

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL ORIGINAL JURISDICTION****Interlocutory Application Nos. 270, 271,
273, 56562, 76163, 76167 & 103342****IN****WRIT PETITION (C) NO. 562 OF 2009****SAMAJ PARIVARTANA SAMUDAYA
& ORS.PETITIONER(S)****VERSUS****STATE OF KARNATAKA & ORS.RESPONDENT(S)****J U D G M E N T****RANJAN GOGOI, J.**

1. Two lessees, i.e., M/s Sandur Manganese and Iron Ores Ltd. and M/s MSPL Ltd. (who have been classified in Categories 'A' and 'B' respectively by this Court in its previous Order) have instituted Interlocutory Application Nos. 270 and 271 essentially seeking

modification of this Court's Orders dated 5.08.2011 and 1.09.2014 so as to enable the applicants to extract iron ore in accordance with the Maximum Permissible Annual Production ("MPAP" for short) approved by the Monitoring Committee in respect of the leases held by them.

2. In proceedings registered and numbered as Writ Petition (C) No. 562 of 2009 titled as "Samaj Parivartana Samudaya & Ors. vs. State of Karnataka & Ors.", an absolute ban on mining activities in three districts of Karnataka, i.e, Bellary, Chitradurga and Tumkur was imposed by this Court by Orders dated 29.07.2011 and 26.08.2011. It is on the basis of the principle of intergenerational equity and to prevent and protect the huge ecological and

environmental degradation following the rampant illegal mining in the aforesaid three districts of Karnataka that this Court had passed the aforesaid orders. However, to ensure that a minimum quantity of iron ore is available, through permissible and legal mining, by Order dated 5.08.2011, a public sector lessee, namely, M/s National Mineral Development Corporation ("NMDC" for short) was permitted to extract iron ore to the tune of 12 Million Metric Tonne ("MMT" for short) per year. Thereafter, by Order dated 13.04.2012, this Court had accepted the recommendations of the Indian Council of Forestry Research and Education ("ICFRE" for short) and fixed a ceiling of 25 MMT as the maximum production of iron ore from all the mining leases in the district of Bellary and 5 MMT in respect of the mining

leases in the districts of Chitradurga and Tumkur. By Orders dated 3.09.2012 and 28.09.2012, this Court had permitted resumption of mining activities in Karnataka in a limited manner by permitting 18 and 63 leases in Categories 'A' and 'B' respectively to resume their activities subject to strict observance of the Reclamation and Rehabilitation Plan ("R&R Plan" for short) in respect of each of the leases as approved by the Monitoring Committee.

Pursuant to the aforesaid orders of this Court, M/s Sandur Manganese and Iron Ores Ltd. and M/s MSPL Ltd. resumed the mining operations. The Monitoring Committee had fixed MPAP of M/s Sandur Manganese and Iron Ores Ltd. at 0.74 MMT and M/s MSPL Ltd. at 0.91 MMT respectively. Thereafter, the Central Empowered Committee ("CEC" for short) by

Order dated 18.03.2016 recommended the enhancement of MPAP of M/s Sandur Manganese and Iron Ores Ltd. to 1.60 MMT and that of M/s MSPL Ltd. to the tune of 1.80 MMT. The said recommendation of the CEC was approved by the Monitoring Committee.

3. Notwithstanding the above, the lessees, i.e., M/s Sandur Manganese and Iron Ores Ltd. and M/s MSPL Ltd. have not been fully able to exploit and operate to the extent of their approved MPAP of 1.60 MMT and 1.80 MMT respectively. This, according to the lessees, is on account of the two orders of this Court. The first is dated 5.08.2011 by which, as already noticed, the public sector lessee, i.e., NMDC was permitted to extract iron ore to the tune of 12 MMT per year. As the said

NMDC was not able to do so, by Order dated 1.09.2014 this Court had permitted another public sector lessee M/s Mysuru Minerals Ltd. ("MML" for short) to make good the shortfall of NMDC and had increased the MPAP of the said MML by 3 MMT without, however, modifying its earlier Order dated 5.08.2011 in respect of NMDC. As a result of the aforesaid two orders, the MPAP of NMDC and MML together is 16.06 MMT though the R&R Plan approved by the Monitoring Committee for NMDC restricts its MPAP to 9.45 MMT and that of MML to 1.06 MMT. As the total MPAP permitted in favour of all the mining leases in Bellary district including the MPAP of 16.06 MMT in favour of NMDC and MML works out to the tune of 26.157 MMT and, therefore, in excess of the cap imposed by this Court (25 MMT), the CEC by Order dated

