

THE GOA GRANT OF MINING LEASES POLICY, 2014

BACKGROUND

In accordance with the Directions contained in the judgment and order of the Hon'ble Supreme Court dated 21st April, 2014 in Writ Petition(Civil) No. 435 of 2012, the Hon'ble Supreme Court has declared that all the Mining Leases in the State of Goa have expired on 22nd November, 2007. The Hon'ble Supreme court has further declared that all the other extracted mineral in the State belonged to the State Government and have permitted the State to e-auction the mineral ore being the property of the State. In paragraph 65 and 66 of the Hon'ble Supreme Court Judgment, the Hon'ble Supreme Court has categorically held as under : -

Para no. 65.They cited the opinion of the Constitution Bench of this court in Natural Resources Allocation, In Re, Special Reference No. 1 of (2012(3012) 10 SCC 1) that auction despite being a more preferable method of alienation/ allotment of natural resources, cannot be held to be a Constitutional requirement or limitation for alienation of all natural resources; and therefore every method other than auction cannot be struck down as ultra vires the Constitutional Mandate.

Para No. 66.We are of the considered opinion that it is for the State Government to decide as matter of Policy in what manner the Leases of these Mineral Resources would be granted, but this decision has to be taken in accordance with the Provisions of the MMDR Act and the Rules

made there under and in consonance with the Constitutional Provisions and the decision taken by the State of Goa to grant a Mining Lease in a particular manner or to a particular party can be examined by way of a Judicial Review by the court. To quote the opinion of four Judges out of five Judges expressed by D.K. Jain in 'Natural Resources Allocation, In Special Reference No. 1 of 2012 (supra).

“Alienation of Natural Resources is a Policy Decision, and the means adopted for the same are thus, executive prerogatives. However, when such a Policy Decision is not backed by a social or welfare purpose, the precious and scarce natural resources are alienated for commercial pursuits of profit minimizing private entrepreneurs, adoption of means other than those that are competitive and maximize revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the Principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair unreasonable and capricious due to its antimony with Article 14 of the Constitution.”

It has further been directed by the Hon'ble Supreme Court that it is for the State Government to decide as a matter of Policy, in what manner Mining Leases are to be granted in the future. The State Government was

actively considering the framing of the Policy by considering several factors. As the Goa State Legislative Assembly was in session, the Hon'ble Chief Minister , out of deference to the ongoing session of the House, had made a statement on the floor of the House to the following effect.

STATEMENT OF SHRI MANOHAR PARRIKAR , HON'BLE CHIEF MINISTER ON THE MATTER OF SHORT DURATION DISCUSSION REGARDING MINING LEASES

The Mining Leases in the State of Goa were initially granted as concessions which came to be abolished by virtue of the Goa, Daman & Diu Mining Leases (Abolition of Mining Concessions and Declaration as Mining Leases) Act, 1987.

Pursuant to this , all the erstwhile concessions were converted into mining leases and were renewed for a period initially for ten years and thereafter the subsequent period of Renewed Lease came to be treated as renewal for twenty years being the First Renewal.

In terms of sub – rule (80 and (9) of Rule 24(A) of the Mineral Concession Rules, 1960, an application for first renewal of a deemed mining lease referred to in Section 4 of the Abolition Act was required to be made to the State Government before the expiry of six months period as provided in Section 5(1) of the Abolition Act. There was power in the State Government to extend it by another one year. The State Government did in fact extend the time for making applications for first renewal upto 22nd November, 1998.

All the Concessionaires in the State of Goa, who had filed the applications by 22nd November, 1998, were renewed, and these renewals

were to expire in the year 2007 i.e. on 21st November, 2007 after a period of twenty years as contemplated by the MMRD Act.

Most of the lease holders filed their applications for second renewal one year before the expiry of the period of lease as required in terms of the Rules. The then State Government of Goa initially headed by Shri Pratapsingh Raoji Rane until June, 2007, and thereafter the Government headed by Shri Digambar Kamat till 2012, although had a duty in Law to dispose of these applications for renewal, singularly failed to either deal with or dispose of these applications. Indeed, out of 409 applications seeking renewal which were filed and pending only eight applications came to be dealt with and renewed, that too in the year 2010.

As a result of this, the then State Government of Goa allowed the working of the mines from 2007 till 2012, based on Deemed Extension Basis without actually dealing with the renewal applications which were filed by the Mining lease holders well within time. Non –disposal by the then State Government cannot be attributed to be the fault of the lease holders.

