

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.01.2025

PRONOUNCED ON : 17.02.2025

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

SUO MOTU W.P.No.1592 of 2015

and

W.M.P.Nos.38757 of 2018 and 3446 of 2024

1. Converted as Suo Motu PIL

2. G.Victor Rajamanickam [withdrawn]
21, Shanthi Nagar, Pillayarpatti Post
Thanjavur District

3. P-1contd.

Petitioner withdrawn from the proceedings as per order dt.
28.01.2016 in W.P.No.1592/2015 ... Petitioners

Vs.

1. Union of India,
Represented by the Secretary to Government,
Government of India,
Ministry of Mines, "D" Wing,
3rd Floor, Shastri Bhavan,
New Delhi – 110 001.

2. The Secretary to Government,
Government of India,
Department of Atomic Energy,

Anushakthi Bhawan, C.S.M.Marg,
Mumbai – 400 001.

3.The Secretary to Government,
Government of India,
Ministry of Environment and Forests,
Pariyavaran Bhawan, C.G.O Complex,
Lodhi Road, New Delhi – 110 003.

4.The Regional Controller of Mines,
Indian Bureau of Mines,
Rajaji Bhawan,
Chennai – 600 090.

5.The State of Tamil Nadu,
Represented by
The Chief Secretary to Government,
Government of Tamil Nadu, Fort
St.George, Chennai – 600 009.

6.The Secretary to Government,
Industries Department,
Government of Tamil Nadu, Fort St.
George, Chennai – 600 009.

7.The Commissioner of Geology and Mining,
Government of Tamil Nadu,
Guindy,
Chennai – 600 032, Tamil Nadu.

8.M/s.V.V.Mineral,
Keeraikaranthattu,
Tisaiyanvilai – 627 657.
Tirunelveli District,
Tamil Nadu.

9.M/s.Transworld Garnet India Pvt. Ltd.,
Keeraikaranthattu,
Tisaiyanvilai – 627 657.
Tirunelveli District,
Tamil Nadu.

10.M/s.Beach Mineral Sands Company,
132, Tiruchendur Road, Kuttam – 627 651.
Tirunelveli District,
Tamil Nadu.

11. Mr.M.Ramesh

12. Mr.K.Thangaraj

13.M/s.Industrial Mineral India Pvt. Ltd.,
Raja Agency Business Complex,
Madathur, Thoothukudi – 620 008.
Tamil Nadu.

14.M/s.Vetrivel Minerals,
Keeraikaranthattu, Tisaiyanvilai – 627 657.
Tirunelveli District,
Tamil Nadu.

15.M/s.Industrial Mineral Company,
No.2, Harrington Road,
K.R.M. Centre,
5th Floor, Chetpet,
Chennai – 600 031.
Tamil Nadu.

16.M/s.Beach Minerals Co. India Ltd.,
133, Tiruchendur Road,
Kuttam – 627 651,
Tirunelveli District, Tamil Nadu.

17.M/s.Beach Minerals Company Pvt. Ltd.,
BMC House, 32-2, Halls Road,
Egmore, Chennai – 600 008,
Tamil Nadu.

18.M/s.Beach Minerals Company,
32-2, Halls Road, Egmore,
Chennai – 600 008, Tamil Nadu.

19.M/s.Balamurugan Company,
32-2, Halls Road, Egmore,
Chennai – 600 008.

Tamil Nadu.

20.M/s.Indian Ocean Garnet Sands Co. Pvt. Ltd.,
Tiruchendur Road, Navaladi,
Radhapuram Taluk, Tirunelveli
District – 627 657. Tamil
Nadu.

21.M/s.Earth Mineral Resources Pvt.
Ltd., 146, Palayamcottai Road,
Tuticorin – 628 003. Tamil Nadu.

22.S.Vaikundarajan,

23.Thiru.Gagandeep Singh Bedi, I.A.S.,
Secretary to Government,
Revenue Department,
Government of Tamil Nadu, Fort St.
George, Chennai – 600 009. Tamil
Nadu.

24.M/s.Southern Enterprises, rep. by
Mr.Dhaya Devadas, No.1/520, 7th
Street, Veerabadra Nagar,
Mambakkam Main Road,
Medavakkam, Chennai-100.

25.M/s.Indian Garnet Sand Company,
Private Limited and rep. by Mr.Dhaya Devadas,
No.1/520, 7th Street,
Veerabadra Nagar, Mambakkam Main Road,
Medavakkam, Chennai-100.

26.M/s Grace Minerals, rep.
by Mr.Dhaya Devadas,
No.1/520, 7th Street,

Veerabadra Nagar, Mambakkam Main Road,
Medavakkam, Chennai-100. (R24 to R26
are impleaded as per Order dated
28.01.2016 in W.P.No.1592/2015)

27.Commissioner of Customs and Central Excise,
Thoothukudi Port,

28.Regional Commissioner of Customs and Central Excise,
Chennai.

29.Chairman,
V O Chidambaranar Port Trust, Thoothukudi.

(R27 to R29 are impleaded as per order dated
21.11.2016 in W.P.No.1592/2015)

30.The Member Secretary,
Tamil Nadu Pollution Control Board (TNPCB),
Panagal Maaligai,
76, Mount Salai, Guindy,
Chennai 600 032.

31.Principal Secretary,
Government of Tamil Nadu,
Ministry of Environment and Forests,
Fort St.George, Chennai 600 009.

(R30 & R31 impleaded vide order
dated 12.11.2021 made in W.P.No.1592/2015)

... Respondents

Prayer: In accordance with the order dated 28.01.2016 in W.P.No.1592 of 2015 passed by the Hon'ble First Division Bench directing the investigation by a special investigation team to probe illegal beach sand mining in the coastal districts of Tamil Nadu and to bring the offenders to justice.

: Dr.V.Suresh
Amicus Curiae

For Petitioners	: Mr.P.M.Subramanian Senior Counsel For Mrs.N.K.Kanthimathi
For R1, R2 & R4	: Mr.R.Rajesh Vivekanandhan Deputy Solicitor General of India
For R3	: Mr.K.Gunasekar Senior Panel Counsel
For R5 to R7, R23 & R31	: Mr.Aravind P.Datar Senior Counsel Assisted by Mr.B.Vijay Additional Government Pleader
For R8	: Mr.V.Raghavachari Senior Counsel For Mr.P.M.N.Bhagavathkrishna
For R9	: Mr.Srinath Sridevan Senior Counsel For Mr.J.Kingsly Solomon
For R10	: Mrs.S.Deepika
For R11, R12, R20 & R21	: Mr.V.Sanjeevi
For R13	: Mr.M.Guruprasad
For R16 to R19	: Mr.Puhazh Gandhi
For R22	: Mr.V.Raghavachari Senior Counsel and Mr.M.Sricharan Rangarajan Senior Counsel For Mr.J.Kingsly Solomon and S.Vaikundarajan Party-in-Person

For R24 to R26	: Mr.V.Selvaraj, For Mr.D.Prabhu Mukunth Arun Kumar
For R30	: Mr.B.N.Suchindran Standing Counsel [For TNPCB]
For R35	: Mr.V.R.Kamalanathan For Mr.A.Michael Shakespeare
For R14, R15, R27 to R29 & R32 to R34	: No Appearance

J U D G M E N T**S.M.SUBRAMANIAM, J.**

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I. Origin of Suo Motu PIL:

The Suo Motu Public Interest Litigation (PIL) arises from allegations of massive illegal mining and sale of “Beach Sand Minerals” (hereinafter referred to as 'BSMs') by various private lessees/mining companies in the three southern districts of Tamil Nadu namely Thoothukudi, Tirunelveli and Kanniyakumari during the period of 2000-2001 till 2016-2017. BSMs are also referred to as 'Heavy Minerals'.

2. The PIL was originally filed by one Dr.Victor Rajamanickam. For various reasons (as available on the record of this Court) he withdrew himself. However, in view of the serious nature of allegations involved including the alleged environmental damages caused, and National security this Court converted the PIL into suo motu case on 28.01.2016.

II. Brief Note on Beach Sand Minerals:

3. The availability of beach sand minerals like Ilmenite, Rutile, Zircon, Leucoxene, Monazite, Sillimanite and Garnet along the coastline of India is a result of geological processes starting from erosion of hinterland rocks containing these minerals, their erosion and transport to the coastal tracts by streams and rivers, repeated

winnowing action by wind and ocean currents and sea level changes,
mineral rock formations, drift of eroded

material through ocean currents and subsequent deposit of minerals on shores. The processes resulting in the deposits of these rare minerals along the shore, stretch over several thousands of years and are continuously driven by sea/ocean erosion of rock formations in other parts of the world. The ocean currents transport the rare minerals from their origin to the shores here. The transportation is dependent upon the physical properties of the minerals themselves i.e., density, mass, etc.

4. In so far as the State of Tamil Nadu is concerned BSMs are peculiar to the three coastal districts of Tamil Nadu namely Thoothukudi, Tirunelveli and Kanniyakumari alone. Beach sand is rich in seven heavy minerals - ilmenite, leucoxene (brown ilmenite), rutile, zircon, sillimanite, garnet and monazite. They are processed to derive rare earth elements and titanium that are used in a variety of industries, including paints and cosmetics.

5. In Beach Sand Minerals (BSMs) ore, there occurs Monazite, a prescribed substance as per Atomic Energy Act, 1962.

Monazite contains Thorium, Uranium and Rare Earth (RE) elements. Thorium is a central component of India's nuclear policy and is considered a matter of key National security. Therefore, private entities are prohibited from dealing with or processing Monazite.

6. The world's reserve of monazite is estimated to be in the range of 12 Million tonnes of which nearly 8 Million tonnes occur with the heavy minerals in the beach sands of India in the States of Kerala, Tamil Nadu, Andhra Pradesh and Orissa.

III. India's Nuclear Development Plans Dependant on Thorium:

7. Monazite, a greenish-yellow phosphate mineral containing rare earth metals, is an important source of thorium, lanthanum, and cerium. It occurs usually in small isolated crystals. Thorium has been recognized as (another) radioactive nuclear material for producing energy indigenously. In fact, India is now

progressing steadily towards a Thorium based nuclear program. Thorium based program has the potential to support the energy security on long term. Thorium is also inherently advantageous considering its domestic availability.

8. Thorium is used in a variety of industrial and military applications. Thorium has been extracted chiefly from monazite. Monazite, is a principal source of Thorium, and Indian Rare Earths Limited (IREL), a Government of

India undertaking under the administration control of Department of Atomic Energy (DAE) is the leading supplier of Monazite in the country. None other than IREL is allowed to process the Monazite.

9. India is currently recognized by the International Atomic Energy Agency (IAEA) to possess a lion's share of Monazite / Thorium resources in the world.

10. As mineral sands in India contain radioactive mineral, it is kept under the purview of Government entities for effective traceability of radioactive material. The Government entities in this field extract minerals that are free from radioactivity from the mineral sand. **The mineral containing radioactivity is the property of Government of India.**

IV. Scope of the Public Interest Litigation (PIL):

11. It is also pertinent to note that after the conversion of the PIL to

Suo Motu PIL, the scope is not restricted to Monazite, but all BSMs. This Court clarified by order dated 21.01.2019 that “this Court is of the considered view that the scope of the Suo Motu Public Interest Litigation covers not only Monazite but also all other BSMs especially with regard to the alleged illegal mining, transportation and other alleged activities”. This order was challenged before the Hon'ble Supreme Court of India in S.L.P.No.10498 of 2019, which was disposed of on 04.07.2019 with a direction to this Court to dispose of various petitions, including this PIL, expeditiously.

12. It is also to be clarified that the argument put forth by mining companies that the PIL itself has become infructuous owing to the amendments brought about to the Mines and Minerals (Development and Regulation) Act, 1957 [hereinafter after referred to as 'MMDR Act'] and introduction of the Atomic Concession Rules, 2016, does not stand accepted, since this Suo Motu PIL is related to the issue of Illegal mining, transportation and sale of raw sand and BSMs during the period 2000-2001 till end of 2016 and related issues and irregularities committed during the said period, which ought to be decided. The illegalities / irregularities alleged during 2000-2001 till 2016 ought to be examined and cannot be brushed aside owing to the advent of amendments, which is post 2016 and shall have no bearing on the validity of this PIL.

V. Significance of This PIL:

13. The negative environmental impacts due to illegal Beach sand mining is humongous. There are broad scale allegations of mining and export of illegally mined minerals such as Monazite with

the active support of officials and bureaucrats. Various legislations including the Environment Protection Act, The Mines and Minerals (Development and Regulation) Act, The Atomic Energy Act and the Rules framed thereunder have been violated. There is also large scale violations in the matter of payment of royalty, sales tax and central excise duty.

14. The Suo Motu PIL was initiated based on the petitions filed in Court and widespread reports of massive illegal beach sand mining from sea shores of southern districts of Tamil Nadu namely Tirunelveli, Thoothukudi and Kanniyakumari, minerals mined beyond approved quantities and approved minerals, violation of various environmental protection laws and ecological damage along coastlines, failure of the officials in monitoring and enforcement of duties and responsibilities and more importantly allegation of failure to account for Monazite tailings.

15. The main allegation in this PIL relates to charges of massive illegal sand mining of RE and BSMs by various mining companies with the active connivance, protection and/ or collusion of different State agencies, the State and Central Government tasked with the responsibility of monitoring such Beach sand mining. There are also allegations of policy violations, illegalities in mining, separation, transportation and export of BSMs, abdication of responsibility on the part of the official monitoring agencies. A matter of great concern is the allegation of loss to the State exchequer of an unimaginable amount of money which ought to have been accrued by the Government, both State and Centre, as royalty due to unethical practices adopted by some of the mining companies. Another issue of concern that has been flagged is about the collusive role of official agencies in the system of royalty calculations. Of equal importance is also the allegations of breach of national security by way of smuggling or clandestine movement of monazite or monazite tailings from India to some countries with nuclear weapon programmes.

VI. Facts in Brief:

Events Leading to Constitution of Mr.Gagandeep Singh Bedi Committee:

16. A total number of 64 mining leases were granted to private lessees for mining Garnet, Ilmenite, Rutile, etc., in patta and coastal poramboke lands in the three coastal districts of Tirunelveli, Thoothukudi and Kanniyakumari under the provisions of Mines and Minerals (Development and Regulation) Act, 1957 and Mineral Concession Rules, 1960. The details are as follows:

<i>Sl.No.</i>	<i>District</i>	<i>No. of Mining Leases Granted to Private Lessees</i>
1.	Tirunelveli	52
2.	Thoothukudi	6
3.	Kanniyakumari	6
	Total	64

17. Three Mining leases have been granted to M/s.IREL India Limited, for mining Garnet, Ilmenite, Rutile, Zircon, Sillimanite, Leucoxene and Monazite in patta and coastal poramboke lands in Kanniyakumari District. TAMIN have been granted with one mining lease for mining Garnet in Tirunelveli District.

<i>Sl.No.</i>	<i>District</i>	<i>No. of Mining Leases Granted to Government Undertakings</i>
1.	Tirunelveli	1
2.	Kanniyakumari	3
	Total	4

18. Mining leases granted to private lessees in the three districts are as follows:

<i>Sl.No.</i>	<i>Name of the Lessee</i>	<i>No. of Leases Granted</i>
1.	V.V.Mineral	34
2.	Transworld Garnet India Pvt. Ltd.	16
3.	Beach Minerals Sands Company and Beach Minerals Company Pvt. Ltd.	10
4.	K.Thangaraj	1
5.	M.Ramesh	1
6.	Indian Ocean Garnet Sand Company Pvt. Ltd.	1
7.	Industrial Minerals India Pvt. Ltd.	1
	Total	64

19. Mining leases granted to Government undertakings are as follows:

<i>Sl.No.</i>	<i>Name of the Lessee</i>	<i>No. of Leases Granted</i>
1.	IREL India Ltd.	3
2.	TAMIN	1
	Total	4

Report of the District Collector, Thoothukudi, August 2013:

20. The immediate incident which led to the imposition of ban on mining of beach sand minerals initially in Thoothukudi and thereafter in the other Districts was the report of the then District Collector, Thoothukudi (Tuticorin) dated 06.08.2013 informing the Government of Tamil Nadu that in response to various complaints of villagers of Keelavaippar village of Vilathikulam Taluka regarding illegal mining by M/s.V.V.Mineral, a multidisciplinary team of District Environmental Engineer, Assistant Director Mines and Deputy Collector (training) conducted an inspection of the mining sites in the village. Following their report that the company has illicitly quarried raw sand from Government Poromboke land and unsurveyed land

adjoining the leasehold area, the District Collector constituted two teams to inspect the areas where illicit mining had been reported and submit a detailed report.

21. Of the two teams, the team headed by the DRO, Thoothukudi visited Keelavaippar – 1 village and reported that the company, M/s.V.V.Mineral has illicitly quarried raw sand to the tune of 85, 611 Cubic

Meter (CBM) consisting of 2,39,712 Metric Ton (MT) of beach mineral from Government Poromboke SF.No.989 and unsurveyed land adjoining S.No.989 of the village.

22. The Special Deputy Collector (Stamps) reported that mining activities had taken place only in the permitted area of Vembar and Periasamipuram villages but the area of sand excavated has not been filled up properly as per rules and regulations of the Mine Act.

23. The District Collector, Thoothukudi pointed out that he had already reported “large scale illicit” beach sand mining by M/s. Beach Sand Minerals Company in Padukkapathu Village of Sattankulam Taluk. The District Collector therefore suggested that detailed field inspections should be undertaken by a Special Team, consisting of departments of Revenue, Police, Environment and Forests, Geology and Mining in connection with the illicit mining of beach minerals by various lessees.

Mr. Gagandeep Singh Bedi Committee's Report on Illegal Beach Sand Mining by Private Mining Companies:

24. Based on the report of the District Collector, the Government of Tamil Nadu formed a Special team headed by Mr. Gagandeep Singh Bedi, IAS, Secretary, Revenue department vide G.O.Ms.No.156, Industries (MMD1) Department dated 08.08.2013 to inspect and verify in terms of Section 24 of MMDR Act, 1957, whether there is illicit mining by the six

lessees of minerals - Garnet, illmenite and Rutile in Thoothukudi district. This team also consisted of officers from the departments of Revenue, Environment and Forest and Geology and Mining.

25. The Special Team headed by Mr. Gagandeep Singh Bedi, IAS, evolved a comprehensive methodology to conduct the field study through a process of triangulation so as to ensure objectivity and avoidance of bias.

26. The Enquiry Team under Mr. Bedi was divided into various teams who inspected the mining leasehold areas. The Reports of these teams were then randomly allotted to another team for super-checking and both these reports submitted were verified by the Core Team. The field visits apart, a team of officials headed by JD (Mines) Mr. Palanivel and other officials inspected the Mineral Separation Units of the lessees on 19th, 20th, 29th and 30th August, 2013. The Commissioner of Customs, Thoothukudi Port and Commissioner of Commercial Taxes, Chennai were approached to furnish details of quantity of beach sand minerals exported. The lessees were also asked in writing to submit

details of pit-wise quarrying operations done and other issues they wanted to represent.

Key Findings in Mr.Bedi Report:

27. Mr.Gagandeep Singh Bedi submitted a detailed 289 page Report of the Special Team on the Inspection of Six Lease Areas of Major Minerals (Garnet, Ilmenite, Rutile etc) in Thoothukudi District, to the then Hon'ble Chief Minister of Tamil Nadu, in mid-September, 2013.

28. It was estimated by the Special team lead by Mr.Bedi, IAS, that illegal mining was detected over an extent of 66.18.0 hecets. And it was estimated that a total quantum of 10,29,955 M.T of raw sand had been illegally mined and transported from the non-leased out areas in Thoothukudi district.

29. Subsequently vide G.O.Ms.No.173, Industries (MMD1) Department dated 17.09.2013, in order to have a comprehensive assessment of the mining of major minerals in districts other than

Thoothukudi, the same committee was also directed to inspect and verify illicit mining of major minerals in leases granted to private parties in Tirunelveli, Tiruchirapalli, Kanniyakumari and Madurai districts. The committee followed the same pattern of investigation adopted in Thoothukudi district, albeit in an expanded manner.

30. Two remaining reports submitted by the Special Team headed by

Thiru.Gagandeep Singh Bedi, I.A.S., in respect of Tirunelveli and Kanniyakumari Districts were produced by the learned Advocate General before the Court on 11.01.2017. It was reported by the Special Team that illegal mining was detected over an extent of 412.99 acres of non-leased out areas in Tirunelveli District and it was estimated that a total quantum of 90,29,838 MT of raw sand had been illegally mined and transported from the non-leased out areas in Tirunelveli District. Further, the illegal mining was detected over an extent of 4.05 acres of non-leased out areas in Kanniyakumari District and it was estimated that 54,446 MT of raw sand had been illegally mined and transported from the non-leased out areas in Kanniyakumari District.