2.12.2016 had directed the Monitoring Committee to reduce the MPAP of other mining leases on a pro rata basis so that the cap fixed by this Court (25 MMT for Bellary district) is maintained. Accordingly, the Monitoring Committee had fixed the MPAP of M/s Sandur Manganese and Iron Ores Ltd. and M/s MSPL Ltd. at 1.17 MMT and 1.355 MMT respectively as against 1.60 MMT and 1.80 MMT respectively, as approved. It is in these circumstances that M/s Sandur Manganese and Iron Ores Ltd. and M/s MSPL Ltd. have filed the I.As. seeking appropriate modification of the orders of this Court dated 5.08.2011 and 1.09.2014 respectively.

4. The issues raised being relatable to the fixation of cap/ceiling on maximum production, the matters were

heard along with other similar matters raising the issue as to whether the cap should be maintained, modified or lifted.

5. I.A. No. 273 of 2017 is instituted by M/s Karnataka Iron and Steel Manufacturers Association ("KISMA") whereas I.A. No. 56562 is filed by Federation of Indian Minerals-Southern Region ("FIMI-South"). I.A. Nos. 76163 and 76167 have been instituted by Chitradurga Sustainable Mining Forum seeking impleadment and directions.

6. So far as I.A. No. 273 of 2017 instituted by M/s KISMA is concerned, it is stated that the State of Karnataka notified for auction 14 mining leases which were earlier declared by this

Court to be in Category 'C' and which leases stood cancelled by the Order of this Court. Thereafter, such leases have been put up for auction in a phased manner and till date 7 such leases have been successfully auctioned. M/s JSW Steel Ltd., one of the members of M/s KISMA, is the successful bidder in respect of 5 of the mining leases having a collective MPAP to the tune of 4.063 MMT per year. According to M/s KISMA, the total cap of 30 MMT fixed by this Court in respect of all the three districts, i.e., Bellary, Chitradurga and Tumkur has been virtually allotted to the categories 'A' and 'B' mines and there is no room within the said cap to take care of the earlier category 'C' mines which have now been auctioned in accordance with the orders of this Court. In these circumstances, M/s

KISMA seeks an order from this Court that a separate cap of 10 MMT be allotted to earlier category 'C' leases, independent of the 30 MMT fixed for the three districts. In fact, M/s KISMA on behalf of one of its members, M/s JSW Steel Ltd, has stated before this Court that its members are prepared to construct closed-pipe downhill conveyor belt system; railway sidings and railway sub-lines as per the R&R Plans approved by the Monitoring Committee.

7. The said prayer of M/s KISMA is supported by FIMI-South in its I.A. No. 56562 of 2017. The specific prayer of FIMI-South is that as the active MPAP of mining leases in the three districts as on date is over 35 MMT, the annual cap of 30 MMT be vacated and each lessee should be allowed to extract iron ore as

per its approved R&R Plan.

8. On the other hand, M/s Chitradurga Sustainable Mining Forum which is a registered society consisting of category 'A' and 'B' leases operating in the district of Chitradurga has joined with M/s KISMA and FIMI-South to seek vacation of the order of this Court fixing an annual cap and for further orders allowing each lessee to operate and extract iron ore as per its approved R&R Plan.

9. The State of Karnataka, on the other hand, also submits that keeping in view the increased demand of iron ore across the country, the cap fixed by this Court may be raised from 30 MMT to 40 MMT. In this regard the State of Karnataka has also pointed out that

apart from its involvement in the Comprehensive Environmental Plans for the Mining Impact Zone ("CEPMIZ" for short), significant improvements in the infrastructure has taken place warranting a relook at the issue and an appropriate modification(s) of the cap/ceiling imposed by this Court earlier may now be made. In fact, the State Government suggests that the annual cap upon iron ore extraction could be gradually increased to 50 MMT, subject to successful implementation of the major items of the CEPMIZ, as approved by this Court.

