



Shephali

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**PUBLIC INTEREST LITIGATION WP NO. 44 OF 2024**

**The Goa Foundation,**  
through its Secretary, Dr. Claude Alvares,  
age 76 years, having Regd. Office at G-8,  
St. Britto's Apts., Feira Alta, Mapusa,  
Goa 403 507,  
PAN No. AAAAG0249C  
Income: Rs. 15-26,00,000 per annum  
(approx), Registration No. 23/Goa/86,  
Email id: goafoundation@gmail.com

...Petitioner

~ versus ~

SHEPHALI  
SANJAY  
MORMARE

Digitally signed by  
SHEPHALI SANJAY  
MORMARE  
Date: 2026.05.08  
11:31:32 +0530

1. **The State of Goa,**  
through its Chief Secretary, Secretariat,  
Porvorim, Goa 403 521.
2. **The Directorate of Mines & Geology,**  
Ground Floor of Institute Menezes  
Braganza, Panji, Goa – 403 001
3. **The Ministry of Mines,**  
Through its Secretary, Shastri Bhawan,  
Dr. Rajendra Prasad Road,  
New Delhi, Delhi – 110 001
4. **M/s. Chowgule & Company Pvt. Ltd,**  
**Mining Division,** at Chowgule House,  
Mormugao Harbour, Mormugao,  
Goa – 403 803.
5. **The Goa Mineral Ore Exporters'**  
**Association,**  
A society registered under Societies  
Registration Act, having its office at P.O.  
Box: 113, Vaglo Bldg.,

Panji – Goa 403 001,  
Through its Joint Secretary, Ms. Tereza  
Maria Goretti Romana Rodrigues De  
Souza, Wife of Cornelio De Souza,  
Resident of House No. 425,  
Aforamento, Near KV Colony, Reis  
Magos, Verem, Bardez, North Goa

6. **The Goa State Pollution Control Board,**  
Through its Member Secretary, Near  
Pilerne Industrial Estate, Opp. Saligao  
Seminary, Saligao, Bardez, Goa 403511

7. **Vijay Ravalnath Gaonkar,**  
r/o H. No.: 252/1, Madala Wada,  
Shirgao, Goa 403 505.

...Respondents

#### APPEARANCES

|                                     |                                                                                                                                                                             |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the Petitioner                  | <b>Ms Norma Alvares, Senior Advocate,</b><br>with Mr. Om D'Costa & Ms. Malisa<br>Simoos.                                                                                    |
| For Respondent Nos. 1 & 2-<br>State | <b>Mr Devidas J. Pangam, Advocate<br/>General,</b> with Mr. Deep Shirodkar,<br>Additional Government Pleader.                                                               |
| For Respondent No. 3.               | <b>Mr Somnath Karpe,</b> with Mr. Anand<br>Shirodkar & Ms. Samiksha Vaigankar.                                                                                              |
| For Respondent No. 4.               | <b>Mr S. D. Lotlikar, Senior Advocate,</b><br>with Ms. Sailee Kenny, MR. Terence<br>Sequeira, Mr. Sarvesh Sawant, Ms.<br>Neha Shirgaonkar & Ms. P. Volvoikar<br>through VC. |
| For Respondent No. 5.               | <b>Mr S. S. Kantak, Senior Advocate,</b><br>with Ms. Neha Kholkar & Ms. Saicha<br>Desai.                                                                                    |
| For Respondent No. 6.               | <b>Mr Joaquim Godinho.</b>                                                                                                                                                  |
| For Respondent No. 7.               | <b>Mr Rohit Bras De Sa.</b>                                                                                                                                                 |

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CORAM : SUMAN SHYAM &  
AMIT S. JAMSANDEKAR, JJ

RESERVED ON : 4<sup>TH</sup> FEBRUARY 2026.  
PRONOUNCED ON : 7<sup>TH</sup> MAY 2026.

**JUDGMENT (Per Suman Shyam, J):-**

1. The Writ Petitioner is an Environmental Non Governmental Organization (“NGO”) based in Goa and has been *inter-alia* engaged in instituting legal proceedings before the Hon’ble Supreme Court of India as well as this High Court, espousing the cause of environment, wildlife, forests, pollution, mining laws, inter-generational equity and planned development of the State of Goa. By filing the present PIL Petition, the Petitioner has approached this Court challenging the provision of Clause 2(2) of Policy For Regulating Iron Ore Dump Handling in the State of Goa, 2023 (hereinafter referred to as “the Dump Policy of 2023”) framed by the State of Goa for dealing with dump mines by contending that Clause 2(2) of the Policy permits handing over mining dumps to the ex-lessees who had illegally created them outside the Mining Lease Area, without holding any auction, thus acting in a manner which not only contrary to the provisions of

Mines and Minerals (Development and Regulation) Act, 1957 (for short “MMDR Act 1957) but also the jurisprudence on elimination of natural resources flowing from the various Judgments of the Hon’ble Supreme Court. It has, however, been clarified that the challenge made to Clause 2(2) of the Dump Policy is confined to only the dumps created outside the lease areas, located on Government and private land and the inventoried dumps and, therefore, the remaining clauses of the Policy of 2023 are not under challenge. The core questions raised in this Writ Petition are (i) whether the State of Goa can eliminate valuable minerals contained in the mineral dumps without holding auction? and (ii) whether dump mining can be permitted without granting mining lease in respect of land where the dump is located? The Petitioner has also challenged the “in-principle” approval dated 16<sup>th</sup> August 2024, consent to operate, dated 12<sup>th</sup> November 2024, and the final approval dated 15<sup>th</sup> May 2025 granted in favour of Respondent No. 4 as the first ex-lessee without holding auction or granting any mining lease in the dump mine. Having regard to the nature of controversy involved in this PIL, it would be apposite to

briefly trace the historical background of this case, evident from the material placed before this Court including the various decisions of the Hon'ble Supreme Court, as hereunder.

2. The State of Goa was under the Portuguese Rule until 19<sup>th</sup> December, 1961. Under the erstwhile Portuguese regime, mining concessions had been granted in perpetuity to the concessionaires. However, after the liberation of the State of Goa, it became a part of the Union of India. As such, the MMDR, Act of 1957 became applicable to the State of Goa. Consequently, the Controller of Mining leases had issued a notice dated 10<sup>th</sup> March 1975 calling upon all the existing lessees and sub-lessees, to file their returns under Rule 5 of the Mining Leases (Modification of Terms) Rules, 1956. The concessionaires in Goa also came within the purview of the said Notification. As such, the Notification dated 10<sup>th</sup> March, 1975 was put to challenge before the Bombay High Court, Goa Bench. By the Judgment dated 29<sup>th</sup> September 1983 rendered in the case of *Vassudeva Madeva Salgaocar vs Union of India*<sup>1</sup> the Bombay High Court had passed a restraint order with regard to

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1 (1985) 1 Bom CR 36.

enforcement of the Notification dated 10<sup>th</sup> March 1975 in respect of the concessionaires in Goa.

