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Versus

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**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD  
HON'BLE MR. JUSTICE ARUN KUMAR RAI**

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|--------------------|----------------------------------|
| For the Petitioner | : Mr. Sumeet Gadodia, Advocate   |
|                    | : Mr. Ranjeet Kushwaha, Advocate |
|                    | : Ms. Tanya Kumari, Advocate     |
|                    | : Mr. Anish Lal, Advocate        |
| For the UOI        | : Mr. Sunil Kumar, Advocate      |
| For the State      | : Mr. Shray Mishra, A.C. to A.G. |
| For the SEIAA      | : Mr. Bhanu Kumar, Advocate      |

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**C.A.V. on 14.08.2025**

**Pronounced on 02/09/2025**

**Per Sujit Narayan Prasad, J.**

**1.** The writ petition is under Article 226 of the Constitution of India for issuance of following reliefs :-

- “(i) For issuance of an appropriate writ, order or direction, declaring that the Management Plan for Sustainable Mining in Saranda and Chaibasa of Singhbhum District, Jharkhand (Annexure-5), published by the Respondent no. 1 in the year 2018 does not have force of law and can otherwise not be made applicable to mining activities in non-forest areas;
- (ii) Upon such declaration, for issuance of an appropriate writ, order or direction particularly a writ of or in the nature of certiorari, quashing and setting aside the letter bearing no. 461 dated 24.03.2023 (Annexure-4), issued under the signature of respondent no.4 by which the application of petitioner for grant of Environment Clearance has been rejected;
- (iii) For issuance of a further appropriate writ, order or direction particularly a writ of or in the nature of mandamus, commanding upon the respondent no.4 to forthwith grant Environment Clearance to the petitioner for operating his mines for which he has been granted a Letter of Intent dated 15.09.2022 upon submission of a fresh application; and
- (iv) For any other relief or reliefs for which the petitioner is legally entitled in the facts and circumstances of the case.”

**Factual Matrix**

**2.** The brief facts of the case as per the pleading made in the writ petition, which are required to be enumerated, read as under :-

It is the case of the petitioner that the petitioner, a proprietorship firm, upon participating in auction for grant

of mining lease for stone, after following the due process prescribed in law and having declared as the preferred bidder, has been issued with a Letter of Intent (LoI) bearing no. Kha.Ni (Nilami)-22/2022-1952/M dated 15.09.2022, for grant of Mining lease over an area of 4 Acres in Gundijora Stone Block situated in District West Singhbhum (Jharkhand), and has complied with all the conditions of such LoI.

**3.** As a prerequisite for execution of Mining Lease deed and initiation of mining operations, the petitioner submitted a proposal for grant of Environment Clearance before the respondent no.4 vide proposal no. SIA/JH/MIN/413198/2023.

**4.** The Mining Plan in respect of the aforesaid mines was also approved by the competent authority vide letter no. G/2022-23-296 dated 14.10.2022.

**5.** The mining lease of the petitioner is situated within village Gundijora which is indisputably a revenue village having no forest cover/growth and does not have any chunk of land under the notified forest cover.

**6.** The application for grant of environment clearance was rejected by the respondent no.4 for the reason that the village in which the petitioner's mines is situated falls under 'No-Mining Zone' as per the Management Plan for Sustainable Mining (MPSM). The communication stating

the said reason and rejecting the proposal for grant of EC was issued vide letter no.461 dated 24.03.2023.

**7.** The respondent no.1 published the MPSM in the year 2018 pursuant to a study conducted by the ICFRE in connection with the Justice Shah Commission's report on illegal mining which has been published to propose a plan for sustainable operation of mines in Saranda and Chaibasa Forest Divisions complying the recommendations of Justice Shah Commission. The study conducted by the ICFRE, which forms the basis for the MPSM, was basically aimed at conservation and protection of forest and was particularly in relation with iron ore mining.

**8.** At page 32 of the report, serial no.245 of the table notes the name of the village in which the petitioner's mines are situated, identifies the same as a part of the Chaibasa Forest Division and as a Conservation Area/no-mining area. The aforesaid identification of entire village Gundijora as a conservation area/no-mining zone itself is arbitrary and without any basis/justification.

**9.** The MPSM is otherwise a document/report based on a study by ICFRE which can, at best be termed as a guideline which has not been notified in a gazette neither has been approved by the Competent Authority and has not been authenticated for its application/enforcement /implementation as per law.

**10.** It is the further case of the petitioner that although para 17 of the same mentions that the same has been prepared in consultation with the stakeholders, but the petitioner never got any notice to participate in any study, which today is set to infringe its valuable rights. Moreover, the entire MPSM seems to have been drafted in connection with Iron ore mining and does not specifically talk about any other mineral.

**11.** It is the case of the petitioner that the MPSM also states that the sanctity of existing lease boundaries extending to biodiversity hotspots shall be maintained and mining shall be allowed. However, despite the above, the respondent no.4 has passed the impugned order.

**12.** It is the grievance of the writ petitioner that the State Government has consented for stone mining in the Saranda forest area, district of Singhbhum West, Chaibasa, as would be evident from Letter of Intent (LoI) bearing no. Kha.Ni (Nilami)-22/2022-1952/M dated 15.09.2022, but as per the requirement, when the State Environment Impact Assessment Authority (SEIAA) has been approached for grant of Environment Clearance, the same has been rejected vide communication dated 24.03.2023 as contained in letter bearing No.461 on the ground that the area of Saranda Forest has been declared to be

conservation zone and no mining operation is allowed in view of the MPSM.

**Submission made on behalf of the Petitioner**

**13.** The argument has been advanced on behalf of petitioner that the aforesaid management plan for sustainable mining in Saranda in Chaibasa of Singhbhum West district has only considered the issue of mining operation of iron ore and manganese and nothing else.

**14.** The contention has been raised that the subject matter of the mining operation herein is for stone mining which has not been dealt with in MPSM, therefore, the ground taken by the SEIAA in not issuing the Environment Clearance is absolutely improper and without application of mind. Therefore, the decision as contained in letter bearing no. 461 dated 24.03.2023 is fit to be quashed and set aside.