10. I.A. No. 103342 of 2017 is filed by the Ministry of Mines, Government of India. It is stated that the National Mineral Policy 2008 is being relooked into and a revised National Mineral

Policy is under way. It is asserted in the I.A. that fixing a cap upon extraction of minerals ought to be left to the discretion of the Executive branch and, in fact, in an Order dated 2.08.2017 in Common Cause vs. U.O.I. & Ors.¹, this Court has mentioned that fixing a cap upon extraction of mineral ore is really the business of the Executive branch of the Central Government and not of this Court. The Ministry of Mines, therefore, has submitted that till the National Mineral Policy is finalized, as an interim measure, the recommendations made by the CEC for enhancement of the cap, details and particulars of which will be noticed subsequently, may be accepted and further that the revised cap ought to be independent of the mining operations by

the newly auctioned category 'C' mines which lessees should be allowed to extract iron ore as per their approved R&R Plans.

11. We will now take notice of what has been recommended by the CEC in its report dated 14.07.2017 read with the Explanatory Note thereto dated 4.10.2017. The MPAP in respect of mines whose R&R Plans have been approved, (both, operating mines and not operating mines) stood at 25.1867 MMT for Bellary district and 5.7227 MMT for Chitradurga and Tumkur districts totaling 30.9094 MMT. In addition, two public sector units viz. NMDC and MML (in Bellary district) were utilizing the additional production facility of 5.62 MMT. The CEC points out that it has already been observed by this Court in its judgment

dated 18.04.2013 in Writ Petition (C) No. 562 of 2009 that permissible annual production would be subject to review/modification depending upon:

- (a) change in the assessed mineral reserves because of subsequent exploration;
- (b) identification of additional area for the disposal of the overburden/waste dump; and
- (c) creation of additional physical infrastructure to remove/reduce transportation bottlenecks.

12. In addition, the CEC has pointed out that in respect of 13 mining leases of 'A' and 'B' categories changes visualized by conditions (a), (b), (c)

above have occurred entitling the said leases to a consideration for enhancement of permissible annual production by 4.125 MMT. In fact, the Government of Karnataka had on 22.08.2017 submitted for approval of the CEC, proposals for enhancement of production levels in respect of the said 13 mining leases.

That apart, the CEC has further stated that it is in receipt of a communication dated 18.09.2017 from the ICFRE relating to enhancement of annual production in the two mines of NMDC totaling 15.96 MMT as against the current permissible MPAP of 9.38 MMT (increase of 6.58 MMT). The aforesaid proposal is under process and it is stated that, if approved, will lead to enhancement of permissible annual

production in Bellary district to 32.5695 MMT and in respect of other two districts to 8.9247 MMT thus totaling 41.4942 MMT against what has been fixed by this Court i.e. 30 MMT.

The CEC in its report and explanatory note has further given details of the availability of the additional infrastructure consisting of new road constructions which have been completed by different lessees; construction of railway sidings at Nandihalli with track lane of 13.6 kms. by M/s JSW Steel Ltd. and installation of downhill conveyor belt with an annual capacity of 5 MMT by NMDC. It has been further reported by the CEC that out of the R&R Plan approved for leases, in 48 cases production is limited by "reserves"; in

34 cases production is limited by "dump area"; in 9 cases production is limited by "road infrastructure", and in 3 cases the "EC limit" is found to be actually less than what is arrived at in the R&R Plan. Accordingly, the CEC has suggested that with the change of position on the ground level and the fact that R&R Plans are available for a large number of mines, inter alia, fixing permissible production limits on consideration of scientific and technical parameters and also after taking into account mining reserves, dumping areas and evacuation infrastructure, ideally, the "production cap" fixed for each of the mining leases based on R&R Plan should be the basis for the ideal overall cap.

