

**SHRI JUSTICE M. B. SHAH, COMMISSION OF INQUIRY
FOR ILLEGAL MINING OF
IRON ORE AND MANGANESE**

FIRST INTERIM REPORT

PART : 1

Terms of reference

1. The Government of India has set up Shri Justice M. B. Shah Commission of Inquiry for Illegal Mining of Iron Ore and Manganese vide Notification dated 22nd November, 2010.
2. The terms of reference of the Commission are as follows:-
 - i. *to inquire into and determine the nature and extent of mining and trade and transportation, done illegally or without lawful authority, of iron ore and manganese ore, and the losses resulting therefrom; and to identify, as far as possible, the persons, firms, companies and others that are engaged in such mining, trade and transportation of iron ore and manganese ore, done illegally or without lawful authority;*
 - ii. *to inquire into and determine the extent to which the management, regulatory and monitoring systems have failed to deter, prevent, detect and punish offences relating to mining, storage, transportation, trade and export of such ore, done illegally or without lawful authority, and the persons responsible for the same;*

- iii. *to inquire into the tampering of official records, including records relating to land and boundaries, to facilitate illegal mining and to identify, as far as possible, the persons responsible for such tampering; and*
- iv. *to inquire into the overall impact of such mining, trade, transportation and export, done illegally or without lawful authority, in terms of destruction of forest wealth, damage to the environment, prejudice to livelihood and other rights of tribal people, forest dwellers and other persons in the mined areas, and the financial losses caused to the Central and State Governments.*

3. The notification also provides that

i. The Commission shall also recommend remedial measures to prevent such mining, trade, transportation and export done illegally or without lawful authority.

ii. The Commission shall have all the powers under the Commission of Inquiry Act, 1952 (60 of 1952) and shall follow its own procedure subject to the provisions of the said Act and the rules made thereunder relating to the procedure of the Commission.

iii. The head quarter of the Commission shall be at Mumbai.

iv. The Commission shall submit its report to the Central Government as soon as possible but not later than eighteen months from the date of its first sitting.

v. The Commission may, if it deems fit, submit **interim reports** to the Central Government before the expiry of the said period on any of the matters specified in the Notification and **shall also recommend specific steps that may be required to be taken to urgently curb the menace of such illegal mining, trade and transportation.**

vi. The Commission may take the services of any investigating agency of the Central Government in order to effectively address its terms of reference.

vii. The Commission may also engage Consultants or specialized agencies for survey, data collections and analysis.

INTERIM REPORT

1. The Commission is submitting its first Interim Report recommending some urgent remedial measures to prevent further illegal mining, its trade, transportation and export. These measures may help in controlling to a large extent illegal mining subject to honest and effective implementation at all levels.
2. Since detailed inquiry with regard to the terms of reference stated in Para : 2 (i), (ii) and (iv) about the nature and extent of mining and trade and transportation, done illegally or without lawful authority, of iron ore and manganese ore, and the losses therefrom; and to identify, as far as possible, the persons, firms, companies and others that are engaged in such mining, trade and transportation of iron ore and manganese ore, done illegally or without lawful authority will take time and since the information sought for is still awaited, completion of inquiry may take some time. Further, activities with regard to illegal mining would require assistance of investigating agency.

**CONSERVATION (PRESERVATION) AND
SYSTEMATIC DEVELOPMENT OF MINERALS –
IRON ORE AND MANGANESE ORE**

I

Iron is also the most common and indispensable metal being used by mankind over the centuries. India enjoys a unique place as one of the earliest nations in mining, processing and using iron ore and its metal. Steel is vital and basic for the development of any modern economy. Rather, consumption of steel is used as a yardstick for measuring industrial growth and socio – economic development. Undoubtedly, Iron and Steel is the crux for industrial development in a country.

The question, therefore, is whether mineral iron ore and manganese ore are required to be conserved (preserved) and developed for the future generations and for future requirements of developing industries in this country.

Legal position:

In exercise of constitutional powers under Article 246, the Central Government has enacted Mines and Minerals Development and Regulation Act, 1957, which cast a duty on the Central Government inter-alia

- (a) to take all such steps as may be necessary for the conservation and systematic development of minerals in India,
- (b) the development of mineral resources in any area, and
- (c) to direct the owner of any mine to do or refrain from doing certain things in the interest of conservation or systematic development of minerals.

For this purpose, it would be worthwhile to refer to the relevant provisions of the Constitution of India, more particularly, Article 246, which is reproduced below:

“Article 246: Subject-matter of laws made by Parliament and by the Legislatures of States-

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List-I in Seventh Schedule (in this Constitution referred to as the "Union List")

(2) Notwithstanding anything in clause (3). Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to the clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the Union List."

Mineral Development:

For the purpose of mineral development and conservation (preservation), it is to be read with **List I (Union List) Entry 41**, which reads as under:

"Trade and commerce with foreign countries, import and export across customs frontiers; definition of customs frontiers."

In addition to above, **Entry No. 54 of List I (Union List)** is also required to be taken into consideration, which reads as under:

"Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

**Mines and Minerals (Development and
Regulation) Act, 1957 (MMDR Act):**

Section 2 of the Act makes the statutory declaration:

“It is hereby declared that it is expedient in public interest that the Union shall take under its control the regulation of mines and the development of minerals to the extent hereinafter provided.”

In exercise of the said jurisdiction, Parliament has enacted the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "MMDR Act, 1957") to provide for regulation of the mines and development of mineral under the control of the Union.

In addition to the above, **Entry 23 of List II (State List)** provides for "Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union."

Keeping the aforesaid constitutional provisions in mind, for conservation (preservation) of minerals, Section 18 of the Mines & Minerals (Development & Regulation) Act, 1957 requires to be taken into consideration.

"Section 18 (1): It shall be 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 environment by preventing or controlling any pollution which may be caused by prospecting or mining operations and for such purposes the Central Government may, by notification in the Official Gazette, make such rules as it thinks fit."

"(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

- (a) the opening of new mines and the **regulation of mining operations** in any area;
- (b) the regulation of the excavation or collection of minerals from any mine;
- (c) the measures to be taken by owners of mines for the purpose of beneficiation of ores, including the provision of suitable contrivances for such purpose;
- (d) **the development of mineral resources in any area;**
- (e) the notification of all new borings and shaft sinkings and the preservation of bore-hole records, and specimens of cores of all new bores-holes;

- (f) *the regulation of the arrangements for the storage of minerals and stocks thereof that may be kept by any person;*
- (g) *the submission of samples of minerals from any mine by the owner thereof and the manner in which and the authority to which such samples shall be submitted; and the taking of samples of any minerals from any mine by the State Government or any other authority specified by it in that behalf;*
- (h) *the submission by owners of mines of such **special or periodical returns and reports** as may be specified, and the form in which and the authority to which such returns and reports shall be submitted;*
- (i) *the regulation of prospecting operations;*
- (j) *the employment of qualified **geologists or mining engineers to supervise** prospecting or mining operations;*
- (k) *the disposal or discharge of waste slime or tailings arising from any mining of metallurgical operations carried out in mine;*
- (l) *the manner in which and the authority by whom directions may be issued to the owners of any mine **to do or refrain from doing certain things in the interest of conservation or systematic development of minerals** or for the protection of environment by preventing or controlling pollution which may be caused by prospecting or mining operations."*

For proper appreciation of Section 18 of the MMDR Act, 1957, the words "conservation" and "conserve" are required to be interpreted and understood in its letter and spirit. The words "conservation" and "conserve" defined in various dictionaries are as under:

A. Compact Oxford Dictionary, Thesaurus & Wordpower guide.

"Conservation - n - 1 preservation or restoration of the natural environment; careful use of a resource --- Derivatives

Thesaurus:

Conservation - n - careful management, economy, good husbandry, maintenance,

Conserve - v. be economical with, hold in reserve, keep, look after, maintain, preserve, protect, safeguard, save, store up, use sparingly, - opposite: destroy, waste.

Conserve/kuhh-serv/ - v - (conserves, conserving, conserved, protect from harm or overuse. - n -/ also kon-serv/fruit jam. - original Latin conserve.

B. Collins English Dictionary 3rd Edition - 2009

Conservation -n - *protection and careful management of the environment and natural resources, 2 - protection from change, loss, or injury,*

Conserve *vb* - **serv**ing, - **serv**ed, *to protect from harm, decay, or loss,*

Merriam - Webster's Dictionary:

Conservation: *n* - *preservation* - **planned management of natural resources**

Conserve - *verb* - *to keep from losing or wasting*
: *preserve,*"

II**INTERPRETATION:**

Read with the above dictionary meanings the word “conservation” in the context of Section 18 would mean **preservation; careful and planned management of natural resources and to protect from harm or overuse of minerals.**

- (a) At this stage, it would be appropriate to look into how Section 15 and 18 of the Mines and Minerals (Regulation and Development) Act, 1957 came to be interpreted by the Apex Court. In the first place, it is worth while to reproduce the law laid down by the Hon'ble Supreme Court in Civil Appeals Nos. 2602-2604 of 1980, D/- 5-2-1981. (*State of T.N., Appellant v. M/s. Hind Stone etc., etc., Respondents - AIR 1981 SUPREME COURT 711*)

In the said case, the State of Tamil Nadu by exercising its power under Section 15 of the Mines and Minerals (Regular and Development) Act, 1957, added **Rule 8 (c)** of T.N. Minor Mineral Concession Rules, 1959 to the effect that no lease or quarry for black granite shall be granted to the private persons. That Rule was challenged before the High Court. The High Court quashed and set aside the said Rule. The Hon'ble Supreme Court set aside the judgment of the High Court and dismissed the petition challenging the Rule 8 (c).