Ban on Mining and Transportation of BSMs Pending Inspection:

31. As per the directive of the Government, to aid the inspection of the Committee under section 24 of the MMDR Act, the District Collectors of the aforementioned districts passed orders to stop the mining operations and transport permits to private lessees from the month September, 2013. But this ban also paved way for more allegations to crop up that the mining companies were illicitly allowed to carry on their mining operations even when the ban was in force.

Litigations Began Cropping Up on the Issue of Illegal Beach Sand

Mining:

32. Soon thereafter a number of cases including Writ Petitions and PIL came to be filed by different parties including the present Respondents making charges, claims and counter claims. The Division Bench of this Court came to consider the various writ petitions filed and delivered a common order dated 12.12.2013 in W.P.(MD).No.1233 of 2012, etc., and Batch. The critical observations of the Division Bench of this Court in its

Order dated 12.12.2013 is as reproduced below:

“32. We have also taken note of the fact that the Government of Tamil Nadu has passed G.O.(Ms) No.173, Industries (MMD. 1) Department, dated 17.9.2013, to inspect and to find out as to whether illicit mining of such major minerals are taking place in Tirunelveli, Tiruchirapalli, Kamniyakumari and Madurai Districts. A special team, consisting of officials from the various departments, has been named; for the said purpose. It has also been stated that the special team would complete the task within a period five months. While so, we do not find it appropriate to direct further investigation, with regard to the alleged illegal mining activities, said to be carried on by the private Respondents herein, parallely, by appointing some other persons, as requested by the petitioners. The petitioners have not been in a position to show that the special team, constituted by the Government of Tamil Nadu, would not be in a position to carry out the task, satisfactorily. Further, the allegation made by the petitioners that the constitution of the special team, by the Government of Tamil Nadu, is only an eye wash, and that it is merely for satisfying this court that action is being taken against the alleged illegal mining activities cannot be accepted. In fact, from the submissions made by the learned Advocate General, appearing on behalf

of the State of Tamil Nadu, we are convinced Government of Tamil Nadu is taking serious action to curb the illicit mining activities, if any, in the coastal and other areas in the State of Tamil Nadu. Only after the special team submits its report such acts, if any, in the light. Thereafter, it would be open to the state government, as well as the central government, to initiate appropriate action against the illicit mining activities, if they are found to have taken place. It would be premature for this court to arrive at a definite conclusion, at this stage, and to direct the official Respondents to initiate appropriate action against the alleged illegal mining activities, said to be carried on by the lessees, especially, when certain factual aspects have to be verified and confirmed, by a proper enquiry and investigation.

33. *However, we are conscious of the fact that the issues raised before this Court, relating to the alleged illicit mining of minerals in the coastal districts of the State of Tamil Nadu and in the other areas of the state, are of public importance. We are also highly concerned about such issues as they also highlight the urgent need to protect and preserve the natural environment by preventing over exploitation of the natural resources of the country. There is no doubt that the governments concerned have to be vigilant in taking appropriate steps to strike a fine balance between proper utilisation of the available resources and the preservation of such resources for posterity. We are also clear that such a balance can necessary scientific*

data provided by persons, who are experts in be achieved only on the basis of the their respective fields.

34. *In such circumstances, in view of the fact that a committee of experts, under the Chairmanship of Mr. Gangandeep Singh Bedi, Secretary, Revenue Department, has been constituted by the State Government to examine, investigate and to file a report, after physical verification of the mining sites in question, we find it appropriate to permit the petitioner in the writ petitions, including those who are wanting to implead themselves in the writ petitions, to submit their representations to Mr. Gagandeep Singh Bedi, the Chairman of the Committee, along with the necessary documents, if any, within fifteen days from today. It is also made clear that it would also be open to the private Respondents, who are parties herein, to submit their representations to the Chairman of the Committee, within the time specified above. On receipt of such representations, the Committee concerned shall examine the issues, by making necessary enquires and investigation, and if necessary, by serving appropriate notices on the parties concerned, and file a report before the State Government, for necessary action, as expeditiously as possible.*

35. *In such circumstances, in view of the fact that the parties concerned have been given the liberty to place all the relevant materials before the committee of experts, constituted by the State Government, we are not inclined to make any observations, with regard to the validity and correctness of the claims and the counter claims made by the parties before this Court. It would be left to the Committee concerned to check and*

to verify such claims, if necessary, by providing an opportunity of hearing to the parties concerned and to file its report before the State Government, as directed by this Court, by this order. On receipt of such report it is for the State Government to take appropriate steps and to pass necessary orders, as it finds fit and necessary, in accordance with law. As it is an admitted fact that subsequent proceedings had been issued pursuant to the impugned show cause notices issued by the Respondent concerned, the writ petitions in W.P.Nos.14399 and 14400 of 2011 have become infructuous. As such, they are dismissed, as infructuous. In such circumstances, as no further orders are necessary, the writ petitions in W.P.No.5549 of 2007 and W.P.No.1233 of 2012 and the impleading petitions filed therein stand closed.”

33. Subsequent to this order of the Division Bench, the validity of G.O.Ms.No.156, Industries (MMD.1) Department dated 08.08.2013 and G.O.Ms.No.173, Industries (MMD.1) Department dated 17.09.2013, which paved way for constitution of the Bedi Committee to inspect and verify allegations of illegal beach sand mining was challenged vide W.P.Nos.16716 and 19641 of 2014 and by order dated 29.05.2015, the learned Single Judge

of this Court set aside the G.O.s to the extent of the Petitioner's lease hold areas alone (Petitioners in W.P.No.16717 and 19641 of 2014 being M/s.Transworld Garnet India Pvt. Ltd. and M/s.V.V.Mineral respectively) and appointed Mr. Justice V.K. Sharma, a former Judge of the High Court of Madras as the Chairperson of the Special Committee for inspection of petitioners lease hold areas. The Court held the G.O's to be valid to all other quarries except the Petitioner's.

34. This Order by the learned Single Judge has come up for challenge vide Writ Appeals in W.A.Nos.1168 and 1169 of 2015 filed by the State Government and W.A.Nos. 1220 and 1221 of 2015 by Respondents 24 to 26, in the present case. These above mentioned Writ Appeals are connected with this Suo Motu PIL and is heard together before this Bench.

Events Leading to the Initiation of Suo Motu PIL:

35. Meanwhile, based on the news item published in the Economic Times in the month of February 2015, a Joint

Inspection was carried out by the Director, Regional Office, Ministry of Environment Forest and Climate Change of India along with Assistant Conservator of Forests, Department of

Environment, Assistant Directors of Geology and Mining of Tirunelveli, Thoothukudi and Kanniyakumari Districts and Officials from the Tamil Nadu Pollution Control Board in the coastal districts from 24.04.2015 to 27.04.2015. A Joint Inspection Report dated 27.04.2015 was signed by the Director, Ministry of Environment Forest and Climate Change of India and other Officials, who accompanied in the Joint Inspection. The Commissioner of Geology and Mining vide letter dated 21.05.2015 forwarded the Joint Inspection Report dated 27.04.2015 to the Government stating that no mining activities were noticed in the coastal districts of Tirunelveli, Thoothukudi and Kanniyakumari.

36. Further, by order dated 27.07.2015, Government vide G.O.Ms.No.179, Industries (MMD.1) Department, dated 27.07.2015

constituted District level and Taluk level Committee to look into complaints on illegal beach sand mining and transportation of BSM for taking appropriate action by authorities concerned.

37. Meanwhile a Public Interest Litigation was filed by one Mr. Victor

Rajamanickam on 23.01.2015 in W.P.No.1592 of 2015 before this Hon'ble Court with a prayer seeking for a Special Investigation Team to probe illegal beach sand mining in the coastal districts of Tamil Nadu. However on 28.01.2016 the Petitioner in the PIL tendered an apology for not disclosing some material facts (which are available on the record of the Court) and the Hon'ble Court accepted his apology and permitted him to withdraw from the proceedings.

38. Subsequently, the High Court considered the seriousness of the allegations and converted the PIL into a Suo Motu case on 28.01.2016. On the same date, this Court proceeded to appoint Mr.V.Suresh, Advocate as Amicus Curiae to assist the

Court by examining various issues raised in the PIL and to place appropriate reports before the Court.

39. Meanwhile, the Assistant Controller of Mines, Indian Bureau of

Mines, Udaipur vide letter dated 20.10.2016 informed the Commissioner of Geology and Mining that Mining Surveillance System was developed by Ministry of Mines and it was launched on 15.10.2016 from New Delhi. The incidences of illegal mining within 500 Meters. zone of mining leases have been captured in the system in the form of triggers. Initially 29 triggers were detected by the system in respect of Tamil Nadu and requested to verify the triggers in the field and to send a report in this regard.

40. Further, there was a District Level Committee meeting on prevention of illegal beach sand mining and transportation of beach sand minerals held on 09.11.2016 at Collectorate, Tirunelveli. It was found by the District Level Committee that all the private lessees in Tirunelveli District were indulged in unlawful mining, transportation of beach sand minerals for the period from 2008-2009 to 2012-2013. Transport permits

issued to the lessees for beach sand minerals for the period from 2000-2001 to 2013-2014 were compared with the quantum of such minerals permitted for production in the approved mining plan / scheme of mining and it was found that a huge quantum of beach sand minerals unlawfully transported by the private lessees.

41. As the entire quantum of beach sand minerals kept with the private lessees, both processed and unprocessed were arrived as illegal storage. It was resolved by the District Committee to request the Assistant Commissioner, Customs, Thoothukudi to produce certificate of legally mined minerals obtained from the District Collector concerned before allowing export of minerals and to insist on transport permits along with bulk permit. The Chairman, Port Trust of Cochin, Vizagapattinam and new Mangalore were addressed by the District Collector, Tirunelveli vide letter dated 19.12.2016 informing that private lessees from the State of Tamil Nadu were making their attempt for export of beach sand minerals from the Ports outside the State of Tamil Nadu and no export of beach sand minerals can be allowed

in the absence of valid transport permits issued by the Deputy Director of Geology and Mining / Assistant Director of Geology and Mining.

42. The Commissioner of Customs, Cochin issued Trade Facility dated 22.12.2016 stating that the Government of Tamil Nadu has banned the mining operation of all private lessees for beach minerals and stopped issuance of transport permits, pending completion inspection by the Special Team and therefore it was decided to verify the source of beach sand minerals being sent for export and as an interim measure directed all the exporters of beach sand minerals to produce documentary proof obtained from competent authority.

Constitution of Mr. Satyabrata Sahoo Committee:

43. It is pertinent to note the Mr.Bedi committee had conducted inspection under Section 24 of the MMDR Act and during the said period based on the directive of the Tamil Nadu government, the District collectors of the said 3 districts had

ordered complete stoppage of mining and stoppage of issuance of transport permits for transport of BSMs pending inspection. But there were reports that inspite of the ban on BSM mining and transportation, illicit mining, processing and transportation was taking place with the connivance of the officials. The learned Amicus Curiae through a status report dated 21.11.2016 had brought to the attention of this Court that despite the ban, there was widespread mining of ROM, processing and transporting of BSMs occurring in 3 districts of the State. Relevant document in support of this was filed before the Court.

44. The First Bench of Madras High Court by interim order dated

11.01.2017 in the Suo Motu PIL W.P.No.1592 of 2015 and W.A.Nos.1168, 1169, 1220 and 1221 of 2015 directed the State and Central Governments to look into the issues jointly and suggest a strategy on the formation of special squads for patrolling of sea shore areas across the coastal districts of Tirunelveli, Kanniyakumari and Thoothukudi and for the constitution of Special Team headed by a Secretary Level Officer of the State Government

and officials from Customs and Excise Department, Atomic Minerals Directorate (AMD) and other departments concerned for estimation of the stock of minerals kept in the processing plants, storage yards, bonded warehouse and other places.

45. Hence, following orders of the Court, a Committee of Central and State government officials was constituted headed by Mr.Satyabrata Sahoo, I.A.S., vide G.O.Ms.No.41, Industries (MMD.1) Department dated 07.04.2017. Inspections were carried out at all processing plants, godowns and other storage areas of the mining lessees in the 3 districts. All stocks of the mining companies were sealed in godowns, stockyards, factories and premises of the companies with effect from April, 2018.

46. A comprehensive report of the special team was submitted to the Government on 18.04.2018 and the same was filed before this Court on 24.04.2018. It consists of main report and several volumes of data from the AMD/AERB of Government of India and various inspection teams. The Monazite content in various stocks as found by Atomic Minerals Directorate (AMD) has also been analysed. The actual stock of BSMs kept with the

private plant owners in the 3 districts, as estimated by Sahoo's Committee was to the tune of 1.50 Crore Metric Tonnes.

Key Findings of Sahoo Report:

47. The total quantum of beach sand minerals stored by the Plant owners / Lease holders at various places in Tirunelveli, Thoothukudi and Kanniyakumari Districts as assessed by the Special Team are furnished as follows:

<i>Sl.No.</i>	<i>Districts</i>	<i>Quantum of Minerals Stocked (in M.T.)</i>
1.	Tirunelveli	1,37,45,644
2.	Thoothukudi	12,09,423
3.	Kanniyakumari	5,93,613
	Total	1,55,48,680

48. The total quantum of beach sand minerals declared as stocks by the Plant owners / Lease holders in respect of the three districts are furnished as follows:

<i>Sl.No.</i>	<i>Districts</i>	<i>Quantum of Minerals Declared as Stocks (in M.T.)</i>
1.	Tirunelveli	64,59,624
2.	Thoothukudi	13,91,810

3.	Kanniyakumari	7,07,300
	Total	85,58,734

49. Thus, there is a massive difference to the tune of 69,89,946 MTs between the quantum of Beach Sand Minerals assessed by the Special Team and the quantum of Beach Sand Minerals declared as stocks by the Plant owners / Lease holders in respect of the three districts.

50. The report submitted by AMD on the percent Monazite equivalent analysis of the samples collected at the time of preliminary assessments from the Godowns / Dump locations / processing plants / mining area in respect of the three Districts reveal that 87 out of 177 samples are having more than 0.25% of Monazite equivalent. During the period up to 2007, the upper limit of "Monazite equivalent" in export sample was 0.25%.

51. The report submitted by AMD on the percent Monazite equivalent analysis of the samples collected at the time of super-check assessments from the Godowns / Dump locations /

processing plants / mining area in respect of Tirunelveli and Thoothukudi Districts reveal that 31 out of 43 samples are having more than 0.25% of Monazite equivalent.

52. Thus, the reports of the AMD reveal that 118 (87+31) out of 220 (177+43) samples collected record more than 0.25% of Monazite equivalent i.e. 53% of samples record more than 0.25% Monazite equivalent. The reports of the AMD further reveals that a number of finished products like Garnet, Ilmenite, Zircon etc., contain other mineral as well, in proportions of 10 to 25 %.

53. The reports further reveals that a number of finished mineral stocks contain Monazite / Monazite equivalent much above the notified reference value. Hence, exporting and trading of all beach minerals need specific supervision especially at port levels from where they are exported. Proper regulation of export of minerals containing monazite / monazite equivalents will be appropriate in view of the radioactive content of the minerals which

in turn might have a bearing on the National Security, if the products fall into wrong hands.

Reassessment Report:

54. Based on the request made by the District Collectors of

Tirunelveli and Thoothukudi and based on the recommendations of the Commissioner of Geology and Mining, orders have been issued vide G.O.Ms.No.246, Industries (MMD.1) Department, dated 20.09.2021 authorising the District Collectors of Tirunelveli, Thoothukudi and Kanniyakumari under MMDR Act, 1957 to re-assess the beach sand minerals stored and sealed at various places by the Special Team Headed by Thiru Satyabrata Sahoo, I.A.S. The BSM stocks were ascertained and sealed at the conclusion of the inspections conducted in 2018 on the directions of this Court, by Joint- Inspection teams of Central and State agencies headed by Mr.Satyabrata Sahoo, I.A.S.

55. The “Reassessment Report on Beach Sand Minerals” filed by the Secretary, Natural Resources Department,

Government of Tamil Nadu presents the findings of inspection done in 2021-2022 by Joint Teams of officials from the Revenue, Geology and Mining, Survey and other departments of the Government of Tamil Nadu. Included in the Inspection Teams were also officials of the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy (DAE) – arrayed as R2 in the present PIL. The 87-page Re-assessment Report (RR-2023) is accompanied by a set of six volumes of field reports submitted by the respective District Collectors and reports of tests on stocks undertaken by the specialist agency of DAE, the Atomic Minerals Directorate.

56. The Reassessment Report concludes that out of a total of 1.5 Crores Metric Tonnes of BSM stocks which were reportedly sealed in various godowns of the mining companies/ private plants in the three districts in 2018, there is a shortfall of 16.04 Lakh Metric Tonnes (amounting to 10.69% of total stock) of BSMs stocks. The RR-2023 concludes that the 16.04 Lakh MT of

BSM stock were illegally transported by various mining companies during the period 2018-2022. The inspection also revealed additional new stocks amounting to 6,62,191.04 MT stocked at various sites. These new stocks were unrelated to previous stocks found in 2018. There is also a finding of high quantum of monazite in the additional stock found.

Amicus Curiae Reports:

57. The Amicus Curiae had been entrusted the task of enquiring into the issue of the state of Beach Sand Mineral mining in the three coastal districts of Thoothukudi (Tuticorin), Tirunelveli and Kanniyakumari Districts of Tamil Nadu. The main allegation in the PIL is that massive illegal mining is taking place over and beyond the permitted quantities with the active involvement of officials. There was an additional allegation that a massive quantity of monazite tailings is unaccounted and that there is the possibility of monazite being smuggled away.

58. The learned Amicus Curiae has submitted detailed and elaborate reports on the pertinent issues raised in the PIL. He had been provided with all the primary data and records of the official agencies for a careful scrutiny. It should be pointed out that the Central government agencies, viz., the DAE – AMD (Respondent No. 2) and IBM (Respondent no. 4) have not disputed the findings of fact in the three Amicus Curiae Reports with respect to illegal mining and transportation of BSMs by the mining companies. In particular the AMD has not disputed the findings of the Amicus Curiae in the second Report about presence of monazite in processed mineral stocks kept by the mining companies in their godowns. This apart, the State Government has very clearly and emphatically accepted the findings of fact in the Amicus report on scale of illegal mining, transportation and export, as also the Royalty Report filed before this Court.

Regarding Allegation of Bias and Prejudice Raised against Amicus Curiae:

59. The Amicus Curiae was appointed by the Court on 28.01.2016, after the Court converted the original Writ Petition into a Suo Motu PIL in view of the serious allegations of massive illegal mining of beach sand minerals in three coastal districts of Kanniyakumari, Thoothukudi and Tirunelveli Districts.

60. It is to be noted that the objections are filed by the 22nd respondent Mr.S.Vaikundarajan on 19.12.2024 during final arguments of the present Suo Motu PIL petition and connected proceedings. The respondents 8 and 9 also raised similar accusations. The 8th respondent in his Memo of Objections to the report of Amicus Curiae imputed "Conflict of Interest" on the part of this Amicus. However, the 8th respondent suppressed the order of this Court dated 15.03.2016, wherein the very same accusations were rejected by this Court.

61. On 28.01.2016, when this Court appointed this Amicus, he was not present in court. So on the next hearing date,

15.3.2016, the Amicus brought to the attention of this court that in a previous litigation (W.P.No.1233 of 2012) involving similar allegations regarding BSM, on behalf of an intervenor he was on record as an advocate on behalf of his office, along with his wife, D. Nagasaila, Advocate. The Amicus informed the court that though his name was on record, he had never appeared even once, in the case. Therefore he informed, that if the various private Respondents had any objections to his appointment as amicus, he will not accept the responsibility. The then the Hon'ble Chief Justice asked all the counsel, including the private Respondents if they had any objections. All

parties including the counsel for 8th Respondent / M/s.V.V.Mineral and 22nd Respondent Mr.S.Vaikundarajan stated that they had no objections. In the order dated 15.03.2016 this court recorded the following order:

“Learned Amicus informed us that at some stage, his office was concerned with the earlier litigation, but none has objection him continuing to assist the court as Amicus, especially respondents No. 8 and 22.”

62. Another accusation made by the private Respondents (R8, R9 and R22) is that the Amicus was a member of a human rights organisation called Peoples' Union for Civil Liberties (PUCL). and had visited the BSM area way back in the 1990's and had got into an altercation with

M/s.V.V.Mineral employees. Yet another accusation is that the Amicus is an Editor of an internal magazine called PUCL. Bulletin in which articles critical of BSM mining were carried which disclosed the bias against M/s.V.V.Mineral and BSM industry on the part of the Amicus.

63. This accusation was denied by the Amicus claiming it to be totally false, fabricated, unsubstantiated and maliciously made. He states that he has never ever visited any BSM mining site in the three coastal districts much less had any interaction with the employees there. All this was spelt out before this Court. After hearing the counsel for R8, and the Amicus this court passed the following order on 20.09.2016:

“A Memo has been filed by the Learned Amicus out of the communication emanating from the counsel for Respondent No. 8 and 22. The Learned Counsel for the said Respondents states that the object was only to bring certain facts to the notice of the Learned Amicus, for him to take a call on the same.”