**Submission made by learned counsel appearing for the respondent-SEIAA**

**15.** Learned counsel for the SEIAA has submitted that it is incorrect on the part of the writ petitioner to take the ground that only consideration which has been given in the MPSM plan is confined to the mining of iron ore and the manganese, rather, the consideration is to be given on the environmental issue and once the environmental issue is the sole criteria then it is upto the satisfaction of the SEIAA

to take a decision to issue environment clearance or not. The SEIAA, on the basis of the aforesaid consideration, has taken a conscious decision in order to maintain the cause of conservation of the Saranda Forest and that is the reason the Environment Clearance has not been given. Hence, such decision cannot be said to suffer from an error.

**Submission made by learned counsel for the Union of India**

**16.** Learned counsel appearing for the respondent-Union of India has submitted that the petitioner has submitted a proposal for grant of Environmental Clearance before the Respondent no. 4 i.e. State Level Environment Impact Assessment Authority (SEIAA) Jharkhand. The SEIAA, Jharkhand, vide letter dated 24.03.2023 rejected the application for grant of Environmental Clearance stating that the village in which the petitioner's mines falls is situated under 'No-Mining Zone' as per the Management Plan for Sustainable Mining (MPSM).

**17.** It has been submitted that the Management plan for Sustainable Mining was prepared by the Ministry of Environment, Forest and Climate Change upon the 'memorandum of action taken' on the 'first report on illegal mining of iron and manganese ores in the State of Jharkhand' of Justice M.B. Shah Commission of inquiry

submitted to the Ministry of Mines and the same was approved by the competent authority in the Ministry of Environment, Forest & Climate Change.

**18.** Learned counsel has further submitted that as per the recommendations made in the MPSM, the entire area of Saranda and Chaibasa of West Singhbhum District were categorized into two zones Mining Zone and Conservation Zones. Mining activities were recommended to be restricted in the mining zone only while no mining activities were recommended in the Conservation Zone.

**19.** It has further been submitted that the instant project for grant of Environment Clearance pertains to the Mining lease over an area of 4 Acres in Gundijora Stone Block situated in Village Gundijora, West Singhbhum District of the Jharkhand State. As per the MPSM, the entire Gundijora Village has been kept under the Conservation Area/No mining zone.

**20.** It has further been submitted that the MPSM did not differentiate between the type/category of mining activity.

**21.** Learned counsel has further submitted that the MPSM was formulated to holistically regulate the mining and allied activities in the Saranda & Chaibasa Region considering the area being highly ecologically sensitive and home to various types of flora and fauna. Further, if any

mining activity is permitted in a non-forest area falling within the no mining zone/conservation zone, the very purpose of conservation of flora and fauna would be defeated.

**22.** It has been submitted that the State Department of Mines and Geology is the Nodal Authority in the State for dealing with the allotment of mining leases under the Mines and Minerals (Development and Regulation) Act (MMDR Act) and is entrusted with the enforcement and regulation of mining operations in a State.

**23.** Learned counsel for the Union of India has submitted that the Ministry issued Environmental Impact Assessment Notification dated 14<sup>th</sup> September, 2006 which requires certain projects to obtain prior Environmental Clearance before any construction work in case of new projects or expansion and modernization of existing projects or activities.

**24.** It has been submitted that the Ministry vide notification S.O. 1886 (E) dated 20.04.2022 has delegated the power to the State Level Environment Impact Assessment Authority (SEIAA) to grant Environmental Clearances to all minor mineral mining projects, irrespective of mine lease area.

**25.** Learned counsel has further submitted that the State Level Environment Impact Assessment Authority

(SEIAA) Jharkhand, is a regulatory authority in the instant matter and the SEIAA, Jharkhand has considered the project in its meeting and after detailed examination unanimously decided not to accept the above mentioned project proposals for consideration of Environmental Clearance.

**Submission made by learned counsel appearing for the respondent-State**

**26.** Learned counsel for the State has submitted that although the consent to operate was given in the said forest area but based upon the MPSM, the State is not moving forward in the matter of issuance of lease. Moreover, the issuance of lease totally depends upon the issuance of Environment Clearance and so long as the Environment Clearance is not available, no lease can be granted by the State.

**Analysis**

**27.** We have heard the learned counsel for the parties and gone through the pleading made in the writ petition as also the affidavits filed on behalf of the respective parties including the response thereto filed on behalf of the petitioner.

**28.** This Court requires to consider as to whether the decision so taken by the Ministry of Environment and Forest by way of MPSM can only be given effect to in a case

of mining of iron and manganese or it is to be implemented in order to protect the issue of environment by causing no threat to the area of the Saranda Forest?

**29.** This Court, in order to answer the aforesaid issue, needs to refer herein the provisions of Environment (Protection) Act, 1986 with its object which has been enacted for the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property.

**30.** The Environment Protection Act, 1986, was enacted under Article 253 of the Indian Constitution, which empowers Parliament to make laws for implementing international agreements. Its foundation can be traced back to India's participation in the United Nations Conference on the Human Environment held in Stockholm in June 1972. At that conference, global leaders recognized the urgent need to address environmental degradation, and India pledged to take legislative steps toward environmental protection.

**31.** Be it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

**Statement of Objects and Reasons.**—Concern over the state of environment has grown the world over since the sixties. The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in

food chains, growing risks of environmental accidents and threats to life support systems. The world community's resolve to protect and enhance the environmental quality, found expression in the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June 1972. The Government of India participated in the Conference and strongly voiced the environmental concerns. While several measures have been taken for environmental protection both before and after the Conference, the need for a general legislation further to implement the decisions of the Conference has become increasingly evident.

2. Although there are existing laws dealing directly or indirectly with several environmental matters, it is necessary to have a general legislation for environmental protection. Existing laws generally focus on specific types of pollution or on specific categories of hazardous substances. Some major areas of environmental hazards are not covered. There also exist uncovered gaps in areas of major environmental hazards. There are inadequate linkages in handling matters of industrial and environmental safety. Control mechanisms to guard against slow, insidious build-up of hazardous substances especially new chemicals in the environment, are weak. Because of a multiplicity of regulatory agencies, there is need for an authority which can assume the lead role for studying, planning and implementing long term requirements of environmental safety and to give direction to, and co-ordinate a system of speedy and adequate response to emergency situations threatening the environment.

3. In view of what has been stated above, there is an urgent need for the enactment of a general legislation on environmental protection which *inter alia*, should enable co-ordination of activities of the various regulatory agencies, creation of an authority or authorities with adequate powers for environmental protection, regulation

of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment, safety and health.