In that context, after discussing Sections 15 & 18, and the contentions raised by the parties, the Court, inter-alia, observed in paragraph 6, as under:

“Rivers, Forests, Minerals and such other resources constitute a nation’s natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the Nation. It is recognized by Parliament. Parliament has declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of the minerals. It has enacted the Mines and Minerals (Regulation and Development) Act, 1957. We have already referred to its salient provisions. Section 18, we have noticed, casts a special duty on the Central Government to take necessary steps for the conservation and development of minerals in India. Section 17 authorizes the Central Government itself to undertake prospecting or mining operations in any area not already held under any prospecting license or mining lease. Section 4A empowers the State Government on the request of the Central Government, in the case of minerals other than minor minerals, to prematurely terminate

existing mining leases and grant fresh leases in favour of a Government Company or Corporation owned or controlled by Government, if it is expedient in the interest of regulation of mines and mineral development to do so. In the case of minor minerals, the State Government is similarly empowered, after consultation with the Central Government. The public interest which induced Parliament to make the declaration contained in Section 2 of the Mines and Minerals (Regulation and Development) Act, 1957, has naturally to be the paramount consideration in all matters concerning the regulation of mines and the development of minerals. Parliament's policy is clearly discernible from the provision of the Act. **It is the conservation and the prudent and discriminating exploitation of minerals, with a view to secure maximum benefit to the community. There are clear sign posts to lead and guide the subordinate legislating authority in the manner of the making of rules. Viewed in the light shed by the other provisions of the Act, particularly Sections 4A, 17 and 18 it cannot be said that the rule making authority under Section 15 has exceeded its power in banning leases for quarrying black granite in favour of private parties and in stipulating that the State Government themselves may engage in quarrying black granite or grant in favour of any corporation wholly owned by the State Government. To view such a rule made by the Subordinate legislating body as a rule made to benefit itself merely because the State**

Government happens to be the subordinate legislating body, is, but, to take too narrow a view of the functions of that body. The reasons that prompted the State Government, to make Rule 8-C were explained at great length in the common affidavit filed on behalf of the State Government before the High Court.

Finally, in paragraph 10 Court observed that:

“The statute with which we are concerned, the Mines and Minerals (Development and Regulation) Act, is aimed, as we have already said more than once, at the conservation and the prudent and discriminating exploitation of minerals. Surely, in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present. We have no doubt that the prohibiting of leases in certain cases is part of the regulation contemplated by Section 15 of the Act.”

- (b) Thereafter, In the case of *D.K. Trivedi and Sons and others – Petitioners v. State of Gujarat and others – Respondents* (AIR 1986 SUPREME COURT 1323),

while dealing with constitutionality of Section 15 (1) of the MMDR Act, 1957, and the power of the State Government to make Rules thereunder, to enable them to charge surface rent, dead rent and royalty in respect of lease of mines granted by them and to enhance rate of royalty during subsistence of such lease., the Supreme Court in para 40 has observed, inter-alia, as under :

"40: The grant of a mining lease would thus provide for the consideration for such grant in the shape of surface rent, dead rent and royalty. The power to make rules for regulating the grant of such leases would, therefore, include the power to fix the consideration payable by the lessee to the lessor in the shape of ordinary rent or surface rent, dead rent and royalty. If this were not so, it would lead to the absurd result that when the Government grants a mining lease, it is granted gratis to a person who wants to extract minerals and profit from them. Rules for regulating the grant of mining leases cannot be confined merely to rules providing for the form in which applications for such leases are to be made, the factors to be taken into account in granting or refusing such application and other cognate matters. Such rules must necessarily include provisions with respect to the consideration for the grant. Under Section 15 (1), therefore, the State Governments have the power to make rules providing for payment of surface rent, dead rent and royalty by the lessee to the Government."

In Para 49 the Hon'ble Supreme Court, pertinently, inter-alia observed as under:

*“Minerals are part of the material resources which constitute a **nation’s natural wealth** and if the nation is to advance industrially and if its economy is to be benefited **by the proper development and exploitation of these resources, they cannot be permitted to be frittered away and exhausted within a few years** by indiscriminate exploitation without any regard to public and national interest.”*

III

It is to be remembered that Mother Earth is kind to mankind in that she provides life to them in the form of water, food and environment. She is kind to them in that she also provides to them variety of materials that make life worth living. Some of such materials are minerals of which the main are Iron Ore and Manganese Ore. Yet, there is no limit to human greed. They go beyond the limits of legal mining and indulge in illegal mining. It is for curbing this menace that (Governmental and Parliamentary Committees) the Supreme Court and the Commission like the present one have been concerned and active.

Keeping the aforesaid legal position in mind, the Commission considers **causes** and makes **suggestions** as stated hereinafter for controlling illegal mining in various States.

Illegal mining arises firstly because of;

- (i) Misuse of **Rule 24A (6)** of the Mineral Concession Rules, 1960.
- (ii) Non-enforcement of **Section 24 (1)** of the Mines & Minerals (Development & Regulation) Act, 1957, which empowers Central Government and State Government Officers to **enter and inspect** any mine and to survey and take measurements in any such mine, may be because of shortage of staff;

- (iii) There are no proper **check posts** and **computerized weigh bridges** at the exit points which can prevent onward march of illegally mined minerals. This also results into nonpayment of proper royalty.
- (iv) In some areas, **Mafias** have taken control of mining operations.
- (v) **High export prices**, particularly from China, has tempted number of persons to indulge in such illegal mining activity.

For the aforesaid purposes, this first Interim Report is submitted recommending some urgent remedial measures to prevent further illegal mining, its trade, transportation and export.

A**MISUSE OF DEEMED EXTENSION OF LEASE PERIOD**

For the reasons stated below, to curb illegal/unauthorized mining, Sub-Rule (6) of Rule 24A of the Mineral Concession Rules, 1960, requires to be suitably amended.

Rule 24A of the Mineral Concession Rules, 1960, reads as under:

"Rule 24A Renewal of mining lease:

- (1) *An application for the renewal of a mining lease shall be made to the State Govt. in Form J, **at least twelve months before the date on which the lease is due to expire**, through such officer or authority as the State Government may specify in this behalf.*

- (2) *The renewal or renewals of a mining lease granted in respect of a mineral specified in Part 'A' and Part 'B' of the First Schedule to the Act may be granted by the State Government with the **previous approval of the Central Government**.*

(3) *The renewal or renewals of a mining lease granted in respect of a mineral not specified in Part 'A' and Part 'B' of the First Schedule to the Act may be granted by the State Government.*

*PROVIDED that before granting approval for second or subsequent renewal of a mining lease, **the State Government shall seek a report from the Controller General, Indian Bureau of Mines**, as to whether it would be in the interest of mineral development to grant the renewal of the mining lease:*

*PROVIDED FURTHER that in case a report is not received from Controller General, **Indian Bureau of Mines in a period of three months of receipt of the communication from the State Government**, it would be deemed that the Indian Bureau of Mines has no adverse comments to offer regarding the grant of the renewal of mining lease.*

(Sub-Rules (4) & (5) omitted by GSR 6(E), dated 7.1.1993)

****(6) If an application for renewal of a mining lease made within the time referred to in sub-Rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period till the State Government passes order thereon.***

(*Substituted by GSR 724(E), dt. 27.9.1994)

(Sub-Rule (7) omitted by GSR 56(E), dt. 17.1.2000)

- (8) *Notwithstanding anything contained in sub-rule (1) and sub-rule (6) an application for the first renewal of a mining lease, as so declared under the provisions of Section 4 of the Goa, Daman and Diu Mining Concession (Abolition and Declaration as Mining Lease) Act, 1987, shall be made to the State Government in Form J before the expiry of the period of mining lease in terms of sub-section (1) of section 5 of the said Act, through such officer or authority as the State Government may specify in this behalf :*

PROVIDED that the State Government may, for reasons to be recorded in writing and subject to such conditions as it may think fit, allow extension of time for making of such application upto a total period not exceeding one year.

- (9) *If an application for first renewal made within the time referred to in sub-Rule (8) or within the time allowed by the State Government under the proviso to sub-Rule (8), the period of that lease shall be deemed to have been extended by a further period till the State Government passes orders thereon.*

- (10) *The State Government may condone delay in an application for renewal of mining lease made after the time limit prescribed in Sub-Section(1) provided the application has been made before the expiry of the lease."*

B**Renewal of mining lease:**

For renewal of mining lease of iron ore and manganese ore , application is required to be filed to the State Government under Rule 24A (3) because iron ore and manganese ore are specified in Schedule-I, **Part "C"**.