Insofar as category 'C' mines are concerned, the CEC has reported that

they have been auctioned under a different regime with firm commitments in terms of the order of this Court dated 30.07.2015; the clauses of the bid document etc. In view of the above and also because of the fact that the said mines have been auctioned through a transparent system, the CEC has submitted that if the cap is not to be lifted and raised it will affect the operations of the already auctioned and also jeopardize the future auction of any further mines in the earlier category 'C', if any. It is further stated that out of the 7 category 'C' mines which have been auctioned till date, MPAP of the 5 leases auctioned in favour of M/s JSW Steel Ltd. is to the tune of 3.623 MMT whereas in respect of other two leases proposals for fixing production limit have not been received

by the CEC. So far as the additional production by NMDC and MML is concerned, the CEC in its report and explanatory note has suggested that though presently MPAP in respect of the two mines of NMDC is 9.45 MMT as per its approved R&R Plan, there is a proposal for revision/increase of the same by taking into account the new infrastructure available, including the railway sidings and the conveyor belt system which have been installed by NMDC and also on the basis of reassessment of reserves and dumping space available. Accordingly, the CEC suggested that NMDC may be allowed to continue with its capacity at 12 MMT for the present financial year and from 2018-2019 onwards NMDC is to operate strictly adhering to such MPAP, as may be re-fixed. So far as the MML is concerned, it has been reported that the

working of MML is "highly stressed" due to shortage of space for stocking besides inadequate infrastructure. The CEC, therefore, has suggested that the production limit of 4.06 MMT now available to MML should be reduced to 2 MMT for the year 2017-2018 and further brought down to the level of approval as per the R&R Plan available during the year 2018-2019.

It is also stated by the CEC that production from the category 'C' mines will not be likely to start for some time and, in fact, such production may more or less commence around the time of the expiry of certain leases (07 numbers having MPAP of 1842 MMT). Accordingly, CEC has suggested as follows:

“(i) With regard to Category 'A' &

'B' mining leases for 'District Bellary' the annual production cap for the district may be enhanced by 3 MMT to 28 MMT and wherein NMDC and MML will operate with maximum annual production ceiling of 12 MMT and 2 MMT for the year 2017-18 respectively and thereafter from 2018-19 these will also operate at the MPAP limit as per the approved R&R Plans subject to the overall limit of annual production fixed for the district, until further orders;

(ii) The existing ceiling of 5 MMT fixed for 'A' & 'B' mining leases for Districts Tumkur and Chitradurga may be enhanced by 2 MMT to 7 MMT, until further orders; and

(iii) With regard to Category 'C' mining leases which have been e-auctioned to the end users, the production cap of individual mining leases be regulated through the limits approved in the R&R Plan without reference to the general cap fixed for the District concerned."

13. Shri M.K. Jiwrajka, former Member Secretary of the CEC, who has assisted the Court at its request, has also filed a note offering suggestions

in the matter as sought for by us.

According to Shri Jiwrajka the following facts are not in dispute. Out of total 166 leases that were categorized by this Court in 'A', 'B' and 'C' categories, 115 leases are in categories 'A' and 'B'; one lease has been suspended. R&R Plans have been prepared for 96 leases, out of which 36 are operating whereas for another 36 leases implementation of the R&R Plan is satisfactory. Further, in respect of 11 leases, R&R Plan implementation is poor and whereas for the remaining 13 preparation of R&R Plan has not started. He has further stated that out of the 36 leases in respect of whom implementation of R&R Plan has reached satisfactory progress, as per the report of the Monitoring Committee, 10 of such leases

are likely to become operational shortly. The sum total of the suggestions offered by Shri Jiwrajka are as follows. For categories 'A' and 'B':

- "1. A consolidated cap of 30 MMT for production by all the operating mining leases excluding auctioned leases (preferably only those auctioned leases for which the lessees have agreed to install the conveyor systems) in Districts Bellary, Chitradurga and Tumkur together may be prescribed.
2. The additional production permissible in 2 leases of MML may be reduced from 3 MMT to 1.5 MMT for the year 2017-2018 and discontinued from 2018-2019 onwards.
3. The production in 2 leases of NMDC Ltd. may be permitted to be regulated, after the proposal regarding the enhancement of the MPAP's in their leases is decided or w.e.f. 2018-2019, whichever is earlier, as per their prescribed MPAP's."