3. The Goa, Daman and Diu Mining Concessions (Abolition and Declaration as mining Leases) Act, 1987 (for short “the Abolition Act”) passed by the Parliament had received the assent of the President on 23<sup>rd</sup> May 1987. As per Section 4 of the Abolition Act, mining concessions were abolished with effect from 20<sup>th</sup> December 1961 by providing that mining concessions would be deemed to be mining leases granted under MMDR Act which would govern such leases. The “Abolition Act” was challenged before the Bombay High Court, which had passed interim orders permitting the lessees to carry on with the mining operations with regard to the concessions for which renewal applications had been filed under Rule 24-A of the Mining Concession Rules. Eventually, although the High Court had upheld the validity of the “Abolition Act” but it was clarified that the same would operate prospectively. The decision of the Bombay High Court was challenged before the Hon’ble Supreme Court of India by instituting Special Leave Petition, wherein interim order was passed permitting the

concessionaires to carry on with the mining operations and mining business in the mining areas for which renewal applications had been made, on the condition that the lessees would pay to the Government, dead-rent from the commencement of the “Abolition Act”.

4. On 16<sup>th</sup> October 2009, the Indian Bureau of Mines (IBM), Government of India, Ministry of Mines, had issued a Notification revising the threshold value of minerals. In the said Notification, thresh hold of Iron Ores i.e. (i) for Hematic Iron Ore had been shown as 45% Fe(min) and (ii) Hematitic Iron Ore (for Goan origin) as 35% Fe(Min).

5. In the meantime, reports were received by the Government of India pertaining to large scale illegal mining of Iron Ore and Manganese Ore in different States including the Sate of Goa. Based on such information, the Government of India had appointed one man Commission of Inquiry under Section 3 of the Commissions of Inquiry Act, 1952 of Justice M. B. Shah, a Former Judge of the Supreme Court of India. The terms of reference *inter alia*, was to enter into and determine the extent of mining trade

and transportation of Iron Ore and Manganese Ore carried out illegally or without any authority of law and the losses incurred therefrom and also to identify as far as possible, the persons, firms and companies that were engaged in such illegal mining, trade and transport of Iron Ore and Manganese Ore. Justice Shah Inquiry Commission submitted two reports, one dated 15<sup>th</sup> March 2012 and another dated 25<sup>th</sup> April 2012, which were tabled in the Parliament on 7<sup>th</sup> September 2012, along with the Action-Taken Report. In the meantime, the Government of Goa had passed order dated 10<sup>th</sup> September 2012 suspending all mining operations within the State of Goa with effect from 11<sup>th</sup> September 2012. The Ministry of Environment and Forests (“MoEF”) had also issued order dated 14<sup>th</sup> September 2012 issuing a direction to keep in abeyance, the environmental clearances granted to the mines in the State of Goa.

6. In the wake of Justice Shah Commission report, the Petitioner herein had instituted Writ Petition being Writ Petition (C) No. 435 of 2012 before the Hon’ble Supreme Court which was



registered as a Public Interest Litigation. The primary relief sought in the PIL was for issuance of a direction to the Union of India and the State of Goa to take steps for terminating the mines in respect whereof, mining activities were being carried out in violation of various statutes.

7. On 5<sup>th</sup> October 2012, the Supreme Court had issued notice to the Respondents in Writ Petition No. 435 of 2012. By the said order, a direction was also issued to the effect that until further orders, mining operations in the leases in Goa, identified in the report of Justice Shah Commission and transportation of Iron Ore and Manganese Ore from those leases, whether lying on the Mine-head and Stockyard, to remain suspended. In the said proceeding, the Hon'ble Supreme Court had also directed that inventory of the excavated mineral ores lying in different mines/ stockyards / jetties/ ports in the State of Goa, made by the Department of Mines and Geology of the Government of Goa, will first be verified and thereafter, the whole inventoried minerals will be sold by e-auction and the sale proceeds (less taxes and royalty) will be retained in separate fixed deposits(lease wise) by the State of Goa

till the judgment on the legality of the leases from which the minerals were extracted, is delivered by the Court. The entire process of verification of the inventory, e-auction and deposit of sale proceeds was required to be monitored by Monitoring Committee constituted for the purpose.

8. By the order dated 11<sup>th</sup> November, 2013 the Supreme Court had constituted a Committee of Experts to conduct a macro EIA study on what should be the ceiling of annual excavation of iron ores from the State of Goa, considering its iron ore resources and its carrying capacity, keeping in mind the principles of sustainable development and intergenerational equity and all other relevant factors. Expert Committee (EC) submitted its interim report on 14<sup>th</sup> March 2014 and final report on 14<sup>th</sup> October 2014.

9. In the meantime, several mining lease holders had approached the Bombay High Court seeking a declaration that the report submitted by Justice Shah Commission as well as the orders issued thereunder, suspending the mining operations and environmental clearances, were illegal and, hence, liable to be quashed. Those Writ Petitions, instituted before the High Court of

Judicature at Bombay were, however, transferred to the Supreme Court and heard along with Writ Petition No. 435 of 2012.

10. In the meantime, the Government of Goa had framed the policy for regulating the mining dumps on Government and private lands and related issues and notified the same in the Official Gazette on 3<sup>rd</sup> September 2013 vide Notification No. 16/7/2008-RD(Part-III). The Notification dated 3<sup>rd</sup> September, 2013 had *inter-alia* mentioned that it was an one time policy for dealing with issues of mining dumps and other related issues. Paragraph B of the Policy of 2013, which lays down the scope of the Policy, is reproduced as here-under:-

*“B. Scope of the Policy.—*

(1) The provisions of this policy shall be applicable to the land used for dumping of mining rejects or like material and for all other activities as provided under sub-section (2) of section 36 of Land Revenue Code, 1968 on the land not covered under the land leased for mining activities irrespective of present and proposed classification/zoning.

(2) The policy provides for the levy of charges for unauthorisedly using the Government and private land for non--agricultural use.

(3) This policy also provides for the procedure to levy these charges etc., and for restoration of land to its original use.”

11. From a plain reading of the Policy of 2013 it is apparent that the primary objective of the same was to address the issue of loss of revenue due to un-authorized occupation of huge chunks of Government and private land for non-agricultural purpose i.e. mine dumping, in violation of Goa Land Revenue Code. Therefore, the Policy had provided for levy of charges by prescribing the conversion fees. As per the projections made in the Writ Petition, the Dump Policy of 2013 had resulted in collection of a sum of Rs 426 crores by the Government of Goa as penalties for demand on Land Revenue.