“We have perused the Memo; we see no reason why the Learned Amicus cannot continue in this matter, merely because he happened to be the Secretary of an Association and Editor of a Bulletin, in which the author published a report, where there was general reference to the illegal sand mining in Tamil Nadu in four lines.”

64. Apart from these two occasions when Respondents 8, 9 and 22 accused Amicus of bias, the same parties, viz., R8 – M/s.V.V.Mineral and R9 – M/s.Transworld Garnet India Private Limited filed W.M.P.No.24173 of 2017 and W.M.P.No.24174 of 2017 making the very same allegations, which was dismissed as withdrawn on 03.10.2017 itself.

65. While so, despite knowing that the same allegations were considered and rejected by this court on three occasions - viz., 15.03.2016, 20.09.2016 and on 03.10.2017, the parties have repeated the same

allegations in:

(a) the Memo of Objections' dated 20.01.2024 filed by R8 – M/s.V.V.Mineral; and

(b) in the Note titled 'Brief Facts about the Writ Appeal and the Motive behind the litigations' served on the Amicus Curiae and circulated by counsel for R22 Mr.S.Vaikundarajan in Court during final arguments on 21.12.2024.

66. It should be pointed out that they have been repeating the allegations against the Amicus despite having personal knowledge that the same allegations were raised earlier, considered and dismissed by this Court. Hence, this Court finds no merit in these allegations against the Amicus.

The First Report of Amicus Curiae:

67. The First report of the Amicus Curiae deals with the mining during Phase I (2000-2001 till September 2013). This study was made independently by the Amicus Curiae without relying on the reports of the Bedi Committee and District level Committee. Computation of unlawful / illegal mining by each lessee year-wise and lease wise was done by comparing the mining plans, scheme of mining and transport permits and quantifying:

- (1)Quantities transported over and in excess of the approved mining plan;
- (2)Quantities transported of BSMs not permitted in the mining plan;
- (3)Quantities transported during period when Scheme of Mining was not approved.

And this Report came to the conclusion that all private lessees had indulged in large scale unlawful mining and transportation of BSMs during the pre ban period from 2000-2001 to 2013-2014.

Second Report of Amicus Curiae:

68. The Second Report deals with the period in Phase 2 or the post ban period after August-September, 2013. The Second Report of the Amicus Curiae, examined the Report of the Sahoo's Committee as regards the total stock of raw sand (ROM), semi-processed and processed BSMS found in the godowns and other places owned by the various lessees / companies.

69. The Second Report concluded that the stocks held by various lessees / mining companies after the imposition of the ban in August / September, 2013 cannot be based on processing of balance of raw sand remaining with the companies at the time of the ban. Therefore the 2nd Amicus Report concludes that the stocks held by different mining companies at the time of Sahoo Committee enquiry should be held to be illegally mined. The Second Report specifically pointed out that many stocks of processed minerals (with THM > 90%) belonging to different companies were found by DAE - AMD to have monazite concentration beyond the threshold value of "> 0.25% Monazite

Equivalent” indicating that significant quantity of monazite can be extracted from these stocks.

Third Report of Amicus Curiae:

70. In this Report, the 'Royalty Settlement Proceedings' approved by the District Collectors of Thoothukudi, Tirunelveli and Kanniyakumari districts in respect of royalty collected and due to be paid by different mining companies for each annual year from 200-2001 till 2015-2016 were studied.

Fourth Report of Amicus Curiae:

71. The fourth report of Amicus curiae summarises the key findings from the reassessment report filed on 27.11.2023 by the 6th Respondent. It reports about large scale illegal removal of 16.04 Lakhs MT of beach sand minerals by different mining companies during 2018-2022. This report of Amicus Curiae dealt with the study of two key issues:

- (1) The high quantum of illegal mining and transportation of BSMS by various mining companies.

(2)High presence of Radio Active Monazite in the semi-processed and processed BSMs stocks kept by various mining companies / Plant owners.

Show Cause Notice Issued:

72. The State Government accepted the findings pertaining to illegal mining, transportation, export and royalty payments on all four reports since the findings of Bedi report, Sahoo's report, Reassessment report and Amicus Curiae report were on the same lines and the findings correlated with each other. Hence, based on the reports and findings, the Government after perusing the relevant documents had issued showcase notices directing the mining parties to reply as to why Cost of minerals and Royalty should not be recovered from them for the quantum of minerals unlawfully mined and transported during the pre-ban period in respect of the mining leases granted

73. The Cost of Minerals and Royalty to be recovered from the private plant owners and ex-lessees for the quantum of beach sand minerals unlawfully mined and transported during the pre-ban period works out to the tune of **Rs.5832.29 Crore**. The break up details are as follows:

- (1)V.V.Mineral – 3581.16 Crore
- (2)Industrial Mineral India Private Ltd. – 82.51 Crore
- (3)Transworld Garnet India Private Ltd – 478.43 Crore
- (4)Beach Minerals Sands Company and Beach Minerals
Company Private Ltd. – 921.69 Crore
- (5)K.Thangaraj – 183.86 Crore
- (6)M.Ramesh – 117.21 Crore
- (7)Indian Ocean Garnet Sand Company and Indian Ocean Garnet
Sand Company Private Ltd. – 191.30 Crore
- (8)Industrial Mineral Company – 276.08 Crore
- Total = 5832.29 Crores

The writ petitions challenging the show cause notices on royalty have been filed and heard along with the present Suo Motu PIL.

74. This High Court by Order dated 21.01.2019 had made it clear that this Suo Motu PIL covers all BSMs pertaining to alleged illegal /unauthorised extraction of minerals, transportation and other associated illegal activities.

VII. Contentions of the Respondents:

Key Points of Contentions by the 8th and 22nd Respondents:

75. The 22nd Respondent claims that his competitors out of rivalry have instituted the present PIL. The 8th Respondent claims that they have a valid mining lease from the State Government with the previous approval of the Central Government as well as Atomic Energy Department. The 8th Respondent stated that they have a valid mining plan duly approved by Atomic Minerals Directorate for Exploration (AMD) and the Indian Bureau of Mines (IBM) which had approved the scheme of mining also. It was also stated that they have a valid Environmental Clearance from Ministry of Environment and Forest (MoEF&CC) for all its mining leases and that the production also is within the limit of EC as well as approved mining/scheme

of mining and they also stated that they have a valid consent under Air Act and Water Act.

76. It was contended that the Amicus Curiae did not highlight any violations of the India Rare Earths Limited (IREL), but instead pointed out imaginary violations against the 8th Respondent's mining lease. The 8th Respondent further leveled allegations of serious mining violations against IREL. It was further contended that the Amicus Curiae did not apply the reverse calculation method for the IREL and that he did not prepare chart citing violations by IREL.

77. It was contended that the Amicus failed to act impartially and that though Amicus discussed about the Bedi report in his volume of charts, Amicus did not point out that Bedi committee did not inspect Trichy and Madurai Districts.

78. It was further contended that principles of Natural Justice was violated only for the 8th Respondent. Inspections of leases belonging to the

24th, 25th and 8th Respondents were conducted based on directions of the High Court. However Natural Justice Principles were violated only with respect to the 8th Respondent. Further, the 8th Respondent alleges that the Amicus failed to point out the illegalities and violations committed by the 24th and 25th Respondents. The 8th Respondent further contends that the Amicus did not collect documents from official government agencies and that he did not rely on official data.

79. The 22nd Respondent goes on to level allegations against Mr.D.Dhaya Devadas that he had engaged Retired officials to make complaint against the 8th Respondent. The 8th Respondent further claims that totally 40 allegations were leveled against the company and that all allegations were thoroughly enquired and rejected by the State Government and reported to the Government of India vide its Principal Secretary letter No.7810/MMD2/2011-1 dated 23.07.2013. The 8th Respondent claims that IREL colluded with Mr.D.Dhaya Devadas.

80. It was submitted that the Customs Department did not point out any irregularities against the 8th Respondent, however it is alleged by the latter that the 24th and 25th Respondents export is more than the permit obtained quantity.

81. The 8th Respondent contended that the Amicus Curiae method of calculation of royalty is wrong. This was substantiated by stating that all the quantity transported by the 8th Respondent is below the quantity permitted by MoEF and permitted by mining plan/scheme of mining and that the variation is solely due to replenishable deposits. Further, it was submitted that all the quantities were transported with valid permits.

82. Further, it was submitted that the 8th Respondent is permitted to produce other minerals from the existing tailings accumulated vide competent authority 2nd Respondent letters dated 05.05.2000 and

05.06.2000, without fresh mining lease and also that the 1st Respondent had confirmed the same, vide letter dated 16.08.2000. Hence, based on the above said approval letters issued by competent authorities, the 6th and 7th Respondents permitted the 8th Respondents to produce minerals from existing accumulated tailings available with 8th Respondent.

83. It was contented that the case of ***Common Cause vs. Union of India and Others***¹, is not applicable to the 8th Respondent. The 8th Respondent relied on paragraph 129 of the judgment, as follows:

“129. The simple reason for not accepting this interpretation is that Rule 2(ii-a) of the MCR was inserted by a Notification dated 26-7-2012 while we are concerned with an earlier period. That apart, as mentioned above, the holder of a mining lease is required to adhere to the terms of the mining scheme, the mining plan and the mining lease as well as the statutes such as the EPA, the FCA, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. If

¹ . 2017 (9) SCC 499

any mining operation is conducted in violation of any of these requirements, then that mining operation is illegal or unlawful. Any extraction of a mineral through an illegal or unlawful mining operation would become illegally or unlawfully extracted mineral.”

On relying in this paragraph, the 8th Respondent averred that they have necessary approvals and clearances as under the Act and Rules.

84. It was further contended that the 8th Respondent has not engaged in illegal mining. And that with respect to Bedi Committee, the 8th Respondent claims it to be not statutorily valid. It was further averred that there is no excess stock with respect to 8th Respondent as per Sahoo Committee report.

85. It was averred by the 8th Respondent that with respect to monazite, there are no possibilities for export of monazite as there are no countries where thorium is used for any purpose. And that the allegation of export of monazite by M/s.V.V. Mineral is wrong.

86. It was also submitted that the reverse calculation method for royalty adopted by Amicus is wrong. It was submitted that this calculation is not based on physical verification or inspection or seizure by competent empowered officials.

87. The 8th Respondent's total sales are 57,71,688 MT. 15,000 divided by 38,77,391 = 0.0038685 x 57,71,688 = 22327.77 MT of Monazite should be available. Whereas the 8th respondent having the following quantity of Monazite.

<i>Actual Stock 38,77,391 M.Ton</i>	<i>Content of Monazite 15,000 M.Ton</i>
Already export local sales quantity 57,71,688 M.Ton	23,408 M.Ton instead of 22327 M.Ton

This will establish that the reverse calculations are wrong according to the analysis report documents of Amicus.

88. The excess quantity is the quantity collected from the already sold minerals prior to 2000. So, the reverse calculation method adopted by Amicus is defeated by his own analysis documents produced from AMD.

89. Further contentions of the 8th Respondent are that as per Section 5(2)(b) of MMDR Act, the State Government, cannot grant the mining

lease without the approved mining plans. Also as per Rule 22(5) of MCR, 1960 the mining plan should contain the tentative scheme of mining - That means the quantity mentioned in the mining plan is only tentative. The quantity and annual program are only tentative and the replenishable quantity can be collected by the lessee if it is deposited within the lease hold area as already decided by the Court in W.A.No.69 of 1998 and W.P.No.5386 of 1997. As per Rule 22(6) of MCR, 1960 the mining plan once approved will be valid for the entire lease period and that 8th Respondent has the valid mining plans for all its mines. As per Rule 9(2) of Mineral Conservation and Development Rules, 1988 (MCDR, 1988), the Controller General or the authorized officer may require the holder of a mining lease to make such modification in the mining plan or impose such conditions as he may be consider necessary by an order in writing, if such modification or imposition of conditions are considered necessary. Accordingly, 8th Respondent has obtained modified mining plan also for certain lease areas.

90. It was averred that the Government of India, IBM issued separatemanual for preparation and approval of mining plans after prior

inspection. So without verification no mining plan will be approved and hence the Amicus allegation about mining plan has no basis.

91. The 8th Respondent averred that none of the Act and Rules for payment of royalty or mining operation has been violated by the 8th respondent. It was submitted that the entire 3rd report of the Amicus is without any statutory violation and that this report regarding royalty and his enclosures 15A and 15B has no legal value.

92. Regarding Monazite the 8th Respondent contends that the percentage of occurrence of monazite in BSMs is a natural phenomenon and claims that they have requisite handling license and that they are permitted to store the monazite tailings. Based on the aforementioned grounds the 8th and 22nd respondent sought for dismissal of this PIL.

Key Contentions of 16th, 17th, 18th, and 19th Respondents:

93. It was mainly submitted that Monazite is a radioactive material

and cannot be clandestinely smuggled across National/International borders. Every atomic mineral have traces of radioactive mineral, which cannot be separated and that National and International regulators have fixed permissible threshold. It was submitted that checkpoints at Airports and Harbours are installed with radioactive detectable scanners as per International guidelines stipulated by International Atomic Energy Agency (IAEA). There is also clear National and International mechanism to monitor the movement of radioactive materials including monazite across borders.

94. With regard to allegations of excess mining it was averred that in BSM, the presence of percentage of minerals are not certain. Sometimes due to tidal action and wind action, the deposits will be more and some time there won't be even any deposit. So when excess minerals are got from BSM, it is declared before the Lessor. The lessor can either confiscate the excess minerals and say it is in excess of the mining plan and hence it belongs to the State or royalty can be collected and in the present case the lessor has chosen the latter and the royalty collected was audited and duly shared

between the Centre and the State. Therefore question of evasion does not arise.

95. It was submitted that every form of mineral which was exported have suffered royalty and properly declared. There must be a mismatch in the interpretation of quantum of royalty to be collected whether on the ad valorem price of Orissa or Tamil Nadu is but a technicality and not evasion.

96. It was submitted that the respondent company was granted lease by order dated 01.03.2004 for a period of 30 years for doing Beach Sand Mining and pursuant to the mining lease the hundreds of crores of Rupees was invested and the mining plan was set up. Further, more than 10,000 direct and indirect employments were created due to the trade. Further, huge amounts of royalty was paid and foreign exchange revenue worth hundreds of crores was generated by exporting beach sand minerals. Surprisingly the Government of Tamil Nadu vide G.O.Ms.No.318 dated 25.11.2021 terminated the lease of this respondent prematurely stating that

Government of India has amended the Atomic Mineral Concession Rules, 2016.

97. It was averred that the amendment is nothing but a clear case of colorable legislation in order to favour Government companies, who are all competitors to the petitioner company. There is no reasonable classification and object sought to be achieved by the specific amendment. Further there is no rational nexus. The beach sand minerals may have minor radioactivity which cannot be separated and that all are handled by both Government and private companies.

98. It was submitted that the ratio laid down in ***Common cause*** judgment (Supra) which deals about static miserable reserve does not apply to the case of BSMs. It was further submitted that the MMDR Act is not a control Act but a development oriented Act.

99. It was averred that the repeated criticism of mining of BSM would cause environmental issue is a gross generalization without any regard to

factual aspects. BSM are unique and they are the only mineral which are replenishable in nature. The replenishment was also recognised by the learned Amicus in his report. The Nagar Committee assigned by Department of Atomic Energy also has recognized fact of replenishment.

100. With regard to royalty it was contented that whatever amount calculated in whatever means either in the form of royalty towards ROM has to be treated as advance royalty. Therefore the entire quantities of mineral exported by the respondents are royalty stuffed. And excess royalty amount collected in the Department of Geology and Mining is still with the Government.

Key Contentions of 24th, 25th and 26th Respondents:

101. It was submitted that except one mining lease in favour of Indian Garnet Sand Company Private Limited all other mining leases in favour of 24th and 25th Respondents were cancelled by the State Government by orders dated 01.02.2013. The said Orders are impugned in W.P.(MD).Nos.2111 to 2115 of 2013. Since transport permits were not issued, the lone mining lease was not operational since 2011. Hence, the allegation

that Amicus Curiae and Committee headed by Mr.Gagandeep Singh Bedi, I.A.S., did not deal with the said leases is unjustifiable.

Key Contentions of the 12th Respondent:

102. It was submitted that the Amicus had used imaginary calculations to arrive at the finding that 12th Respondent has carried out illegal mining. Further, with respect to quantity transported beyond the quantity mined, this respondent submitted that there is no quantity restriction either in the MMDR Act or Rules. The quantity mentioned in the approved mining plan is tentative for five years that, too for excavated quantity vide Rule 22(5)(v) of MCR, 1960. It was further submitted that with respect to quantity transported during the period when there was no approved scheme of mining, where the period have been lapsed is not applicable to the 12th Respondent and that they have a valid mining plan as well as scheme of mining. Therefore, it was submitted that the entire allegation is not applicable to the 12th Respondent.

Submissions on Behalf of the 4th Respondent:

103. It was submitted that as per the guidelines of the mining plan/scheme of mining, the lessee has to establish proved reserves for atleast five years period to commensurate with the tentative proposals furnished in the mining plan/scheme of mining. So, the extraction of the mineral cannot be beyond the proved reserves established at that time. Further submission of Scheme of Mining, the reserves has to be reestablished by way of additional exploration, considering the depth factor. The lessee has to carry out the mining operations in accordance with the approved mining plan/scheme of mining which includes approved quantity in the mining plan. Contrary to this, attracts the violation of Rule 13(1) of Mineral Conservation and Development Rules, 1988, i.e. deviation in the approved mining plan.

104. It was further submitted that the mining plan or scheme of mining is being approved with proposals of production for five years period. The lessee should extract the mineral within the permissible limits and get permits for that quantity only. Any demand for excess quantities of mineral that can only be extracted with proper prior approvals. The modifications also for the

remaining period of the approved mining plan/scheme of mining. The lessee cannot extract the mineral as per the whims and fancies and later approach the Indian Bureau of Mines extending the approval of mining plan/scheme of mining from the date of approval i.e. Prospective not retrospective.

Submissions on Behalf of the 2nd Respondent:

105. The 2nd Respondent submitted that Monazite, which is (greenish yellow) phosphate mineral containing rare earth metals, is an important source of thorium, lanthanum and cerium. Thorium has been recognised as (another) radioactive nuclear material for producing energy indigenously and that India is now progressing steadily towards a Thorium based nuclear program. Thorium based program has the potential to support energy security in long term. Monazite is a principal source of Thorium and Indian Rare Earths Limited (IREL) is a leading supplier of Monazite in the country.

It was stated that none other than IREL is allowed to process Monazite.

106. It was submitted that India's nuclear development plans are crucially dependent on Thorium based development. This is recognised in the IAEA Report. Also the world's reserve of monazite is estimated to be in the range of 12 Million Tons of which nearly 8 Million Tons occur with the

heavy minerals in the beach sands of India in the States of Kerala, Tamil Nadu, Andhra Pradesh and Orissa.

107. It was submitted that since Monazite is important for our Country's nuclear requirements, as a policy decision, no private players is allowed to process Monazite but are allowed only to store them as per the directives issued by the AERB. Also no private players is allowed to crack Monazite from the Monazite enriched tailings as it results in highly radioactive thorium and uranium and are vulnerable to leaching. With respect to atomic minerals under MMDR Act, for the purpose of grant of mining lease by the State Government for such minerals like Ilmenite, Rutile, Zircon, Leucoxene, permission is to be obtained from the Central Government / DAE.

108. It was also submitted that AMD has not approved any mining plan for monazite in favour of 8th Respondent (M/s.V.V.Mineral). It was also averred that as per AMD records, 10 mining plans were transferred to 15th Respondent (M/s.Industrial Minerals Company). These mining plans do not

include monazite mining. Further AMD has not approved any mining plan in Tamil Nadu in favour of 9th Respondent (M/s.Transworld Garnet India Pvt. Ltd.).

109. The 2nd Respondent also submitted that no permission was granted to the State Government for inclusion of monazite in the mining lease granted to private party and if at all any mining lease is granted by including Monazite to any private party, the same is without the sanction of the Central government and amounts to violation of Act and Rules.

110. It was contended that the Respondents 8 and 22 have stated that they have not carried out any estimate for monazite as they are not permitted to handle the same and hence no information has been furnished on the estimated reserves of Monazite. However, they have furnished the total quantity of monazite rich tailings for the period from 2007 to 2016 as 80,725.05 M.T. The respondents further have stated that they have never personally assessed the Monazite content in the feed material but provided the data based on the AMD's (Atomic Minerals Directorate for Exploration

and Research – a Unit of the second respondent) report of the second respondent and furnished the percentage of monazite content with respect to each of their mine numbering 34 specifically given in the tabular format (Page Nos.9 to 13 of their letter dated 04.12.2016). Further in page number 14, they have furnished the total ROM (Run of Mine) collected from each of their mine numbering 34 (Page Nos.14 to 16).