**32.** “Environment” is a difficult word to define. Its normal meaning relates to the surroundings, but obviously that is a concept which is relatable to whatever object it is which is surrounded. Environment is a polycentric and multifaceted problem affecting the human existence, reference in this regard be made to the judgment of the Hon’ble Apex Court in the case of **T.N. Godavarman Thirumalpad v. Union of India, (2002) 10 SCC 606.**

**33.** It requires to refer herein that The Environment Pollution (Prevention and Control) Authority is a statutory authority constituted under Section 3 of the Environment (Protection) Act, 1986, and its directions are final and binding on all persons and organisations concerned, reference be made to **M.C. Mehta v. Union of India, (2002) 4 SCC 356.**

**34.** It requires to refer herein that under Section 3(2)(v) of the Act 1986 total prohibition against establishment of industries in an area is in force, State Government neither can grant exemption to a specified industry located within or attempting to locate itself within such area nor can the State direct the State Pollution Control Board to prescribe conditions for grant of NOC. The aforesaid view has been

rendered in the case of ***A.P. Pollution Control Board II v. Prof. M.V. Nayudu, (2001) 2 SCC 62.***

**35.** It requires to refer herein that the National Forest Policy, 1988 which lays down far-reaching principles must necessarily govern the grant of permissions under Section 2 of the Forest (Conservation) Act, 1980 as the same provides the road map to ecological protection and improvement under the Environment (Protection) Act, 1986. The principles/guidelines mentioned in the National Forest Policy, 1988 should be read as part of the provisions of the Environment (Protection) Act, 1986 read together with the Forest (Conservation) Act, 1980, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court ***Lafarge Umiam Mining (P) Ltd. v. Union of India, (2011) 7 SCC 338.***

**36.** It needs to refer herein that prior environmental clearance in terms of 2006 notification issued under Section 3 of the Environment (Protection) Act, 1986 Act read with Rule 5 of the Environment (Protection) Rules, 1986, is required to be taken before commencement of the “actual construction or building work” of the national highway by the executing agency (NHAI), reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in ***Project Implementation Unit v. P.V. Krishnamoorthy, (2021) 3 SCC 572.***

**37.** In the case of ***Goa Foundation v. Union of India*, (2014) 6 SCC 590** the Hon'ble Apex Court has categorically issued the directions regulatory bodies to deal with illegal mining and to restore the environment from the damage caused by mining, and further direction has been passed that all mining within a distance of 1 km from national parks and sanctuaries, are prohibited .

**38.** Recently the Hon'ble Apex Court in the case of ***Vanashakti Vs. Union of India* 2025 SCC OnLine SC 1139** while tracing the evolution of the Environmental Act 1986 and emphasizing the process of issuance of EIA (Environment Impact Assessment Notification, 2006) notification has observed that Sub-section (1) of Section 3 sums up the very object of the 1986 Act. Therefore, the EIA notification has been issued not only for the purposes of protecting and improving the quality of the environment but also for preventing and abating environmental pollution. Subsection (1) of Section 3 confers general power of taking measures on the Central Government. Subsection (2) confers specific power for taking measures in the matters set out in clauses (i) to (ix) thereof. Clause (v) of subsection (2) of Section 3 empowers the Central Government to take measures for putting restrictions of areas in which any industries, operations or processes shall not be carried out or shall be carried out subject to

safeguards. The relevant paragraph of the aforesaid judgment is being quoted as under:

“Part IV-A of the Constitution of India containing fundamental duties as set out in Article 51A was incorporated in the Constitution by the 42<sup>nd</sup> Amendment Act with effect from 3<sup>rd</sup> January 1977. Clause (g) of Article 51A provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. This Court in several decisions has held that the right to live in a pollution free atmosphere is a part of the fundamental right guaranteed under Article 21 of the Constitution of India.

**2.** The world changed rapidly after World War II. From the late 1960s and early 1970s, slowly there was a realisation about the drastic consequences of the destruction of environment and pollution of various kinds. In June 1972, at Stockholm, the United Nations Conference on Human Environment was held. In the said conference, several decisions were taken by the world community to protect the environment.

**3.** In our country, it took fourteen years thereafter for the legislature to come out with a law for protection and improvement of the environment. The Environment (Protection) Act, 1986 (for short, ‘the 1986 Act’) was brought into force with effect from 19<sup>th</sup> November 1986. As can be noticed from several orders of this Court and the High Courts, the progress of implementation of the 1986 Act has been very slow.

**4.** The 1970s and 1980s saw growth of industrialisation in our country. The activities such as mining, gas exploration, thermal power plants, petroleum refining industries, various other industries, building and construction projects, such as, highways started growing.

**5.** Again, it took twenty years after the 1986 Act came into force to exercise the power under sub-section (1) and

clause (v) of sub-section (2) of Section 3 of the 1986 Act read with clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 (for short, '1986 Rules') for coming out with the Environment Impact Assessment Notification, 2006 (for short, 'the EIA notification'). The EIA notification was issued on 14<sup>th</sup> September 2006. It provided that the projects or activities mentioned in clause (2) thereof shall require prior Environmental Clearance (for short, 'the EC') from the concerned regulatory authority. The concerned regulatory authority in the Central Government is the Ministry of Environment Forests and Climate Change (for short, 'the MoEFCC') for matters falling under Category 'A' in the Schedule, and at the State level, the State Environment Impact Assessment Authority (for short, 'the SEIAA') for the matters falling in Category 'B'. In the Schedule, Categories 'A' and 'B' were incorporated setting out industries and other development work. The entire controversy in this group of petitions is about ex post facto grant of EC.

**13.1** Sub-section (1) of Section 3 sums up the very object of the 1986 Act. Therefore, the EIA notification has been issued not only for the purposes of protecting and improving the quality of the environment but also for preventing and abating environmental pollution. Subsection (1) of Section 3 confers general power of taking measures on the Central Government. Sub-section (2) confers specific power for taking measures in the matters set out in clauses (i) to (ix) thereof. Clause (v) of subsection (2) of Section 3 empowers the Central Government to take measures for putting restrictions of areas in which any industries, operations or processes shall not be carried out or shall be carried out subject to safeguards.

**14.2** Therefore, without prior EC, construction of new projects or activities, expansion or modernisation of existing projects or activities listed in the Schedule entailing capacity addition with change in process or

technology, cannot be undertaken. Entire procedure for grant of prior EC is laid down in the EIA notification.