The Hon'ble Supreme Court has in its Judgment and Order dated 21st April, 2014 clearly held that the action of allowing the mines to be run on Deemed Extension Basis from the years 2007 to 2012 was completely illegal and has further declared that the so – called deemed mining leases in the State of Goa have expired in the year 2007.

After my Government took over on 09th March, 2012, and after examining the matter from several angles including the then Public Accounts Committee Report, the Hon'ble Mr. Justice Shah Commission of Inquiry Interim Report, and having regard to the factual situation, ordered stoppage of the mining operations in the State of Goa by Government

Order dated 10th September, 2012. This Order was unsuccessfully challenged in the Hon'ble Supreme Court of India by the lease holders, and in the aforesaid judgment and Order of the Hon'ble Supreme court, the order passed by State on 10th September, 2012 has been specifically upheld and Hon'ble Supreme Court has further declared that the said Order will have to be continued till decisions are taken by the State Government to grant fresh leases.

Few things emerge out of the Hon'ble Supreme Court's Order . In the first place , the mining leases have been held to have expired in the year 2007. In the second place, the State Government has been directed, in accordance with its policy to grant fresh leases in the State.

With these, the options available with the State Government are as follows: -

The State Government can directly auction the leases in order to secure the best returns for the grant of leases by way of a competitive bidding, process,

- a) The State Government can also form a State Corporation and undertake the mining activities through the State Mineral Development Corporation.*
- b) The State Government could also proceed to grant fresh leases, in terms of the MMRD Act by the following the process of preferential grant of leases to certain persons as specified in the MMRD Act.*
- c) Yet another option available to the State Government was to decide the renewal applications which were pending since the year 2006 and which had remained without any disposal.*

Each of the aforesaid modes has its own merits and de-merits.

While there cannot be any gainsaying that the mode of auction could have brought in possibly and probably a greater revenue share for the state of Goa on account of the competitive bidding and the consequent match-bids, it has also certain risks involved in it, namely it would have involved inviting unknown business interest, who are often referred to as mining mafia, to carry out and undertake mining activities causing risk and danger to the several areas including ecological factors, The Hon'ble Supreme Court's Order dealing with Karnataka is an eye opener for everyone to see.

In so far as reserving the area in the State to undertake mining activities, this would have required forming of a Corporation or an Agency to carry out and undertake the work of mineral excavation as well as selling the ore or through export. This would involve several logistical issues including formation of a Corporation, which has to undertake the obligations flowing from being a "State" , the absorption of the existing work force, apart from the inefficiency and corruption that plague the Public Sector Enterprises by and large, which pose serious challenges.

Following the preferential mode by giving it to those operators who have already excavated the area in the earlier term or giving it out to those who have surface rights or who have obtained consent of surface rights was yet another option.

The aforesaid each one of the options were actively under consideration of the State Government. The matters were being

considered at various levels and its pros and cons were being examined by applying the relevant and material consideration. While the State Government was in the process of deliberating on all these issues at various levels, the judgment and order of the Hon'ble high court in Writ Petition filed by certain lease holders came to be delivered on 13th August, 2014 whereby the Hon'ble High court has directed the execution of the Lease Deeds under Section 8(3) of the MMRD Act in favour of the lease holders who have already paid the stamp duty pursuant to Orders of the State Government in accordance with the Goa Mineral Policy, 2013, placed before the Hon'ble Supreme Court and subject to the conditions. All Authorities , be it Civil and Judicial, in terms of Article 144 of the Constitution of India are required to act in aid of the Hon'ble Supreme Court and the law declared by the Hon'ble Supreme court is binding on all the Courts within the territory of India under Article 141 of the Constitution of India.

While it is a matter of natural choice for the State Government to have considered, while framing a policy, for granting fresh leases even to the existing lease holders to follow the process of competitive binding, may be on a limited scale and limited to certain class of bidders by specifying a minimum bid criteria, the judgment of the Hon'ble High Court is an intervening factor, directing the State Government to execute the 27 Lease Deeds and decide the pending applications in accordance with law. This judgment and order of the Hon'ble High Court virtually leaves no choice to the State Government, thereby to completely abandon