12. On 28<sup>th</sup> September 2013, the Goa Mineral Policy 2013, was finalised by the Government of Goa after considering the recommendations/ comments/ objections from various stake holders. The Goa Mineral Policy of 2013 was published in the Official Gazette under Notification No. PR. Secy (Mines) 01/2012-Mines. Preamble to the policy takes note of the fact that the Goan economy is heavily depended on Iron Ore Industry. However, during the period from 2006-07 to 2011-12, due to huge spurt in demand of low grade ore in international market followed by

illegalities and irregularities under the previous regulatory regime, the State had witnessed the peak of unregulated mining without any concern for fragile ecology and environment of the State or for the general well being of an average Goan, leading to reckless exploitation without any concern for sustainability. Therefore, it was observed that in order to promote sustainable extraction regime to facilitate systematic, scientific and planned utilization of mineral resources and to streamline mineral based development of the State, keeping in view, the need to protect environment, health and safety of the people in and around the mining areas, the Goa Mineral Policy 2013 has been framed. From the above, it is clear that the primary objectives of the policy was to develop and exploit mineral resources in a scientific and systematic manner, taking into account the interest of the State, its People and the Environment. It would be significant to note here-in that the Dump Policy of 2013 as well as the Goa Mineral Policy of 2013 were framed and notified by the Government of Goa during the pendency of Writ Petition (c) No 435 of 2012 and the connected matters before the Hon'ble Supreme Court. However, none of

those two polices were challenged by the Petitioner in Writ Petition (C) No.435 of 2012.

13. The verdict in Writ Petition (c) no 435 of 2012 and the connected matters came to be delivered on 21<sup>st</sup> April 2014 in *Goa Foundation vs Union of India*.<sup>2</sup> (here-in-after referred to as *Goa Foundation-1* ).

14. In *Goa Foundation-1*, the Supreme Court had *inter-alia* declared that the deemed mining leases of Goa had expired on 22<sup>nd</sup> November 1987 and the maximum renewal period of 20 years of the deemed mining leases had also expired on 22<sup>nd</sup> November 2007. Consequently, it was held that mining by the lessees after 22<sup>nd</sup> November 2007 was illegal. On the basis of such observations, the order dated 10<sup>th</sup> September 2012 issued by the Government of Goa and the order dated 14<sup>th</sup> September 2012 issued by the MoEF were held to be sustainable. It was also observed that dumping of mines outside the lease area of the mining leases was not permissible under the MMDR Act and the

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2 (2014)6 SCC 590.

Rules made thereunder. In so far as Dump Mining activities were concerned, the Apex Court had observed that the EC had said nothing about the mining dumps inside or outside the leased areas as noted by Justice Shah Commission presumably because in the order dated 11<sup>th</sup> November 2013, no direction was issued in that regard. Therefore, the opinion of the EC was sought in this regard, thereby directing it to submit its report within six months as to how mining dumps in Goa are to be dealt with. On the basis of such observations, the following directions were issued in **Goa**

***Foundation-1:-***

“88.1. MoEF will issue the notification of eco-sensitive zones around the national park and wildlife sanctuaries of Goa after following the procedure discussed in this judgment within a period of six months from today.

88.2. The State Government will initiate action against those mining lessees who violate Rules 37 and 38 of the MC Rules.

88.3. The State Government will strictly enforce the Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013.

88.4. The State Government may grant mining leases of iron ore and other ores in Goa in accordance with its policy decision and in accordance with the MMDR Act and the Rules made thereunder in consonance with the constitutional provisions.

88.5. Until the final report is submitted by the Expert Committee, the State Government will, in the interests of sustainable development and intergenerational equity, permit a maximum annual excavation of 20 million MT from the mining leases in the State of Goa other than from dumps.

88.6. The Goa Pollution Control Board will strictly monitor the air and water pollution in the mining areas and exercise powers

available to it under the 1974 Act and the 1981 Act including the powers under Section 33-A of the 1974 Act and Section 31-A of the 1981 Act and furnish all relevant data to the Expert Committee.

88.7 The entire sale value of the e-auction of the inventoried ores will be forthwith realised and out of the total sale value, the Director of Mines and Geology, Government of Goa, under the supervision of the Monitoring Committee will make the following payments:

- (a) Average cost of excavation of iron ores to the mining lessees;
- (b) 50% of the wages and dearness allowance to the workers in the muster rolls of the mining leases who have not been paid their wages during the period of suspension of mining operations;
- (c) 50% of the claim towards storage charges of Marmagao Port Trust.

Out of the balance, 10% will be appropriated towards the Goan Iron Ore Permanent Fund and the remaining amount will be appropriated by the State Government as the owner of the ores.

88.8. The Monitoring Committee will submit its final report on the utilisation and appropriation of the sale proceeds of the inventoried ores in the manner directed in this judgment within six months from today.

88.9. Henceforth, the mining lessees of iron ore will have to pay 10% of the sale price of the iron ore sold by them to the Goan Iron Ore Permanent Fund.

88.10. The State Government will within six months from today frame a comprehensive scheme with regard to the Goan Iron Ore Permanent Fund in consultation with CEC for sustainable development and intergenerational equity and submit the same to this Court within six months from today; and

88.11 The Expert Committee will submit its report within six months from today on how the mining dumps in the State of Goa should be dealt with and will submit its final report within twelve months from today on the cap to be put on the annual excavation of iron ore in Goa.”

15. From the direction contained in paragraph 88.11, as noted above, it is thus evident that save and except calling from the



Expert Committee report within six months as to how to deal with the mining dumps, the Supreme Court did not issue any other effective order pertaining to the mining dumps in *Goa Foundation-1*.

16. In the meantime, several mining leases holders, who had applied for renewal of mining leases and had already paid stamp duty in terms of the Goa Mineral Policy of 2013 and whose applications for renewal were pending since the year 2006, had approached the Bombay High Court praying either for consideration of their application for a second renewal or for the grant of a mining lease on renewal. After considering the prayers made by the Petitioners and upon taking note of the Goa Mineral Policy of 2013 framed by the Goa Government, the Bombay High Court, in the case of *Lithoferro thorough its Partner Kaustubh Sawkr & Anr Vs. Director of Mines and Geology & Ors.*<sup>3</sup> and the connected matters, had passed judgement and order dated 13<sup>th</sup> August, 2014, directing the State Government to execute Lease Deeds under Section 8(3) of the MMDR Act in favour of the lease

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3      2022 SCC OnLine Bom 3420.

holders, who had already paid stamp duty pursuant to the order of the Government, in accordance with the Goa Mineral Policy of 2013, subject, however, to the conditions laid down by the Apex Court in *Goa Foundation-1*. It was observed that the expression “fresh leases” appearing in paragraph 67 of *Goa Foundation-1* would mean and include grant of renewal of leases. In so far as the lease holders who had not paid the stamp duty, the State of Government was directed to decide their renewal applications under Section 8(3), as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of the order. The decision of the Bombay High Court in the case of *Lithoferro* (Supra) was assailed by Goa Foundation i.e. the Petitioner, before the Supreme Court by filing SLP (c) No. 32138/2015 and SLP (c) No. 32699-727 of 2015.

17. The State of Goa had framed the Goa Grant of Mining Leases Policy of 2014 which was issued on 04<sup>th</sup> November 2014 and gazetted on 20<sup>th</sup> January 2015. The said Policy had apparently rejected the idea of competitive bidding for the grant of mining leases for the time being. Under the said Policy, 88 mining leases

were renewed. These renewals were also under challenge. It was the case of the Petitioners that in view of the Judgment rendered in ***Goa Foundation-1***, the mining leases which had expired in the year 2007 could not have been renewed under the garb of granting fresh leases.