On the basis of the aforesaid Rule 24A (6), **the concept of deemed extension of a lease for unlimited period has taken place.** This is misused by quite a sizeable number of lease holders/license holders because no decision is taken promptly on the renewal application by the concerned State Government Officers or other authorities. The unlimited period of deemed extension tends to provide a giant platform for the lease-holders to indulge in illegal mining activity at their sweet will.

Following excerpts from various reports duly and aptly illustrate the mischief played and playable as a result of the aforesaid deemed extension provision.

**19TH REPORT OF
THE STANDING COMMITTEE
ON
COAL AND STEEL**

In 19th Report submitted by Standing Committee on Coal & Steel (2005–2006) for deemed extension, the Committee has observed as under:–

In Para: 2.17, it has been stated that:–

2.17 *The Committee note that Indian Bureau of Mines (IBM), a subordinate office under the Ministry of Mines, has been entrusted with the responsibilities for the promotion, conservation and scientific development of minerals in the country other than coal, petroleum, natural gas, atomic minerals and minor minerals. IBM also performs regulatory functions viz. enforcement of Mines and Minerals (Development and Regulation) Act, 1957, the Mineral Concession Rules, 1960, and Mineral Conservation and Development Rules, 1988. The Committee further note that as an executive arm of the Ministry, IBM also regulates mining activities as per the provisions of the Central Act and rules made thereunder.*

*The Committee further note that the IBM also provides technical consultancy services to mining industry apart from advising the Central and State Governments on all aspects of mineral industry, trade, legislation, etc. **The IBM undertakes inspection/studies for the enforcement of provisions of MMDR Act, 1957, and rules made thereunder for ensuring that mining operations are carried out in accordance with the approved mining plans/schemes of mining. The Committee, therefore, feel that while ensuring that mining operations are carried out as per approved plans and schemes, the IBM is duty bound to point out the violations in this regard.***

*The Committee are constrained to observe that the magnitude of illegal mining activities is not only detrimental to primary objectives of National Mineral Policy **but also causing immense loss to the exchequer and the revenue realized through penalties imposed by the State Governments can in no case compensate the huge resources being drained away. The situation is too grim to be tackled by the State Governments on their own and, therefore, their insistence for not parting with their power in favour of IBM is not justifiable.***

In Para: 3.18, it has been stated that:–

“3.18 *The Committee are anguished to note that as on 31.3.2006, 204 cases for grant of mining lease have been pending with the State Governments of Maharashtra, Andhra Pradesh, Rajasthan, Karnataka and Madhya Pradesh and this figure may increase further with the availability of information from other States. The Committee further note that the cumbersome procedure for grant of mining lease has been identified as one of the reasons for the problem of illegal mining by the Ministry. **The Committee have serious apprehensions that the malaise of the illegal mining will continue to raise its ugly head and the very purpose of streamlining the procedure for grant of mining leases would be defeated if the cases of grant of mining lease are not disposed of quickly.***

The Committee desire the Ministry / IBM to seriously look at the problem and to ensure that the cases of grant of mining leases are disposed of as early as possible. The Committee would like to be apprised in this regard.”

Thereafter, for action taken on the aforesaid report, the Standing Committee on Coal and Steel (2006–2007) has observed as under:–

In CHAPTER: I, in Para: 1.29, it has been stated that:-

“E. Dispose of cases of grant of mining leases immediately:-

1.29 *The Committee had earlier desired the Ministry / IBM to ensure that the cases of grant of mining lease are disposed of as early as possible. The Committee deprecate that the Ministry instead of giving a categorical reply has informed that a high level Committee had taken up review of National Mineral Policy and it has submitted its recommendations to the Government. **The Committee need not emphasize that timely disposal of mining lease application is in the overall interest of mineral exploration and any delay in this regard could be interpreted as encouragement to the menace of illegal mining.** The Committee feels that the Ministry cannot absolve itself from its responsibilities of timely disposal of mining lease application under the pretext that the issue is being reviewed by the high level committee of the Planning Commission. **The Committee, therefore, reiterates that the Ministry should take urgent steps to streamline the procedures as to minimize the delay in the grant of mining lease.”***

D**MISUSE OF DEEMED EXTENSION AS NOTED IN THE REPORT OF THE CENTRAL EMPOWERED COMMITTEE – DATED 26-4-2010 WITH REGARD TO MINING LEASE IN THE STATE OF ORISSA**

The misuse of deemed extension can also be highlighted from the **findings recorded** in the report dated 26-4-2010 submitted by the Central Empowered **Committee appointed by the Apex Court**, with regard to illegal mining and trade in the State of Orissa. (The directions given in Interim Application No.2747-2748 of 2009 filed by Rabi Das, Editor (Ama Rajdhani, a daily newspaper).

The submissions of the Applicant noted by the Committee in para 4 of its report, inter-alia, are as under:

- (i) *Under the provisions of the Forest (Conservation) Act, 1980 the mining leases having forest areas cannot be renewed without obtaining the prior approval of the Central Government. The renewal applications for these mining leases have been **kept pending for more** than ten years and during which period taking recourse to Rule 24 A(6) of the Mineral Concession Rules, 1960, **a large number of such mines have been allowed to continue without the mandatory approval** under the FC Act or even grant of Temporary Working Permission (TWP). These even include the mines of the Orissa Minerals*

Corporations (OMC), a Government of Orissa Undertaking. The Directions issued by the Government of Orissa as well as the Government of India for the closing of these mines have remained on paper only.

- (ii) *The Comptroller & Auditor General of India (CAG, in its Report for the year ended 31-3-2008, has also raised objections regarding mining going on in the forest area without the statutory approval and the excess quantity of mineral extracted/transported without making any payment of Royalty. As per the above Report, the test checking of the records done by the Accountant General, Orissa has revealed as under:*

"(a) even though the concerned Divisional Forest Officer objected to the mining operations being done in the forest area without approval under the FC Act, the Deputy Director of Mines, Koira between April, 2005 and March 2007 allowed two lessees to extract 1.91 lakh MT of manganese/iron ore valued at Rs.7.89 crores;

*(b) as against the royalty paid by the five lessees for **4.26 lakh MT of chromite and manganese ore, the actual production** and dispatch, as per the Report filed with the India Bureau of Mines, was **5.15 lakh MT**. This has resulted in an evasion of royalty to the tune of Rs.1.97 crores; and*

(c) an area of 1011.50 hectares which included 793.35 hectares of forest land, was handed over in June, 1982, to a Mining Corporation to carry out mining operations on agency basis.

Later in January, 1999, the Mineral Concession Rules were amended withdrawing the provisions for mining operations on agency basis. However, the Corporation notwithstanding the said amendment, continued the mining operations on agency basis. The said Corporation in fact continued mining activities upto 23rd November, 2006 **without executing any lease deed and without obtaining approval under the FC Act. During the above period, 2.98 lakh MT of manganese ore and 7.24 lakh MT of iron ore valued at Rs.88.47 crores were extracted. The CAG has recommended** that since the mining operations were carried out without the valid lease granted under the MMDR Act, the extraction of the above said quantity of 10.22 lakh MT of minerals (7.24 lakh MT + 2.98 lakh MT) by the Corporation was illegal and, therefore, the value of mineral amounting to Rs.88.47 crores was recoverable from them."

- (iii) A Vigilance Inquiry was taken up regarding allegation of corruption in the matter of illegal mining by M/s. RBT Ltd. and others. In the Vigilance Enquiry Report dated 10-8-2009, it was concluded that the officers of the Mines Department and the Forest Department abused their official position showing undue official favour to M/s. RBT Ltd., thereby causing loss of about Rs.110.00 crores because of illegal mining from the forest and other unauthorized areas.
- (iv) Under the garb of deemed extension clause (Rules 24 A (6) of the Mineral Concessions Rules) and because of the non-implementation of the provisions of the

*Forest (Conservation) Act and the other applicable Rules and Guidelines, **widespread and rampant illegal mining operations have been taking place in Orissa. The organized illegal mining is taking place with the active support of the State Government** and has resulted in the breakdown of the constitutional machinery.*

- (v) *A preliminary study conducted by the Orissa Jana Sammilani, a civil society / organization indicates that about 155 leases are operating in Orissa without any valid authority in these mining areas, most of which include forest areas and by whom the mandatory clearances/approvals from the Central Government have not been obtained. No renewal has been granted and no lease deed has been executed.”*

The observations and recommendations of Central Empowered Committee (CEC), State of Orissa, inter-alia, are as under: (Para 9)

*“The State of Orissa has also informed that out of 596 mines leases presently **341 mines** are operating while the remaining 255 are non working/lapsed mines (under Section 4(4) of the Mines and Minerals (Development and Regulation) Act, 1957). The operating/working mines consist of **126 subsisting mines and 215 mines working under the 'deemed extension'** as provided under Rule 24A (6) of the MCR, 1960. The details of the 215 expired mining lease working under the "deemed extension" as provided under Rule 24A (6) of MCR, 1960 are as under:–*

- (i) for 15 mines the lease period had expired more than **20 years** ago.
- (ii) for 17 mines the lease period had expired **15 to 20 years** ago
- (iii) for 38 mines the lease period had expired **10 to 15 years** ago
- (iv) for 65 mines the lease period had expired **5 to 10 years**
- (v) for balance 80 mines the lease period had expired less than 5 years back.”