the process of competitive bedding for earning the best revenue to the State Government . While this was the position taken by the State Government in the Goa Mineral Policy, 2013, and the Hon'ble High Court has interpreted the Order of the Hon'ble Supreme court in Writ Petition (Civil) No. 435/2012, the State Government in view of Hon'ble High court order, has for the present ruled out the process of going for competitive bidding. The State Government is considering actively, within its Constitutional powers and functions, to come out with regulatory and controlling measures and levy and collect appropriate returns having regard to the fact that the soil comprising the land belongs to the State. So long as there is a direct relation of the land, the State Legislature can for the purpose of augmenting the revenue resources of the State as well as to compensate the State not only for rendering services by the State including pollution control, prevention of ecological damage and also other ecological measures but also to regulate and control the subject of land which is excavated. The State Government has also commenced the inquiry and investigation into the violations of matters under Rules 37 and 38 of the Mineral concession Rules, 1960 as directed by the Hon'ble Supreme Court.

The state Government, upon a result of the inquiry commenced and undertaken impose appropriate fines and put penal consequences including cancelling, revoking or rejecting the lease deeds or applications for renewal in respect of those lease holders who are found guilty. While in terms of the Judgment of the

Hon'ble High Court, Lease Deeds are to be executed in 27 cases and the pending applications have to be considered. The State Government shall not considered those applications which are in Wild Life Sanctuary areas or areas which are otherwise protected. At the same time, notwithstanding the fact that pursuant of the order of the Hon'ble high court in such cases, Lease Deeds are to be executed or renewals are to be granted, all such Lease Deeds and grant of any renewal will be subject to the outcome of the inquiry under Rules 37 and 38 of Mineral Concession Rules, 1960 in terms of the Hon'ble Supreme court's order and the State Government will also impose such and other conditions / restrictions on undertaking of any mining activity. Any mining activity undertaken by the State will of course be subject to and in accordance with the Rules framed by the State Government in the year 2013.

(Note : The statement reproduced has been slightly corrected for better clarity without altering any meaning)

As is seen from the aforesaid, the Judgment and order of the Hon'ble High Court is an intervening circumstance inasmuch as it directs the execution of Lease Deeds in 28 cases and consideration of the Application under Section 8(3) by the State Government in the other cases.

ACTION AS PER THE SUPREME COURT JUDGEMENT:

The Hon'ble Supreme Court has also directed the State Government to hold an Inquiry in so far as violation of Rules 37 and 38 of MC Rules 1960, are concerned; and the Hon'ble Supreme Court has directed the

State Government to initiate action against those Mining Leases which have violated Rules 37 and 38 of the Mineral Concession Rules, 1960.

The aforesaid are the Directions contained in the Judgment of the Hon'ble Supreme Court of India which are fully binding on the State Government under the Constitution of India. In terms of Article 142, the State is required to act in aid of these Orders.

While the Hon'ble High Court in its Judgment and Order dated 13th August 2014, has directed that the Lease Deeds under Section 8(3) of the MMRD Act be executed in favour of the Petitioner/Lease Holders which have already paid the Stamp Duty pursuant to Government Orders in the Goa Mineral Policy, 2013, placed before the Hon'ble Supreme Court in Writ Petition(Civil) No.435 of 2012 and subject to the Conditions laid down by the Hon'ble Apex Court in the said Writ Petition.

The second Direction relates to deciding of the Renewal Applications under Section 8(3) as expeditiously as possible; and preferably within a period of three months from the date of the receipt of a copy of the Hon'ble High Court's Order.

While the State Government was considering the Judgment and Order of the Hon'ble High Court, it became clear that the Judgment of the Hon'ble High Court is subject to the Conditions laid down by the Hon'ble Apex Court. In any event and situation, the Judgment of the Hon'ble Apex Court and the Directions contained therein, would bind the State Government; unless otherwise directed by the Hon'ble Apex Court.

In the considered Opinion of the State Government, it would be futile to challenge the Judgment of the Hon'ble High Court before the Hon'ble

Apex Court as that would once again delay the commencement of the Mining Operations. As a matter of fact, a substantial portion of the State's Revenue comes from the Mining Sector. The State has been virtually starved of funds for undertaking many activities including Infra-structural Projects; and on account of the stopping of the Mining Operation, the State had to walk a tight-rope as there has been no Revenue coming from one of the major source of Revenue.