18. After taking note of the submissions made by the parties, the Apex Court was of the view that the questions raised in the proceeding were threefold- viz. (i) In view of the Judgment in ***Goa Foundation-1*** whether, only fresh leases were to be granted by the State of Goa and not second renewal? (ii) For granting fresh leases whether, the State of Goa should have introduced competitive bidding and auction process; and (iii) Even assuming that the decision to grant second renewal to the mining lease holders was valid, even then, whether, the second renewals were in accordance with law ? The question as to whether the decision of the Bombay High Court in the case of ***Lithoferro*** (Supra) was in accordance with law also fell for consideration of the Hon'ble Supreme Court in the said proceeding. By the judgment and order dated 7<sup>th</sup> February, 2018 in ***Goa Foundation Versus Sesa Sterlite Limited and***

*Others as* well as the connected proceedings reported in *(2018) 4 SCC 218* (here-in-after referred to as *Goa Foundation-2* ) it was held that in view of the categorical directions contained in *Goa Foundation-1* The State of Goa was required to consider the grant of fresh mining leases. Therefore, the decision of the State of Goa to grant second renewal of the mining leases was erroneous, contrary to the decision of *Goa Foundation-1* and, therefore, was liable to be quashed.

19. Referring to the EAC report submitted in October 2013 pertaining to 137 mining Leases wherein it was found that many of the mining Lease Holders had (i) no approval from the National Board of Wildlife (ii) indulged in excess mining or dump mining or (iii) intersected ground water level without any clearance of the Central Ground Water Board (iv) had no forest clearance, the Supreme Court had observed in *Goa Foundation - 2* that although the Mineral Policy and the EAC report were perhaps placed before the Court in *Goa Foundation - 1*, the same were not dealt with.

20. Dealing with the question as to whether the State of Goa should have auctioned these mining leases, the Supreme Court

took note of the observations made in an earlier decision in the case of *Natural Resources Allocation, In Re, Special Ref. No. 1 of 2012*,<sup>4</sup> wherein the following observations have been made:-

“148. In our opinion, auction despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources and therefore, every method other than auction cannot be struck down as ultra vires the constitutional mandate.

149. Regard being had to the aforesaid precepts, we have opined that auction as a mode cannot be conferred the status of a constitutional principle. Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution.”

21. In the light of the decision in *Natural Resources Allocation, In Re, Special Ref (supra)* the question as to whether, auction was mandatory for disposal of natural resources was answered by the Apex Court in paragraphs 80.1 to 80.5 of *Goa Foundation-2* as follows:-

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4 (2012) 10 SCC 1.

“80.1. It is not obligatory, constitutionally or otherwise, that a natural resource (other than spectrum) must be disposed of or alienated or allocated only through an auction or through competitive bidding;

80.2. Where the distribution, allocation, alienation or disposal of a natural resource is to a private party for a commercial pursuit of maximising profits, then an auction is a more preferable method of such allotment;

80.3. A decision to not auction a natural resource is liable to challenge and subject to restricted and limited judicial review under Article 14 of the Constitution;

80.4. A decision to not auction a natural resource and sacrifice maximisation of revenues might be justifiable if the decision is taken, inter alia, for the social good or the public good or the common good;

80.5. Unless the alienation or disposal of a natural resource is for the common good or a social or welfare purpose, it cannot be dissipated in favour of a private entrepreneur virtually free of cost or for a consideration not commensurate with its worth without attracting Article 14 and Article 39(b) of the Constitution.”

22. In *Goa Foundation-2* although it was observed that in principle the decision of the State of Goa not to auction the grant of mining lease was flawed, yet, the Apex Court did not express any final opinion on the issue nor quashed the decision of the Government of Goa not to go for competitive bidding for grant of fresh mining lease by observing that the same was not an issue warranting adjudication in that proceeding. The conclusions drawn in *Goa Foundation-2* and directions issued therein are reproduced here-in-below for ready reference:-

“154. In view of our discussion, we arrive at the following conclusions:

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

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

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

154.4. The Ministry of Environment and Forests was obliged to grant fresh environmental clearances in respect of fresh grant of mining leases in accordance with law and the decision of this Court in Goa Foundation and not merely lift the abeyance order of 14-9-2012.

154.5. The decision of the Bombay High Court in Lithoferro v. State of Goa (and batch) giving directions different from those given by this Court in Goa Foundation<sup>1</sup> is set aside.

154.6. The mining leaseholders who have been granted the second renewal in violation of the decision and directions of this Court in Goa Foundation are given time to manage their affairs and may continue their mining operations till 15-3-2018. However, they are directed to stop all mining operations with effect from 16-3-2018 until fresh mining leases (not fresh renewals or other renewals) are granted and fresh environmental clearances are granted.

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

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

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

**23.** After the decision in case of *Goa Foundation-2* as noted above, the State of Government came up with the “Policy for regulating Iron Ore dump handling in the State of Goa”, which was published in the Official Gazette on 14<sup>th</sup> September 2023. The aforesaid policy, here-in-after referred to as “the Policy of 2023”, was apparently aimed at addressing the ground realities arising pursuant to the Judgment delivered by the Supreme Court in *Goa Foundation-1*, more particularly, the declaration that dumping of minerals outside the lease area itself was illegal. Clause 2(2) of the Policy of 2023 is under challenge in this Writ Petition.

**24.** While acknowledging the fact that in view of the declaration of the Supreme Court, the erstwhile lease holders would not have any right to handle the dumps outside the lease area except in



accordance with the Policy decision of the State, it was provided that the Policy of 2023 was in continuation and modification of earlier policy for regulating the mining dumps over Government and Private lands and the related issues.

**25.** Clause 1.2 of the of the Policy of 2023 defines “dump”, which reads as follows:

“Dump constitutes the excavated material accumulated in the form of heap or pile on the surface of the land or stocked on the demineralized area temporarily or permanently during mining, and the material stocked or piled can be re-handled as and when required not only for recovery of Fe mineral and associated minerals but also to fulfil the norms of mine closure plan as specified by the regulatory bodies. Therefore, dumps include not only the piles of stocks of exploitable Fe mineral, but it also includes wastes and tailings.”

**26.** As per Clause 1.3 a Dump site would mean and include earmarked areas either within the mining lease or outside the lease area, utilized for storing ore, overburden lumps or fines, rejects, sub-grade material, tailings or earth/soil generated during mining operation or extraction of ROM.

**27.** Clause 2 of the Policy deals with dumps situated outside the lease area on private property.

28. Clauses 2.1 and 2.2 of the Policy of 2023 would be relevant in this case and, therefore, are being reproduced hereinbelow for ready reference:-

“2. Dumps situated outside the lease area on private property.— 2.1. All dumps which have not been approved or shown in the mining plan sanctioned by the IBM shall be deemed to be completely illegal and neither the lease holder nor any other person shall have any right to the same. Such dumps shall be compulsorily auctioned by the Government.