Taking into account the details provided by the applicant as also to the State of Orissa, the Committee concluded, as under: (Para 13)

- “(i) Mining activities were going on in a large number of the mines in Orissa without the requisite approvals under the Forest (Conservation) Act, 1980, Environmental Clearances and the Air & Water Acts. The mining activities also exceeded the production limit as approved under the Mining Plans.
- (ii) A large number of the mines have remained operational for long periods of time after the expiry of the lease period because of the delays in taking decisions on the renewal applications filed by the respective mining lease holders and consequently the mines becoming eligible for 'deemed extension' as provided under Rule 24 A(6), MCR, 1960. [Page Nos.20 & 21, Para: 13(ii)]

- (iii) *In a large number of cases the forest areas approved under the FC Act are lesser than the total forest area included in the approved mining leases, and*
- (iv) *There was lack of effective coordination and common understanding between the officials of the Mines Department and the Forest Department resulting in the ineffective enforcement of statutory provisions.*

The Committee in para 15 of its report, inter-alia, observed as under (Para 15):

*The CEC is of the view that the State has taken corrective steps, though rather belatedly. However, **serious shortcomings still remain** which need to **be dealt with on priority** so as to **ensure the strict compliance** of the provisions of the Forest (Conservation) Act, 1980, the Environmental Protection Act and the other statutory provisions and Rules. Towards this objective the following **recommendations** are made for the consideration of this Hon'ble Court.*

- (a) *A large number of mines are operating in Orissa (also in other parts of the country) after expiry of the mining lease period. This is being done under the*

provisions of 'deemed extension' of mining leases provided under Rule 24A (6) of the MCR, 1960 and is happening because the applications filed for the renewal of the mining leases remain undecided for a considerable period of time after expiry of the mining lease period.

The “deemed extension” clause is primarily meant to deal with contingency situation and to ensure that the mining operations do not come to an abrupt end because of administrative delays in deciding on the renewal applications. This provision is not meant to be availed of indefinitely. Moreover, continuing mining over a long period of time without renewal of the mining lease becomes a potential source for serious illegalities and irregularities.

It will therefore be appropriate and desirable that the applications filed for the renewal of the mining leases are decided by the State of Orissa in a time-bound manner. To make this possible the concerned lessee should be required to provide to the State Government, within a reasonable period, copies of the approvals under the FC Act, Environmental Clearances, No Objection of the State Pollution Control Board under the Air and Water Acts and the Mining Plan duly approved by the Indian Bureau of Mines/other competent authority. This will ensure

that the mining operations under the 'deemed extension' clause do not continue for an indefinite period. In respect of the mining leases for which the renewal applications are pending with the State Government, the status and the reasons for the pendency for each of the mining leases (as at present) should be provided by the State Government.

- (b) Even otherwise the Rule 24A (6), MCR, 1960 does not authorize the lessee to operate a mine without statutory clearances/approvals. Therefore, in respect of a mine covered under the 'deemed extension' clause, the mining operations should be permitted to be undertaken in the non-forest area of the mining lease only if (i) it has the requisite environmental clearance, (ii) it has the consent to operate from the State Pollution Control Board under the Air & Water Acts, (iii) Mining Plan is duly approved by the competent authority, and (iv) the NPV for the entire forest falling within the mining lease is deposited in the Compensatory Afforestation Fund.*

The mining in the forest land included in the mining lease should be permissible only if, in addition to the above, the approval under the FC Act/TWP (Temporary Work Permit) has been obtained.

- (c) *No forest land can be leased / assigned without first obtaining the approval under the FC Act. Therefore, the forest area approved under the FC Act should not be lesser than the total forest area included in the mining leases approved under the MMDR Act, 1957. Both necessarily have to be the same. In view of the above, this Hon'ble Court while permitting grant of Temporary Working Permission to the mines in Orissa and Goa has made it one of the pre-conditions that the NPV will be paid for the entire forest area included in the mining leases. Similarly, all the mining lease holders in Orissa should be directed to pay the NPV for the entire forest area, included in the mining leases;*
- (d) *In Orissa, substantial areas included in the mining leases as non-forest land have subsequently been identified as DLC forest (deemed forest/forest like areas) by the Expert Committee constituted by the State Government pursuant to this Hon'ble Court's order dated 12-12-1996. While processing and/or approving the proposals under the FC Act in many cases such areas have been treated as non-forest land. It is recommended that (i) the NPV for the entire DLC area included in the mining lease, after deducting the NPV already paid, should be deposited by the concerned lease holder and (ii) the mining operations in the unbroken DLC land (virgin land)*

should be permissible only if the permission under the FC Act has been obtained/is obtained for such area. Keeping in view the peculiar circumstances as was existing in Orissa and subject to the above, the mining operations in the broken DLC land may be allowed to be continued provided the other statutory requirements and Rules are otherwise being complied with;

- (e) The demand for the payment of the NPV, as per sub-para (b), (c) and (d) above should be raised by the concerned Divisional Forest Officer within a maximum period of 30 days and the mining lease holder should deposit the amount payable towards the NPV (for the balance forest area) within a period of 30 days thereafter failing which the mine should not be allowed to continue its operations. Appropriate detailed working instructions in this regard should be issued immediately by the State Government;*

- (f) Pursuant to this Hon'ble Court's order dated 14-2-2000, no mining is permissible in an area falling within the National Parks and Sanctuaries. Therefore, mines, if any, working within the boundary of a National Park and Wildlife Sanctuary including areas notified under Section 18, 26A or 35 of the Wildlife (Protection) Act, 1972 should be immediately closed. This will also include the mines*

operating on the strength of the orders passed by any authority, including any other Court of law. (There is one mine which is reported to be operating on the strength of the order passed by the Sub-Divisional Court in a Wildlife Sanctuary in Orissa);

- (g) *This Hon'ble Court by order dated 4-8-2006, has inter-alia directed that pending the identification and the notification of the **eco-sensitive zones** around the National Park/Wildlife Sanctuaries, the Temporary Working Permission (TWP) for mining should not be granted in respect of mines located within a distance of one Kilometer from the boundary of a National Parks/Wildlife Sanctuary. Whether the mining is done under a TWP or with the formal approval, both have the **negative impact on the protected areas**. Keeping the above in view it is recommended that the State of Orissa should be asked to provide the details of existing mining leases falling within a distance of one kilometer of the National Park/Sanctuary along with their observation regarding the impact of such mines on the protected area. A decision regarding such mines may be taken by this Hon'ble Court thereafter.*
- (h) *There are nine coal mines, belonging to the Mahanadi Coal Field Ltd, a subsidiary of the Coal India Ltd. (CIL), operating without obtaining the approval under the FC Act on the purported ground that the mining leases have been transferred to them by the CIL*

during 1990-92 after the promulgation of the Coal India (Regulation, Transfer and Validation) Act, 2002. The provisions of the Forest (Conservation) Act are equally applicable to such forest areas and are required to be complied with by all the other similarly placed coal companies. Such as WCL and the SECL have at the time of renewals/new mining leases been obtaining the approvals under the FC Act. It is therefore imperative that in respect of these nine leases also, the approvals under the FC Act are obtained by the Mahanadi Coal Fields Ltd. after following the prescribed procedure. It is recommended that, as was earlier permitted in the case of WCL, SECL and the other coal companies, subject to the payment of the NPV for the forest land included in these nine mining leases, the Mahanadi Coal Fields may be allowed to continue mining for the next one year during which period they should obtain approval under the FC Act and failing which the mines should be closed; and

- (i) In respect of the areas where there is dispute regarding the applicability of the Forest (Conservation) Act no mining should be permitted till such time the dispute is resolved or the approval under the FC Act is obtained (this will be in conformity with this Hon'ble Court's order dated 16-12-2006 for mining in Aravalli Hills in Haryana and Rajasthan).

E**REPORT OF THE CENTRAL EMPOWERED COMMITTEE
DATED 7-1-2011 QUA MINING LEASE IN ANDHRA
PRADESH:**

Similar are the observations of the Central Empowered Committee (CEC) in its report dated 7-1-2011 with regard to the mining lease in Andhra Pradesh, particularly, in Bellary region.

That report was submitted on the basis of the directions issued by the Hon'ble **Apex Court** in *SLP (C) Nos. 7366-7367 of 2010* (challenging the judgment and order dated 26.2.2010 passed in Writ Petition No.25910/2009, (b) and Writ Petition No. 26083 of 2009 of the Hon'ble High Court of Andhra Pradesh at Hyderabad) *filed by the Government of Andhra Pradesh with Writ Petition (C) No.562 of 2009 filed by the Samaj Parivartan Samudai and Ors.,*

The said directions are, as under:

“In short, we want to know whether mining is going in the forest area in the Bellary region restricted to six mining leases granted in favour of M/s. Bellary Iron Ore Pvt. Ltd., M/s. Mahabaleswarappa & Sons, M/s. Ananthapur Mining Corporation and M/s. Obulapuram Mining

Company Pvt. Ltd. in the first instance. The affected parties will submit their representations to the CEC by 29th November, 2010. On receiving the representations, the CEC will hear the parties concerned on or before 16th December, 2010 and will submit its Report to this Court by 5th January, 2011."