111. Based on the above data furnished by the respondents 8 and 22, approximate quantity of monazite computed and furnished in a tabular format. Based on the data furnished by the Respondents, it is seen that the data on grade of monazite in the mining lease areas with reference to AMD's reports vis-à-vis the monazite resources is computed as 5876 M.T. covering 34 mining lease areas of the respondents 8 and 22, whereas the total quantity of monazite computed based on the data submitted by the Respondents 8 and 22 regarding quantity of tailings from 2007 to 2016 is 23,461M.T. Hence, there is a mismatch as seen from the above regarding computed monazite resource.

112. It was submitted that as regards, excessive mining carried out by private lessees, which are found to be higher than the quantity approved by the mining plan (IBM/AMD) on the basis that the lessee has a valid mining lease and the land is owned by the lessee and advance royalty is paid and the sanctity of approved plan:

The quantity of monazite (23,461 MT) is a figure arrived at on the basis of grade and tonnage declared by respondent 8 and 22. However, the Sahoo Committee has assessed 23,608 MT of monazite contained in the monaziterich tailings storage yard and also assessed about 15,000 MT of monazite in various stocks available with respondent 8 and 22, thereby totaling to 38,608 MT monazite. Special team has also assessed the monazite

available in the monazite-rich tailings storage yard and stocks available with other BSM operators. Inputs given further below has taken into account of 38,608 MT monazite assessed by Special Team. Based on inspection of the beaches in the concerned areas, calculations disclose that for a quantity of raw sand of 6-7 Crore Tons mined as pointed out by the Learned Amicus Curiae, this would generate tailings of about 38,608 MT of monazite. The

calculations arrived at by the Learned Amicus Curiae are justified considering the average grade of 0.05% monazite in raw sand as declared by Respondent 8 and 22.

However, as per the declaration by respondent 8 and 22, the total raw sand production is only 98,88,100MT. Considering the average grade of 0.05% in raw sand (also declared by respondents 8 and 22), this quantity of raw sand would yield only 5,876 MT of monazite, which is a major discrepancy with respect to the quantity of monazite assessed by Special team. The difference indicates that, a larger quantity of raw sand has been processed than what has been declared by respondent 8 and 22.

Even if a higher grade of monazite is considered, say 0.1% (2 times) in raw sand mined, taking in to account the possible enrichment process by beach washings, about 3.50 to 4 crore tonnes of raw sand is required for the collection of 38,608 tonnes of monazite as against the 98,88,100 tonnes of raw sand declared by respondent 8 and 22.

In view of the above, the possibility of excessive mining of raw sand against the declared quantities and grades cannot be ruled out. It was averred that based on deliberations, Department of Atomic Energy (DAE) was in

agreement and supported the proposition of the Tamil Nadu Government that semi processed material and monazite tailings need to be eventually handed over to DAE.

113. It was submitted that during processing of the raw sand, monazite, which is radioactive in nature, gets distributed and progressively concentrated in various process streams and becomes potential source of radiation exposure. Therefore, for radiological safety considerations, AERB issued guidelines for safe management of monazite tailings under Atomic Energy (Radiation Protection) Rules, 2004 in order to avoid any undue radiation exposure to workers and general public. Accordingly, the facilities were either required to store the monazite tailings in pits within premises under their institutional control topped with non-radioactive silica sand or were required to backfill the mined-out sites after mixing with silica sand such that radiation level remained comparable to natural background radiation of the region. Nevertheless, besides being radioactive substance, monazite contains thorium and uranium which is notified as prescribed substance under the Act, control of which solely rests with the Department of Atomic

Energy. DAE has all the enabling powers to acquire prescribed substance under the Act.

Submissions on Behalf of the 1st Respondent:

114. The 1st Respondent submitted that as per Entry 23 of List II (State List) the State Governments have powers for; “Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the union”.

115. The Mines and Minerals (Development and Regulation) (MMDR) Act, 1957 was enacted by the Parliament. Section 2 of the MMDR Act, 1957 is the statement of declaration of expediency which states as follows:

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

116. With the said declaration the Union has taken under its control the regulation of mines and development of minerals to the extent specified in the said MMDR Act, 1957. The MMDR Act 1957, inter-alia, provides for procedures to grant mineral concessions, regulate mining activities and provisions for mineral development in the country. Two sets of Rules have been framed by the Ministry of Mines under the MMDR Act as follows:

- (1) Mineral Concession Rules, 1960 (MCR), which, inter-alia, lays down the procedures for grant of mineral concessions, conditions of mineral concessions, action to be taken by the State Government for notification of area and transfer of concessions.
- (2) Mineral Conservation and Development Rules, 1988 (MCDR), which, inter-alia, provides for regulation of mining activities of major minerals by Indian Bureau of Mines (IBM) through approved Mining Plan.

117. It was submitted that State Governments grant mineral concessions. The statutory provision under section 5(1) of the MMDR Act, 1957 with regard to grant of mining leases prior to 12th January, 2015 required obtaining previous approval of the Central Government for grant of mineral

concessions for a mineral specified in the first schedule of the MMDR Act, 1957. For the purposes of MMDR Act, 1957, ilmenite, rutile, leucoxene, zircon, and monazite are specified as 'Part B Atomic Minerals' in the First Schedule to the MMDR Act, 1957. Garnet and Sillimanite are not specified in Part B of the First Schedule. Obtaining previous approval of the Central Government for grant of mining leases in respect of garnet and sillimanite is not required.

118. It was submitted that the issue of illegal mining is the subject matter of State Government. State Governments are in charge of law and order. State Governments have been empowered under section 23-C of MMDR Act, 1957 to curb illegal mining by framing Rules for preventing illegal mining, transportation and storage of minerals. The revisionary jurisdiction of the Central Government is also banned in respect of orders passed by State Governments under section 23-C.

119. It was further submitted that the Central Government also took cognizance of the emerging situation, a need was felt to look into the matter

holistically in the interest of regulation of mineral development and for conservation of mineral resources of strategic significance.

120. Pursuant thereto, the entire export of BSM has been now canalised through Indian Rare Earth Limited since 21.08.2018 for which monazite test certification from Atomic Mineral Directorate [AMD] has been made mandatory. Furthermore, Central Government revised the threshold value of BSM from 0.75% to 0.00% [zero percent] Monazite content in Total Heavy Mineral vide G.S.R.No.134(E) dated 20.02.2019. That pursuant to the notification dated 20.02.2019, and in exercise of powers conferred under Section 4A(1) of the MMDR Act, 1957 and also after consultation with the State Governments, the Ministry of Mines vide order dated 01.03.2019 decided to prematurely terminate all the existing mineral concession of BSM held by private persons/companies in the Country in the interest of regulation of mines and mineral development and conservation of mineral resources and directed the respective State Government(s) to take necessary action as per the provisions of Section 4A(1) and 4A(3) of the MMDR Act, 1957.

Key Contentions of the State Government:

121. It was contented that based on reports of illicit mining, pursuant to the direction issued by the State Government in G.O.Ms.No.156, Industries Department dated 08.08.2013 and G.O.Ms.No.173, Industries Department dated 17.09.2013, the Special Team conducted extensive field visits in Thoothukudi, Tirunelveli and Kanniyakumari Districts in the month of August, October and November, 2013 and intensively examined all mining and related issues. The special team head was assisted by a Core team consisting of 4 District Revenue Officers, 2 Joint Directors of Survey, 1 Joint Director of Geology Mining and 1 Additional Chief Environmental Engineer. This Core team coordinated the inspections of all the 64 leases granted in Tirunelveli, Thoothukudi and Kanniyakumari and assisted in the preparation of reports.

122. It was reported by the Special Team Head that the procedures laid down by the High Court dated 12.12.2013 in W.P.(MD).No.1233 of 2013, etc., batch cases were scrupulously followed. As directed by the Court, representations were received and notices were given to concerned parties. To ensure the principles of natural justice, all concerned were given an

opportunity to put forth their contention in writing to the special team. The claims and counter claims were examined in detail and conscious decision was taken based on merits and based on unassailable and impeccable evidences gathered from fields. The same were substantiated and strengthened by field report/photographs/ survey maps. The report pertaining to Thoothukudi District was filed before this Court on 20.09.2016 and two other reports pertaining to Tirunelveli and Kanniyakumari Districts were filed before this Court on 11.01.2017. All the three reports revealed that a total quantity of 1,01,14,239 MT of raw sand (1.01 Crore MT) had been illegally mined and transported over an extent of 234.55.0 Hectares of non leased out areas in three districts.

123. Further, with regard to the Amicus Curiae's report it was submitted that the Learned Amicus Curiae's report is based on the data collected from the District Collector of Tirunelveli, Thoothukudi and Kanniyakumari on the quantum of Beach Sand minerals permitted to be transported by the district officials of Department of Geology and Mining in Tirunelveli, Thoothukudi and Kanniyakumari districts for the period from

2000-01 to 2013-14 (pre-ban period).The report submitted by learned Amicus curiae is based on the details of mining plans and scheme of mining approved by Indian Bureau of Mines with reference to non-atomic minerals namely Garnet and Sillimanite.

124. It was averred that the minerals not permitted for production in the approved mining plan/scheme of mining were treated as unlawfully mined and transported one. Further none of the private respondents had submitted scheme of mining for approval of the Atomic Minerals Directorate in respect of Ilmenite, Rutile, Zircon and Leucoxene.

125. It was submitted that the Taluk level and District level committees constituted by the Government are Fact finding committees to look into the complaints on illegal BSM and transportation of BSMs and for taking appropriate action by the authorities concerned. The mechanism devised by the Government for constitution of Taluk level committees and District level committees are very much within the ambit of State Government as, State is vested with powers for preventing illegal mining, transportation and storage of minerals.

126. Also it was found that royalty accounts in respect of M/s.V.V.Mineral and M/s.Transworld Garnet Private Limited were settled for the period from 2008-2009 to 2011-2012 by erroneously computing royalty for the quantum of raw sand transported under Rule 64B(2) of MCR, 1960. It was further found that Royalty was not fixed for the quantum of processed Garnet, Ilmenite, Rutile, Zircon, Sillimanite and Leucoxene sold/ exported on ad-valorem basis for the period from 2008-2009 to 2011-2012 as required under Rule 64-D of MCR, 1960. It was further found that, as Royalty accounts were settled improperly, by computing royalty for the quantum of Raw sand transported and it was contrary to the provisions of Rule 64-D of MCR 1960, it was decided by the District level committee that the royalty accounts were not settled in accordance with the guidelines specified under the Rule 64-D of MCR, 1960 and therefore the royalty accounts settled for the period are to be treated as null and void.

VIII. Legal Issues:

127. The following legal issues arise for determination in this matter:

(1)Whether the constitution of the Expert Committee headed by

Mr.Gagandeep Singh Bedi, I.A.S., vide G.O.Ms.No.156, Industries Department dated 08.08.2013 and G.O.Ms.No.173, Industries Department dated 17.09.2013, by the State Government in exercise of powers conferred under Section 24 of MMDR Act, to inspect and file a report in regard to illicit mining of BSMs, is valid in law.

(2)Whether the reports and findings of the Special Team headed by Mr.Gagandeep Singh Bedi, I.A.S., is valid in law?

(3)Whether the reports and findings of the Special Team headed by Mr.Satyabrata Sahoo, I.A.S., is valid in law?

(4)Whether the methodology adopted by the learned Amicus Curiae about illegal mining of BSMs is fair, objective and rational?

(i) Three-way method of calculating illegal mining is correct or not?

(ii) Reverse calculation of calculating quantum of ROM required to produce 80,725.05 MT of Monazite-rich tailings is correct or not?

(5) Whether the methodology adopted by the Amicus in calculating the Cost of minerals and Royalty on ad valorem basis for the quantum of minerals unlawfully/illegally mined and transported/exported during pre-ban period and post-ban period is valid in law?

(6) Whether the reports and findings submitted by the Learned Amicus Curiae is valid in law?

(7) Whether the findings of the Reassessment Report is valid in law?

(8) Whether the premature termination of BSMs mining leases by invoking Sections 4A(1) and 4A(3) of MMDR Act, 1957 in terms of

the directives dated 01.03.2019 issued by the Ministry of Mines, Government of India is valid?

(9)Whether the findings of the Committees and Amicus on processed stocks with high quantum and concentration of Monazite illegally held by the private respondents is valid?

(10)Whether there has been an illegal inclusion of Monazite and other atomic minerals to existing mining leases without prior approval of Government of India?

(11)Whether the request of the Government for handing over of the entire stocks held by the mining companies to IREL India Limited can be granted?

(12)Whether the Public Notice No.50 of 2016 dated 23.11.2016 issued by the Customs department to verify the source of BSMs and for production of requisite certificate from the District

Collectors certifying legal source of minerals to permit export under Section 50 of the Customs Act, 1962 is valid?

(13)Whether the Royalty accounts settled by the District Collectors by computing Royalty for Quantum of Raw sand transported without computing Royalty on ad valorem basis for the BSM exported is valid in law?

(14)Whether the Royalty accounts settled by the District Collector of Tirunelveli, Thoothukudi and Kanniyakumari by computing Royalty for raw sand transported by applying Rule 64B(2) of MCR, 1960 in respect of M/s.V.V.Mineral (R8) and M/s.Transworld Garnet India Private Limited. (R9) and M/s.Industrial Mineral India Private Limited (R13) and without computing Royalty on ad valorem basis for the actual quantum of minerals sold / exported under the provisions of Section 9(2) read with Second Schedule of the MMDR Act and Rule 64-D of MCR, 1960 unsettled by the State Government in the light of third report of the Amicus, is legally valid?

(15) Whether there is a need for a comprehensive investigation into the role of officials involved in the backdrop of the findings in the Committee reports and Amicus reports?

128. The issues as framed are categorised below into four core sections, with further sub-classifications, to enable an in-depth analysis:

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IX. Discussions:

(A) Illegal Mining, Storage, Transportation and Exports of BSMs:

(1) Extent and Quantum of Illegal Beach Sand Mining:

129. Rule 2(iiia) of the Mineral Concession Rules, 1960 defines “illegal mining”, as “any reconnaissance or prospecting or mining operation undertaken by any person or a company in any area without holding a reconnaissance permit or a prospecting licence or as the case may be, a mining lease as required under sub-section(1) of section 4 of the Act”.

1.1 What Constitutes Illegal Mining:

130. The Hon'ble Supreme Court of India in **Common Cause's** case cited *supra*, observed as follows:

“130. It is not, as suggested by Learned Counsel, that illegal mining is confined only to mining operations outside a leased area. Such an activity is obviously illegal or unlawful mining. Illegal mining takes within its fold excess extraction of a mineral over the permissible limit even within the mining lease area which is held under lawful authority, if that excess extraction is contrary to the mining scheme, the mining plan, the mining lease or a statutory requirement. Even otherwise, it is not possible for us to accept the narrow interpretation sought to be canvassed by Learned Counsel for the mining lease holders particularly since we are dealing with a natural resource which is intended for the benefit of everyone and not only for the benefit of mining lease holders.”

131. It was further clarified that mining in excess of permissible limits under the mining plan will certainly amount to illegal or unlawful mining or mining without authority of law.

1.2 Consequences of Illegal Mining:

132. Section 21(5) of the MMDR Act, 1957 provides that whenever any person 'raises' any mineral without lawful authority from 'any land', the State Government may recover from such person the mineral so raised, or where such mineral has already been disposed of, the price thereof, and may also recover from such person royalty, rent, or tax as the case may be.

133. The scope of section 21(5) MMDR Act, 1957 was considered by the Supreme Court in **Common Cause's** cited *supra*, paragraph 151, which clarified that “..... as far as mining lease area is concerned, extraction of a mineral over and above what is permissible under the mining plan or under the EC, undoubtedly attracts the provision of sec. 21(5) of the Act, being extraction without lawful authority. It will also attract section 21(1) of the MMDR Act, 1957. Section 21(5) of the Act is certainly attracted and is not limited to a violation committed by

a person only outside the mining lease area - it includes a violation committed even within the mining lease area”.

134. The Hon'ble Supreme Court in the same ruling explained about the scope of recovery of cost by pointing out that if there was illegal mining, the defaulting lessee must bear the consequences of the illegality and not be benefited by pocketing 70% of the illegally mined ore. The Hon'ble Supreme Court clarified that in the case of mineral unlawfully mined and transported; “...*there can be no compromise on the quantum of compensation that should be recovered from any defaulting lessee - it should be 100 %*”. (para 154). It must be pointed out, that apart, from the cost of mineral, the State Government can also recover royalty on the quantum of mineral unlawfully transported as provided in Section 21(5) of the Act itself. Also Section 23(C) of the MMDR Act empowers the State Government to frame rules to prevent illegal mining, transportation and storage.

135. The MMDR Act is an Act that was passed in expedient public interest so that the Union should take under its control the regulation of mined sand, the development of minerals to the extent provided in the Act.

There are two major sets of Rules under this Act - The Mineral Concession Rules, 1960 and the Mineral Conservation and Development Rules, 1988 (MCDR).

136. In the Mineral Concession Rules, 1960, beach sand minerals are referred to as 'Associated Minerals'. Rule 69(x) of the Mineral Concession Rules, 1960, defines 'Associated Minerals' as "Temenite, Monazite, Zircon, Rutile; Leucoxene, Garnet and Sillimanite". Leucoxene was added to this list of associated minerals in 2000.

137. Part B of Schedule I of the MMDR Act specifies the minerals that are classified as Atomic Minerals. Out of the 7 BSM Minerals (Garnet, Sillimanite, Rutile, Ilmenite, Zircon, Leucoxene

and Monazite), Rutile, Ilmenite, Zircon, Leucoxene and Monazite are atomic minerals while Garnet and Sillimanite are not. Therefore for the mining of Garnet and Sillimanite alone, the relevant authority to approve the Mining Plan is the Indian Bureau of Mines (IBM) while for Rutile, Ilmenite, Zircon, Leucoxene and Monazite, which are classified as Atomic minerals as they have radioactivity, the authority to approve the Mining Plan is the Atomic Minerals Directorate

(AMD).

138. However, with effect from 11.07.2016, an amendment has been made to Part B of the I Schedule of the MMDR Act, and a 12th entry was added to it. This entry reads as follows -

“Beach Sand Minerals, that is, economic heavy minerals found in the teri or beach sands, which include, Imenite, Rutile, Leucoxene, Garnet; Monazite, Zircon and Sillimanite.”

Hence with effect from 11.07.2016 ,all Beach Sand Minerals including Garnet and Sillimanite are classified as Atomic Minerals.

139. The granting of mining lease can be divided into four parts:

- (1)Obtaining prior approval and “precise area letter”
- (2)Approval of mining plan and scheme of mining
- (3)Environmental Clearances under CRZ, EIA and Air and Water Acts
- (4)Grant of mining lease.

1.3 Legal Position Governing Mining Plans:

140. Rule 22A of the MCR, 1960 states that mining operations have to be in accordance with the mining plans. Rule 22A(2) states that once the mine is in operation, the modification of the mining plan requires prior approval. Rule 9(1) of the MCDR, 1988 also stipulates that the mining operations can commence only in accordance with a mining plan approved under Section 5(2)(b) of the Act. Rule 13(1) of the MCDR also prescribes that mining operations shall be carried out in accordance with the approved mining plans with such conditions as may be prescribed or as per the scheme approved under

Rule 12 of the MCDR, 1988. Rule 13(2) importantly provides that, if the Regional Controller or authorized officer finds that the mining plan is not being complied with, they may order suspension of all or any of the mining operations and permit continuance only once operations are in accordance of the mining plan.

1.4 Operations Carried Out in Violation of Mining Plans:

141. Section 4(1) of the MMDR Act, 1957 makes explicit that “No person” shall undertake any mining operation in any area except under and in accordance with the terms and conditions of the mining lease. The strict law further provides in Section 4(1-A) that no person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of the Act and rules made thereunder. But a careful reading of various committee reports accepted by the State Government reveals that there has been flagrant violation of Sections 4(1) and 4 (1A) of the MMDR Act.

142. More pertinently, in the Bedi Committee Report on findings in Tirunelveli District, The lessees have, in some leases, obtained lease for patches of lands instead of continuous lands by leaving many Survey Field Numbers in between. In many leases, not only the lands covered under lease were mined, but also, the intervening non-leased lands had also been mined. There is no field boundary between sub-divisions and also between Survey Field Numbers. It seems that for record purpose alone, leases have been split up and applied for separately to avoid getting clearance from the Ministry of Environment and Forest Department, Government of India.

143. The Amicus Curiae report also deliberates on the issue of approval of mining plans in cases where claims of replenishment of reserves of beach sand are of a very high order. The extent and quantum of illegal mining done is humongous and the bandwidth to commit this illegality and the resources both monetary and human, employed to dodge the

legal mechanisms is staggering. The AC report further states instances where mining lessees in the absence of scheme of mining had continued to mine and transport minerals unlawfully. This can be found from the data provided by the AMD. So even after the expiry of extended period of lease , no scheme of mining was submitted to the AMD for seeking approval. Further, as per Bedi report illicit mining for an extent of 89.67 Acres was reported in Government poromboke and Hindu Religious and Charitable Endowments (HR&CE) lands to a quantity of 17,08,292 MT. The reports also carry specific instances of violations of conditions stipulated in the Mining lease.