2.2. With respect to the inventoried dumps situated on private properties falling outside the lease area, but depicted on the mining plan, only if the Conversion fees in terms of the Policy for regulating the mining dumps on Government and private lands, and related issues and the fine contemplated under sub-section 1A of section 33 of the Goa Land Revenue Code, have been paid; the erstwhile lease holder shall be permitted to remove the dump within a period of five years from the date of publication of the present policy or such further period as may be notified, subject to payment of royalty and compliance of all statutory requirements.”

29. From a conjoint reading of Clauses 2.1 and 2.2 of the Policy of 2023, what transpires is that in respect of the mining dumps which did not have the approval as shown in the mining plan, such dumps would stand forfeited under the policy and would be compulsorily auctioned by the Government. However, in respect of the inventoried dumps situated on private properties, which are falling outside lease area but depicted in the mining plan, the right of the erstwhile lease holders to remove the same within a

period of five years from the date of publication of the Policy on payment of royalty has been recognized. Clause 2(1) of the Policy, in our considered opinion, proceeds on the premise that in case of dumps situated outside the mining area but covered in the mining plan instead of conducting auction of such dumps, the Government had permitted the lessees to remove the same within the specified time period after payment of conversion fee and royalty and as per the other statutory requirements.

30. Ms. Norma Alvares, learned Senior Counsel appearing for the Petitioner has straneously argued that after the decision of the Apex Court in *Goa Foundation-1*, whereby it was observed that all dumping outside the lease area are illegal and without any auhtorization under the law, the erstwhile leases cannot claim ownership over such dumps. She submits that even if such dumps were created under the mining plans by the erstwhile lease holders, even then, in view of the observations made in the ***Goa Foundation -1***, all such dumps along with the respective leases had lapsed. Under such circumstances, the erstwhile lease holders cannot claim any right over the dumps nor can the same be

handed over to such ex-lease holders without putting the same to public auction. According to Ms. Norma Alvares, learned Senior Counsel, for the Petitioner, after the decision in *Goa Foundation-1* dumps containing Iron Ore ought to have been confiscated by the State of Goa and the same should have been sold in public auction since no other means of alienation of natural resources would be permissible under the law.

31. By referring to and relying upon the decision of the Supreme Court *Bharat Coking Coal Ltd Vs State of Bihar & Ors.*<sup>5</sup> Ms Alvares has further argued that surface deposits also constitute mining and therefore, the dump mines would be liable to be disposed of by the State only through auction and by no other means. Notwithstanding the same, the impugned clause in the Policy 2023, which permits handing over the dumps to the erstwhile leases merely on payment of conversion fee and royalty of 22% is not only in conflict with the mandate flowing from the decisions of the Supreme Court in *Goa Foundation-1*, but the same would also result in huge losses to the public exchequer. To substantiate her above arguments, Ms Alvares has projected that

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5 (1990) 4 SCC 557.

the procedure adopted by the State of Goa for alienation of dumps outside the Lease area, without holding e-auction would result in alienation of about 261.70 million tons of dumps, the revenue for which, would be in the vicinity of Rs. 10,000 crores.

**32.** In so far as the Expert Committee Report, which indicates that it would be the prerogative of the State Government to frame policy for handling of dumps outside the lease area, Ms. Alvares submits that such recommendations of the Expert Committee would not have the force of law nor can the same perpetuate illegality. Therefore, the Respondent-State cannot seek refuge under the Expert Committee Report, so as to justify the impugned policy. On such count, Ms. Alvares has submitted that Clause 2(2) of the Policy of 2023 be struck-down by this Court and all consequential actions taken thereunder, including issuance of in-principle approval, consent to operate, and final approval dated 15<sup>th</sup> May 2025 in favour of the ex-Lessee i.e. the Respondent No. 4 be set aside by this Court.

**33.** Responding to the above arguments, Mr Devidas Pangam, learned Advocate General for the State of Goa has submitted that

dumps cannot be treated on equal footing with the Iron Ore extracted from the mines as per the Mining Plan. Since there is no direction for confiscation of the dumps in *Goa Foundation-1* and considering the recommendations made by the Expert Committee observing that appropriations /ownership of the dumps outside the lease area would be within the domain of the State Government, hence, the policy of 2023 have been framed by taking note of the directions issued by the Hon'ble Supreme Court. Therefore, the same does not call for any interference by this Court.

34. Mr. Pangam has further argued that since there is no declaration by the Hon'ble Supreme Court as regards ownership or expropriation of the dumps located either within or outside the lease area and since the Expert Committee has left the matter at the discretion of the State, which position has also been affirmed by the order dated 13<sup>th</sup> December 2022 passed by the Supreme Court in IA No. 6524/2020 arising out of WP(C)-435/2012, hence, the prayers made in the Writ Petition are not sustainable in

the eyes of law. The Writ Petition is, therefore, liable to be dismissed.

**35.** Mr S. D. Lotlikar, learned Senior Counsel for the Respondent No. 4, while supporting the above arguments made by and on behalf of the State Government of Goa, has further contended that the dumps were created under the mining plan by the erstwhile lessees and treated as waste materials since those did not have any marketable value at the relevant point of time. Value, if any, attached to the dumps was only subsequent to reduction of the threshold value of the Ores from 55% to 45% which took place in the year 2009 i.e. much after the creation of the dumps. Contending that the policy of 2023 is nothing but continuation of 2013 policy, which also did not provide for confiscation or public auction for the dumps and in view of the fact that the Petitioner did not challenge the 2013 policy, hence, the prayer made in the PIL Petition would not be maintainable under the law.

**36.** It is the further contention of the learned senior counsel appearing for the Respondent No. 4 that after the direction of the Supreme Court issued on 13<sup>th</sup> December 2022 permitting the

State of Goa to resume dump mining activities in accordance with Expert Committee's report, no order contrary to the directions contained in said order, can either be prayed for or passed by this Court. Under such circumstances, the learned Senior Counsel appearing for the Respondent No. 4 has also prayed for dismissal of the PIL Petition.

**37.** Mr S.S.Kantak, learned senior counsel appearing for the Respondent No 5 has also prayed for dismissal of the Writ Petition by arguing that the prayers made there-in are not maintainable under the law.

**38.** The learned Counsel for the Respondent No. 6, Mr. Joaquim Godinha, has adopted the submissions made by the other Respondents and has also prayed for dismissal of the PIL Petition.

**39.** We have considered the submissions made at the Bar and have also gone through the material available on record. At the very outset, it deserves to be noted herein that, in the present Petition, we are not concerned with granting of mining leases but with disposal of dump mining created outside the Mining Lease



Area. From the definition provided in Clause 1(2) of the Policy of 2023, it is evident that Dumps are created due to accumulation of material stocked or piled temporarily in demineralized area which can be re-handled not only for recovery of Fe ore and other associated minerals but also for mine closure and the same includes wastes and tailings.