In the said report, it has been observed as under (page 59, para 53):

- "(i) The first renewal period of mining lease of 25.9 hectares of M/s. OMC has **actually expired on 13-12-2004**. The permission granted by the State of Andhra Pradesh to treat the mining lease valid upto 25-4-2017 is illegal and needs to be set aside. The mining done in the forest area after 2004 is therefore illegal and the value of the mineral extracted from the reserved forest after April, 2004 should be recovered from the lease holders based on the normative market value of the mineral extracted from the area.
- (ii) Similarly, the mining lease of M/s. AMC has been renewed after a gap of almost 17 years which is illegal and it should be cancelled."

F**EVALUATION OF CASES (KARNATAKA) RELATING TO
TRANSFER OF MINING LEASES & RELATED
MATTERS OF INTERIM REPORT**

**(The Government of Karnataka, in Order No. CI 164
MMM 2006 dated 12th March, 2007, referred various
aspects of illegal mining to the Hon'ble Lokayukta for
investigation and report under Section 7(2A) of
Karnataka Lokayukta Act, 1984)**

**In the Interim Report, "Evaluation of cases
relating to transfer of mining leases and related
matters", in Para: 3(8), it has been stated that:**

*"M/s. Mineral Enterprise Pvt. Ltd. held the
subject lease by transfer. Lease was to expire on 02-
12-1991. The lessee applied for renewal on 06-09-
1990 well within the stipulated period under Sub-
rule 24A. Application was registered by the
Department of Mines and Geology vide No.112 AML
90/13.09.1990.*

*The renewed lease deed could only be
registered on 16th November, 2003 i.e. after **13
years and 2 months of filing of renewal
application.***

The inordinate delay involved in disposal of the renewal application distinctly speaks of the tardy and casual manner in which the Government business is transacted. Also, there were directions from the Provisional Authority and the Hon'ble High Court of Karnataka to dispense the matter on merits within a stipulated period. Such directions have also been ignored.”

In Para: 3(10), it is stated that the lessee

“Sri K. Raghavendra Rao held the M.L. No.737 for manganese over the subject area which was due to expire on 15th December, 1987. It was renewed on 17-08-1994 for a period of 10 years from 15-12-1987 after a lapse of 7 1/2 years. The lease so renewed was executed under M.L.No.2204 on 11-10-1995. The renewed lease was due to expire on 15-12-1997. The lessee Sri K. Raghavendra Rao made an application for the second renewal on 26-09-1996 which was well within the period stipulated under sub-rule (1) of Rule 24-A, MCR 1960. The Director of Mines and Geology after having obtained a report from the Senior Geologist, Chitradurga” and clearance from the concerned Deputy Commissioner, addressed the Regional Controller, Indian Bureau of Mines, Bangalore on 28th May/03rd June 1997 for comments on the past performance of the lessee. The

*Controller of Mines, IBM sent his comments on 07-08-1997 and the mining plan was approved by IBM on 25-06-1999. The Director of Mines and Geology sent his proposal for renewal to the Secretary to the Government of Karnataka on 11-07-2000 (letter was signed nearly a month and twenty days after it was typed). In the meanwhile lessee Sri K. Raghavendra Rao died on 4th December, 2000. The Government of Karnataka vide their Notification No.CI:105: MMM 2003 dated 13-02-2004 (after a lapse of 3 1/2 years) sanctioned renewal of M.L. M.L.No.2204. The renewed lease was finally executed on 4th June, 2007 in favour of Smt. K.R. Chanchala Bai, legal heir of late K. Raghavendra Rao **after a lapse of nearly 11 years from the date the application was filed.** The process and the time involved in the renewal of mining lease indicate that the Government agencies involved in such processes are insensitive and appear to deliberately procrastinate the issue."*

CONCLUSIONS:

From the aforesaid reports, it transpires that the mining activities continued in various areas for a long time on the basis of 'deemed extension'.

- (1) For this, the **Standing Committee (Parliamentary)** on Coal and Steel **(2005–06)**, has observed as under:

- (a) *"The Committee have serious apprehensions that the malaise of the illegal mining will continue to raise its ugly head and the very purpose of streamlining the procedure for grant of mining leases **would be defeated if the cases of grant of mining lease are not disposed of quickly.**"*

The Committee desires the Ministry / IBM to seriously look at the problem and to ensure that the cases of grant of mining leases are disposed of as early as possible. The Committee would like to be apprised in this regard."

The **Standing Committee (Parliamentary)** on Coal and Steel **(2006–07)**, has observed as under:

(b) *The Committee need not emphasize that timely disposal of mining lease application is in the overall interest of mineral exploration and any **delay in this regard could be interpreted as encouragement to the menace of illegal mining.***

(c) *The Committee, therefore, reiterates that the Ministry should take urgent steps to streamline the procedures as to minimize the delay in the grant of mining lease.”*

(2) **Similarly, the Central Empowered Committee appointed by the Apex Court, pointed out as under:**

"Widespread and rampant illegal mining operations have been taking place in Orissa. The organized illegal mining is taking place with the active support of the State Government and has resulted in the breakdown of the constitutional machinery".

(3) It has also been pointed out that even though the lease period expired, on the basis of 'deemed extension', the lease/license holders were continuing mining as in the following cases:

- (a) in 15 mines, the lease period had expired before **20 years**;
 - (b) in 17 mines, the lease period had expired before **15 to 20 years**;
 - (c) in 38 mines, the lease period had expired before **10 to 15 years**;
 - (d) in 65 mines, the lease period had expired before **5 to 10 years**; and
 - (e) in 80 mines, the lease period had expired before **1 to 5 years**.
- (4) In forest areas, the lease holders were continuing mining operations without obtaining approval / permission from the Forest Department as required under the provisions of the Forest (Conservation) Act, 1980.
- II. Similar observations have been made by the Central Empowered Committee with regard to Andhra Pradesh and State of Karnataka.

Hence, for deciding application for renewal of mining lease, procedure is required to be streamlined and provisions in that regard are required to be amended as stated herein after.

REMEDIAL MEASURES

Rule 24(A) (1) and 24(A) (6) of the Mineral Concessions Rules, 1960 require to be amended for effective enforcement.

Rule 24(A) reads as follows:

- (1) *An application for the renewal of a mining lease shall be made to the State Government in Form J. at least twelve months before the date on which the lease is due to expire, through such officer or authority as the State Government may specify in this behalf.*

Following amendments by way of additional clauses (b) and (c) in the said Rule would curtail the time for deciding the renewal application for the lease.

24(A) (1)(a) An application for the renewal of a mining lease shall be made to the State Government in Form - J at least twelve months before the date on which the lease is due to expire, through such officer or authority as the State Government may specify in this behalf.

- (b) **In case of forest land, simultaneously with the application for the renewal of a mining lease under Rule 24(A) (1) (a) appropriate application should be filed before the concerned Forest Officer for approval.**

- (c) **Further, if required, simultaneously with the application for renewal of mining lease under Rule 24(A) (1) (a) appropriate application should be filed to State Pollution Control Board for its clearance.**

Rule 24(A) (6) of MCR 1960, reads as follows:

- (6) *If an application for renewal of a mining lease made within the time referred to in Sub-Rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period till the State Government passed the order thereon.*

Following **amendment in Rule 24(A) (6)** would curtail the period of deemed extension only for one year:-

“If an application for renewal of a mining lease made within the time referred to in Sub-Rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended **by a further period of one year or till the State Government passed the order thereon, whichever is earlier.**”

By this amendment concerned officers would be required to decide the renewal application promptly within stipulated time.

One year before expiry of lease and one year after expiry of lease – **(two years)** for deciding renewal application would be more than sufficient.

IV**MINING WITHOUT LEASE OR LICENSE
AND
MINING OUTSIDE THE LEASED AREA**

For controlling the above stated menace of illegal mining, (as discussed herein and found in various Committees' reports) there is a specific provision in the Mineral Concession Rules, 1960, namely Rule 2 of Part-VII which provides for the covenants of the lessee/lessees.

Rule 2 reads as under:

*"The lessee/lessees shall at his/their own expense erect and at **all times maintain and keep in repair boundary marks and pillars** according to the demarcation to be shown in the plan annexed to this lease. Such marks and pillars shall be sufficiently clear of the shrubs and other obstructions as to allow easy identification."*

As the said Rule was not followed, Government of India, Ministry of Mines, Indian Bureau of Mines had issued **Circular No. 2 of 2010 dated 06-4-2010**. The said Circular reads as under:

"In supersession to all the instructions issued on the subject, it is decided that:

1. *The Mining Lease / Prospecting License boundary showing all Khasra numbers / Survey Nos. on a Cadastral Map (Khasra Plan) on original plan (not the photo copy) and duly certified by State Government on a scale of 1:3960 shall be submitted with Mining Plan / Scheme of Mining / Progressive Mine Closure Plan and Scheme of Prospecting by the Lessee / Applicant / Licensee.*
2. *The boundary pillars of each mine lease / prospecting license are to be fixed precisely. Each boundary pillar shall be surveyed using DGPS (at least 2 Hours observation) for its ground position by an agency recognized by the State Government).*
3. *The Geo-referenced mining lease / prospecting licenses map prepared using DGPS shall be superimposed on Geo-referenced vectorised cadastral map.*
4. *On integration, the Geo-referenced mining lease/prospecting licenses map shall be duly matched with geo-referenced vectorised cadastral maps.*

5. *In case of forest areas, the boundary pillars shall be fixed on ground with reference to at least three permanent ground features in and around mining leases / prospecting licenses.*
6. *The geo-referenced mining leases / prospecting licenses map shall be superimposed on latest high-resolution satellite data (cloud-free) derived from merging of Cartosat-2 and LISS-IV (Scale 1:5,000) covering an area of 500 meters from the mining lease / applied area boundary.*
7. *The satellite data products are available from NRSC, Hyderabad. The superimposed output in the form of soft copy and hard copy should be submitted along with the Mining plan / Scheme of Mining / Progressive Mine Closure Plan and Scheme of Prospecting. The soft copy submission should be in the standard format and digitized maps should be in shape file, which can be imported in any GIS database.*
8. *The above maps will be base for preparation of all statutory as well as working plans of the mines.*

This circular may be given wide publicity amongst RQPs / Mine Owners / Lessee's / Licensee's / Applicants for implementation. Further, this may be intimated to all the states."