According to Shri Jiwrajka auction of only 14 of the earlier Category 'C'

mines are likely to be successful including 7 leases recently auctioned. The total MPAP of these leases would be around 11-13 MMT. It has therefore been suggested that additional production upto 10 MMT by the auctioned Category-C mining leases and Dalmia mining lease (preferably wherein the lessees have agreed to install the conveyor systems) may be permitted subject to the following:

- “(i) the concerned lessee has agreed to install the conveyor system linked to railway network/ integrated conveyor system and after the alignment of the same is finalized;
- (ii) the Right of Way (ROW) and/ or the approvals under the Forest (Conservation) Act, 1980 for the conveyor system, linked railway siding (if required), linked railway sub-line (if any) and integrated conveyor system under construction by JSW

Steel Ltd. will be acquired/ obtained by the State Government within a period of maximum three months (after the alignment is finalised) at the cost of the respective lessees/ successful bidders/ steel plant and by treating the acquisition/ approval as mining related infrastructure development (and not as mining activities). The concerned authorities of the State Government and the Central Government will provide necessary assistance to expedite the process.

(iii) the leases wherein the conveyor system is not made operational within a period of 21 months (including the period for acquiring the ROW), the production will be suspended and will be allowed to be resumed only after the conveyor system is made operational; and

(iv) if the integrated conveyor system under construction by the JSW Steel Ltd. is not made operational within a period of 21 months (including the period for acquiring the ROW) the additional production permitted for the auctioned leases will cease to be available (the production by

all the leases will be restricted to the prescribed cap by reducing the MPAP of all the leases including Category-C mining leases on pro-rata basis) and will become available only after the conveyor system becomes operational."

Shri Jiwrajka by giving all the relevant details in a very lucid chart has stated that total MPAP in respect of 35 operating leases (one lease has been suspended) is 24.406 MMT and the annual production beyond MPAP permitted in two NMDC and MML is 5.55 MMT thereby totaling 29.956 MMT. According to Shri Jiwrajka, if the MPAP of the 10 leases, which are likely to become operational in 2017-2018 and the enhancement of MPAP of 8 operating leases which are under consideration (5 leases in respect of whom enhancement is also under consideration happen to be non-operating leases) is taken into account the total

works out to 5.0087 MMT which will bring the MPAP to 34.9647 MMT. In the report of Shri Jiwrajka it is further mentioned that out of the 35 operating leases, 7 mining leases with total MPAP of 1.841 MMT are due to expire on 31.03.2020. Shri Jiwrajka has further suggested that the production level of MML be reduced for the year 2017-2018 and discontinued from the year 2018-2019 and also that the production level of the NMDC leases should be regulated as per the MPAP prescribed as per the R&R Plan. In para 4 of the report/note of Shri Jiwrajka it has been mentioned that 6 lessees have agreed to install conveyor belt system at their own cost which will become operational from 2019-2020. Once the same is provided, the 6 leases would also be entitled to significant enhancement in their MPAP which may be

to the tune of 6 MMT or more.

14. We have considered the detailed facts and figures placed before this Court by the respective parties in the I.As. under consideration and the contentions advanced on that basis which seems to centre the fact that significant changes have taken place on the ground after the orders of this Court imposing the cap were passed. Having regard to such change of circumstances, there is an imminent need to lift the cap by fixing the total permissible production for the three districts at a higher quantum, it is urged. Separately, it has been submitted that category 'C' mines which are now being dealt with under a totally different regime and by a transparent process of auction should not be

included within the permissible quantum of production that may be fixed/enhanced for the three districts of Bellary, Chitradurga and Tumkur.

15. We have also heard Shri Prashant Bhushan, learned counsel for the petitioner in Writ Petition (C) No. 562 of 2009, whose core submission appears to be that having regard to the availability of iron ore reserves in the three districts, the cap fixed by the Court will not call for any modification so that intergenerational equity can be maintained and the availability of iron ore can be ensured for a maximum period of time to enable the succeeding generations to enjoy the fruits thereof.

