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The Secretary (Mines),
Government of Goa,
Secretariat,
Porvorim, Goa

Subj: Recovery of compensation under Section 21(5) of MMDR, 1957 on account of illegal mining

Dear Sir,

This is in continuation of our letters dated 30-Apr-2014 titled “Recoveries of amounts from sale of iron ore from mining leases found operating without a valid lease from November 2007 till September 2012”¹ and 10-Dec-2014 titled “Recoveries of proceeds from illegal mining in Goa (2007-2012)”².

You may recall that the Supreme Court in WP 435 of 2012 had ruled that all mining after 22-Nov-2007 was illegal, and mining stopped only on 10-Sep-2012, nearly 5 years later. We had asked the government to start recovery proceedings under Section 21(5) of the MMDR Act, and estimated the amount recoverable conservatively at Rs. 65,058 crores.

I now draw your attention to the recent Supreme Court judgment in WP 114 of 2014 (Common Cause vs UOI & Ors, the Odisha mining case) delivered on 2-Oct-2017.³ It has made some rulings that are relevant to the situation in Goa. Here are key extracts:

ECs cannot be retrospective

“124. ... The concept of an ex post facto or a retrospective EC is completely alien to environmental jurisprudence including EIA 1994 and EIA 2006. We make it clear that an EC will come into force not earlier than the date of its grant”

¹

<http://hash-cookies.s3.amazonaws.com/How%20much%20is%20recoverable%20from%20the%20miners%20-%2028-4-2014-1.pdf>

²

<http://goenchimati.org/wp-content/uploads/2016/06/2014-12-11-GF-letter-to-CS-Goa-on-the-need-to-start-recovery-proceedings-with-Calculations.pdf>

³ http://supremecourtfindia.nic.in/supremecourt/2014/4352/4352_2014_Judgement_02-Aug-2017.pdf

Not adhering to statutory requirements is illegal mining

“128. ... the holder of a mining lease is required to adhere to the terms of the mining scheme, the mining plan and the mining lease as well as the statutes such as the EPA, the FCA, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. If any mining operation is conducted in violation of any of these requirements, then that mining operation is illegal or unlawful. Any extraction of a mineral through an illegal or unlawful mining operation would become illegally or unlawfully extracted mineral.”

Mining in excess of the mining plan is illegal mining

“139. ... While mining in excess of permissible limits under the mining plan or the EC or FC on leased area may not amount to mining on land occupied without lawful authority, it would certainly amount to illegal or unlawful mining or mining without authority of law.”

Section 21(1) of MMDR Act: Illegal mining is a penal offence

“141. Section 21(1) of the MMDR Act is clearly relatable to a penal offence and applies if any one contravenes the provisions of Section 4(1) of the MMDR Act. Section 4(1) of the MMDR Act prohibits the undertaking of any mining operation in any area except under and in accordance with the terms and conditions of a mining lease and the rules made thereunder. Therefore, when a person carries out a mining operation in any area other than a leased area or violates the terms of a mining lease, which incorporates the mining plan and which requires adherence to the law of the land, that person becomes liable for prosecution under Section 21(1) of the MMDR Act. In the event of a conviction, he or she shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to Rs.5 lakh per hectare of the area”

Section 21(5) of MMDR Act: Illegal mining requires recovery of ore or its value

“150. In our opinion, Section 21(5) of the MMDR Act is applicable when any person raises, without any lawful authority, any mineral from any land. In that event, the State Government is entitled to recover from such person the mineral so raised or where the mineral has already been disposed of, the price thereof as compensation. The words ‘any land’ are not confined to the mining lease area. As far as the mining lease area is concerned, extraction of a mineral over and above what is permissible under the mining plan or under the EC undoubtedly attracts the provisions of Section 21(5) of the MMDR Act being extraction without lawful authority. It would also attract Section 21(1) of the MMDR Act. In any event, Section 21(5) of the Act is certainly attracted and is not limited to a violation committed by a person only outside the mining lease area – it includes a violation committed even within the mining lease area. This is also because the MMDR Act is intended, among other things, to penalize illegal or unlawful mining on any land including mining lease land and also preserve and protect the environment. Action

under the EPA or the MCR could be the primary action required to be taken with reference to the MCR and Rule 2(ii a) thereof read with the Explanation but that cannot preclude compensation to the State under Section 21(5) of the MMDR Act. The MCR cannot be read to govern the MMDR Act”

Quantum of compensation is 100% of the value

“153. In our opinion, there can be no compromise on the quantum of compensation that should be recovered from any defaulting lessee – it should be 100%. If there has been illegal mining, the defaulting lessee must bear the consequences of the illegality and not be benefited by pocketing 70% of the illegally mined ore. It simply does not stand to reason why the State should be compelled to forego what is its due from the exploitation of a natural resource and on the contrary be a party in filling the coffers of defaulting lessees in an ill gotten manner”

Amounts due to be paid within a deadline: After payment, mining may restart

“225. The amounts determined as due from all the mining lease holders should be deposited by them on or before 31st December, 2017. Subject to and only after compliance with statutory requirements and full payment of compensation and other dues, the mining lease holders can re-start their mining operations.”

The above referred judgement has determined that Environment Clearances issued under the 1994 EIA notification expired after five years of grant. Any mining operations in excess of the five year grant are illegal. Further, the Shah Commission Report (2012) and the CEC Report (2012) have documented many cases where mining leases were operational while not having all the required approvals. Extraction in excess of mining plans was also observed. In light of the judgment in the Odisha mining case, it is clear that large amounts are recoverable as compensation under Section 21(5) of the MMDR Act. Penal action under Section 21(1) must also be considered, as per the judgement quoted above.

In conclusion, I reiterate that the state has failed to proceed with the recovery of at least Rs. 65,058 crores. Following the Odisha judgment, there are many other sums recoverable. The Government is the public trustee of the common wealth – our *uttaradhikari*, our *jeypad*. It is your constitutional duty to act expeditiously to recover this money. If these sums are deposited in the Goan Iron Permanent Fund (popularly called the Goenchi Mati Permanent Fund) and a real interest of only 3% earned, and distributed equally to all as a common dividend, we could eliminate poverty in the state of Goa.

We would be happy if you would grant us an appointment to discuss this issue.

Yours faithfully,

(Dr. Claude Alvares)
Director