40. As per the statements made in paragraph 18 of the Writ Petition, there are two categories of mining dumps which are distinguishable from one another. “Waste dumps” are huge dumps comprising of topsoil, over burden, non-mineral waste, mud, rocks etc. which are required to back fill the mining pits after mine closure. “Minirel dumps” would consist of stack of ore or sub-grade ore which were kept aside during mining operation. After the revision of the threshold value of Iron Ore by the IBM, from 55% to 45 % these sub-grade ore immediately became saleable/marketable. Therefore, in view of the decision in *Goa Foundation-1* these dumps containing saleable/ marketable ore had vested in the State and therefore, those were liable to be confiscated and disposed of through public auction.

41. What would be significant to note here-in that in *Goa Foundation-1*, although an issue regarding ownership and expropriation of mining dumps were raised, no opinion in respect thereof was rendered by the Apex Court. Instead, as has been noted above, opinion of the EC was called for as to the manner in which such dumps are to be handled. The EC had submitted its report on 14<sup>th</sup> October, 2014. The EC report was available during the pendency of *Goa Foundation-2*. However, it appears that the issue regarding public auction of mining dumps was not raised by the Petitioner in *Goa Foundation-2*. The said aspect of the matter, in our opinion, would assume great significance in the facts of this case simply on account of the fact that in *Goa Foundation-2* instituted by the Petitioner, the Apex Court was examining the validity of the Goa Grant of Mining Lease Policy, 2014 permitting grant of mining lease without resorting to the process of competitive bidding. However, the Policy of 2014 had not been interfered with by the Court in *Goa Foundation -2*.

42. Not only that, the Policy of 2013 was notified by the Government of Goa on 3<sup>rd</sup> September, 2013 i.e. before the

decision in *Goa Foundation-1*. The Policy 2013 also did not envisage confiscation of mining dumps outside the Mining Lease Area or for that matter, holding of e-auction or competitive bidding for disposal of mining dumps. At that stage also the Notification of the IBM issued on 16<sup>th</sup> October 2009 revising the threshold value of iron ore was also available in public domain. In other words, all such grounds urged in the present Petition pertaining to dump mining, were available to the Petitioner during the pendency of *Goa Foundation-1*. However, no relief, in the light of the policy of 2013, was prayed for by the Petitioner. Notwithstanding the same, the Policy of 2023, which is a continuation of the Policy of 2013, has been assailed in this Writ Petition.

43. The recommendations of the Expert Committee pertaining to dump mining is contained in paragraph 6 of the report dated 14<sup>th</sup> October 2014, which is reproduced hereinbelow for ready reference:-

**“6.0 Recommendations**

1. The unstable dumps that are contributing to the pollution of surrounding ecosystems and those located on hill slopes, forest areas

and other ecologically sensitive non-lease areas should be handled on priority.

2. Those dumps which are stabilized and covered with the vegetation and located in lease area, and not contributing to the degradation of surrounding ecosystems may be permitted for dump mining only after the existing ore as above is exhausted in a particular lease and subject to all clearances including environmental and forest clearances and on an approved mining plan. (The advantage of mining of these dumps will be: (i) that the lateritic plateaus will be available for bring back to their original ecosystem through restoration; (ii) yield minerals of commercial values and generate income and promoted economic growth, (iii) the wastes can be used in back filling demineralized pits, (iv) prevent pollution from un-stabilized dumps, and (v) some of the shallow voids can be used for storage of water and also for recharging ground water. Consequently, the advantages of dump mining outweigh the pollution caused which can be mitigated by appropriate measures.)
3. The dumps in the non-lease area is in the domain of the State Govt. and the State Govt. may evolve an appropriate policy keeping in view the various existing *judgements* of the Hon'ble Supreme Court and Hon'ble High Courts, the various related legislations, recommendations made in this report, taking into account the environment, ecology, socio-economics of the area, mineral conservation, and other related factors.
4. By and large, dumps which are situated within the mining lease area are being managed and dealt with in accordance with approved mining plans. However, further conditions may be imposed for all such dumps which contain sub-grade ores, either partially or fully, and are situated outside the mining lease area to minimise environmental Impacts.
5. The dumps of tallings are the source of pollution of surrounding ecosystems. Therefore, these dumps should be grassed or covered with mulch till the material is disposed of.
6. The GMP, 2013 policy as envisaged under 6.3.6 should be followed before re-handling dumps in forest areas.
7. Additional ore beneficiation/palletisation plants with modern as well as relevant technologies could set up for re-handling of the dumps.
8. The Committee recommends setting up a Centre for Ecological Restoration and Mineral Development, with the financial resource from cess imposed on the saleable minerals or CAMPA funds.
9. Assessment of the extent of saleable Fe ore and potential saleable Fe ore (after beneficiation), and other associated minerals (e.g. industrial minerals) may be undertaken from both stabilized and un-stabilized

dumps. This assessment should be carried out as per the MMDR, GMP 2013, IBM rules and other relevant rules/regulations.

10. The mine quarries could be used for storage of water and recharge of ground water, pisciculture development, source of water for Irrigation etc. In such a case, mine closure plan has to be suitably amended.
11. Dump mining should be undertaken after relevant approvals Including environmental clearance, forest clearance if required.
12. The committee recommends that the classification of dumps proposed in the report may be followed in the management of dumps.\
13. The GMP, 2013 may be amended, as required, to take Into account the recommendations made by the Expert Committee.”

44. In view of the recommendations made by the Expert Committee, the Government of Goa had filed Interlocutory Application bearing No 6524/2020 in Writ Petition(S)(Civil) No. 435 of 2012 seeking permission to carry out dump mining. Based on such application made by the State of Goa, the Hon’ble Supreme Court had passed order dated 13<sup>th</sup> December, 2022 allowing the State Government to carry out dump activities. The order dated 13<sup>th</sup> December 2022 passed in IA No. 6524/2020 in WP(C)-435/2012 would be of great significance in this case and therefore, the same is being reproduced hereinbelow:-

“Vide order dated 14.08.2017, this Court had stated that the Expert Committee's Report will be duly considered.

This application has been filed by the State of Goa praying for 'permitting the applicant to carry out dump mining recommended by the Expert Committee's Report dated as 12.04.2015.

There is no opposition to the said application.

We are, therefore, inclined to allow the State Government to carry out the dump mining activities in accordance with the Expert Committee's Report and specifically paragraph 6 that is containing the recommendation of the Expert Committee.

The application (I.A. No. 6524 of 2020) is disposed of in the above terms.”

45. After the order dated 13<sup>th</sup> December 2022 was passed, on 14<sup>th</sup> September 2023, the Dump Policy of 2023 was framed by the Government of Goa by taking into consideration the recommendations made by the Expert Committee.

46. From a plain reading of the order dated 13<sup>th</sup> December, 2022 we find that the methodology for carrying out dump mining activities by the State Government of Goa was directed to be in accordance with the Expert Committee's report. Save and except the recommendations in paragraph 6 of the Expert Committee, no other condition has been added in the order dated 13<sup>th</sup> December 2022 as a criteria for carrying out the dump mining activities. Under such circumstances, we are of the considered opinion that it would not be permissible for this Court to add words to the order dated 13<sup>th</sup> December 2022 passed by the Hon'ble Supreme Court,

as such a recourse would clearly amount to tinkering with and/or modifying the order dated 13<sup>th</sup> December 2022 of the Hon'ble Supreme Court.