(a)

ENFORCEMENT OF THE ABOVE CIRCULAR:

The question is regarding enforcement of the aforesaid Rule and the Circular. Strict enforcement of the above stated Circular to control illegal mining beyond lease area is absolutely necessary. This is clear from the finding recorded by the various committees.

At the outset it would be worthwhile to reproduce some relevant portion of the Report dated 3-8-2006 of the Standing Committee on Coal and Steel (Parliamentary).

1. Boundary marks:

For boundary marks, the Committee has, inter-alia, observed as under:

*"Para 2.17 ... The IBM undertakes inspection/studies for the enforcement of provisions of MMDR Act, 1957 and rules made thereunder **for ensuring that mining operations are carried out in accordance with the approved mining plans/schemes of mining. The Committee, therefore, feels that while ensuring that mining operations are carried out as per approved plans and schemes, the IBM is duty bound to point out the violations in this regard.**"*

.....

"Para 3.17 ... **The Committee view with concern the manipulation of existing mining plans and the violations in mining of major minerals in various States.** As is evident from large scale transportation activities visible in the area, the mining companies are **indulging in excessive excavation of minerals beyond the permissible limits** under the approved plans. The Committee are also anguished to note that whereas mining plans are approved for a particular area, mining activities are clandestinely being carried out much below the ground level and beyond the approved area sometimes jeopardizing the historical and ancient monuments.

.....

The Committee desires the Ministry to immediately come out with short term measures to contain such unlawful mining activities. The Committee also desires the Ministry to expeditiously frame the clear and unambiguous definition of illegal mining and also prepare a schedule of types of illegal mining for the information of concerned agencies / individuals and the State Governments."

"Para 4.16 ... In this backdrop, the Committee are extremely constrained to note that no mechanism whatsoever existed in the Ministry till recently for effective prevention of illegal mining. The Committee are also surprised that though the State Governments were

empowered to take action for prevention of illegal mining, there was no semblance of coordination between the Ministry of Mines and the State Governments though forums like Mineral Advisory Council, Conference of State Ministers of Mining & Geology existed. The lack of seriousness was evident from the fact that the last conference of State Ministers of Mining & Geology was held in January, 2003. During all these years, **the illegal mining continued unabated with unscrupulous miners playing havoc with scientific mineral exploration and environmental concerns. The Committee are, therefore, of the view that Ministry of Mines has performed miserably to discharge their constitutional responsibility of regulation, scientific development and exploration of mines and minerals in the Country."**

"Para 4.18 ... The Committee **strongly feel that if more inspections are carried out**, the possibility of a large number of cases of illegal mining being detected can not be ruled out particularly in Orissa, Chhattisgarh, Karnataka, Jharkhand, Rajasthan and Madhya Pradesh.

The Committee, therefore, desire that the Ministry should take initiative to suggest **periodicity of routine and regular inspections** by the State Governments and IBM for detecting and preventing such cases."

**Standing Committee on Coal & Steel (2006–2007) —
14th Lok Sabha, dated 22nd August, 2007:**

Report with regard to action taken by the Government on the Recommendations contained in the Nineteenth Report of the Standing Committee on Coal and Steel (Fourteenth Lok Sabha)

In CHAPTER: I, in Para: 1.15, it has been stated that:—

“B. Issue directions to States to frame Rules for Prevention of Illegal Mining, transportation and storage of minerals”:—

... ..

*“1.15 Since the **non-framing of rules by most of the State** Governments was the main reason for the rampant illegal mining in the Country, the Committee had desired the Ministry to direct the States who had not framed rules for prevention of illegal mining, transportation and storage of minerals to do so. The Ministry in its reply has stated that so far 14 States have framed rules under Section 23C of MMDR Act, 1957 for the prevention of illegal mining, and that instructions have been issued to the remaining State*

*Governments for framing such rules. **The Committee are pained to note that illegal mining has already played havoc on the mineral resources of the country and caused great loss to the national exchequer but some of the State Governments are still oblivious to the fact that massive illegal mining is taking place in their respective States in the absence of rules to curb this menace.** The Committee would like to reiterate their earlier recommendation and desire the Ministry to take up the matter vigorously with such State Governments.”*

Further, in CHAPTER: I, in Para: 1.32, it has been stated that:–

“F. *State Governments should set up **Task Force** to prevent Illegal Mining”:*–

... ..

“1.32 *The Committee had desired the Ministry to direct all the State Governments to set up the task forces at State level at the earliest to carry out **inspections** for prevention of illegal mining. The Ministry has informed that so far 19 States have constituted task force and instructions have been issued to the remaining States for constitution of task force immediately. The Committee are of the strong view that constitution of task force is absolutely*

*necessary for the prevention of illegal mining and in the absence of such mechanism, the malaise of illegal mining would continue unabated. The Committee, therefore, desires the Ministry to vigorously take up the matter with the State Governments who have not constituted task force so far at the highest level. The Committee would also like the Ministry to **stringently monitor the framing of these task forces and seek periodical reports from them** to ensure early detection and prevention of the cases of illegal mining."*

(b)

Further, it will be worthwhile to make a note of the reports (interim) submitted by the CEC before the Hon'ble Supreme Court in IA No. 2746 - 2748 of 2009 filed by Rabi Das, Editor, AMA, Rajdhani (Daily Newspaper) on 26th April, 2010.

For this purpose CEC relied upon CAG's report (pertaining to mines in Orissa) wherein CAG has stated that "area of 1011.50 Hectares which included **793.35 Hectares of forest land** was handed over in June, 1982 to a Mining Corporation to carry out mining operations on agency basis. Later, in January, 1999 Mineral Concession Rules were amended withdrawing the provisions for mining operations on agency basis and yet the Corporation continued the mining operations on agency basis upto 23-11-2006 without executing any lease deed and without obtaining approval under the FC Act. A **Vigilance Inquiry** was taken up regarding allegation of **corruption** in the matter of illegal mining by M/s. RBT Ltd. and others. In the Vigilance Inquiry Report dated 10-8-2009, it was concluded that **the officers of the Mines Department and the Forest Department abused their official position showing undue favour** to M/s. RBT Ltd., thereby causing loss of about Rs.110.00 crores because of illegal mining from the forest and other unauthorized areas. Upon the State Government taking

up administrative enquiries in a number of cases including M/s. RBT Ltd., B.C. Das and M/s. Arjun Ladha in District Keonjhar and Keria and B.K. Das in District Mayurbhanj **12 vigilance cases pertaining to possession of disproportionate assets** came to be registered. Besides, a **multi-disciplinary State Level Squad detected 213 such cases** since July, 2009. The **District Level Enforcement Squads detected 596 similar cases** between April and December, 2009.”

The State has also reported as under:

*"A large number of cases regarding the **transportation of the illegally mined / unauthorized ore** have been detected and for which FIRs have been lodged at the concerned Police Stations. These include 62 rakes dispatched from Banspani, 63 from Joruri and 27 rakes from Barbil. 1.85 lakh MT of iron ore and manganese ore have been seized at the various railway sidings. Besides, 48 persons belonging to the different companies / transporters have been arrested."*

MINING WITHOUT ANY LEASE AGREEMENT:

It has been observed that in Orissa, Karnataka and Jharkhand, illegal mining has occurred without any permission of the State Government, especially in Forest

areas. Inaccessibility within the area combined with poor regulation by the State Government has contributed to this type of illegal mining. In West Singhbhum district of Jharkhand, the areas adjoining the Orissa border are known to have rich deposits of high grade iron ore occurring in the forest areas. Some of these areas are prone to Naxalism and are generally inaccessible due to lack of infrastructure. However, illegal mining of iron ore has been going on in these areas, particularly with the **connivance** of illegal crushing units operated by **mafias**. These mafias have also been reported to have expanded their operation into Orissa and attacked officers from State Government of Orissa investigating into illegal mining in the region.

The particular case of 6 mines working in Obullapuram, H-Siddapuram and Malapanagudi villages in Anantpur District of Andhra Pradesh is an example of illegal mining being conducted in forest areas of adjoining Bellary Reserve forest due to poor enforcement by the State Government in forest areas. In this case there are also allegations that boundary marks making out the inter-State boundary between Andhra Pradesh and Karnataka have been removed in order to enable mining across inter-State borders without having to take mining approvals.