16. The cap fixed by this Court by Orders dated 5.08.2011 and 1.09.2014 was

in a situation where there was virtually no control or effective regulatory measures as to the maximum output that could be generated by a particular mine. There was no scientific study of the iron ore reserves allocated to a particular mine in the lease granted. As a result, it was virtually a free for all exercise designed to achieve the maximum profit within the shortest possible time frame. There was rampant and illegal mining with encroachments into forest land, particularly for use as overburdened dumps resulting from excessive mining. This had led to environmental and ecological depredation to an extent that necessitated judicial intervention to resolve a situation which is the normal course may have fallen within the executive domain. It is on the basis of the intervention by

the Court that R&R Plans have been prepared for each mine by an expert body, ICFRE, based on a scientific study of various parameters including mining reserves. R&R Plans have been drawn up specifying a particular/permissible limit for each mine on the basis of limitations of reserves, dumping areas, available infrastructure etc. Accordingly, recommendations have been made for increase of MPAP for 13 different category 'A' mines and also for increase of MPAP in respect of 2 leases held by the public sector lessee, i.e., NMDC. Similarly, 10 mines are anticipated to undertake operations within a short time. Though the report of Shri Jiwrajka, requested for by this Court, would seem to suggest that presently the cap need not be lifted for reasons already noticed, we are of the

view, that the suggestions offered by Shri Jiwrajka are based on certain presumptions which may not necessarily occur in the future. The suggestions for maintaining the cap is limited to the year 2017-18 though the projections contained in the report is well into the future. The solution offered by the Court has to be realistic. Therefore, it is the various features of the current scenario on the ground as highlighted in the report of the CEC that would deserve a close look/consideration. In this regard, we may also take note of the fact that the assessment of reserves has also changed over the years and today the iron-ore reserves across the State of Karnataka, comprising of haematite and magnetite reserves, is to the tune of 10.071 BMT (Billion Metric Tonnes). All these reasons impel us to accept the

recommendations of the CEC for enhancement of the cap for category A and B Mines in the 3 district of Bellary, Tumkur and Chitradurga as well as the recommendations with regard to MPAP of NMDC and MML, as mentioned in paragraph 12 hereinabove, with the further direction that all pending proposals for enhancement of MPAP shall be decided without delay, naturally, subject to the cap as above.

17. Insofar as category 'C' mines are concerned, we are again of the view that the recommendation made by the CEC deserves acceptance. The operation of the mines already auctioned and such auctions that may take place in the future ought not to be jeopardized by including the said mines, which are covered under a different legal and business regime, to come within the cap

fixed for categories 'A' and 'B' mines. The operations of such mines (earlier category 'C' mines) are likely to commence within a period of about 18 to 21 months. By that time, some of the current leases (7 in number) are also likely to expire (2020). Presently, the MPAP of the 5 of newly auctioned 'C' mines have been worked out. The remaining proposals have not yet been finalized. In the above circumstances, we are of the view that no separate cap for category 'C' mines need to be stipulated at this stage except to reiterate the fact that such an exercise may be performed at an appropriate time and a separate cap for such mines (newly auctioned) will be worked out, independent of the cap revised by this order for the 3 districts. While doing so the infrastructure and other relevant

parameters for mining and evacuation of mined material, that may become ready and available at that relevant point of time, will naturally be considered.

18. Consequently, we dispose of all the I.As. by accepting the recommendations made by the CEC for category A & B mines, as extracted in paragraph 12 above, subject to the conditions stated above so far as category 'C' mines are concerned.

....., J.
(RANJAN GOGOI)

....., J.
(ABHAY MANOHAR SAPRE)

....., J.
(NAVIN SINHA)

NEW DELHI
DECEMBER 14, 2017

ITEM NO.1501
[FOR JUDGMENT]

COURT NO.3

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

I.A. NOS. 270, 271, 273, 56562, 76163, 76167 AND 103342
IN
WRIT PETITION (CIVIL) NO(S). 562/2009

SAMAJ PARIVARTANA SAMUDAYA & ORS.

PETITIONER(S)

VERSUS

STATE OF KARNATAKA . & ORS.

RESPONDENT(S)

Date : 14-12-2017 These applications were called on for
pronouncement of judgment today.

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Hon'ble Mr. Justice Ranjan Gogoi pronounced the judgment of the Bench comprising His Lordship, Hon'ble Mr. Justice Abhay Manohar Sapre and Hon'ble Mr. Justice Navin Sinha.

The applications are disposed of in terms of the signed reportable judgment.

[VINOD LAKHINA]

AR-cum-PS

[TAPAN KUMAR CHAKRABORTY]

BRANCH OFFICER

[SIGNED REPORTABLE JUDGMENT IS PLACED ON THE FILE]