47. If the Petitioner had any objection to the recommendations made by the Expert Committee in the light of *Goa Foundation-1* and *Goa Foundation-2* and was of the view that the dump created outside the Mining Lease Area ought to be confiscated and put to public auction, then in that event, there was nothing preventing the Petitioner from raising such a plea before the Hon'ble Supreme Court when the order dated 13<sup>th</sup> December, 2022 was passed. The said order was evidently passed after hearing the Petitioner. But the Petitioner did not raise any objection to the Expert Committee recommendation for handling the mining dumps. The order dated 13<sup>th</sup> December, 2022 has attained finality in the eyes of law. No application for review/modification of the order dated 13<sup>th</sup> December 2022 has been filed by the Petitioner before the Supreme Court.

48. As per Article 141 of the Constitution, this Court is duty bound to implement the orders of the Hon'ble Supreme Court in

letter and spirit. Law is also well settled that a Court order must be read and understood strictly in the context of the order. In *Goan Real Estate & Construction Limited & Anr. Vs. Union of India through Secretary, Ministry of Environment & Ors.*<sup>6</sup> it has been observed that an order of the Court must be construed having due regard to the text and context in which the same was passed. The Judgment and Order of the Court cannot be read as a statute.

49. In the decision of the Bombay High Court, Goa Bench, in *Vedanta Limited & Anr. Vs. Director of Mines and Geology & Ors.*,<sup>7</sup> a co-ordinate Bench, while dealing with the prayer of the Petitioner herein to extend the mining lease period from 1987 to 2037 under Section 8(A)(3) of the Act of 1957 on the ground that such extension was mandated under the statute and, therefore, was not affected by the decision of the Supreme Court in *Goa Foundation-2*, has observed that the decision of the Supreme Court would be binding and the High Court cannot direct the State to act contrary to the clear directions of the Supreme Court.

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<sup>6</sup> (2010) 5 SCC 388.

<sup>7</sup> Writ Petition No. 1005 of 2019.



In that case it was observed that the Supreme Court has clearly directed that only fresh mining leases can be granted and not renewal and extension of lease. After taking note of the facts and circumstances of the case, directions issued in *Goa Foundation-2* , the Division Bench had observed that, until the decision in *Goa Foundation-2* is reviewed, the prayer made by the Petitioner therein to amend and grant extension of lease cannot be considered, as the same would be contrary to the decision of the Hon'ble Supreme Court in *Goa Foundation-2*.

50. On 16<sup>th</sup> August 2024, the Directorate of Mines, granted “in-principle” approval to the Respondent No. 4 for dump handling in accordance with Clause 2(2) of the Dump Policy, 2023. Goa State Pollution Control Board (“GSPCB”) had also granted consent to operate for dump handling on 12<sup>th</sup> November 2024. In the month of January 2025, amendments were carried out to Clause 2(2) of the Dump Policy 2023 thereby expanding the scope of the dumps on other lease areas as well. Accordingly, on 6<sup>th</sup> March 2025, the cabinet approved levy of 22% premium for dump handling under

the amended policy. Thereafter, on 4<sup>th</sup> April 2025, the SEIAA had granted environment clearance to the Respondent No. 4 for carrying out dump handling. On 7<sup>th</sup> May 2025, second amendment to Clause 2(2) was carried out, thus, introducing premium mechanism for dump removal. On 7<sup>th</sup> May 2025, the Directorate of Mines had also issued an order implementing 22% premium on dump mines. Based on the above, final approval dated 15<sup>th</sup> May 2025 was issued in favour of the Respondent No. 4 for handling 1.35 MMT dump at Sirigao village. The State of Goa had thereafter, approached the Hon'ble Supreme Court of India seeking permission to dispose of 1.94 MMT of "non-inventories" ore.

51. In the above context, it would be pertinent to mention herein that from a reading of the judgments rendered in *Goa Foundation-1* and *Goa Foundation -2*, it appears that the mining dumps were created by concessionaires and/or the erstwhile lease holders while operating the mining leases/ concessions which had evidently lapsed in the year 2007. Therefore, the Petitioner may

have some justification in contending that just like the Iron Ore lying in the mines, requiring execution of fresh mining leases through e-auction, the same process must also be followed even in case of dumps. However, such contention of the Petitioner cannot be countenanced for two reasons. Firstly, while there is a categorical declaration in *Goa Foundation -1* pertaining to the ownership of the mines after the lease holders' right had ceased to operate, there is no such declaration in respect of the mining the dumps. The said position has also remained unaltered in *Goa Foundation-2*.

52. It is no doubt true that in *Mineral Area Development Authority Vs. Steel Authority of India Limited*,<sup>8</sup> relied upon by the learned Senior Counsel for the Petitioner, it has been observed that natural resources are held by the State as trustee of the public and, therefore, the State must deal with the same in a the manner consistent in a nature of such trust and in accordance with the regulatory regime. The Petitioner's counsel has also argued that in the case of *Meerut Development Authority Vs. Association of*

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8 (2024) 10 SCC 1.

*Management & Ors.*,<sup>9</sup> it has been observed that the wealth of the State must not go to the hands of the individuals at a discount.

53. In the case of *Sachidanand Pandey Vs. State of WB*,<sup>10</sup> it has been observed that the State owned property should not be dealt with at the absolute discretion of the Executives. The above observation was quoted in the case of *Centre for Public Interest Litigation & Ors. Vs. Union of India*.<sup>11</sup> The Petitioner has heavily relied on such decisions. There can be no quarrel with the propositions of law flowing from the aforesaid decisions. However, in our opinion, none of those decisions had laid down the absolute proposition of law that in every case, the State must resort to public auction for disposing of natural resources.

54. In the case of *Natural Resources Allocation* (Supra), the Hon'ble Supreme Court has categorically held that auction is just one of the several price discovery mechanism and, therefore, it cannot be held to be the only constitutionally recognized method for alienation of natural resources although it can be a mode of

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9 (2009) 6 SCC 171.

10 (1987) 2 SCC 295.

11 (2012) 3 SCC 1.

valid disposal of natural resources. Such observation in Natural Resources Allocation has been quoted with approval in ***Goa Foundation-2***, wherein some of the issues raised in the present Petition were directly and substantially in issue.

55. In the present case, as has been noted above, the dumps, whether in the Government land or private land, outside the lease area were the products of mining activities, which were carried out under the approved mining plans. When these dumps were generated, those were treated as waste, thus, signifying that no value would be attached to such dump mines. Their value increased only after the threshold limit was revised in the year 2009. The State Government of Goa earlier has realised or is in the process of realizing conversion fee from the ex-lessees for using the land for dumping and also recovered royalty on such dumps. Therefore, it cannot be said that as per Clause 2(2) of Policy of 2023, the dumps are being alienated without following a transparent process or by causing loss to the exchequer. The facts and figures projected by the Petitioners are also totally insufficient for this Court to arrive at a conclusion that the all the dumps

contain deposit of Iron Ores/ Manganese Ores, valued in excess of the royalty recovered by the State.