1.5 Challenge to the Constitution of Bedi's Committee:

144. At the outset, this Court would like to clarify that Writ Appeals in W.A.Nos.1168, 1169, 1220 and 1221 of 2015 were filed challenging an order passed by a learned Single Judge of this Court. The Learned Single Judge in his order dated

29.07.2015 in W.P.Nos.16716 and 19641 of 2014 had ordered the setting aside of constitution of the Bedi Committee vide G.O.Ms.No.156, Industries (MMD.1) Department dated 08.08.2013 and G.O.Ms.No.173, Industries (MMD.1) Department dated 17.09.2013 with respect to M/s.V.V.Mineral and M/s.Transworld Garnet India Private Limited alone and further directed the subsequent appointment of a committee under a Retired Judge of this High Court to inquire into the allegations and this Order of the learned Single Judge was challenged before the Division Bench of this Court by the State Government through W.A.Nos.1168, 1169 of 2015 and by Mr.Dhaya Devadas in W.A.Nos.1220 and 1221 of 2015. These Writ Appeals were connected along with Suo Motu PIL and heard together. The validity of the G.Os under challenge and formation of the

Committee has been elaborately dealt with in the writ appeals.

1.6 Allegations of Bias against Mr.Gagandeep Singh Bedi, I.A.S:

145. One of the issues raised by the private Respondents is, whether Mr.Gangandeep Singh Bedi, I.A.S., the Chairman of the Special Committee appointed by the State Government, is biased in conducting inspections under Section 24 of MMDR Act, as ordered by the Government in G.O.Ms.No.156, Industries Department dated 08.08.2013 and

G.O.Ms.No.173, Industries Department dated 17.09.2013.

146. The natural justice principles are clear in terms that the Judge should be impartial and neutral. To invite the allegations of bias, there must be some personal or pecuniary interest for the Judge in the subject matter of consideration. In the case on hand the allegation of bias against Mr.Bedi is pertaining to events that is alleged to have happened in the year 2002 whereby in the course of performance of his duty as a Collector, he had passed some administrative orders on illegal beach sand mining. The present Chairman of the Committee as District Collector in the year 2002 issued a report to the department of Geology and Mining observing generally that mining lease should not be granted in coastal area as there was a possibility of law and order problem and the lessees quarrying in

Government poromboke lands.

147. Moreover, as the then Collector of Kanniyakumari District, illicit sand lorries and trucks were seized by the revenue officials under his instruction. These actions *per se* cannot pave way to cement the argument of bias against Chairperson of the committee.

148. An analysis of these allegations showcases that he had only acted in the course of performance of his official function and does not indicate a personal or pecuniary bias on his part. Hence to throw away the entire enquiry proceedings on these irrelevant allegations that too raised much belatedly does not find any merit. Moreover the respondents herein had initially submitted representations and their contentions before the committee without any objection, it was only at a later stage that suddenly this argument of bias was raised at the time of filing of the Writ petition in 2014. This raises several questions as to the genuinity in the submissions of respondents in raising the plea of bias against the appellants. Also it paves way for a fair surmise that the respondents have waived their right to object the appointment of the Chairperson of the Committee. Furthermore the accusations of the respondents against the Chairperson does not reflect any direct or indirect nor personal or pecuniary interest in the subject matter of inspection.

149. At the outset the allegations have no direct bearing on the inspection conducted and is too far fetched an argument to be coloured with bias.

150. Furthermore, relying on vague allegations of bias stemming from events that is said to have happened years ago without substantial reasoning cannot be a valid argument. There must be an actual bias or reasonable likelihood of bias. To sustain a plea of bias, there must be cogent, uncontroversial and undisputed material, and the court cannot go by vague, whimsical and capricious suspicion.

151. Moreover the test of 'real likelihood of bias' ought to be applied in the instant case and this test can be applied in tandem with **“fair-minded and informed observer”** standard test. This can be elaborated further by the following explanation; To disqualify a person from adjudicating on the ground of interest in the subject matter of lis, the test of real likelihood of the bias is to be applied. In other words, one has to enquire as to whether there is real danger of bias on the

part of the person against whom such apprehension is expressed in the sense that he might favour or disfavour a party. In each case, the Court has to consider whether a fair minded and informed person, having considered all the facts would reasonably apprehend that the Judge would not act impartially.

152. Both the above tests have been applied effectively across various decisions rendered by the Hon'ble Supreme Court. As detailed elaborately in the case of ***P.D.Dinakaran (1) vs. Judges Inquiry Committee and Others***², both these tests ought to be applied in tandem to effectuate a viable result. It is important to establish a real likelihood of bias rather than mere apprehensions and suspicions. Also the “fair minded and informed observer test” rests a notch higher than the 'reasonable man test' thereby raising the bar of assessment. This also paves way for a case to case analysis of the 'rule against bias' thereby ensuring compliance of the principles of natural justice.

² . (2011) 8 SCC 380

153. It is also pertinent to note that the Committee consists of 230 Government officials from across various departments and is not a single man committee. Further, it is not an adjudicatory committee, but an inspection committee, whose duty is refrained to conducting inspection and verification of reports on illegal beach sand mining along the coast. Hence, the final decision making authority is the Government. Thereby to insinuate charges of bias against the Committee that too long after the commencement of the inquiry is highly unwarranted and irrelevant considering the nature of proceedings in hand.

1.7 Powers of Inspection Under Section 24 OF MMDR Act:

154. The Bedi Committee had undertaken the inspection under section 24 of the MMDR Act. The powers under Section 24 is clear in its terms and devoid of any ambiguity. The private Respondents/Lessees contended that no prior notice was issued to them before conducting inspections. But the wordings in Section 24 of MMDR Act nowhere prescribes any issuance of notice prior to inspection. The section clearly states that for the purpose of

ascertaining the position of the working, actual or prospective, of any mine or abandoned mine or for any other purpose connected with this Act or the rules made thereunder, any person authorised by the [Central Government or a State Government] in this behalf, by general order, may-

- (a) enter and inspect any mine;
- (b) survey and take measurements in any such mine;
- (c) weigh, measure or take measurements of the stocks of minerals lying at any mine;
- (d) examine any document, book, register, or record in the possession or power of any person having the control of, or connected with, any mine and place marks of identification thereon, and take extracts from or make copies of such document, book, register or record;
- (e) order the production of any such document, book, register, record, as is referred to in clause (d); and
- (f) examine any person having the control of, or connected with, any mine.

155. So the section explicitly lays down the power of entry and inspection in the mines. Nowhere does it specify the need for prior notice to inspect. In the absence of provision to issue notice, the

contention raised by the Respondents mining companies that prior notice must be issued finds no merit. Moreover an inspection cannot be termed as 'surprise inspection' if prior notice is issued. That would defeat the very definition of 'surprise inspection'. Therefore when the Act is clear in its terms, no new meaning/procedures can be accorded to it.

156. Hence, the vires of the G.O.Ms.No.156, Industries (MMD.1) Department dated 08.08.2013 and G.O.Ms.No.173, Industries (MMD.1) Department dated 17.09.2013 stands undefeated and ought to be considered valid in the eyes of the law, thereby making the appointment of Bedi

Committee legally sustainable.

157. It is pertinent to note that the Special team under Mr.Bedi was entrusted with the task of inspecting and verifying the allegations of illicit mining in the said BSM lease sites in terms of Section 24 of MMDR Act. The

Special team conducted field visits in Tirunelveli, Thoothukudi and

Kanniyakumari districts in the months of August, October and November 2013.

158. The sites have not only been checked by independent teams of Revenue, Survey, Environment and Forests, Geology and Mining departments but also super checked further on by independent teams of officials of these departments. The Secretary, revenue department and the Core members have further verified the observations through extensive site visits.

1.8 Methodology Adopted by the Committees to Inspect and Verify the Extent and Quantum of Illegal Mining:

159. The methodology adopted by Bedi Committee has been said to involve multiple level of checks. The Committee comprised of officials from different departments and a comprehensive methodology to conduct the field study through a process of triangulation to ensure

objectivity and impartiality is said to have been conducted. The Special team under Mr.

Bedi was divided into various sub teams. Each of these sub teams also known as Check Team would visit the site and conduct a comprehensive study of the mining area, then a detailed report of the findings is submitted. Thereafter another random sub team is selected to do a Super check of the mining site and present their report of findings. Few other members of the Core team would then visit the site and record their findings and then would be reconciled with the findings of the Check and Super check teams.

160. Through this triangulation method there is three layer inspection and cross checks to ensure a fool proof system of verification. And ultimately when findings made through three checks and super checks correlates with each other it becomes a Fact. So it is not a case of one person visiting the site randomly and conducting inspections but these are expert teams and, after first check another two super checks were carried out to cull out the actual numbers and facts relevant to the inspection. This is more of a scientific method of

inspection being employed which was carefully organised to ensure impartiality and objectivity throughout the process.

161. It is worthwhile to note that the Respondent mining company at no point in time has disputed the findings on the illegal mining at any place.

They have not denied the action of illegal mining. The two points of contention on their side has always been that the Committees are biased and in terms of Sahoo Committee and Amicus reports, they have questioned the reverse calculation method. But this Court finds no merit in both these contentions. The random bias allegations against a committee not only comprising of Mr. Bedi but around 230 officials who are involved in this process, cannot be termed to operate as a single man committee.

162. Moreover, what makes the Committee reports stand good is the fact that all the Four Committee Report findings in one way or the other concur with each other. Even the Respondent mining company are not disputing the fact of illegal mining having taken place.

Instead the contentions of Respondent companies are only in the lines of the calculation method adopted. In terms of reverse calculation method adopted, the difference in the raw sand quantum is so enormous that it is hard to throw away this calculation method. It is a form of logical deduction and the DAE has also accepted the finding of the Amicus Curiae to this effect. They have accepted the specific finding in the AC report that the leftover monazite is in a huge number and that it requires much more raw sand than what has been actually declared by the private lessees.

163. Further, a careful scrutiny of all these reports show scientific method of inspection and calculations being done scrupulously by team comprising of hundreds of officials from both Central and State governments. When the findings are in tune with one another , the findings on the reports becomes a fact.

164. The methodology adopted by the Bedi Committee as explained in the report submitted by them and the procedure adopted by them on scrutiny, appears fair and there has been elaborate surveys

by teams of officers from different department with careful checks and super checks of the lease sites and further cross checks were also conducted. Furthermore, the State Government had accepted the report submitted by Mr.Bedi.

165. Also the Amicus Curiae appointed by this Court had made an independent study without relying on the reports of the Bedi Committee. He has relied on primary data analysis whereby data on the BSM mining from the years 1998-1999 was provided to him on the directions of this court. A pro forma table carrying the basic information on mining lease by various official agencies was created. The approach adopted by the Amicus was to create a Comprehensive table including varied information about mining leases in three district provided by the IBM, AMD, Department of Geology and Mining, Customs department and District officials. The information collected from different agencies was then put into one single Consolidated, Comprehensive Chart which contained all the relevant information about each mine in a single chart. As a reference material the AC had

referred to other reports which carried material on field inspections but the findings of the AC report essentially relied on primary data analysis .

166. The methodology evolved for studying the total scale of illegal mining relied totally on information about transportation permits, mining plans and sales of BSM compiled from data provided by official agencies of Central and State Government:

(a) Indian Bureau of Mines (**IBM**) of Ministry of Mines, Government of India,

(b) Atomic Minerals Directorate (**AMD**) of Department of Atomic Energy (DAE),

(c) Customs Department and

(d) District Mines Department of Government of Tamil Nadu.

167. The data gathered was cross checked with the data about Mining/Transportation and Sales given by the private Mining Companies to Government agencies. The entire data was compiled, analysed and

thereafter provided in the form of consolidated charts which showed the compiled information in the following ways:

- (a) Mining Lease (ML) wise. (each of the total of 64 MLs have been listed district wise).
- (b) Year wise and
- (c) Raw Sand (ROM) and BSM wise for each private respondent mining company.

168. As all the charts in Volume 4 of Amicus report show, each Mining lease - chart also shows the approval given by (a) IBM for mining of raw sand and BSMs in the case of Garnet and Sillimanite and (b) AMD in the case of Atomic minerals like Ilmenite, Rutile, Leucoxene and Zircon for each mining period of 5 years for each of the 64 mining leases in the three districts. Full details of the proceedings are also provided by way of proceedings number, date etc.

169. The collected data and its analysis were presented in a single chart as available in Volume 4, which the Government

Departments as well private mining companies could easily cross-check and verify the data presented in each chart year-wise from 2000-2001 to 2015-2016 and point out to any error of wrong calculation.

170. It is to be pointed out that none of the party respondents both Government agencies as also the private mining companies, have raised any dispute regarding any of the year-wise data presented. The State Government fully accepted the data compilation and Central Government also agreed with the findings.

171. None of the private party respondents have shown any mistake or discrepancies in the methodology adopted by the Amicus or the calculations leading to the quantum of unlawful/illegal mining and transportation of ROM and BSMs. The objections, if at all very generic and do not repudiate the methodology or the findings.

172. A Three-way method of computing the quantum of illegally mined and transported raw sand (ROM) and BSMs was formulated. These were

(1) Quantity transported in excess of quantity of raw sand / BSM permitted to be produced as per approved mining plan/ Scheme of Mining

(2) BSM transported is not an approved mineral in the mining plan. be noted.

(3) Transportation of raw sand / BSMs during period when there is no

valid Scheme of mining.

173. It can be noted that quantum of ROM/BSMs quantified for all mining lessees is based on objective, rational and replicable methodology. The above method of identifying what constitutes illegal mining was explained by the Hon'ble Supreme Court in **Common Cause's** case cited *supra*, as follows:

"129.

The holder of a mining lease is required to adhere to the terms of the mining scheme, the mining plan and the mining lease as well as statutes such as the EPA, the FCA, the Water (Prevention and

Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. If any mining operation is conducted in violation of any of these requirements then that mining operation is illegal or unlawful. Any extraction of a mineral through an illegal or unlawful mining operation would become illegally or unlawfully extracted mineral.”

The same method has been followed in the Amicus Curiae report.

174. Through the study of the primary data and based on various other documents and records, **the Amicus report concluded in essence that all the private lessees in the three district had indulged in large scale unlawful mining and transportation of BSMs during the period from 2000-01 to 2013-14 (pre-ban period).** The company wise data on illegal transportation of raw sand and minerals is available in the Comprehensive First Report filed by the Amicus.

1.9 Extent and Quantum of Illegal BSMs in Three Districts – Pre-Ban Period:

175. The Key findings in the Bedi Committee Report pertaining to

illicit mining in the three districts are as follows:

SUMMARY OF ILLICIT MINING IN TIRUNELVELI DISTRICT						
	Village	No. of Leases	No. of Mining Coc.	No of Leases Where Illicit Mining	Extent of Illicit Mining (Acres)	Quantity of Illicit Mining (MTs)
1	Kuttam	9	All 9 leases belong to Beach Sand Minerals Company	8	65.43	24,73,575
2	Karaisuthu Uvari	17	Trans World Garnet – 14 & V.V.Mineral – 3	15	111.79	23,56,552
3	Karaisuthy Pudur	9	V.V.Mineral – 7, K.Thangaraj – 1 & M.Ramesh – 1	6	194.13	28,52,855
4	Levinjipuram	4	All 4 leases belong to	4	0.6	6,31,408
SUMMARY OF ILLICIT MINING IN TIRUNELVELI DISTRICT						
			V.V.Mineral			
5	Irukkanthurai	3	All 3 leases belong to V.V.Mineral	NIL	NIL	NIL
6	Koodankulam	1	V.V.Mineral	NIL	NIL	NIL
7	Chettikulam	2	Both belong to V.V.Mineral	2	1.12	12,000

8	Vijayapathi	3	All 3 belong to V.V.Mineral	1	0.05	1,000
9	Thiruvambalap uram	3	All 3 belong to V.V.Mineral	1	26.26	4,81,300
10	Thiruvambalap uram Vijayapathi & Koodankulam	1	V.V.Mineral	1	13.61	2,21,148
Total		52	0	38	412.99	90,29,838

SUMMARY OF ILLICIT MINING IN KANNIYAKUMARI DISTRICT			
Sl.No.	Name of the Village	Extent of Illicit Mining (Acres)	Quantity of Illicitly Mined Mineral (MT)
1	Lease-1, Azhagappapuram	0.75	8,110
2	Lease-2, Azhagappapuram	2.42	39,116
3	Lease-3, Kanniyakumari	0.88	7,190
Total		4.05	54,446

176. As regards Thoothukudi District, the Special Committee's final summary of findings are as follows:

(1) Out of the 6 mines inspected, illicit mining was noticed in 3.

(2) For the remaining 3 sites there are instances of lessees getting transport permits without doing mining so as to use these elsewhere and possibly in areas of illicit mining.

(3) Illicit mining has been noticed by the Team over a total area of 163.146 acres to an extent of 10,29,995 MT.

177. Thus, cumulatively the Special Committee reported illicit mining of BSM in the three districts amounting to the following quantity:

(1) Tirunelveli District	-	90,29,838 MTs
(2) Kanniyakumari District	-	54,446 MTs
(3) Thoothukudi	-	10,29,955 MTs
<hr/>		
Total	-	1,00,14,239 MTs
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1.10 Extent of Illegal Mining of Garnet:

178. Further information about the scale of illegal and unlawful mining of BSMs in the three districts surfaces from an analysis of data gathered from IBM Annual Yearbooks, Customs Department, Thoothukudi port and District

Transport Departments. The summary of key findings as available in the Amicus Curiae report is as follows:

(1) A total of 1,15,29,200 MTs (One Crore fifteen lakhs twenty nine thousand two hundred MTs) of Garnet was reported to have been produced in the three districts of Tirunelveli, Thoothukudi and Kanniyakumari as found in the IBM Annual Yearbooks for the period 2000-2001 to 2013-2014.

(a) In contrast, the study of Transportation details provided by the District Mines Departments shows only a quantity of 34,68,005 MTs of Garnet was transported.

(b) This huge difference of 80,61,195 MTs of garnet requires to be further examined and accounted for.

(2) To produce the above reported 1.15 crores of garnet a quantum of nearly 3 times that amount of raw sand is required. In other words, a quantum of approximately 3.45 crore MTs of raw sand, at a minimum, will be required to produce the garnet.

1.11 Post Ban Period – Illicit Beach Sand Mining:

179. It is to be noted on perusal of the findings in Sahoo Committee and Amicus Curiae reports, which reveal that there was widespread illegal mining and transportation of BSM even after the imposition of the ban in August-September, 2013. It appears that despite the ban on mining of beach sand minerals and transport of the same post September, 2013, the separation or processing for which the primary material is the raw beach sand were continuing to function uninterrupted in the districts of Thoothukudi and Tirunelveli.

180. The Sahoo Committee had reported the following quantum of ROM/Semi-processed and Processed found with various lessees of which the major stocks is as follows: M/s.V.V.Mineral, R8/22 - 38.77 Lakh Tonnes; M/s.Transworld Garnet, R9 - 16.31 Lakh Tonnes; BMC, R10/17, 64.40 Lakh Tonnes, IMC, R15 - 25.58 Lakh Tonnes and IOGS, R20 - 4.20 Lakh tonnes. **Also the total quantum of BSM stored by Plant owners/lease holders at various places in Tirunelveli, Thoothukudi and Kanniyakumari as assessed by the Special Team is to the extent of 1,55,48,680 MT. Whereas the total**

quantum of BSM declared as stocks by the Plant owners/lease holders in respect of three districts are to the extent of 85,58,734 MT. Thus there is a massive difference to the tune of 69,89,946 Mts between quantum of BSMs assessed by Special Team and the quantum of BSMs declared as stocks by the lessees.

181. The Second Amicus Curiae Report concluded that the stocks held by various lessees / mining companies after the imposition of the ban in August / September, 2013 cannot be based on processing of balance of raw sand remaining with the companies at the time of the ban. Therefore, the 2nd Amicus Report concluded that the stocks held by different mining companies at the time of Sahoo Committee enquiry should be held to be illegally mined.

Subsequently, there were again reports of illegal mining and transportation of BSMs from the sealed premises and a reassessment of the BSM stocks stored at various places in the three districts originally assessed by the Sahoo team was ordered. The reassessment was carried out by the District Collectors of Thoothukudi, Tirunelveli and Kanniyakumari and vide letters

dated 08.12.2022, 01.12.2022 and 21.01.2023, their respective reports were forwarded to the State Government.