**15.1** Thus, what was sought to be done was to protect the project proponents who committed gross illegality by commencing construction or commencing operation or process without obtaining prior EC as provided in the EIA notification. The 2017 notification was a one-time measure. Moreover, this Court in the case of *Common Cause v. Union of India*<sup>2</sup>, held in no uncertain terms that the concept of *ex post facto* or retrospective EC is completely alien to environmental jurisprudence including the EIA notification. The decision in the case of *Common Cause*<sup>2</sup> was delivered on 2<sup>nd</sup> August 2017. Notwithstanding the clear declaration of law which was made on 2<sup>nd</sup> August 2017, the Central Government did not withdraw the 2017 notification.

**17.** The issue of *ex post facto* EC was dealt with in the case of *Common Cause*<sup>2</sup>, In paragraph 108, a submission was recorded that the possibility of getting *ex post facto* EC was a signal to the mining leaseholders that obtaining an EC was not mandatory or that if it was not obtained, the default was retrospectively condonable. In paragraph 125, this Court held thus:

**“125.** We are not in agreement with the learned counsel for the mining leaseholders. **There is no doubt that the grant of an EC cannot be taken as a mechanical exercise. It can only be granted after due diligence and reasonable care since damage to the environment can have a long-term impact. EIA 1994 is therefore very clear that if expansion or modernisation of any mining activity exceeds the existing pollution load, a prior EC is necessary and as already held by this Court in M.C. Mehta [M.C. Mehta v. Union of India, (2004) 12 SCC 118] even for the renewal of a mining lease where there is no expansion or modernisation of any activity, a prior EC is necessary. Such importance having been given to an EC, the grant of an ex post facto environmental clearance would be**

**detrimental to the environment and could lead to irreparable degradation of the environment. 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.”

**18.** Therefore, there is already a concluded finding of this Court that the concept of *ex post facto* or retrospective EC is completely alien to environmental jurisprudence and the EIA notification. This view was reiterated by this Court in the case of *Electrosteel Steels Ltd. v. Union of India*<sup>4</sup>. In paragraph 72, this Court held thus:

**“72. There can be no doubt that the need to comply with the requirement to obtain environment clearance is non-negotiable.** A project can be set up or allowed to expand subject to compliance of the requisite norms. Environmental clearance is granted on condition of the suitability of the site to set up the project from the environmental angle, and existence of necessary infrastructural facilities and equipment for compliance of environmental norms. To protect future generations, it is imperative that pollution laws be strictly enforced. Under no circumstances, can industries which pollute be allowed to operate unchecked and degrade the environment.”

**23.** Apart from the fact that the very concept of grant of *ex-post facto* EC is illegal, it is not possible to understand why the Central Government made efforts to protect those who committed illegality by not obtaining prior EC in terms of the EIA notification. As the EIA notification was eleven years old when the 2017 notification was issued, there was no equity in favour of those who committed such gross illegality of not obtaining prior EC. The persons who acted without prior EC were not illiterate persons. They were companies, real estate developers, public sector undertakings, mining industries, etc. They were the persons who knowingly

committed illegality. We, therefore, make it clear that hereafter, the Central Government shall not come out with a new version of the 2017 notification which provides for the grant of *ex-post facto* EC in any manner.

**26.** The basic submission by learned ASG is based on a premise that what is provided under the 2021 OM is not grant of *ex-post facto* EC. The relevant part of the 2021 OM is in paragraph 10 and 11, which read thus:

**“10. Standard Operating Procedure-Guiding Principles:**

- i. Without prejudice to any other consequences, **action has to be initiated under section 15 read with section 19 of The Environment (Protection) Act, 1986 against all violations.**
- ii. Projects not allowable/permissible, for grant of EC, as per extant regulations : **To be demolished.**
- iii. Projects allowable/permissible, if prior EC had been taken as per extant regulations : **To be closed until EC is granted (if no prior EC has been taken) or to revert to permitted production level (in case prior EC has been granted).**
- iv. **Polluter pays** : Violators to pay for violation period proportionate to the scale of project and extent of commercial transaction.
- v. Setting up a mechanism for reporting of violation to the regulatory authority(ies).

**39.** Thus, it is evident from the aforesaid judgment that the Hon’ble Apex Court has observed that very concept of grant of *ex-post facto* EC is illegal, and direction has been passed upon the Central Government that to not come out with a new version of the 2017 notification which provides for the grant of *ex-post facto* EC in any manner.

**40.** Further, it is settled position of law that Environmental Impact Assessment (EIA) done and environmental clearance granted by expert authorities can be quashed on well-recognised principles of judicial review i.e. if there is any illegality, irrationality or procedural impropriety in granting such permission. However, if after setting up of plant, the plant begins/continues to pollute environment fundamental right under Article 21 of Constitution, it can always be invoked, reference be made to the ***Sterlite Industries (India) Ltd. v. Union of India, (2013) 4 SCC 575.***

**41.** It requires to refer herein that the legislation has also been formulated by bifurcating the issue to maintain the environment by enacting the various Acts, i.e., Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, etc.

**42.** All these Acts having its individual object to maintain the environment so as to maintain the sustainable development.

**43.** The Hon'ble Apex Court has also considered the issue of environment in the case of ***Bittu Sehgal v. Union of India, (2001) 9 SCC 181, Karnatak Industrial Area Development Board v. C. Kenchappa & Others, (2006) 6 SCC 371, T.N. Godavarman v. Union of India, (2002) 10***

**SCC 606**, and ***Deepak Kumar v. State of Haryana***  
**(2012) 4 SCC 629.**

**44.** The relevant paragraphs of the aforesaid judgments are being referred herein :-

***Bittu Sehgal v. Union of India*, (2001) 9 SCC 181**

“15. This Court in *Vellore Citizens' Welfare Forum v. Union of India* [(1996) 5 SCC 647 : JT (1996) 7 SC 375] considered in detail the “sustainable development” to the extent which has been recognised under the international law and also its practicability under the environmental laws in India. This Court in the said judgment held that the “precautionary principle” and “the polluter pays” principle have been accepted as part of the law of the land. The relevant part of the judgment is as under: (SCC pp. 658-60, paras 11-14)

“11. Some of the salient principles of ‘Sustainable Development’, as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that ‘The Precautionary Principle’ and ‘The Polluter Pays Principle’ are essential features of ‘Sustainable Development’. The ‘Precautionary Principle’ — in the context of the municipal law — means:

(i) Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The ‘onus of proof’ is on the actor or the developer/industrialist to show that his action is environmentally benign.