56. Law is well settled that although a policy decision of the State is not immune to judicial review of the constitutional Court, yet, the Court would not sit in appeal over the wisdom or efficacy of the policy. In policy matters, the Court must respect the separation of power and exercise restraint unless it is shown that the policy itself infringes on the fundamental rights of the citizens or is arbitrary or unreasonable or the same is framed in bad faith, with the *mala fide* intent and ulterior motive to extend undue favour to a specific entity, by ignoring the public interest at large. While examining the validity of a policy decision of the State in exercise of jurisdiction under Article 226 of the Constitution of India, the Court must play a supervisory role but not the role of an Appellate Authority and act as a sentinel on the *qui vive* so as to ensure that the executive does not cross the boundary of fairness, reasonableness and the decisions are compliant with the statutory norms as well as fundamental rights guaranteed under Part-III of the Constitution of India.

57. Policy decision of the State, particularly, in economic matter, are based on various inputs, data and ground realities which are within the special knowledge of the executives. The economic policies are shaped by such inputs available to the Government. The Courts do not have the necessary expertise to examine the merit of such policies so as to arrive at a conclusion, as to whether, a better policy could have been framed.

58. In the case of **Tata Cellular vs. Union of India**, reported in (1994) 6 SCC 651, the Hon'ble Supreme Court has held that it is not for the Court to determine whether a particular policy or a decision taken in fulfillment of that policy is fair or not. The Court should only be concerned with the manner in which those decisions have been taken.

59. In the case of *M P Oil Extraction Vs. State of M.P.*,<sup>12</sup> the Hon'ble Supreme Court has observed that the Executive Authority of the State must be held to be within its competence to frame a policy. Unless the policy is absolutely capricious and not being informed by any reason whatsoever, permitting the conclusion

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12 (1997) 7 SCC 592.

that the same is arbitrary and founded on mere *ipse dixit* of the executive thereby offending Article 14 of the Constitution of India or the same is found to be in conflict with the statutory provisions, the Court cannot and should not overstep its limits and tinker with the policy decision of the executive functionary of the State.

60. In the case of ***BALCO Employees Union (Regd.) Vs Union of India & Ors.***,<sup>13</sup> the Hon'ble Supreme Court has made the following observations in paragraph 98, which reads thus:-

“98. In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself.”

61. Coming to the facts of the present case, as has been noted above, it is not a case where the mining dumps have been permitted to be removed, as per Clause 2(2) of the policy of 2023, without following any transparent procedure. Clause 2(2) of the Policy of 2023 cannot be struck down by the Court merely on the ground that a better policy could have been framed by the State.

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13 (2002) 2 SCC 333.



62. Insofar as the mining dumps, generated under fresh mining leases issued in terms of the provisions of the MMDR Act is concerned, Clause 2(2) of the policy of 2023 itself makes it clear that such dump mine must be in conformity of the mining plan approved by the Competent Authority.

63. From the above, it is apparent that the mining dumps so created are nothing but the dumps generated due to the mining activities carried out under an approved mining plans. Therefore, it must be presumed that the lease holder has already paid royalty with regard to the Iron Ore, if any, contained in the dumps. Under such circumstances, the plea of disposing of the dumps, through a fresh process of auction, in our considered opinion, does not hold to reason. Rather, we are of the view that the mechanism prescribed under Clause 2(2) of the Policy of 2023 is not only fair and transparent but the same also adequately addresses the economic concerns of the State.

64. It is no doubt correct that Section 10(B) of the MMDR Act of 1957 makes it mandatory for grant of mining lease in respect notified minerals thorough auction, which includes Iron Ore and

Manganese Ore. However, in the present case, as noted above, we are not concerned with the grant of fresh mining lease, which issue was conclusively dealt with in *Goa Foundation-1* and *Goa Foundation-2* and appropriate directions issued therein. It is no doubt correct that in view of the decision in *Goa Foundation-1*, it is now settled that dump mining activities outside the Mining Area would be illegal. But the same, in our view, would not automatically lead to the conclusion that all mining dumps created outside the mining area, are liable to be confiscated and sold in public auction as no such direction has been issued in *Goa Foundation-1* or *Goa Foundation-2*. In view of the definition of mining dumps as noted above, we are also not inclined to accept the Petitioner's contention that the mining dumps are to be treated at par with the mining leases for the purpose of Section 10(B) of the MMDR Act, 1957.

65. In the case of *Bharat Coking Coal Ltd Vs State of Bihar & Ors.* (Supra) relied upon by the learned Senior Counsel for the Petitioner, the Appellant therein was a Government company, carrying out coal mining operation in village Sudamdih in the

State of Bihar. There was a coal washery adjacent to the Appellants coal mine. After the coal was extracted from the mines, the same used to be crushed into pieces of different sizes for the purpose of grading and, thereafter, brought to the washery for washing and cleaning the same so as to reduce the ash percentage and for use by metallurgical consumers. In the aforesaid process, small coal particles escaped from the washery in the form of slurry along with water and got deposited in the pond constructed for the storage by the Appellant. But when the pond became full, the slurry used to overflow into river Damodar and the coal got deposited in the river-bed. These coal particles were collected and formed into briquettes which were sold in the market for energy and fuel purpose. Considering the high commercial value of the briquettes, the same had extensive used by steel plants and thermal power stations. The State of Bihar had accordingly granted lease in favour of the Respondent therein for collecting such coal particles from Damodar river bed. The case of the Appellant was that the collection of coal took place in a plot No. 370 belonging to it which formed part of the river bed of Damodar. As such, it had property rights to collect and obtain the

slurry deposited in the river bed. It is in such factual backdrop it was held that the Appellant was the owner of the Plot No. 370 of village Sudamdih, and, therefore, the State Government did not have authority under the law to make any arrangement or to settle any right with Respondents for collecting slurry deposits from Plot No. 370. It was accordingly, held that the slurry which escaped from the Appellant's washery is mineral and its regulation is within the exclusive jurisdiction of Central Government. Having regard to the facts and circumstances of this case, we are of the view that since the disposal of the mining dumps is in terms of a notified policy of the State Government, the decision in the case of *Bharat Coking Coal Ltd Vs State of Bihar & Ors.* (Supra) would not have any application in the facts of the present case.

66. The question of conserving the natural resources in the State of Goa, bearing in mind the issues of sustainable development and intergenerational equity is a very serious issue having great public importance. We, therefore, appreciate the efforts on the part of the Petitioner-Foundation in highlighting such issues of public importance which had led to significant

judgments and directions passed by the Hon'ble Supreme Court in *Goa Foundation-1* and *Goa Foundation-2*. However, for the reasons state herein above, we are of the view that, the reliefs prayed in the PIL, cannot be granted in the facts and circumstances of the present case.

67. The Writ Petition is accordingly dismissed.

68. No order as to cost.

(AMIT S. JAMSANDEKAR, J.)

(SUMAN SHYAM, J.)