1.12 Difference in the Stocks Kept in the Three Districts:

182. The comprehensive report filed by the Special Team headed by Mr.Satyabrata Sahoo, I.A.S., in the year 2018 revealed that a total quantity of 1.5 Crore M.T of Beach Sand Minerals were stocked at various places in the Districts of Thoothukudi, Tirunelveli and Kanniyakumari. Whereas, the reports submitted by the District Collectors of Thoothukudi, Tirunelveli and Kanniyakumari and the reports submitted by the Team of Officials on the reassessment of Beach Sand Minerals stocked in the three districts revealed that a total quantity of 1,40,57,926.84 M.T. Of BSM stocks were kept at various places in the three Districts. Further, it is found that there is a short fall in the quantum of BSM stocks kept with various plant owners in the three Districts to the tune of 16.04 Lakhs M.T. Computing to 10.69% of total stock. Apart from that it is found that an additional stock of

6,62,191.02M.T of BSM stocks were kept with the plant owners at various places in the three Districts.

183. Further the reassessment report reveal an alarming presence of Monazite kept in the additional stocks of the Plant owners at various places. The report states that monazite to the tune of 6,448.362 MT in the semi-processed stocks of 4,83,198.255 kept by plant owners in three districts is a matter of serious concern.

184. The Respondent mining companies in their counter affidavit to the findings of the reports primarily failed to provide satisfactory answers. The 8th Respondent predominantly attacks the formation of the Committees or raises allegations against the officers involved in the process but ultimately inspite of four different and elaborate reports submitted by the teams comprising of top most officials in the State Government, the Respondents failed to reply to the findings on the massive scale of illegal mining. The contention of

the Respondents 8/22 does not address the veracity of the findings nor could they disprove the evidence backed findings, rather they are trying to question the very act of ordering the inspection of the mining sites.

185. However, this argument cannot be accepted as when allegations of illegal mining are levelled time and again over a period of time on particular lease sites, it is the duty of the State Government to appoint committees to inspect and verify the truth of these allegations. To ascertain the position of the working of a mine, any person authorised by the Central Government or the State Government, by general order, may enter and inspect the mining site. The powers of the State to take action on complaints of illegal mining and transportation cannot be questioned. The Respondent companies instead of giving replies to the nature and substance of findings against them are only on the point of very formation of committee to conduct inspection.

186. It is hard to overlook all these findings in the committee reports submitted before this Court. **At this point it is also pertinent to note that the State Government has accepted the findings on illegal mining and transportation in the reports filed by all the above committees and it is also a relevant point that the findings of all these reports are in conformity with each other. The common thread that runs through these reports connects on a singular point that establishes a conclusion of illegal mining having taken place across the lease sites of the Respondent mining companies in the three coastal districts of Tirunelveli, Thoothukudi and Kanniyakumari. The allegations of massive illicit mining across these districts have found the support in the Bedi report, Sahoo report, the Amicus Curiae report and the Reassessment report. Hence this Court finds it hard to brush aside the committee reports and a careful scrutiny of the data, evidence , methodology and findings in these reports makes this Court arrive at the conclusive decision that massive scale of illegal mining has taken place as mentioned in the reports.**

1.13 Action Under Section 4 of MMDR Act:

187. This violations attract the penal provisions under section 21(1) of the MMDR Act for contravention of section 4(1) and section 4(1A) of the Act, 1957. Thus, required actions are to be undertaken by the competent authorities.

1.14 Premature Termination of Mining Lease:

189. It is to be noted that the Central Government by order dated 01.03.2019 ordered that it is expedient in the interest of regulation of mines and mineral development and conservation of mineral resources to prematurely terminate all the existing minerals concessions of BSMs held by private persons/companies across the country and directed the State Governments to take necessary action as per the provisions of Sections 4A(1) and 4A(3) of MMDR Act, 1957. Pursuant to the directions issued by the Central Government, show cause notices were issued by the Government to the private respondents and after providing reasonable opportunities of hearing, orders have been passed by the Government by pre-maturely

terminating the mining leases granted in favour of the private respondents. Writ Petitions have been instituted challenging the premature termination of mining leases granted in Tirunelveli, Thoothukudi and Kanniyakumari Districts.

190. It is to be pointed out that none of the private respondents chose to challenge the directives of the Central Government to prematurely terminate the mining leases vide its order dated 01.03.2019. The Writ Petitioners have challenged the consequential show cause notices and termination orders issued by the State Government without challenging the fundamental order of the Central Government directive for premature termination of leases. Thus, the Writ Petitions are not maintainable without there being a challenge to the Central Government directives.

191. The Nine Judges Constitution Bench of the Hon'ble Supreme

Court of India in the case of ***Mineral Area Development Authority and Another vs. Steel Authority of India and Another***³. Considered the principles relating to premature termination of prospecting licence by the Union and State Governments as public trustees of mineral resources.

192. Paragraphs 64, 65 and 142 of the judgment in ***Mineral Area Development Authority's*** case cited *supra* reiterates the principles as under:

“64. The principle that the Union and State Governments act as public trustees of mineral resources has been incorporated in the MMDR Act. Section 4-A empowers the Central Government to prematurely terminate a prospecting licence, exploration licence, or mining lease, after consultation with the State Government in the interests of: (i) the regulation of mines and mineral development; (ii) preservation of the natural environment; (iii) control of floods; (iv) prevention of pollution;

³. (2024) 10 SCC 1

- (v) *avoiding danger to public health or communications;*
- (vi) *ensuring the safety of buildings, monuments or other structures;*
- (vii) *conservation of mineral resources; and*
- (viii) *maintaining safety in the mines or for such other purposes⁴.*

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

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

- (i) *the State is a public trustee of natural resources, including minerals;*

⁴ . *State of Haryana v. Ram Kishan*, (1988) 3 SCC 416, para 7. This Court observed that Section 4A : (SCC p. 420, para 7) “7. ... was enacted with a view to improve the efficiency in this regard and with this view directs consultation between the Central Government and the State Government. The two Governments have to consider whether premature termination of a particular mining lease shall advance the object or not, and must, therefore, take into account all considerations relevant to the issue, with reference to the lease in question.”

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

142. The word “regulate” is of wide import and the breadth of its meaning depends on the context in which it is used. This Court has construed the power to regulate to include the power to:

- (i) grant or revoke a permission or licence including incidental or supplemental powers⁵;*
- (ii) prohibit depending upon the context and circumstance⁶;*

⁵ . State of T.N. v. Hind Stone, (1981) 2 SCC 205, para 10; State of U.P. v. Dharmander Prasad Singh, (1989) 2 SCC 505, para 52

⁶ . Talcher Municipality v. Talcher Regulated Market Committee, (2004) 6 SCC 178, para 14; Union of India v. Asian Food Industries Ltd., (2006) 13 SCC 542, para 43

(iii) control or adjust by rule or to subject to governing principles⁷⁸; [and (iv) issue directions⁹.

Thus, the expression “regulation” appearing in List I Entry 54 and List II Entry 23 must also receive a wide meaning, in keeping with the principle that the words used in the legislative entries must be interpreted broadly.”

Hence, the premature termination of mining leases by the State Government is in consonance with the provisions of the MMDR Act and the Rules framed thereunder.

(2) Illegal Processing:

193. The raw sand that has been mined is brought to the preconcentration plant and this pre-concentrated sand is then separated depending upon their different physical properties. Therefore, there are multiple processing plants that are often utilized to obtain the various atomic minerals from the beach sand mined.

⁷ . U.P. Coop. Cane Unions Federations v. West U.P. Sugar Mills Assn., (2004) 5 SCC 430, para ⁸ ; Balmer Lawrie & Co. Ltd v. Partha Sarathi Sen Roy, (2013) 8 SCC 345, para 24 : (2013) 3 SCC (Civ) 804 : (2014) 1 SCC (L&S) 114

⁹ . Subramanian Swamy v. State of T.N., (2014) 5 SCC 75, para 67 : (2014) 3 SCC (Civ) 134

194. The processing plants depending upon their location will require

CRZ Clearance. In the EIA Notification of 2006, Entry 2(b) concerns “mineral beneficiation”. The processing plants will need to get a handling license under the Atomic Energy (Working of the Mines, Minerals and Handling of Prescribed Substances) Rules, 1984. SO 1210 dated 24.04.2009 issued by the AERB stated that the BSM Processing Plants carrying out mining and mineral separation for production of ilmenite, rutile, leucoxene, zircon, sillimanite, garnet and monazite and physical and chemical processing of these BSM will require a safety license under the Atomic Energy (Radiation Protection) Rules, 2004. The necessary permissions from the Local Authority and permissions to construct the processing plants will need to be obtained.

2.1 Environmental Laws on Mineral Processing:

195. With regard to Environmental laws, the EIA Notification 2006, the Coastal Regulation Zone (CRZ) Notification 2011 and 1994 issued under the Environment Protection Act, 1984, the Air (Prevention and Control of

Pollution)Act 1981 and Water (Prevention and Control of Pollution) Act, 1978 apply to the stage of mining.

2.2 Coastal Regulation Zone (CRZ):

196. The Coastal Regulation Zone Notification, 1991 identifies Coastal Regulation Zone (CRZ) as all “coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (on the landward side) upto 500m from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL”. The Notification imposes restrictions on activities within the CRZ. The entire coast is categorized into Zone I, II, III and IV with Zone I being the most ecologically sensitive where all development activities are prohibited. **All inter - tidal Zones are categorized as Zone I and hence no mining can be permitted in the inter tidal Zone. One of the conditions of the CRZ clearance is that no mining takes place in the inter tidal zone.**

197. Where replenishment of reserves is of such high volumes, there is a sharp increase in the permitted quantity of raw sand to be mined as also the quantum of minerals permitted to be mined during that specific period. This is identified in the AC report, in cases of 19 approvals of mining leases in which official agencies, viz., AMD and IBM have approved claims by mining companies. The AC report also quoted the Nagar committee report over replenishment of beach sand occurring in the backdrop of allegations that mining companies have been using the excuse of mining replenishments to cover up massive illegal mining of BSMs.

198. Ironically the mining plans approved by the IBM / AMD have not taken note of this and have permitted enhanced quantities of minerals to be mined by approving modified mining plans on account of the replenishment of minerals in the inter tidal Zone.

199. The 1991 CRZ has been replaced by 2011 CRZ Notification . The provisions with regard to BSM mining remains the same except that the protection to sand dunes has been made more stringent.

200. Para 2 of the 1991 Notification lists out the Prohibited Activities within the CRZ. Para 2(ix) prohibits “mining of sands, rocks and other substrata minerals in CRZ areas except; (a) those rare minerals not available outside the CRZ areas and; (b) exploration of Oil and Natural Gas”. Rule 2(xiii) prohibits “dressing or altering of sand dunes, hills, natural features including landscape changes for beautification, recreational and other such purpose except as permissible under this Notification”. The proposals for activities within the CRZ area are examined by the Tamil Nadu Coastal Zone Management Authority and its recommendations are given. Thus, it is important to note here that while mining within the CRZ area was permitted if the minerals are not found outside

the CRZ area, such mining cannot lead to alteration or dressing of sand dunes. Additionally if minerals are found outside the CRZ, then no mining was permitted within the CRZ.

2.3 Violations of Conditions of EC and CRZ Clearances:

201. An analysis of the reports of Mr.Bedi Committee and Amicus Curiae reveal that in many of the sites, **the lessees have adopted mechanical method of mining, instead of manual scooping in Inter Tidal Zone and in other areas falling under CRZ-I, which, mandates manual scooping only.** Mining was done by adopting mechanical methods. Otherwise, such large quantity of minerals and vast extent of area (both in terms of length, breadth and depth) could not have been mined purely with manual scooping. It was also confirmed by the Special Team that the mined terrain also proved that machineries were involved and used for mining operations.

202. No Mining can be allowed within 50 Meters from the river banks. But in Survey No.23, Nambiyar River running

between Thiruvambalapuram and Karaichuthu Pudur Villages, Mining has been done right up to the River bed. The lessee concerned has literally blocked the natural mouth of river Nambiyar in S.F.No. 23 between Thiruvambalapuram and Karaichuthu Pudur villages, thereby affecting the fragile backwater eco-system (coming under CRZ-I). It has also affected the natural tidal water influence on the river body. Mining has also been noticed right up to the river banks. These are environmental violations of serious nature.

203. In Tirunelveli District, 24 out of 52 leases, the lessees have not obtained necessary environmental clearance from the Ministry of Environment and Forest, Government of India, which they should have otherwise obtained, as all the lease areas are falling under CRZ.

204. In all leases the following common environmental violations were noticed :

- (1) No Green belt developed.
- (2) No dust suppression system installed.
- (3) Depth criterion not followed
- (4) Sand tailings not refilled.
- (5) Mining in Inter Tidal zone has been noticed (in the leased area, without necessary clearance from Ministry of Environment and Forests, Government of India).
- (6) Illicit mining reported in CRZ-1 and Inter Tidal Zone.
- (7) Temporary and Permanent structures, Bore wells, Open wells, Cement pipelines (to draw sea water), desalination plant, Office sheds, Labourers' Sheds, etc., were constructed by some lessees (as pointed out in detail for each Lease) right in CRZ-I area and Inter Tidal zone, which is strictly prohibited activity as per CRZ Notification and other related Acts and Regulations.

2.4 Sand Dunes:

205. As per the Coastal Regulation Zone Notification Guidelines as well as most of the mining plans approved by the authorities concerned, altering and dressing of sand dunes is prohibited. In 27 out of 52 leases in Tirunelveli District, the lessees have mined and removed the sand dunes. The sand dunes which are to be kept intact have been mined and removed.

Similar issue is spotted in Thoothukudi and Kanniyakumari. There has been violation under Rule 22A of the MCR, 1960.

2.5 Role of Tamil Nadu Pollution Control Board (TNPCB):

206. The Tamil Nadu Pollution Control Board (TNPCB) issues **Consent to establish/Consent to operate** to the mining projects after receipt of EC issued under EIA notification. But the TNPCB have stated that illegal mining is not covered under the purview of the TNPCB. But there has been a specific finding in the Bedi Report that under the provisions of the Water and Air Act, in certain mining leases Consent Order was not obtained from TNPCB for commencing the mining operations. This ought to have been monitored and there has been a failure on the part of the TNPCB to take requisite action when no 'consent to operate order' was obtained by the lessees.

2.6 Doctrine of Public Trust and Sustainable Development:

207. The principle that the Union and State Governments act as public trustees of mineral resources has been incorporated in the MMDR Act.

208. The Central Government or the State Government may not always be the “owner” of the underlying minerals. But the Constitution empowers both Parliament (under Entry 54 of List I) and the State legislatures (under Entry 23 of List II) to regulate mines and mineral development, the entrustment to the State being subject to the power of Parliament to regulate the domain. The Constitution has entrusted the Union and the States with the responsibility to regulate mines and mineral development in consonance with the principles of the public trust doctrine and sustainable development of mineral resources¹⁰. Under the MMDR Act, the Central Government, acting as a public trustee of minerals, regulates prospecting and mining operations in public interest¹¹.

209. The regulatory regime under the MMDR Act recognises the important role of the State in regulating mines and mineral development. This emerges from the stand point of the following perspectives: (i) the State is a public trustee of natural resources, including minerals; (ii) pursuant to its role

¹⁰ . Mineral Area Development Authority (*Supra*)

¹¹ . State of Rajasthan vs. Gotan Lime Stone Khanji Udyog (P) Ltd., (2016 4 SCC 469 [29]; Orissa Mining Corporation Ltd. vs. Ministry of Environment & Forests, (2013 6 SCC 476 [58])

11. Mineral Area Development Authority (*Supra*)

as a public trustee, the State has been empowered to regulate prospecting and mining operations; (iii) the provisions of the statute reflect the priority of the state to regulate mining and related activities to ensure sustainable mineral development; (iv) prospecting and mining operations may be carried out by both the Government as well as private lessees bearing in mind the public interest; and (v) the Government has to ensure that mineral concessions are granted in a fair and transparent manner¹¹.

210. When the State holds a resource that is freely available for the use of public, it provides for a high degree of judicial scrutiny on any action of the Government¹². It is, thus, the duty of the Government to provide complete protection to the natural resources as a trustee of the public at large. Moreover, even a policy to give free sand as welfare measure cannot justify unregulated mining unmindful of impact on environment. If in the course of mining, damage is caused, the same must be recovered from such

¹² . Intellectuals Forum, Tirupathi vs. State of AP, (2006) 3 SCC 549, para 76

violators. Else, authorities cannot avoid their duty under the environmental law to restore the damage which is a duty to future generations¹³.

2.7 Polluter Pays Principle:

211. Further, the concept of Polluter Pays Principle was discussed by the Hon'ble Supreme Court of India in ***Bajri Lease Lol Holder Welfare Society vs. The State of Rajasthan and Others***¹⁴. The relevant portion of the judgment is extracted below:

“15. Section 23-C of the MMDR Act empowers the State Governments to make rules for preventing illegal mining, transportation and storage of minerals. This Court in Deepak Kumar¹⁵ directed the State Governments/Union Territories to formulate rules in accordance with the Model Guidelines. Pursuant to the directions issued by this Court and the National Green Tribunal¹⁶ (“NGT”), the Sustainable Sand Mining Management Guidelines, 2016 were issued (“2016 Sand Mining Guidelines”). The responsibility for

¹³ . Anumolu Gandhi vs. State of A.P, 2019 SCC Online NGT 1712

¹⁴ . (2022) 16 SCC 581

¹⁵ Deepak Kumar v. State of Haryana, (2012) 4 SCC 629

¹⁶ . National Green Tribunal Bar Assn. v. Ministry of Environment & Forests, 2013 SCC OnLine NGT 961

implementation of the said Guidelines was placed on the State Governments which had to create a mechanism to measure the mined-out mineral and its transportation and also to ensure that the amount of mineral mined does not exceed the quantity permitted in the EC. The 2016 Sand Mining Guidelines recommended use of transport permits with bar codes, for generation of reports showing the daily lifting of sand and user performance reports. Transport permits with bar codes would also enable vehicles carrying sand to be tracked from source to destination.

16. *Dissatisfied with the ineffective monitoring mechanism, failure of the Mines Surveillance System as well as lack of an effective institutional monitoring mechanism not only at the stage of the grant of EC but at subsequent stages with respect to illegal sand mining, NGT, in an Order dated 5-4-2019 in National Green Tribunal Bar Assn. v.Virender Singh ¹⁷ and connected matters, directed the MoEFCC and the State Governments to review extant monitoring mechanisms and consider revision of the 2016 Sand Mining Guidelines. Consequently, the MoEFCC issued the 2020 Sand Mining Guidelines.*

17. *The damage caused to the environment due to rampant unscientific illegal mining needs no*

¹⁷ . National Green Tribunal Bar Assn. v. Virender Singh, 2019 SCC OnLine NGT 1488

reiteration. Unabated illegal mining has resulted in the emergence of sand mafia who have been conducting illegal mining in the manner of organised criminal activities and have been involved in brutal attacks against members of local communities, enforcement officials, reporters and social activists for objecting to unlawful sand excavation. The statistics provided by the State Government highlight the magnitude of the problem as about 2411 FIRs have been registered in relation to illegal mining in the State of Rajasthan, between 16-11-2017 and 30-1-2020. When this Court has restrained 82 mining lease/quarry holders from carrying on mining of sand and bajri unless a scientific replenishment study is completed and EC is issued by the MoEFCC, the State of Rajasthan ought not to have issued mining leases in favour of the khatedars. It is clear from the report of CEC that the majority of the khatedari leases are within 100 metres from the riverbed.

18. *The 2020 Sand Mining Guidelines prescribe that mining plan for mining leases on khatedari lands shall only be approved if there is a possibility of replenishment of the mineral or when there is no possibility of riverbed mining within 5 km of the patta land/khatedari land. Agreeing with CEC's conclusions on the issue of mining leases in khatedari*

lands facilitating legalisation of transportation and sale of illegally extracted sand, we approve the recommendation of CEC that all khatedari leases which are located within 5 km from the riverbed and those leases where lease conditions have been violated have to be terminated forthwith and that khatedari leases shall be granted only with the permission of this Court.

19. *CEC has recommended imposition of exemplary penalty of Rs 10 lakhs per vehicle and Rs 5 lakhs per cubic metre of sand seized, which would be in addition to what has already been ordered/collected by the State agencies as compensation.*

Compensation/penalty to be paid by those indulging in illegal sand mining cannot be restricted to the value of illegally-mined minerals. The cost of restoration of environment as well as the cost of ecological services should be part of the compensation. The “polluter pays” principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of “sustainable development” and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

20. *The scale of compensation by those who are involved in illegal mining has been dealt with by NGT in National Green Tribunal Bar Assn. v. Virender Singh [Cited Supra] . In its Order dated 26-2-2021¹⁸ , NGT considered and approved the Report submitted by the Central Pollution Control Board dated 30-12-2020, in pursuance of its earlier orders, on scale of compensation to be recovered for violation of norms for mining on “polluter pays” principle. Additionally, Para 9.2 of the 2020 Sand Mining Guidelines provides as follows:*

“The environmental damages incurred or resulting due to illegal mining shall be assessed by a committee constituted by District Administration having expertise from relevant fields, and also having independent representation of locals and State Pollution Control Board. Guidelines for assessment of ecological damages prescribed by the State Government or Pollution Control Boards concerned or any other authority shall be applicable and compensation as fixed shall be paid by the project proponent, in light of the Hon'ble National Green Tribunal orders.”