It is known fact that nearly 1,50,000 of the population is directly or indirectly depends on the Mining Sector. Apart from the workmen, the Transport Sector, namely the Trucks used for road transportation, the Barges which are used for transport through rivers from jetties, big vessels has been affected. Indeed, it is a matter of record that the country on account of stoppage of Mining Operations, has suffered a loss of nearly 8 billiondollars. Stoppage of the Mining Operations has a cascading effect of a vicious nature. Not only those who are directly involved in mining such as the mining companies, truck operators, barge transporters, mining machinery owners, but small time business / industry such as tea stalls , automobile workshop, petrol pump, consumer goods vendor, road side tyre service provider etc have all suffered. Further, exposure of Financial Institutions Including Banks is more than Rs. 850crores as loan/ advance on Mining Sector to trucks, barges, mining machinery etc.; to small time operator besides which advances of housing / consumer loan and other mining companies exceeds Rs. 1000 crores.

There are around 20,000 trucks estimated to be used for Mining Operations; out of which, altogether 12546 which are engaged in

transportation of Iron Ore have been registered so far with the Mining Department for purpose of availing benefit under the Government scheme.

The stoppage of mining operations has impacted owners, drivers, operators, and sailors who were depending directly on the mining operation besides impacting service provider to this sector.

This has also affected the Banking Sector, more particularly small Co-operative Banks, which had advanced Loans to the Truck Owners at the time of purchase of the Trucks. In fact, non-payment of the Instalments has adversely affected the financial state of the smaller Co-operative Banks and societies.

There are around 375 Barges estimated to be plied for Mining Transportation; out of which 223 barges have been registered so far with the mining department in the state of Goa which are primarily engaged in transportation of mining ore. Stoppage of the Mining Activity has stopped all the Barge Transport thereby affecting their owners, staff and their families.

Result of the slump in economic activities has also impacted the education sector as school dropouts in the Mining Belt has drastically increased.

Many of the Dockyards which were catering to Barge Services have also laid off their employees for lack of work; thereby affecting not only the Owners of the Dockyard but also its employees and their families depending on it.

There are around 220 Mining Machineries so far registered with the Department of Mines & Geology. Presently due to stoppage of the Mining

Activity, these Machineries and the staff employed on these Machineries are not being used at the Mines.

This has rendered many of the employees depending on this Mining Machinery unemployed; thereby directly affecting them and their families.

Besides most of the Mining Companies started retrenchment and lay offs of their employees . This has directly affected thousands of people without any light at the end of tunnel.

This has kept the staff at Panaji Port, Mormugão Port and at the Transhippers, idle and without a job; thereby affecting their livelihood and basic human needs and rights.

All these aforesaid factors would demonstrate that there has been a drastic fall in the purchasing power of the persons who were directly or indirectly depending on the Mining Activity. Resulting in reduction in spending power drastically thereby directly affecting business and economics of the mining belt and the state.

The aforesaid facts would demonstrate that stopping of the mining activity had a cascading effect on the overall economy; and it has directly affected all the persons who were directly or indirectly dependent upon Mining.

Apart from this, this has directly affected the State Revenue, resulting in loss of more than Rs. 3000 crores, amounting to around 22% of States own revenue. The stoppage has also impacted the standing of Goa as a steady and dependable supplier of low grade Iron ore in the international market and as it stands today Australian and Brazilian suppliers has occupied the space. The ban has not only reduced the income of the

people but has also brought about a cascading effect to the entire economy of the State.

Indeed, the State Government as regards the critical situation arising out of the Mining Operation, the same needs to be remedied at the earliest in order to avoid any chaos, disorder and the situation going out of control. The State Government has done its best by ensuring that the Workmen are not retrenched or jobless and are continued to be paid by the Mining Companies. The State Government has also given out funds for the purpose of helping the workmen sector and the persons involved therein by coming to their aid. The State Government has also ensured that families and children of mining dependents do not suffer; and has further maintained a tight vigil, grip and control over the Law and Order situation; and has ensured that no untoward Activity in derogation of the social order takes place on account of this critical situation.

Having regard to the aforesaid, the State Government thought it proper to act in accordance with the Directions of the Hon'ble Supreme Court by balancing the equities, needs; as also to sub-serve the Public Interest and by having sustainable development by protecting the Ecological and all other factors.

POLICY FRAMEWORK

The State Government has been considering and deliberating the entire matter, and thought it proper having regard to the facts that:

- a) The Mining Lease Holders had applied for the Second Renewal well within time.