12. ‘The Polluter Pays Principle’ has been held to be a sound principle by this Court in *Indian Council for Enviro-Legal Action*

v. *Union of India* [(1996) 3 SCC 212 : JT (1996) 2 SC 196] . The Court observed: (SCC p. 246, para 65)

‘... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country.’

The Court ruled that: (SCC p. 246, para 65)

‘... once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity *irrespective* of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on.’

Consequently the polluting industries are ‘absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas’. The ‘Polluter Pays Principle’ as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of ‘Sustainable Development’ and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damage to ecology.

13. The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48-A and 51-A(g) of the Constitution are as under:

‘47. *Duty of the State to raise the level of nutrition and the standard of living and to improve public health.*—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48-A. *Protection and improvement of environment and safeguarding of forests and wildlife.*—The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

51-A. (g) To protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.’

Apart from the constitutional mandate to protect and improve the environment there are plenty of post-independence legislations on the subject but more relevant enactments for our purpose are: the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment Protection Act, 1986 (the Environment Act). The Water Act provides for the Constitution of the Central Pollution Control Board by the Central Government and the Constitution of the State Pollution Control Boards by various State Governments in the country. The Boards function under the control of the Governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. It also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the latter part of this judgment.

14. In the view of the abovementioned constitutional and statutory provisions we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country.”

**19.** We are further of the view that it is not necessary for this Court to monitor this case any further. It can be better done by the High Court. We, therefore, transfer this petition to the

High Court to be treated as a petition under Article 226 of the Constitution of India and to be dealt with in accordance with law. We request the Chief Justice of the Bombay High Court to constitute a “Green Bench” for the purpose of adjudicating the environmental matters filed in the Bombay High Court. On our suggestion, “Green Benches” are already functioning in Calcutta, Madhya Pradesh, Madras, Allahabad and Punjab High Courts. While monitoring this matter, the High Court shall deal with the hazardous and noxious industries operating in the Dahanu Taluka in accordance with law, keeping in view the town/regional plan, the Government of India notifications and the NEERI report. It will be open to the State Government to approach the High Court for any clarification, if necessary.”

***Karnataka Industrial Areas Development Board v. C. Kenchappa, (2006) 6 SCC 371***

“**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.

**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.

**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.

**85.** In *M.C. Mehta v. Kamal Nath* [(1997) 1 SCC 388] this Court dealt with the public trust doctrine in great detail. The Court observed as under: (SCC p. 413, para 35)

“35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.”

**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.”

**95.** The directions which have been given in the impugned judgment are perhaps on the lines of directions given by this Court in *M.C. Mehta v. Union of India* [(1997) 3 SCC 715] . This Court observed that the preventive measures have to be taken keeping in view the carrying capacity of the ecosystem operating in the environmental surroundings under consideration. Badkhal and Surajkund lakes are popular tourist resorts almost next door to the capital city of Delhi. Two expert opinions on the record—by the Central Pollution Control Board and by NEERI make it clear that the large-scale construction activity in the close vicinity of the two lakes is bound to cause adverse impact on the local ecology. NEERI has recommended green belt at one km radius all around the two lakes.

**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.

**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.

**T.N. Godavarman Thirumulpad v. Union of India, (2002)**  
**10 SCC 606**

**17.** Article 48-A in Part IV (Directive Principles) of the Constitution of India brought by the Constitution (Forty-second Amendment) Act, 1976, enjoins that “State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”. Article 47 further imposes the duty on the State to improve public health as its primary duty. Article 51-A(g) imposes “a fundamental duty” on every citizen of India to protect and improve the natural “environment” including forests, lakes, rivers and wildlife and to have compassion for living creatures. The word “environment” is of broad spectrum which brings within its ambit “hygienic atmosphere and ecological balance”. It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. The State, in particular has a duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including the right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which

life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment. Therefore, there is constitutional imperative on the Central Government, State Governments and bodies like municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve the man-made environment and natural environment.

**26.** The tragedy of the predicament of the civilized man is that “Every source from which man has increased his power on earth has been used to diminish the prospects of his successors. All his progress is being made at the expense of damage to the environment which he cannot repair and cannot foresee.”

There is increase in awareness of the compelling need to restore the serious ecological imbalances introduced by the depredations inflicted on nature by man. The state to which the ecological imbalance and the consequent environmental damage have reached is so alarming that unless immediate, determined and effective steps were taken, the damage might become irreversible. In his foreword to *International Wildlife Law*, M.R.M. Prince Philip, the Duke of Edinburgh said:

“Many people seem to think that the conservation of nature is simply a matter of being kind to animals and enjoying walks in the countryside. Sadly, perhaps, it is a great deal more complicated than that.... As usual with all legal systems, the crucial requirement is for the terms of the conversions to be widely accepted and rapidly implemented.... Regretfully progress in this direction is proving disastrously slow.” (See *International Wildlife Law* by Simon Lyster, Cambridge, Grotius Publications Ltd., 1985 Edn.)

**33.** In *Divisional Forest Officer v. S. Nageswaramma* [(1996) 6 SCC 442] it was observed that the renewal of lease is not a vested right of the lessee. There is a total prohibition against the grant of mining lease in a forest area without concurrence of the Central Government. As was observed by this Court in *M.C. Mehta v. Kamal Nath* [(1997) 1 SCC 388] our legal system based on English common law includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. The public at large is the beneficiary of the seashore, running waters, air, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

**Deepak Kumar v. State of Haryana, (2012) 4 SCC 629**

23. The Ministry of Mines, Government of India sent Communication No. 296/7/2000/MRC dated 16-5-2011 called “Environmental Aspects of Quarrying and of Minor Minerals—Evolving of Model Guidelines” along with a draft model guidelines calling for inputs before 30-6-2011. Draft rules called Minor Minerals Conservation and Development Rules, 2010 were also put on the website. Further, it may be noted that Section 15(1-A)(i) of the Act specifies:

“15. (1-A)(i) the manner in which rehabilitation of flora and other vegetation such as trees, shrubs and the like destroyed by reason of any quarrying or mining operations shall be made in the same area or in any other area [once] selected by the State Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the quarrying or mining lease;”

24. We are of the view that all State Governments/Union Territories have to give due weight to the abovementioned recommendations of MoEF which are made in consultation with all the State Governments and Union Territories. The Model Rules of 2010 issued by the Ministry of Mines are very vital from the environmental, ecological and biodiversity point of view and therefore the State Governments have to frame

proper rules in accordance with the recommendations, under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957.

25. Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive instream sand and gravel mining causes the degradation of rivers. Instream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics.

26. We are of the considered view that it is highly necessary to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long-term rational and sustainable use of natural resource base and also the bio-assessment protocol. Sand mining, it may be noted, may have an adverse effect on biodiversity as loss of habitat caused by sand mining will affect various species, flora and fauna and it may also destabilise the soil structure of river banks and often leaves isolated islands. We find that, taking note of those technical, scientific and environmental matters, MoEF, Government of India, issued various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of Article 48-A and Article 51-A(g) read with Article 21 of the Constitution.

28. The Central Government also should take steps to bring into force the Minor Minerals Conservation and Development Rules, 2010 at the earliest. The State Governments and UTs also should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MoEF in its Report of March 2010 and

model guidelines framed by the Ministry of Mines, Government of India. Communicate the copy of this order to MoEF, Secretary, Ministry of Mines, New Delhi; Ministry of Water Resources, Central Government Water Authority; the Chief Secretaries of the respective States and Union Territories, who would circulate this order to the Departments concerned.

29. We, in the meanwhile, order that leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from MoEF. Ordered accordingly.

**45.** It is evident from the discussion so made by the Hon'ble Apex Court, the basic object in making observation is to maintain the core of the environment.

**46.** All these judgments passed by Hon'ble Apex Court are on the issue of protecting the ecology, the flora and fauna and the natural resources due to the reason that if the same will not be put to check, the impact will be indiscriminate, uninterrupted and the same will cause deforestation which will ultimately lead to affect the fauna and thereby the entire ecology will become imbalanced.

**47.** The larger bench constituting 9 Judges of the Hon'ble Apex Court in the case of ***Mineral Area Development Authority v. SAIL, (2024) 10 SCC 1*** while appreciating the issue of royalty has categorically held that Under the MMDR Act, the Central Government, acting as a public trustee of minerals, regulates prospecting and mining operations in public interest and the legislation

seeks to increase awareness of the compelling need to restore the serious ecological imbalance and protect against damage being caused to the nature. The Hon'ble Apex Court while taking a leaf from the judgment rendered in the case of ***Pradeep S. Wodeyar v. State of Karnataka*** (2021) 19 SCC 62 has further observed that the essence of the MMDR Act is to protect humankind and every species whose existence depends on natural resources from the destruction which is caused by rapacious and unregulated mining. For ready reference the relevant paragraphs are being quoted as under:-

**“62.** The Central Government or the State Government may not always be the “owner” of the underlying minerals. But the Constitution empowers both Parliament (under List I Entry 54) and the State Legislatures (under List II Entry 23) to regulate mines and mineral development, the entrustment to the State being subject to the power of Parliament to regulate the domain. The Constitution has entrusted the Union and the States with the responsibility to regulate mines and mineral development in consonance with the principles of the public trust doctrine and sustainable development of mineral resources. Under the MMDR Act, the Central Government, acting as a public trustee of minerals, regulates prospecting and mining operations in public interest. [*State of Rajasthan v. Gotan Lime Stone Khanji Udyog (P) Ltd.*, (2016) 4 SCC 469, para 29; *Orissa Mining Corpn. Ltd. v. Union of India*, (2013) 6 SCC 476, para 58] In the process, the legislation seeks to increase awareness of the compelling need to restore the serious ecological imbalance and protect against damage being caused to the nature. [*State (NCT of Delhi) v. Sanjay*, (2014) 9 SCC 772, para 32 : (2014) 5 SCC

**63.** In *Pradeep S. Wodeyar v. State of Karnataka* [*Pradeep S. Wodeyar v. State of Karnataka*, (2021) 19 SCC 62, para 49.3] , one of us (D.Y. Chandrachud, J.) observed that the essence of the MMDR Act is to “protect humankind and every species whose

existence depends on natural resources from the destruction which is caused by rapacious and unregulated mining”. The Court noted that the restrictions under Section 4 of the MMDR Act are intrinsically meant to protect the environment and communities who depend on the environment.

**64.** The principle that the Union and State Governments act as public trustees of mineral resources has been incorporated in the MMDR Act. Section 4-A empowers the Central Government to prematurely terminate a prospecting licence, exploration licence, or mining lease, after consultation with the State Government in the interests of:

- (i) the regulation of mines and mineral development;
- (ii) preservation of the natural environment;
- (iii) control of floods;
- (iv) prevention of pollution;
- (v) avoiding danger to public health or communications;
- (vi) ensuring the safety of buildings, monuments or other structures;
- (vii) conservation of mineral resources; and
- (viii) maintaining safety in the mines or for such other purposes. [ See *State of Haryana v. Ram Kishan*, (1988) 3 SCC 416, para 7. This Court observed that Section 4-A : (SCC p. 420, para 7)“7. ... was enacted with a view to improve the efficiency in this regard and with this view directs consultation between the Central Government and the State Government. The two Governments have to consider whether premature termination of a particular mining lease shall advance the object or not, and must, therefore, take into account all considerations relevant to the issue, with reference to the lease in question.”]

Moreover, the MMDR Act now mandates grant of mining leases, [ MMDR Act, Section 10-B] exploration licences, [ MMDR Act, Section 10-BA] and composite licences [ MMDR Act, Section 11] in respect of notified minerals through the process of auction. The Central Government is empowered to prescribe the terms and conditions subject to which the auction shall be conducted.

**65.** The regulatory regime under the MMDR Act recognises the important role of the State in regulating mines and mineral development. This emerges from the standpoint of the following perspectives:

- (i) the State is a public trustee of natural resources, including minerals;
- (ii) pursuant to its role as a public trustee, the State has been empowered to regulate prospecting and mining operations;
- (iii) the provisions of the statute reflect the priority of the State to regulate mining and related activities to ensure sustainable mineral development;
- (iv) prospecting and mining operations may be carried out by both the government as well as private lessees bearing in mind the public interest; and
- (v) the Government has to ensure that mineral concessions are granted in a fair and transparent manner.”

