hold a high level meeting on urgent basis, considering the emergent situation that may arise. For lack of satisfactory answers from the State Government regarding the disparity in the data of the State Government and data of the Indian Bureau of Mines, the

Director General of Indian Bureau of Mines will have to conduct an inquiry and publish a report in the public domain.

70. Before we conclude, we wish to make few observations .

71. First, the State can sell the ore and recover a substantial amount. The amount can be used in various ways to benefit the people. It can be deposited in the Permanent Iron Ore Fund; it can be utilized to take safety measure in respect of the mines; it can be used to help the working class affected by the mining and transportation closure, apart from the liability of their employers. Thus there are many ways in which State can use this amount for the benefit of the average Goans and the fragile ecology of Goa, on which Supreme Court has repeatedly emphasized.

72. Second, we are surprised at the vehemence at which the State has asserted the right of the mining lease holders in these proceedings. The State must keep in mind that it acts as a trustee of the people for the natural resources. In discharge of this duty, it has to keep the interest of the citizens at heart as the first priority. The ultimate relief sought in this Petition, that the ore belongs to the State , in a given case on facts, may not be tenable, but the notion itself is not abhorrent to receive such a vociferous opposition from the State during the arguments. We got a feeling that the dividing line

between State and the mining lease holders was blurred. A neutral, balanced and measured response by the State would have been more appropriate and commensurate with its role.

73. Third, in this Petition, the State has filed 66 pages affidavit taking numerous legal points. It was filed with promptitude and obviously a substantial effort is put in it by the State machinery. Why we refer to it because, simultaneously we are hearing other public interest litigations in respect of the mining affected villages. These villages have suffered severe air pollution due to mining, the natural streams have been polluted and dried up and many do not have water to drink. In these petition, there was absolute lack of any response from the State. At first there were simple denials that problem is not serious. We had to pass series of orders over a period four months just to ensure that the State takes steps to provide drinking water to these villages. We found that 180 Crores were collected by the State of Goa in last two years in District Mineral Fund for the mining affected, but not even single rupee was spent. The Foundations were established after we passed the orders and their first meeting was held just last month. We had to literally push the State on every date to do something to alleviate the suffering of the innocent mining affected. This sharp contrast in the State response in respect of these two ends of mining spectrum, the Mining Affected and the Mining Beneficiaries, is too stark for us not to notice. We

write it here because it pains *our* conscience.

74. In the result of the discussion, the Writ Petition is disposed of as under :

(I) The impugned decision of the State of Goa dated 21 March 2018 to permit transportation of the royalty paid ore after 15 March 2018 in respect of 88 leases, not covered by the order passed by the Supreme Court dated 4 April 2018 in respect of the Appellants before the Supreme Court therein, is quashed and set aside.

(II) The State Government will take a decision within four weeks from today in the light of the observations made in this Judgment and in view of the legal position regarding its ownership rights as a custodian of the mineral resources and its powers to take possession, sell and dispose of the ore in question to utilize the proceeds for public purpose.

(III) The interim order dated 28 March 2018 is confirmed, and it shall continue as a final relief, excluding the ore covered by the order passed by the Supreme Court dated 4 April 2018 in respect of the Appellants before the Supreme Court therein. It is clarified that this order will not be construed as an embargo on the State to transport the ore in question treating it as a State property.

(IV) The Chief Secretary, State of Goa will hold a meeting

with all the concerned officers within a period of 15 days from today to chalk out a comprehensive plan for the safety of the mines in question.

(IV) The Controller General of Indian Bureau of Mines will hold an enquiry to verify the correctness of the mining data maintained by the State of Goa in light of the disparity noticed and publish the report of such inquiry in the public domain, within a period of six months from today.

75. Rule is made absolute in the above terms.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.

76. At this stage, Mr. Kantak, the learned Senior Advocate for the Respondents seeks stay of the order. We have quashed and set aside the decision of the State Government and directed the State Government to take decision within a period of four weeks. Hence, it is not necessary to stay the operation of this Judgment and Order. The request is accordingly rejected.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.