21. *Section 21(5) of the MMDR Act empowers the State Government to recover the price of the illegally mined mineral, in addition to recovery of rent, royalty or tax. The penalty recommended by CEC for illegal sand mining is in addition to the penalty that can be imposed by the State Government in terms of Section 21(5) of*

¹⁸ . National Green Tribunal Bar Assn. (Supra)

the Act. However, the basis for imposition of exemplary penalty of Rs 10 lakhs per vehicle and Rs 5 lakhs per cubic metre of sand has not been stated by CEC in its report. CEC is directed to follow the directions given by NGT in respect of imposition of penalty/determining scale of compensation for illegal mining and the provisions of the 2020 Sand Mining Guidelines and determine the penalty/compensation afresh and submit a report to this Court within a period of eight weeks from today.”

(3) Illegal Transport:

212. The Amicus Curiae report on study of primary documents and records pertaining to transport permits clearly discerns the circumstances which constitute ‘Unlawful transport’.

- i. Transporting quantities in excess of approved quantities;
- ii. Transporting minerals not approved to be mined or transported for a specific lease and;
- iii. Transporting minerals during years/periods when there was no approved ‘scheme of mining’.

213. Of the total quantum of 1,51,27,070 MTs of raw sand for which transport permits were obtained, the total quantum unlawfully transported works out to 86,35,151 MTs in terms of the 62 mining leases owned by M/s.V.V.Mineral and M/s.Transworld Garnet India Private Limited.

3.1 Illegalities in Grant of Transport Permits:

214. Some key findings on illegal transportation are available in the committee reports. As per Bedi committee report, the Transport Permits issued for the mining leases do not, in many cases, tally with the Quantity mined as per the Inspection reports. In many cases, it is found that on a yearly basis, the Transport Permits are issued without field verification of the utilisation of the Permits given in the previous years.

215. There was specific instruction vide G.O.Ms.No.156, Industries

(MMD.I) Department dated 08.08.2013 and G.O.Ms.No.173, Industries
(MMD.I) Department dated 17.09.2013 to ensure all mining and transport activities are stopped pending inspection of the Bedi committee in the three

concerned districts. Post this, no transport permits were issued to mining companies as per records. But the data analysed by the Amicus reveals that mining and transport including export was carried on despite this ban. The massive scale of illegalities shown by the data is deeply disturbing and this gives rise to a fair question as to whether the officials are responsible and accountable for preventing these illegalities had knowledge about this or did they choose to overlook this illegality. It is hard to disbelieve that the officials did not know about the illegal mining and transportation happening right under their nose.

216. In the Memo filed by the Amicus dated 21st November, 2016, information was placed before this court which showed that there was widespread illegal mining and transportation of BSM even after the imposition of the Ban in August-September, 2013. The key element of the Memo pertaining to illegal transport is extracted below:

“Stopping of Transport Permits:

217. It is to be noted that both G.O.Ms.No.156, Industries (MMD.I)

Department dated 08.08.2013 and G.O.Ms.No.173, Industries (MMD.I) Department dated 17.09.2013 effectively required all private mining lessees to immediately stop mining operations pending completion of inspection by the Special Team and all Assistant Directors (Mines) in the concerned districts to immediately stop issuance of transport permits of major minerals like Garnet, Ilmenite, Rutile etc. So effectively as of 17.9.2013, all lessees ceased to operate their mines and to transport minerals or raw sand”.

218. As per the contentions of the 6th Respondent, in the month of May 2016, the 9th Respondent had declared that 6,98,887 MT of Garnet were exported by them during the period from 2000-2001 to 2015-2016. Whereas, they had obtained transport permits for a quantity of 1,85,150 MT of Garnet only from 2000-2001 to 2007-2008. Therefore it was estimated by the learned Amicus that a total quantity of 5,13,737 MT of Garnet had been illegally mined and transported by the 9th Respondent without obtaining transport permits.

219. When the issuance of transport permits were stopped from

August, 2013 onwards, the Assistant Commissioner of Customs, Thoothukudi vide his letter dated 05.10.2016 informed the District Collector, Thoothukudi/Tirunelveli that a total quantity of 3,96,081 MT of beach sand minerals were exported by R10 from 08.08.2013 to 10.01.2016 through Thoothukudi Port. Therefore, the entire quantity of 3,96,081 MT of beach sand minerals exported by R10 without transport permits are illegally exported contravening the provisions of Section 4(1-A) of the MMDR Act, 1957 and attracts penal provision of Section 21 of the MMDR Act, 1957. Several other findings pertaining to the unlawful transportation is available in the report filed by the Amicus.

220. The Amicus Curiae had submitted a comprehensive chart with details of the quantity of raw sand and BSMs illegally transported by private lessees. The data as mentioned in the report as to the quantum of illegal mining and transportation is humongous and shocking. A further matter of concern is the Sahoo Committee report which reveals that illegal transportation of the

minerals and raw sand was carried out inspite of the ban on mining in place. This shows the complete failure of the monitoring mechanisms that ought to have been in vigil.

221. Another disheartening fact is that, even after the godowns containing BSM stocks were sealed after the Sahoo Committee inspection, a reassessment of stocks by the District collectors revealed that this threat of illicit mining is unstoppable. There was a shortfall of BSMs stocks in the sealed godown despite the ban thereby proving that illegal transportation was still happening. Till the remainder of stocks are present in those sealed godowns the illicit transportation will be difficult to curb and it would be only wise on the part of the State Government to legally dispose of the stock as early as possible to prevent further offences.

222. Considering that the stocks have an alarming presence of Monazite, which being a radioactive substance and constitutes a high risk, the stocks which are in the custody of the State Government ought to be handed over to the M/s.IREL India

Ltd. which is a Government of India undertaking exclusively entitled to handle Monazite under the Atomic Energy (Working of Mines, Minerals and Handling of Prescribed substances) Act, 1984.

3.2 Illegal Transportation Left Unchecked:

223. The Reassessment report filed by the District Collectors also reveal the huge scale of unlawful transportation of raw sand and BSMs taking place. The District Collector, Thoothukudi vide letter dated 28.01.2022 reported that the officials of the Department of Geology and Mining, Revenue and Police have inspected the BMC godown located at Survey No.651/3 of Mullakadu - II Village on 08.01.2022 at 7.00 P.M. and noticed that a Taurus lorry with Registration No.TN-58 AK 3313, a JCB vehicle, a Fork Lift and two motor bikes were found in the godown. After enquiry, it was confirmed that the BMC godown was trespassed and 35 M.T of Garnet were to be smuggled in the Taurus lorry. Therefore all the vehicles used for causing illegal transport of Garnet stored in the Mullakadu - II Village

were seized by the Assistant Director of Geology and Mining (i/c), Thoothukudi under Section 21(4) of the MMDR Act, 1957 and handed over to Muthiapuram Police Station. Based on the complaint made by the Assistant Geologist, FIR No.11/2022 has registered in Muthiapuram Police Station under Section 380, 447 and 511 of IPC and under Section 21(4) of MMDR Act, 1957.

224. The District Collector, Thoothukudi has reported that another BMC godown was inspected on 09.01.2022 by the Taluk level Task force committee and found that the entire stocks kept in the godown had been illegally transported. FIR was registered based on this complaint. The District Collector, Thoothukudi has further reported that three more complaints were made against the Respondent lessees for disconnecting electricity supply given to the CCTV cameras fitted by the District Administration in the godowns and FIR was registered based on this complaint.

225. A shocking finding in the Amicus Curiae report is the total failure of the District Mines officials to check as to whether the transport permit that have been issued by them for years are according to the approved Mining plan/scheme and whether it is the approved quantities permitted to be transported. Another finding that is surprising is that the District collectors also failed to check on these mismatches in the transport permits when they prepared the annual reconciliation of royalty payments. These failures on the part of the officials paved way for a huge financial loss to the Government considering the enormous amount of BSMs unlawfully transported throughout several years.

(4) Illegal Exports:

226. According to Amicus Curiae report the Total quantum of BSMs exported during the period, 2000-01 to 2016-17 amounts to 77,94,680 MTs. The total quantum of exports of BSMs specifically after the ban in mining and transportation i.e., September, 2013 onwards was initially amounting to

21,90,951 MTs. So the total quantum of exports post ban period amounts to 28% of the total exports made from 2000-2017.

4.1 High Quantum of Monazite Concentration in Processed Stock:

227. The Amicus had relied upon the information provided by the Customs department whereby the exports were continuing to take place despite the ban till November 2016. The report of the District level committee dated 09.11.2016 also carries details of the quantities of minerals exported by different companies. **One of the key findings in the Sahoo report is that many stocks of processed minerals belonging to different mining companies, has been found to have considerable amount of Monazite concentration beyond the threshold value of >0.25% Monazite equivalent and a significant quantity of Monazite can be extracted from these stocks. It is a matter of concern that these processed minerals which were ready for sale/export contains such high concentration of Monazite. Therefore there are clear findings by the committee**

on the presence of Monazite among the minerals exported. The quantum of such Monazite exported and the Countries to which this radioactive substance was exported, the modus adopted by these companies and the role of the Customs officials who had failed to prevent such export must be probed extensively to ensure that our National security is not compromised.

228. Though the Respondent companies are dismissing this contention as unfounded and speculative, the fact that the component Thorium is derived from Monazite and is considered as a crucial element and deemed as the nuclear fuel of the future needs to be considered. Though internationally Uranium based Reactors are developed, there has been attention given to Thorium based reactors too.

229. India is recognised as the third largest repository of thorium deposits in the world, only after Brazil and Turkey. In India

itself Monazite is the main rare earth mineral from which Thorium is derived and Tamilnadu is one of the main repositories of Monazite-thorium.

230. Hence, the data gathered by the Sahoo Committee and the reports of unlawful transportation of Monazite and further statement on the presence of Monazite above the threshold value in the processed stocks of the mining companies which are stored to be exported ought to be probed in depth. **Keeping the seriousness of the issue in hand and the security of our great Nation being the top priority, the Competent agencies must thoroughly investigate this issue.**

4.2 Discrepancies in the Details of Mineral Export:

231. The learned Amicus has calculated that a sum of Rs.3,581.11 Crores is to be recovered from the 8th Respondent for the quantum of BSMS illegally transported during pre-ban period based on the estimation by Bedi committee that 33,75,695 M.T of raw sand had been illegally mined and

transported in the three districts. The 6th Respondent in their Counter affidavit have stated that the 8th Respondent was presented with the 'Highest exporter' award for the export of processed minerals for the year 2015-16 and 2016-17. It was further reported that the 8th Respondent set a record by exporting 4,71,773 M.T. of heavy minerals that included Garnet, Ilmenite, Rutile and Zircon for the year 2015-2016 and 4,04,048 M.T of heavy minerals for the year 2016-17. The data provided by the 8th Respondent to the Taluk Level Committee on 11.06.2016 revealed that

98,80,600 M.T of raw sand was transported by them from 2000-01 to 2013-14.

It was further reported that 56,59,688.22 M.T. of processed minerals were sold by them from 2000-2001 to 2015-2016. It is seen from the award presented to the 8th Respondent that 4,04,048 M.T of processed minerals such as Garnet, Ilmenite, Rutile and Zircon were exported by the 8th Respondent during the year 2016-2017. Thus, a total quantity of 60,63,736

M.T. of processed minerals were sold by the 8th Respondent from 2000-2001 to 2016-2017. The extraction of 60,63,736 M.T of processed minerals from 98,80,600 M.T of raw sand is estimated as a recovery of 61.37% of total heavy minerals.

232. This high recovery percentage of total heavy minerals is neither supported by the available literature nor supported by the approved mining plan / scheme of mining pertaining to the mining lease hold areas of the 8th Respondent in the three districts. Even after this high recovery of total heavy minerals extracted and sold from 2000-2001 to 2016-2017, the balance stock available with the 8th Respondent could be waste only and could not be treated either as raw sand (ROM) or semi processed sand or processed minerals. Whereas, the report filed by the Special Team headed by Mr.Satyabrata Sahoo, I.A.S., on 18.04.2018 revealed that 38,77,391M.T of raw sand, semi processed sand and processed minerals are kept with them as stock. Therefore, the entire quantity of 38,77,391 M.T of stock available with the 8th Respondent as assessed by the Sahoo Committee is illegally mined, transported and stored contravening the provisions of Section 4(1) and 4(1A) of the MMDR Act, 1957 and it will attract the penal provisions of Section 21 of MMDR Act, 1957.

233. Further, the 8th Respondent has not provided the actual quantum of Garnet, Ilmenite, Rutile, Zircon, Sillimanite, Leucoxene sold / exported by them from 2000-2001 to 2016-2017 to the Government so far. Apart from that the 8th Respondent has not submitted the actual quantum of beach sand minerals sold/exported and the actual sale value realised before this Court also. Therefore, the amount estimated by the learned Amicus Curiae is reflecting only a portion of the huge loss caused to the State Exchequer by the illegal activities of the 8th Respondent. It was further averred that none of the other lessees have submitted details of actual quantum of BSMs sold or exported by them and the actual sale value realised for the period from 2000-2001 to 2016-2017 to the 6th Respondent.

4.3 Action Required:

234. The competent authorities under MMDR Act, MCR, 1960, the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011, Atomic Energy Act, 1962,

Environment Protection Act, 1984, Air (Prevention and Control of Pollution) Act, 1981, Water Prevention and Control of Pollution Act, 1974 are required to initiate prosecution under the above mentioned enactments.

4.4.Challenge to Public Notice No.50 of 2016:

235. The Mining Companies have challenged the Public Notice No.50 of 2016 issued by the Commissioner of Customs, Thoothukudi for production of private certificate of legally mined minerals from the concerned District Collector / Transport permits along with bulk permits before allowing export. The District Collector, Tirunelveli forwarded minutes of the District Level Committee meeting by letter dated 09.11.2016 requesting the Assistant Commissioner, Customs to insist on certain documents issued by the State Authorities, before allowing BSMs for exports. Consequently, Public Notice No.50 of 2016 was issued by the Commissioner of Customs, Thoothukudi directing the exporters of minerals for production of necessary certificates/documents namely certificate of legally mined minerals from the concerned District Collector/transport permits along with bulk permits, certifying the legal source of BSMs brought to the customs area for exports.

236. Challenging the trade facility issued by the Commissioner of Customs, Cochin, M/s.V.V.Mineral filed W.P.(C).No.650 of 2017 before the High Court of Kerala and the Writ Petition was dismissed on 26.07.2018. Writ Appeal filed in W.A.No.1724 of 2018 was dismissed by the Division Bench on 03.09.2018. The Special Leave Petition filed by M/s.V.V.Mineral in S.L.P.(C).No.2775 of 2019 as been dismissed by the Hon'ble Supreme Court of India as withdrawn on 20.02.2020. Thus, the Division Bench judgment of Kerala High Court attained finality. Therefore, no further adjudication needs to be undertaken in respect of the issues in connection with the Public Notice No.50 of 2016 issued by the Commissioner of Customs.

(B) Monazite:

(1) Presence of Monazite in the Coastal Beaches of Tamil Nadu:

237. The Amicus Curiae report carries a study about Heavy Minerals in the Beach and coastal red sands (Teri) of Tamil Nadu by The Atomic Minerals Directorate for Exploration and Research, and The Department of Atomic Energy (AMD-ER & DAE). The essential portions are extracted below:

“High concentrations of industrially important heavy minerals in the beach and dune sands of Tamil Nadu in the southeastern part of India have been known since the early part of the 20th century. Indeed, the chance discovery of monazite in the beach sands of Manavalakurichi near Kanyakumari in Tamil Nadu by Herr Schomberg in 1908, heralded the beginning of exploration for the placer sand in India. Since then, several heavy mineral deposits, containing principally ilmenite, sillimanite, garnet, rutil, zircon and monazite have been identified in Tamil Nadu, largely due to the efforts of the Atomic Minerals Directorate for Exploration and Research (AMD) of the Department of Atomic Energy in the post - Independence period.”

238. This study goes on to explain the heavy mineral deposits and data regarding the concentrations of monazite in the coastal beach sand and Teri sands along the coast of three Districts of Tirunelveli, Thoothukudi and Kanniyakumari.

1.1 Monazite – Prescribed Substance:

239. The Atomic Energy Act, 1962 was enacted to control the development of atomic energy and matters connected therewith and to provide for the development, control and use of atomic energy for the welfare of the people. Under the Atomic Energy Act, 1962, there are two sets of rules that concern mining (i) the Atomic Energy (Working of the Mines, Minerals and handling of Prescribed Substances) Rules, 1984 and (ii) the Atomic Energy (Radiation Protection) Rules, 1971, which was replaced by the Atomic Energy (Radiation Protection) Rules, 2004.

240. Under the Atomic Energy Act, 1962, “prescribed substances” has been defined in Section 2(g) as *“any substance including any mineral which the Central Government may, by notification, prescribe, being a substance which in its opinion is or may be used for the production or use of atomic energy or research into matters connected therewith and includes uranium, plutonium, thorium, beryllium, deuterium or any of their respective derivatives*

or compounds or any other materials containing any of the aforesaid substances”.

241. All the atomic minerals were originally notified as prescribed substances under the Atomic Energy Act. The list of prescribed substances originally notified was amended by Notification dated 20.01.2006. The Notification provided that Entry “OA314 - Titanium ores and concentrates (Ilmenite, Rutile and Leucoxene)” and Entry “OA315 Zirconium, its alloys and compounds and minerals/concentrates including zircon” would cease to be prescribed substances from 01.01.2007 onwards. Therefore, from 01.01.2007, Ilmenite, Rutile, Leucoxene and Zircon ceased to be prescribed

substances. However, **Monazite continued to be a prescribed substance.**

1.2 Policy Decision of DAE on Monazite:

242. **At the outset, it must be noted that as a policy decision, DAE is not allowing any private players to process Monazite. Also it further clarified that, the AMD has not**

approved any such mining plan for monazite in favour of the 8th Respondent i.e. M/s.V.V.Mineral. The 2nd Respondent, DAE has also submitted that, as per the records available with AMD, 10 (9 from M/s.V.V.Mineral and one from M/s.Indian Garnet Supply Company) numbers of approved mining plans have been transferred to 15th Respondent i.e., M/s.Industrial Minerals Company. It is clarified by the 2nd Respondent that these mining plans do not include Monazite mining.

The AMD has not approved any mining plan in Tamil Nadu in favour of 9th Respondent M/s.Transworld Garnet India Private Limited.

243. However, under the guidelines framed by the Atomic Energy Regulatory Board (AERB) individual processors of beach sand have to separate and safely keep the monazite content of such sand. No individual or entity is permitted to process monazite in any manner without a licence from DAE. Monazite is important for our Country's nuclear requirements and due to the said reasons only, private players are not allowed to process

Monazite.

244. The Transportation of the Monazite enriched tailings, which is aradioactive material, through public domain, it requires a separate approval for transportation of radioactive material under Sub clause (iii) of third proviso to Rule 3(3) of Atomic Energy (Radiation Protection) Rules, 2004, which states that "approval for package design for transportation of radioactive minerals" is required. This safety licence is said to have been issued to the 8th Respondent. Permission for transport is issued for Monazite enriched tailings and not Monazite, as none of the non-DAE units are permitted for production of Monazite as product.

245. No private players, including 8th Respondent are allowed to crack

Monazite, taking into consideration that to remove Monazite from the Monazite rich tailings results in highly radioactive thorium and uranium and are vulnerable to leaching. Hence, the Second Respondent is restricting the grant of licences for such processing of Monazite only to fully owned Public Sector Undertaking (IREL) of the second Respondent and considered not to

be in public interest to open this activity to private sector beach sand mineral players like Respondent Companies.

246. Monazite mineral will be present in the left out tailings after removal of other minerals like Ilmenite, Rutile, Zircon, Garnet etc. and the second Respondent through AERB is regulating the monazite rich tailings by way of issuing licence under the Atomic Energy (Radiation Protection) Rules, 2004 and carrying out annual inspection of the sites of the beach sand private mining players solely from radiological safety aspects.

247. Therefore, Monazite being a prescribed substance under the Atomic Energy Act, the private parties are prohibited from mining, processing, selling or exporting the mineral.

(2) Monazite Enriched Tailings:

248. After initial cleansing, the residual raw sand is subjected to processing to obtain different BSMs for which the lessee mining company has

to obtain permission. After extraction of the permitted BSM, the residue contains higher concentration of the minerals not removed, especially monazite. These residues are termed “tailings”. Since private players are not permitted to process monazite, monazite enriched tailings' which become radioactive with higher concentrations of monazites, have to be stored in specially constructed and protected enclosures so as to prevent both accidental radiation to animals and human beings and contamination of local sites, sand and water as well as prevent it from getting into wrong hands.