**48.** Therefore, the legislation has also been made by way of Mines and Minerals (Development and Regulation) Act, 1957 for the basic object of regulation of mines and the development of minerals. The object of MMDR Act 1957 has been taken note by the Hon’ble Apex Court in the case of ***Common Cause v. Union of India, (2017) 9 SCC 499*** wherein it has been observed which reads as under:

“**84.** Briefly therefore, the overall purpose and objective of the MMDR Act as well as the Rules framed thereunder is to ensure that mining operations are carried out in a scientific manner with a high degree of responsibility including responsibility in protecting and preserving the environment and the flora of the area. Through this process, the holder of a mining lease is obliged to adhere to the standards laid down under the Environment (Protection) Act, 1986 or the EPA as well as the laws pertaining to air and water pollution and also by necessary implication, the provisions of the Forest (Conservation) Act, 1980 (for short “the FC Act”). Exploitation

of the natural resources is ruled out. If the holder of a mining lease does not adhere to the provisions of the statutes or the rules or the terms and conditions of the mining lease, that person is liable to incur penalties under Section 21 of the MMDR Act. In addition thereto, Section 4-A of the MMDR Act which provides for the termination of a mining lease is applicable. This provides that where the Central Government, after consultation with the State Government is of the opinion that it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment, prevention of pollution, etc. then the Central Government may request the State Government to prematurely terminate a mining lease.

**49.** It requires to refer herein that the grant of a mining lease is governed by the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (or the MMDR Act), the Mineral Concession Rules, 1960 (or the MCR) and the Mineral Conservation and Development Rules, 1988 (or the MCDR). Section 4(1) of the MMDR Act provides that no person shall undertake any mining operation in any area except under and in accordance with the terms and conditions of a mining lease granted under the MMDR Act and the Rules made thereunder. A “mining operation” is defined in Section 3(d) of the MMDR Act as meaning any operation undertaken for the purpose of winning any mineral.

**50.** Section 4(2) of the MMDR Act provides that no mining lease shall be granted otherwise than in accordance

with the provisions of the said Act and the Rules made thereunder.

**51.** Section 5(2) of the MMDR Act provides for certain restrictions on the grant of a mining lease. It provides that the State Government shall not grant a mining lease unless it is satisfied that the applicant has a mining plan duly approved by the Central Government or the State Government in respect of the mine concerned and for the development of mineral deposits in the area concerned.

**52.** Section 10 of the MMDR Act provides for the procedure for obtaining a mining lease and sub-section (1) thereof provides that an application is required to be made for a mining lease in respect of any land in which the mineral vests in the Government and the application shall be made to the State Government in the prescribed form and along with the prescribed fee.

**53.** Section 18 of the MMDR Act makes it the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of the environment by preventing or controlling any pollution which may be caused by mining operations. The MCDR are framed in exercise of power conferred by Section 18 of the MMDR Act. The distinction between the MCR and the MCDR is that the MCR deal, inter alia, with the grant of a mining

lease and not commencement of mining operations. However, the MCDR deal, inter alia, with the commencement of mining operations and protection of the environment by preventing and controlling pollution which might be caused by mining operations.

**54.** Clause 11-C of MCR is of some importance and it requires that the lessee shall take measures for the protection of the environment like planting of trees, reclamation of land, use of pollution control devices and such other measures as may be prescribed by the Central Government or the State Government from time to time at the expense of the lessee.

**55.** Rule 9 of the MCDR prescribes that no person shall commence mining operations in any area except in accordance with a mining plan approved under Clause (b) of sub-section (2) of Section 5 of the MMDR Act. The mining plan may be modified in terms of Rule 10 of the MCDR in the interest of safe and scientific mining, conservation of minerals or for protection of the environment. However, the application for modifications shall set forth the intended modifications and explain the reasons for such modifications. The mining plan cannot be modified just for the asking.

**56.** Rule 41 of the MCDR requires every holder of a mining lease to carry out mining operations in such a

manner as to cause least damage to the flora of the area and the nearby areas. Every holder of a mining lease is required to take immediate measures for planting not less than twice the number of trees destroyed by reason of any mining operations and to look after them during the subsistence of the lease after which these trees shall be handed over to the State Forest Department or any other appropriate authority. The holder of a mining lease is also required to restore, to the extent possible, other flora destroyed by the mining operations.

**57.** The State has also been casted duty and as per the conferment of power under Section 15 of the MMDR Act, 1957, the State has also come out with the rule known as Jharkhand Minor Mineral Concession Rules, 2004.

**58.** Further, the MMDR Act has also taken care of by conferring power under Section 23(c) upon the State to formulate a rule in order to put check on illegal transportation and illegal storage of the minerals. All these are to be taken together and for the aforesaid purpose, the direction has been passed by the Hon'ble Apex Court in the judicial side to strictly implement the statutory command to achieve the object and intent of the Act so as to maintain the environmental issue by way of conservation of the flora and the natural resources, otherwise the entire ecology will become imbalanced.

**59.** Thus, the overall purpose and objective of the MMDR Act as well as the Rules framed thereunder is to ensure that mining operations are carried out in a scientific manner with a high degree of responsibility including responsibility in protecting and preserving the environment and the flora of the area. Through this process, the holder of a mining lease is obliged to adhere to the standards laid down under the Environment (Protection) Act, 1986 or the EPA as well as the laws pertaining to air and water pollution and also by necessary implication, the provisions of the Forest (Conservation) Act, 1980 (for short “the FC Act”). Exploitation of the natural resources is ruled out, reference in this regard may be made to the judgment rendered by the Hon’ble Apex Court in the case of ***Common Cause v. Union of India (supra)***.

**60.** In the backdrop of the aforesaid settled position of law this Court is now adverting to the factual aspect of the present case, the writ petitioner although had made an application before the competent authority of the State Government for getting a lease license for stone mining in the Saranda Forest area, Chaibasa in the district of West Singhbhum.

**61.** The State although has issued consent to operate but the petitioner when made application before the SEIAA for getting the Environment Clearance, it has been refused

by passing an order based upon the Management Plan for Sustainable Mining wherein the area has been made eco-sensitive zone.

**62.** Learned counsel appearing for the petitioner, however, has submitted that the said report is only for the purpose to put check upon the mining of iron ore and the manganese which cannot be made applicable in the matter of mining of stone falling under the Saranda Forest area but we are not in agreement with the said ground, reason being that when the issue of forest conservation is there then entire thing is to be taken into consideration as to how the forest area is to be saved.