- b) The fact that the Applications of the Mining lease holders for the Second Renewal were not disposed off by the then State Government and for which the Lease Holders cannot be blamed.
- c) Having further regard to the fact that 27 mining Lease Holders despite the closure of the mining operations, when called by the State to do so within the period, have paid the Stamp Duty; as also, other levies.
- d) Such payments helped the State Government to override the financial crisis at that point of time.
- e) Having regard to the fact that a large number of labour staff employed with this lease holders.
- f) That concerned Mining Lease Holders have invested heavily into the development of Mines; as also, into the Machinery such as Ripper Dozers, Cranes, wheel loader. Beneficiation plants etc.
- g) Other methods are not as suitable as this method for various reasons listed Hon'ble Chief Minister statement to the house listed above.

The State Government after having considered the matter from every possible angle, has decided to exercise its Power under Section 8(3) of the Mines and Mineral Regulations and Development Act, 1957, and to consider each of the cases on their own merits and subject to compliance with the Conditions which may be laid down by the State Government including for strict Pollution Control measures, and thereafter take a decision on the renewal in terms of Section 8(3) of the MMRD Act, 1957, complying fully with the Procedure laid down therein.

Though the State Government has in principle decided to follow the route of the renewal of Lease under Section 8(3) of the MMRD Act, it shall be subject to the following:-

Unless and until the Inquiry initiated pursuant to the Judgment and Order of the Honourable Supreme Court of India against those Mine Lease Holders found to be violating either Rule 37 or Rule 38 of the Mineral Concession Rules 1960, or otherwise indicted in the Report of the Justice Shah Commission / PAC report or found to be engaged in, any kind of illegality of whatsoever nature such as illegal Sale of Ore, Sale of Royalty Challan without Ore, Encroachment of adjoining areas outside the lease over production in excess of the limit specified in the Environmental Clearance; those which have undertaken unscientific mining Operations; those who have violated or have not paid the Royalty amount; those who have re-used old Royalty Challans for defrauding; and those involved in Illegal Mining Activities shall not be considered for renewal of the Mining Leases.

For this purpose, presently the inquiries are in progress at various levels and foras including the investigation by the SIT Team, by the Team of Chartered Accountants which have been set up by the State Government and after the Inquiry is complete or during the course of the inquiry where it is found that any violations have taken place, such persons shall not be considered for Grant/Renewal of the Leases.

For the aforesaid purpose, mining leases may be classified under in Categories (I), (II) and (III).

Category I will be those Mining Leases which have no violations or very minimal violation of any provision / condition of applicable laws / rules orders / permissions etc. or those which cannot otherwise be referred to as 'violations'.

Category II are those Mining Leases which have been found to have violated the Provisions of the Mineral Concession Rules including Rules 37 and 38 and other matters as mentioned in the Public Accounts Committee Report/. Justice Shah Commission Report. In this category, the State Government will consider each of the cases on its own merits; and wherever the violations are noticed subject to the same being remedied by paying appropriate Penalty/Fines including those of forfeiture, the State Government shall pass appropriate Orders in accordance with Law.

Category III – Mining leases will be those which are found to have violated substantially any provision / condition of applicable laws / rules / orders / permissions etc and in which cases the State Government shall determine the Lease/reject their 'Application for the Second Renewal'.

Those Mining Lease Holders who have paid Stamp Duty, in which there are no violations found in terms of Mr. Justice Shah Inquiry/Public Accounts Committee Report, shall be considered for Renewal.

Grant of Leases will be only after compliance with the Provisions of Section 8(3), including the requirement of the Rules; namely the Report of the Indian Bureau of Mines; and after in each case the State Government has come to the conclusion that it is in the interest of Mineral Development that there is a need to renew the Mining Lease.

Such Mining Companies which have already been issued Show Cause Notices, or a Hearing is in progress for various violations and upon the decision thereof by the State Government, will be considered and given time for payment of Stamp Duty and other charges leviable and payable in accordance with the Conditions imposed by the State Government. The State Government shall also consider imposing Charges prospectively and retrospectively as regards recovery etc., in addition to the Royalty, through appropriate Legislative measures. Including creation and payment of 10% of the sale proceeds to Goa Mineral Permanent fund.

The formation of the entire Policy is aimed that it is required to balance various interests having regard to the Principle of Sustainable Development; but by keeping in mind the commercial interest of the present state of economy, the interest of the labour class, the interest of the working class including other staff, the interest of the market in the Mining Localities, the interest of the Public Sector, the interest of the existing Mining Lease Holders and the overall welfare needs of the State; and require all urgent infrastructural development. By balancing all these interests the present Policy has been formulated by the State Government.

The above policy is in principle decision of the state Government and will be vetted for exact legal requirements from specific necessities as also from financial view points and notified thereafter.