ENCROACHMENT OF AREAS:

Several instances have come to the knowledge of Central Government where due to failure of State Government to **demarcate the mining lease boundaries**, the lease holders have transgressed into each other's mining lease area and carried on illegal mining activities. These instances are widespread in Bellary - Hospet region of Karnataka, Karnataka - Andhra Pradesh border areas in the Anantpur district of Andhra Pradesh and in the Sundergarh - Koenjhar region of Orissa. In fact many of the complaints on transgression have been taken to the respective High Courts which have ordered the State Governments to demarcate boundaries at the field level.

ILLEGAL MINING DUE TO LACK OF ADEQUATE CHECKS IN FOREST AREAS:

Ineffective enforcement of checks in forest areas by the State Departments has contributed to uncontrolled mining of mineral wealth in forest areas. The Lokayukta of Karnataka in his Report dated 18th December, 2008 submitted to the State Government has also pointed to such inadequacies in the Forest Department. As pointed out by the Lokayukta of Karnataka, **the forest areas of Bellary - Hospet, Karnataka especially those sharing boundaries with**

Andhra Pradesh have seen some worst cases of illegal mining. In a particular case in Karnataka, a secret road from Bellary to the Belikeri Port (a minor port under the State Government) has been discovered to be going through the forest areas to enable illegally mined ore to be exported. This could not have been possible without connivance of the State Forest officials. The most common response of the State Forest department has been that records demarcating leases in forest areas are inadequate or do not co-relate with the ground position.

(c)

**MASSIVE ILLEGAL MINING IN FOREST AREAS IN
MINING LEASE NO.2010 (Karnataka)**

RE: Encroachment

even with regard to illegal mining lease

The CEC Report with regard to the massive illegal mining in Forest areas in mining lease No.2010 indicates following glaring instances of encroachment by the lessees of illegal mining leases. CEC relied upon the Preliminary Report of the Lokayukta, Karnataka and observed as under:

“The Report of the Lokayukta, Karnataka shows the following encroachments / illegal mining in the forest area by M/s. S.B. Minerals, M/s. Balaji Mines and Minerals and M/s. Muneer Enterprises:

- | | | | |
|-------|---|-----------------|---|
| (i) | M/s. S.B.
Minerals | 5.8- ha. | (as per sketch 4.14 ha.
in the ML No.2010 of
M/s. RMML) |
| (ii) | M/s. Balaji
Mines &
Minerals | 8.54 ha. | |
| (iii) | M/s. Muneer
Enterprises | 8.33 ha. | (as per sketch 3.93 ha. In
the ML No.2010 of M/s.
RRML)” |

The particulars of the aforesaid encroachments appear in Annexure R-43 as under:

“Annexure AA”

List of the Forest Offence Cases booked for having done the encroachment and illegal mining in stopped Dalmia (BRH) Mines M.L. No. 2010

Sr. No.	Name of the Offender	Nature of Offence	FOC No.	Date	Material seized	Vehicle seized	Remarks
1	M/s. Trident Minerals, M.L. No. 2315	Encroached in M.L. No. 2010 to the extent of 3.00 to 4.00 acres and doing mining	157/07-08	4.3.2009	--	--	Charge-sheet is filed in JMFC Sandur
2	M/s., S.B. Minerals, M.L. No. 2550	Encroached in M.L. No. 2010 extent 0.4 ha. and was doing mining	2/09-10	20.4.2009	4,160 cum Iron Ore	--	Investigation is under progress
3	M/s. S.B. Minerals, M.L. No. 2550	Encroached in M.L. No. 2010 extent 11.00 ha. and was doing mining	39/09-10	22.8.2009	1,656 cum Iron Ore	--	Investigation is under progress
4	M/s. S.B. Minerals M.L. No. 2550	Encroached in M.L. No.2010 extent 19.32 ha. and was doing mining	60/09-10	14.9.2009	29,927 cum Iron Ore	9 Vehicles and Machines	Investigation is under progress

5	M/s. S.B. Minerals, M.L. No. 2550	Formation of road in M.L. No. 2010 to the extent 500 MTR.	67/09-10	29.9.2009	3 cum Fire wood	--	Investigation is under progress
6	M/s. VMPL, M.L. No. 988	Formation of illegal road of 800 MTR in M.L. No. 2010 & 200 MTR in forest area	893/09-10	5.12.2009	2 Lakhs fine paid	--	Investigation is under progress

Thus, even the lessees holding illegal leases in forest area had encroached upon further areas in Mining Lease No. 2010.

From the aforesaid report it is apparent that with regard to mines in Bellary District, there are no proper boundary marks and there is encroachment beyond lease area.”

(d)

CONCLUSION:

Considering the aforesaid reports and the findings recorded by the Committees, it is apparent that as there is no proper enforcement of Rule 2 of Mineral Concession rules, 1960 Part VII which deals with rents, royalties and taxes, circular dated 06-04-2010 and Section 24(1) of the Act; mining without lease or mining outside the lease area is continuing unabated. Therefore, more and more inspections of the mines are necessary. Not only inspection, but the record thereof is also required to be maintained with a specific note that mining operation is in the lease area. If it is found that mining operation is beyond the lease area, immediate action should be taken.

For this purpose, following suggestions are made:

AMENDMENT IN SECTION 24 & RULES 26 & 27

Hence, for controlling illegal mining:

- (i) beyond lease area or**
- (ii) mining without lease or licence,**
it is necessary to amend the provisions of
Section 24(1) of the Act by adding

- "(aa) verify whether the boundary pillars are properly structured and are easily visible; and reports thereof should be kept on record."**

Thereupon, relevant part of the Section would read as under:

“Section: 24(1)

(a) enter and inspect any mine;

(aa) verify whether the boundary pillars are properly structured and are easily visible; and reports thereof should be kept on record.

(b) survey and take measurements in any such mine;”

(c)

(d)

(e)

(f)

FURTHER FOLLOWING AMENDMENTS NEED TO BE CARRIED OUT IN THE RULES 26 AND 27 OF MINERAL CONCESSION RULES, 1960

Rule 26 of the Mineral Concession Rules, 1960 deals with the refusal of the application for grant or **renewal of mining lease.**

Following Sub-Rule is proposed to be **added as Sub-Rule (4) in Rule 26.**

- (1)
- (2)
- (3)
- (4) *Notwithstanding the provisions of Sub-Rule (1), where it appears that the applicant is indulging in illegal mining or encroachment upon the non-lease area **or has extended or changed, in any manner, the boundaries or boundary marks of lease area**, the application for renewal shall be liable to be rejected.*

In **Rule 27** of the Mineral Concession Rules, 1960, which deals with the conditions of mining lease, the following Sub-Rule is proposed to be added as Sub-Rule (4A).

- (1)
- (2)
- (3)
- (4)
- (4A) If the lessee / licensee is found to have **encroached upon the non-lease area, in any manner, including shifting of boundaries or boundary marks, and / or if the boundary pillars are not maintained**, the lease / license shall be liable to be terminated after giving 30 days' show cause notice.
- (5)

Finally, it is also suggested that the aforesaid Circular dated 06/04/2010 requires to be amended as under by adding Clause 9 and 10 to the following effect, for better implementation:

- (9) The distance between two pillars should not be more than 20 mtrs. and that the pillars should be of concrete.
- (10) It should be mandatory for the concerned officer/s to visit the mine/s at least once a month, verify whether the boundary pillars are properly affixed and are easily visible, and the report/s thereof should be kept on record.

AND

If the report is incorrect, the explanation of the concerned officer who visited last should be sought for and if not found satisfactory, departmental action should be taken.

Aforesaid amendments would cast duty on the concerned officers to visit the site which itself would control mining beyond lease area.

Further, lessees would also know that if he carries out mining activity beyond lease areas, his lease would be cancelled.

**CHECK POST / COMPUTERISED WEIGH BRIDGE
AND
MAINTENANCE OF ROAD / TOLL TAX**

For controlling illegal mining and for recovery of exact Royalty it is necessary to have effectively functioning check posts and computerized weigh bridges.

In some states for recovery of Royalty reliance is placed on the statement of the mine owner / transporter.

In these days, it would be highly improper solely to rely upon the statement made by the owner or transporter with regard to the weight of the minerals. Further, so called cross checking from the consumers with regard to the weight also does not help the State in recovering exact recoverable royalty. For this purpose Section 23C of the Act requires to be implemented.