**63.** If the contention of the writ petitioner will be accepted, then the very purpose of constitution of the Commission of Hon'ble Justice M.B. Shah will be frustrated which has been constituted only for the purpose of protecting the forest area which has been considered to be the dense forest area of the region.

**64.** The Ministry of Environment and Forest has constituted a Commission for the purpose of Management Plan for Sustainable Mining in Saranda Forest, Chaibasa in the Singhbhum West district. We, after going through the same, have found that the iron ore and the manganese have been considered but allowing for stone mining will be proper or not in the context of report submitted by Hon'ble

Justice M.B.Shah Commission that has to be considered and the very purport on which the policy has been made by way of Management Plan for Sustainable Mining wherein it has specifically been assigned that the entire area is eco-sensitive zone and the area requires conservation.

**65.** Learned counsel appearing for the Union of India has brought to the notice of this Court Page No.45 of the counter affidavit filed on behalf of respondent Ministry of Environment and Forest wherein the entire area has been said to be conservation area/no mining zone.

**66.** In view of the aforesaid specific reference made in the said report earmarking the same to be the conservation area as also earmarking it to be no mining zone, then the question is that how can the stone mining can be allowed to be carried out in view of the said finding recorded in the said MPSM in which the consideration has been given with respect to designation of mining zone, conservation area and no mining zone.

**67.** It would be evident from the said plan that the recommendation has also been given not to grant fresh leases in Saranda Forest although with respect to the iron ore and manganese, but when such is the intention of the said plan based upon the Hon'ble Justice M.B. Shah Commission report, which is on the premise of the fact that in the aforesaid area Saal trees and associates which

were existing are already destroyed and it has affected the environment. Hence, capping of production in each mine is a must.

**68.** It has also been taken into consideration in the report of Hon'ble Justice M.B. Shah Commission that the *"right to life is a fundamental right under Article 21 of the Constitution of India and it includes the right to enjoyment of pollution-free water and air for full enjoyment of life. The protection of this right is directly linked with clean environment. It is the duty of the State and citizens to improve the natural environment, including forests, lakes, rivers and wildlife, and to have compassion for living creatures. This would require that habitats of wildlife should not be disturbed; river, lake, water and air should not be polluted."* Therefore, in that premise direction has been issued that *"before carrying out any mining operation, Comprehensive Environmental Management Plans must be formulated to the satisfaction of, and got approved from, the Ministry of Environment & Forests in a time bound manner"*. It has also been referred in the said report that *"there should be a balance between preservation and utilization that would indeed a matter for an expert body to examine"*.

**69.** The consideration has also been given that the entire area is a part of notified elephant reserve. Most of the mines are very close to the rivers or natural streams and in

many of the cases, streams are either passing through or quite close by the leased area and catchments area.

**70.** We are conscious that all these observations have been made with respect to the mines of iron ore and the manganese but the question is that if such restriction is there for the mining of the iron ore and the manganese then whether the other mining operation of the stone etc. can be allowed? If the same will be allowed then what will happen to the Saranda Forest which is admittedly having wildlife and is one of the finest elephant habitats. If the same will be allowed then the entire Saranda Forest will be destroyed.

**71.** Allowing the mining operation will further lead to destroying the environment and thereby the principle of inter-generational equity that present generation has a solemn responsibility to protect and improve the environment for the present and future generations will ultimately be jeopardized and not only jeopardized, we will go into a situation from where the same cannot be repaired. Therefore, it is the duty of the present generation to safeguard the natural resources of the earth through careful planning and to undertake to pass on to the future generations.

**72.** This Court, therefore, is of the view that if such is the consideration as is evident from the impugned decision

taken by the SEIAA for the purpose for which the SEIAA has been constituted and fully relying upon the purport of the MPSM based upon the Hon'ble Justice M.B. Shah Commission report, the same cannot be said to suffer from an error.

**73.** Further, for the reason SEIAA, Jharkhand has been instituted for the aforesaid purpose as would be evident from the very object for which the SEIAA, Jharkhand has been established in the year 2006 which is being referred herein :-

“... ... for imposing certain restrictions and prohibitions on new projects or activities, or on the expansion or modernization of existing projects or activities based on their potential environmental impacts as indicated in the Schedule to the notification, being undertaken in any part of India', unless prior environmental clearance has been accorded in accordance with the objectives of National Environment Policy as approved by the Union Cabinet on 18<sup>th</sup> May, 2006 and the procedure specified in the notification, by the Central Government or the State or Union Territory Level Environment Impact Assessment Authority (SEIAA), to be constituted by the Central Government in consultation with the State Government or the Union Territory Administration concerned ... ..”

**74.** The SEIAA since has been established to assess the environmental impact and as such it is the authority of SEIAA to take its subjective satisfaction for the purpose of granting Environment Clearance.

**75.** Learned counsel for the petitioner has submitted that other mining is being carried out without any check

and, as such, putting restriction or not allowing the Environment Clearance to the petitioner is nothing but in the teeth of Article 14 of the Constitution of India. But, we are not in agreement with such submission merely for the reason that if the State has committed any illegality or the Environment Clearance has been given to others, then it is the subject matter of reviewing the decision so that the same can be taken care of by putting restriction upon the same to have the foremost consideration for the purpose of saving the environment.

**76.** Since we are considering the legality and propriety of the decision taken by the SEIAA as has been alleged on behalf of the writ petitioner, but based upon the aforesaid reason, the question of issuance of writ of certiorari is not fit to be issued for the reason that the decision so taken by the SEIAA cannot be said to suffer either from the perversity or in violation of principle of natural justice or contrary to any statutory mandate, rather, the same is in consonance with the object of different environmental laws as also the very purport for which the Commission has been constituted headed by Hon'ble Justice M.B. Shah.

**77.** This Court, therefore, is of the view that the decision so taken by the SEIAA needs no interference.

**78.** So far as carrying out the other mining operation is concerned, the competent authority of the SEIAA or the

State Government or the Union of India through the Principal Secretary, Ministry of Environment, Forest and Climate Change has to take care by taking follow up action in this regard.

**79.** The instant writ petition stands disposed of.

**I agree** **(Sujit Narayan Prasad, J.)**

**(Arun Kumar Rai, J.)** **(Arun Kumar Rai, J.)**

Birendra/**A.F.R.**