Section 23C of the Mines and Mineral (Development & Regulation) Act, 1957 gives power to the State Government to make rules for preventing illegal mining, transportation and storage of minerals which reads as under :-

Section 23C (1): The State Government may, by notification in the Official Gazette, make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

- (2): *In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-*
- (a) *establishment of check-posts for checking of minerals under transit;*
 - (b) ***establishment of weigh-bridges to measure the quantity of mineral being transported;***
 - (c) *regulation of mineral being transported from the area granted under a prospecting licence or a mining lease or a quarrying licence or a permit, in whatever name the permission to excavate minerals, has been given;*
 - (d) *inspection, checking and search of minerals at the place of excavation or storage or during transit;*
 - (e) *maintenance of registers and forms for the purpose of these rules;*
 - (f) *the period within which and the authority to which applications for revision of any order passed by any authority be preferred under any rule made under this section and the fees to be paid therefor and powers of such authority for disposing of such applications.*

SUGGESTIONS:

By exercising power under Section 23C (2) (b) of the Mines and Mineral (Development & Regulation) Act, 1957, it can be suggested and it is desirable that all the **States may frame identical rules for establishment of the weigh-bridges. Central Government may frame model rules for States to adopt.**

- (i) For recovery of royalty and also to control illegal mining, it is desirable to **establish computerized weigh-bridges** at exit point in case where there is a cluster of mines;
- (ii) In case where mines are scattered and there is considerable distance between the mines, it is desirable that there should be **a computerized weigh-bridge within a radius of 15 to 20 kms. and that should be compulsorily made at exit point for all trucks carrying minerals;**
- (iii) There should be a specific Rule empowering the concerned Officer to check the vehicles as well as minerals at any point within the State and in case where a truck is found without legal permit received from the authorized weigh-bridge, to seize the same and to take action as per the rules; and

- (iv) In any case, **if** it is not feasible for the State Government to have weigh-bridge, it may authorize private persons to have their computerized weigh-bridge with a specific direction that whenever a truck passes, its weight and all the relevant information are sent to the main station. The State Government may authorize such persons to recover reasonable fees from the transporters.

This would help in curbing illegal mining, transportation of minerals and also the State Government can recover proper royalty. In any case, a **proper online system** is required to be developed to regulate transportation of vehicles carrying minerals and such vehicles should be fitted with **Global Positioning System (GPS) and Radio Frequency Identification (RFID)** devices for effective monitoring of movement of the vehicles.

In the State of Andhra Pradesh, this Commission has observed that for recovering royalty, the concerned officers solely rely upon the weight stated by the mine owners/license holders. Mineral weight is not taken in the presence of officers of the department. This is highly improper because the concerned officers of the department have to rely solely upon the statement made by the mine owners/license holders. Indeed it is stated that the officers of the department can verify weight from

the consumers so as to ascertain how much minerals have been purchased or received from the mines owners/license holders.

In the opinion of this Commission, the aforesaid procedure cannot be the basis for recovery of royalty or for controlling illegal mining as in the present day scenario it is difficult to rely upon such statements made by the transporters, mine owners or consumers who have purchased minerals.

CORRUPTION:

No doubt for achieving the proper result, corruption is required to be controlled. The experiment of computerized weigh-bridge in the State of Gujarat is criticized because of corruption as reported in newspaper - the Time of India. **(May be exaggerated)**

Weeding out corruption and bringing in transparency have failed to achieve the desired result because of corruption at various levels. For this purpose, it would be necessary to refer to news reported in the **Times of India on 7-5-2011**, which reads as under:

"No check post to weed out corruption?"

"A project, which got mention in World Bank's Development Report 2001 as a model for others to emulate to "weed out corruption and bring in transparency" may have failed to achieve its purpose. Ten years later, the project, which involved computerization of check posts at the cost of Rs.200 crores, seems to be infected with a toxic "corruption virus"

"For products like marble, iron, steel and other sensitive products, where government suspects tax evasion, these forms are to be procured online. But the state commercial tax department's badly maintained website leaves traders with two options - to either await their turn to log in to the website and run the risk of incurring losses or grease the palms of officials at check posts."

"In exchange for a few thousands, the check post officials allow trucks to come or leave the state without such forms. This has resulted in huge tax income losses for the state coffers."

"The website's problems have made traders helpless. They can't wait for days to get a chance to log in to the website and get the form especially when the option of bribing officials at check posts is readily available. The nexus between notorious tax inspectors and local police officials at many entry-exit points of the state is well known among the transporters who help the traders bring goods without the forms," said a source."

Hence, to avoid such a situation, computerized weigh-bridges should be properly manned and web-site problems should be maintained and controlled.

In any case, computerized forms should be easily made available to the traders/transporters.

CHECK POSTS:

At all exit points, check posts should be established for examination/verification of mineral(s) in transit, records and documents including challan.

In this respect the following suggestions require consideration. This suggestion is made for having a rule similar to rule 7 of Gujarat Mines (Prevention of Illegal Mining, Transportation and Storage) Rules, 2005.

**Establishment of check posts and barriers and
weighment and inspection of minerals in transit**

- (i) If the State Government considers it necessary to do so with a view to checking transport and storage of mineral(s) raised without lawful authority, it may direct the setting up of check-post or erection of barrier or both at any place or places within the state by an order in writing. Provided that setting up of a check post or erection of a barrier or both shall be notified in the Official Gazette.
- (ii) Any officer authorized by the State Government in this behalf, may check any carrier carrying mineral(s) at any place and the persons in charge of the carrier shall furnish a valid challan or transit pass in prescribed Form and other particulars such as bill or receipt or delivery note on demand by officer in charge,

- (iii) At every check post or barrier set up under above sub-rule (i) of Rule 7 or at any other place when so required by the officer in charge of the check post or the barrier or any other authorized officer, the person in charge of the carrier shall stop the same for examination of the mineral in transit and also inspection of records and documents relating to minerals in possession of such person in charge of the carrier. The person in charge of the carrier shall if so required by the officer in charge of the check post or the barrier or any other authorized officer shall furnish his name and address as also that of the owner of the carrier and the name and address of both the consigner and the consignee. After checking the mineral and carrier the officer in charge of the check post or the barrier or any other authorized officer shall put his signature on the valid challan or transit pass.
- (iv) The officer in charge of the check post or the barrier; or the authorized officer shall have power to seize the mineral along with the carrier in transit, the dispatch of which is not covered by a valid challan or transit pass or the person in charge of the carrier refuses to make the payment of penalty as may be prescribed.

The officer in charge of the check post or any authorized officer may direct the person in charge of the carrier to carry the mineral to the nearest police station or check post or barrier of the department;

Provided that if the person in charge of the carrier refuses to carry the mineral and the carrier to the nearest police station or check post or barrier of the department, the officer in charge or any other officer empowered may seize the carrier and take the same in his possession.

- (v) Whenever a carrier together with the mineral is seized by an authorized officer, he shall give an option to the owner or in charge of the carrier to pay an amount equivalent to the value of the mineral(s) in lieu of such seizure. In case of failure of owner or person in charge of the carrier to exercise such option, legal action may be initiated against him by any authorized officer.
- (vi) The officer in charge of the check post or the barrier or any other authorized officer shall give a receipt of such mineral and carrier seized by him to the person from whose possession it is seized.

Finally, **modernized check posts** at all strategic points would contribute to regulate and check illegal transportation of minerals.

MAINTENANCE OF ROADS:

How the roads are constantly used by the lease/license holders, it would be worthwhile to reproduce some observations made by **Hon'ble Mr. Justice Hegde, Lokayukta, Karnataka State, in the Report dated 18-12-2008 at Page No.55 and by in Report on illegal mining activities in Bellary, Hospet and Sandur region (BHS) at Page No.116**, which read as under:

"... During the course of my journey, I noticed that roads in and out of Hospet and Sandur are practically not motorable by passenger vehicles, because of the heavy load and frequency of the vehicles carrying minerals and also in view of the fact that these vehicles carry minerals in open bodied vehicles, on either side of the road, vegetation has been damaged heavily."

"... The use of heavy machines has been increased manifolds. The increase in crushers at mines head, stock yards and many other places which are working round the clock, the noise pollution have crossed all times. The truck movement on hilly areas, bad roads and movement mainly in nights, the peace of the area has been completely lost. Most of the villages in Sandur, Hospt and

Bellary Taluks and also beyond, which falls on the "iron route", are highly affected. The impact of the movement of vehicles is felt up to Sea coast in western and eastern part of the plateau. The roads in Western Ghats have been completely destroyed due to the movement of iron ore loaded heavy duty trucks."

In the area where there are mines for transporting the mines lease holders are constantly using roads for transporting minerals. Round the clock they also use heavy machines and bring crushers at mine heads, stock yards and at many other places. By constant use of roads for transporting minerals and for other purposes there cannot be any doubt that it adversely effects environment.

For this purpose, it is to be stated that when there are cluster of mines situated in one locality, then it is advisable to have **roads maintained by the lease/licence holders** upto a certain limited area. If the roads are not maintained by the lease / licence holders, then appropriate toll tax should be recovered from the lease / licence holders for proper maintenance of roads.

INADEQUATE STAFF

To the questionnaire sent to the various States, it has been admitted by the States that for controlling illegal mining, there is the shortage of staff.

The State of Karnataka has pointed out that only limited numbers of officers are available to supervise the mining activity and its transportation. The staff is also not provided with wireless communication system for better co-ordination and swift action upon illegal mining and its transportation.

The State of Maharashtra has pointed out that shortage of manpower is a reason for illegal mining activity and inadequate manpower, poor infrastructure can be said to be contributing towards the failure to some extent, in curbing illegal mining.

The State of Orissa has also point out that **there is a need for enhancing staff, setting up modern check gates, making use of IT** in monitoring transportation etc for effectively curbing mining activities.