2.1 Handling Licences Mandatory for Handling Monazite Tailings:

249. The majority of BSMs are categorised as Atomic Minerals under the MMDR Act (after the 2016 amendment, all BSMs are classified as Atomic minerals). Leucoxene, Rutile, Ilmenite, Zircon and Monazite were also classified as prescribed substances under the Atomic Energy Act though after 01.01.2007, only Monazite remained a prescribed substance with Rutile, Leucoxene, Ilmenite and Zircon denotified as prescribed substances.

250. Till 1998, on the introduction of the Policy on 'Exploitation of Beach Sand Minerals to private players', it was mandatory for all the private players to hand over the monazite tailing's (and also remaining heavy minerals containing other prescribed substances like Ilmenite, Zircon, Rutile etc.) to IREL, a Government of India Undertaking under the administrative control of DAE. After the said Policy, all private players were allowed to mine and win the prescribed substances except Monazite. The Monazite tailings have to be stacked and preserved by the private players as per the guidelines and directives issued by DAE in this regard.

251. When it comes to obtaining handling licences for handling Monazite tailings, the private players ought to get handling licence under the following legislations:

a) The Atomic Energy (Working of the Mines, Minerals and Handling of Prescribed Substances) Rules, 1984.

- b)** Atomic Energy (Radiation Protection) Rules 2004 read with Notification No.30/1/2002-ER/Vol.II/2875, dated 12.10.2006.
- c)** Atomic Energy (Safe Disposal of Radioactive Wastes) Rules 1987.

252. The Atomic Energy (Working of the Mines, Minerals and Handling of Prescribed Substances) Rules, 1984 stipulates that, when a prescribed substance is “handled” then a “licence for handling of prescribed substances” needs to be obtained. As per Rule 2(i) of the 1984 Rules, “handling” includes manufacture, possess, store, use, transfer by sale or otherwise, export, import, transport or dispose of. But in the case on hand, the DAE stated that no licences were issued under this Act to private parties including the 8th Respondent.

253. Another legal position ought to be clarified that post the policy shift from 01.01.2007, there was no need for mining companies to obtain handling licences from DAE under The

Atomic Energy (Working of the Mines, Minerals and Handling of Prescribed Substances) Rules, 1984. Though the Rules stipulate the Handling licence to be obtained, in practice, the AMD and DAE seem to have done away with this requirement.

254. Under the Atomic Energy (Radiation Protection) Rules 2004, where Monazite is concerned, the lessee has to obtain licence from Atomic Energy Regulatory Board (AERB) for mineral separation plant operations as per the directives and instructions of the AERB or anybody authorized by DAE in accordance with the provisions of the Atomic Energy Act, 1962 read with Notification No.30/1/2002-ER/Vol.II/2875, dated 12.10.2006 for the purpose of handling Monazite. It is clarified by the DAE that the 8th Respondent (M/s.V.V.Mineral) was granted handling licence under this

legislation.

255. Regarding the documents relating to permission/ authorization granted to Respondents for disposal/transfer of radioactive waste under the Atomic Energy (Safe Disposal of Radioactive Wastes) Rules 1987, it was submitted that the “Monazite” concentrates, which are presently being stored does not qualify, as “Wastes” and hence, no authorization under the Atomic Energy (Safe Disposal of Radioactive Waste) Rules, 1987 were issued.

2.2 Presence of Monazite Enriched Tailings in the Leased Out Mines:

256. Based on the Orders of this Hon'ble Court dated 02.11.2017,

Joint Inspection was carried out by the officials of Atomic Minerals Directorate, Hyderabad and Indian Bureau of Mines, Chennai in the presence of officials of Atomic Energy Regulatory Board(AERB), Mumbai and Second level Team Heads for assessment of Monazite enriched tailings said to be stored.

257. The report submitted by AMD reveals that the

Thiruvembalapuram site of M/s.V.V.Mineral contains 23,608 MT of Monazite at an average grade of 17.47%. The report reveals that Kuttam site of M/s.Beach Minerals Sands Company is having 0.6% Monazite equivalent. The report reveals that Arasoor site of M/s.Beach Minerals Sand Company is having 0.46% Monazite equivalent and reveals that the Mappillaioorani site of M/s.Miracle Sands and Chemicals has Monazite tailings at two places, having 7.8% monazite equivalent. This trench has 75 MT material, which translates to 5.85 MT Monazite. The other site is open heap having dimensions of 8m length, 2m width and 2m height, having 5.5% Monazite equivalent. This dump has 160 metric tonnes material which translates to 8.80 MT Monozite. The report reveals that Monazite tailings are stored at two locations at Mela Arasaradi site of M/s.Miracle Sands and Chemicals one site having 5.0% and 16.0% monazite equivalent and another having 3.90% and 4.80 monazite equivalent.

258. Subsequently a Super check inspection was conducted in designated areas reported to have monazite

enriched tailings stored in Tirunelveli and Thoothukudi districts,
along with officials of Atomic Minerals
Directorate, Indian Bureau of Mines, Atomic Energy Regulatory Board,
Geology and Mining, Revenue and Survey Departments.

2.3 Accounting for Monazite Enriched Tailings:

259. The Sahoo committee report clearly states that, when it pertains to the major lessee, M/s.V.V.Mineral, in their letter dated 18.08.2017 addressed to the District Collector, Tirunelveli stated that the details of the Monazite rich tailing stored in Thiruvembalapuram (Authoor Plant Tailings Storage Yard) is 80,725 metric tonnes, which contain Monazite and other heavy minerals and silica waste etc. They have further stated that prior to 2007, they produced Garnet and Ilmenite only and did not generate any Monazite rich tailings.

260. But the AMD report on the analysis of the samples collected

from the Monazite enriched tailings stored at Thiruvembalapuram site in Tirunelveli District reveals that the tonnage of materials at the site is computed to be 1,35,135 metric tonnes containing 23,608 metric tonnes of Monazite at an average grade of 17.47% in Phase - I and 17.20% in Phase - II.

261. Thus, there is a variation in the quantum of Monazite enriched tailings declared by the plant owner and the quantity assessed by the Atomic Minerals Directorate, which needs further investigation.

2.4 Discrepancy in Raw Sand Actually Declared and the Actual Fact as Disclosed from Monazite Tailings:

262. Another crucial point for consideration as pointed out by the Amicus Curiae report is that, while the total amount of raw sand declared by Respondent 8/ Respondent 22 to have been mined between 2000-01 to 2013-14 is only 98.88 lakh tonnes. Monazite tailings indicate a massive amount of 4.6 to 4.9 Crore tonnes of raw sand having required to be mined. Therefore, this points out a huge discrepancy between factual records of

transportation, declarations made by the company as to the extent of raw sand (ROM) mined and the actual fact as disclosed from monazite tailings.

263. Adding complexity to this is the fact that the report of the Special Team indicates that a quantity of 671.89 MTs of Monazite can be extracted from the processed minerals kept packed in bags in Thoothukudi with Monazite content between 0.7% to 4.8%. Using the reverse calculation method, a much higher proportion of raw sand (ROM) would be required to produce 667.4 MTs of pure Monazite. Using the same calculation, about 13 lakh tonnes of raw sand would be required to produce 671 MTs of monazite.

2.5 Reverse Calculation Method:

264. The 2nd Respondent / DAE reported “Gross Mismatch” between Total Quantum of raw sand purportedly transported by 8th Respondent/ M/s.V.V.Mineral between 2001-2016 and raw sand required to produce 80,725.05 Mts of Monazite rich tailings. A unique method – **reverse calculation** was used by the Amicus to determine Quantity of raw sand (ROM) required to produce Quantum of Monazite tailings declared by 8th Respondent/ M/s.V.V.Mineral.

265. To conduct further study a memo was filed by the Amicus on 21.11.2016, this Court had passed directions to the respondents, especially R8 and R22 to provide to R2, DAE details about quantity of monazite tailings stored and related matters. Based on the information provided by R8 and R22, R2 has filed before this court an affidavit dated 05.01.2017 providing the following information:

<i>Period</i>	<i>Total ROM Mined – Mts</i>	<i>Approximately quantity of Monazite (Mts) computed by R-2</i>
2007 – 2016	988,88,100	5876.6
<i>Period</i>	<i>Quantitty of Monazite rich tailings stored</i>	<i>Total quantity of Monazite (MT) Computed by R-2</i>
20072016	80,725.05	23,461.7

266. The 2nd Respondent, in their affidavit has pointed out to the discrepancy between the amount of Monazite in ROM based on grade of monazite as contrasted to the quantity of monazite computed based on tailings from 2007 to 2016. The 2nd Respondent in their affidavit have pointed to the following:

(a) There is a mismatch between the figures furnished by R8 and R22 regarding monazite resource which R8 and R22 have to clarify.

(b) As regards data pertaining to ROM, R8 and R22 were put to strict proof to support the figures.

267. An exercise was undertaken to compute the total quantity of raw sand required to produce 23,461 MTs of monazite (as determined by R-2 based on the figures given by R-8/22) at 29% concentration:

Monazite Tailings Reported by R-8: Calculation of Raw Sand requirement (APP)					
A	Monazite tailings quantity for period 2007-2016	80725.05 Mts	Ref: Affidavit of R-2, dated 10 th January, 2017		
B	Monazite quantity available in tailings (tons)	23461.7 Mts	"		
C	Average monazite content in the tailings (B/A)	29%			
		Case – 1	Case – 2	Case – 3	Case – 4

D	Recovery of Monazite (in Monazite tailings)	100%	99%	98%	97%
E	Recovery of Monazite in Pre-concentration plant output	100%	99%	98%	96%
F	Overall recovery of monazite (D x E)	100%	98%	96%	95%
G	Avg. Monazite content in Raw Sand (ROM)	0.05%	0.05%	0.05%	0.05%
H	Quantity of Raw Sand required (tons) = (B / (FxG))	4,69,22,000	4,78,79,591	4,88,77,083	4,93,60,404
Case 1 to 4 represents varying recovery efficiency of the plant operations					
<p>Note: If we consider the production plants (Pre-concentration plant and Mineral Separation Plant) are operating with recoveries as defined in Case – 2 then, a ROM (Raw sand) quantity of 4.787 crores tonnes with 0.05% of Monazite grade is required for the generation of 80,725 Mts of Monazite tailings with 29% Monazite grade constituting 23,461 Mts.</p> <p>Case 3 and 4 represents 2 other possibilities and are presented to have a rough</p>					
Monazite Tailings Reported by R-8: Calculation of Raw Sand requirement (APP)					
estimation of the amount of raw sand required amounting to 4.88 crores and 4.93 crores of raw sand each.					

268. The above calculation is an attempt to approximately calculate the total quantity of raw sand required based on the specifications given by R-2. The calculations are made on the assumption that some amount of monazite will be lost in the preliminary washing and pre-concentration stage and during mineral separation stage.

269. The above calculation indicates that approximately 4.69 Crores to 4.93 Crore MTs of raw sand will be required to produce the 23,461 MTs of Monazite or 80,725.06 MTs of monazite enriched tailings.

270. It requires to be noted that the total quantity of ROM transported as shown by the data provided by the District Mining Departments amounts only to 1.51 Crores in respect of all lessees for the period 2000-2001 till 2013-2014. 21. In contrast the above figure of 4.69 to 4.93 Crores of ROM is required in respect of mining operations

of only one lessee, viz., R8, M/s.V.V.Mineral, and that too for the period 2007-2016. This huge discrepancy is significant.

271. Hence, it can be deduced that while the computation of monazite from the total amount of ROM transported during the period is a lower figure, the amount that can be quantified from the basis of concentrated monazite tailings is much higher figure. Working backwards, if one were to compute the amount of raw sand required to produce 23,461 MTs of monazite, the figure will be much more than the amount of 98,88,100 MTs of raw sand reported to have been transported by 8th respondent from the 34 mining leases he operates. This works out to a figure much larger than the amount of ROM claimed by the company. Hence there is a clear “mismatch”.

272. It is also highlighted in the 1st report of the Amicus Curiae filed before this Court on 20th June, 2017, that a total quantity of ROM amounting to between 4.6 to 4.9 Crore Tons of raw sand will be required to produce 23,462 Tons of Monazite. None of the respondents so far have controverted this figure.

273. In this background, the crucial point to be highlighted is the fact that while the total amount of raw sand declared by respondents 8 and 22 to have been mined between 2000-2001 to 2013-2014 is only 98.88 Lakh Tonnes. Monazite tailings indicate a massive amount of 4.6 to 4.9 Crore Tons of raw sand having to be required to be mined. All this therefore indicates a huge discrepancy between factual records of transportation, declarations made by the company as to the extent of ROM mined and the actual fact as disclosed from the Monazite tailings.

274. Furthermore, the DAE has submitted that the calculation arrived at by the learned Amicus Curiae is justified considering the average grade of 0.05% monazite in raw sand as declared by Respondent 8 to 22. So the DAE submits that, as per the declaration of Respondent 8 to 22, the total raw sand production is only 98,88,100 MT. Considering the average grade of 0.05% in raw sand (also declared by Respondents 8 to 22), this quantity of raw sand would yield only 5,876 MT of monazite, which is a major discrepancy with respect

to the quantity of monazite assessed by Special Team. The difference indicates that, a larger quantity of raw sand has been processed than what was declared.

275. The DAE further submits that, even if a higher grade of monazite is considered, say 0.1% (2 times) in raw sand mined, taking into account the possible enrichment process by beach washings, about 3.50 to 4 crore tonnes of raw sand is required for the collection of 38,608 tonnes of monazite as against the 98,88,100 tonnes raw sand declared by Respondents 8 and 22. In view of the above, the possibility of excessive mining of raw sand against the declared quantities and grades cannot be ruled out. Hence there can be an effective conclusion drawn from the Sahoo committee report, Amicus Curiae report and the submissions of DAE that there has been illegal mining of raw sand over and above the permissible

limits.

276. The Sahoo Committee report and the Amicus Curiae report reveal similar contradictions in the quantity of raw sand mined as declared by the private mining companies namely Respondents herein and the actual raw sand mined as disclosed from monazite tailings. Though the Respondent mining companies oppose the reverse calculation method adopted by the committees, it is beyond understanding as to how such a huge mismatch between declared raw sand mined and actual raw sand, as disclosed from Monazite tailings can happen. This mismatch cannot be completely brushed aside.

2.6 Total Quantity of Monazite that can be Extracted from Stocks Available with M/s.V.V.Mineral which are > 0.25% Monazite Equivalent:

277. If one has to calculate the total quantity of Monazite contained in all the various stocks of the 8th Respondent company, (including raw sand, semi-processed and processed minerals) which are greater than 0.25% Monazite equivalent, it comes to about 15,000 MT of Monazite. In other words, apart from the 23,608 MT of Monazite available in the Monazite tailings yard, a quantity of 15,000 MT of

Monazite can be extracted from the stocks of M/s.V.V.Mineral, adding to a total of 38,608 MT approximately of Monazite. Using the same backward calculation, this will require a figure upwards of 6.00 to 7.00 Crore tonnes of ROM (raw sand) must have been mined.

278. In other words, apart from the 23,608 MT of Monazite available in the Monazite tailings yard, a quantity of 15,000 MT of Monazite can be extracted from the stocks of M/s.V.V.Mineral, adding to a total of 38,608 MT approximately of Monazite. Using the same backward calculation, this will require a figure upwards of 6.00 to 7.00 Crore Tons of ROM (raw sand) must have been mined.

279. To summarize, the key points in Amicus Curiae report is produced below:

(i) The total quantity of stock found was belonging to M/s.V.V.Mineral as reported in the Sahoo Committee Report of 38.77 lakh tonnes is totally

illegal.

(ii) The total quantity of Monazite available in the processed minerals is 671 MT.

(iii) The total quantity of Monazite available in the stocks of the company amounts to approximately 15,000 MT.

(iv) The total quantum of Monazite available in the Monazite tailings stored in the designated site at Thirvambalapuram village is 23,608 MT as found by AMD.

(v) A total quantity of over 4.6 Crore tonnes of raw sand is required to produce 23,608 MTs of Monazite. How and where this was obtained or how such a massive mining could be covered up is a matter that is required to be inquired into by specialised agencies competent to undertake such an investigation.

(vi) If to the stock of 23,608 MTs of Monazite, a further quantity of 15,000 MTs of monazite that can be extracted from all the stocks of the company is added, a total figure of 38,608 MTs of Monazite emerges. As explained before, this, in turn, would require a ROM quantity of over 6 to 7 crore tonnes of raw sand (ROM).

280. Similarly with regard to the Respondent 10/Respondent 17, the Sahoo committee report indicates that the company gave a declaration to the committee of having stocks of 9441 MT, whereas, the Committee estimated amount to 64,40,028.93 MT. Hence, there is a huge discrepancy between quantity declared and quantity found.

281. The Report of the Special Team in respect of stocks of raw sand and minerals processed by M/s.Transworld Garnet has reported that as against a declared quantity of 17,75,761 MT of stock, the quantity estimated by the Second Level Teams is 16,30,724.5 MTs. It is necessary to point out that Transworld Garnet India Pvt. Ltd. has been granted 14 mining leases for mining garnet in Tirunelveli district and 2 mining leases for mining garnet in Thoothukudi district. They do not have any mining lease for mining Ilmenite and other BSMs.

282. While so, one of the samples relating to Processed Mineral, viz., TTK 15, relating to sample taken in Kootudankadu village in Thoothukudi district, found THM concentration of 98.472% in a stock

of 6140.86 MT quantity. It is reported that this processed mineral is a finished product kept in bags for sale. In this sample, Garnet concentration was found to be 91.95% amounting to 5646.76 MTs of garnet. Very interestingly, this same sample also contains 6.5% of Ilmenite amounting to 399.16 MTs of Ilmenite. In other words there was a substantial quantity of Ilmenite in the stock which is said to be mainly Garnet. It must be pointed out that Ilmenite is a higher value mineral of great demand in external markets. The company does not have permission to mine, process and sell Ilmenite.

283. With regard to Respondent 9, the total quantity of 2,984.95 MT of monazite can be extracted from the various stocks of raw sand, semiprocessed and processed minerals found in the stockyard of the company.

284. The Report of the Special Team in respect of stocks of raw sand and minerals processed by M/s Industrial Mineral Company has reported that as against a declared quantity of 4,42,080 MT of stock,

the quantity estimated by the Second Level Teams is 25,58,169.93 MTs. The total quantity of Monazite can be extracted from all the stocks of M/s.IMC comes to about 4,122.65 MT. In the sample under the name of M/s.IOGS, the total quantity of stock is 9775 MT from which 605 MT of Ilmenite can be extracted. The issue is how M/s.IOGS can sell Ilmenite, when they do not have the licence to do so.

285. Also total quantity of 1,738.97 MTs of Monazite can be extracted from the different stocks held by M/s.IOGS Company Ltd. As previously pointed out the company itself holds only 2 individual mining leases for mining and sale of Garnet alone. However, the stocks with them indicate that they do have fair quantity of Ilmenite and Monazite stocks with them.

2.7 Monazite Tailings Yard:

286. A little known fact that emerged only when the Special Team undertook the study of Monazite tailings yards was the fact that

M/s Beach Minerals Sands Company had two monazite tailings yards approved by AERB at Kuttam in Radhapuram Taluk of Tirunelveli district and Arasoor Village of Sathankulam Taluk in Thoothukudi district.

287. AMD, which conducted the Inspection of Monazite tailings yards, took one sample from the Beach Sand Companies' site in Kuttam, which was found to have 0.6% Monazite Equivalent. The monazite tailings had been stored in trench like structures. In the other site at Arasoor Village, 11 bags of 2 tonnes each of monazite tailings had been stored in a well like structure. Samples taken from that site indicated the stock of tailings to have a monazite equivalent reading of 0.46%. The tail amount of monazite amounted to about 0.10 MT.

288. Using the same formula adopted for calculating the total amount of ROM necessary for producing 23, 462 MT of Monazite in the case of

M/s.V.V. Mineral, it is found that a total quantity of 63,61,952 MT of raw sand (ROM) will be required to produce the said 3,780 MTs of Monazite that can be extracted from stocks presently available with the Company. As can be inferred from the above discussion, the company viz., Beach Mineral Sand Company, must have had to illegally mine a huge quantity of raw sand to produce the stocks Processed / Semi-processed minerals that they now possess.

2.8 Mismatch in Figures of Monazite Tailings Submitted by the Respondent Companies:

289. Very importantly, the Report by the Special Team concludes on the issue of monazite tailings yard of M/s.Beach Sand Companies as follows:

“g. The authorities at AERB need to be look into the fact as to why monazite equivalent of such low concentration (e.g.0.72% at Kuttam and 0.39% at Arasoor) need to be kept in these specific sites.

Has this concentration of the monazite equivalent changed over the years because of any pilferage?

Were they being properly inspected in a timely manner? Is there possibility of its being transported out without the knowledge of AERB or the authorities concerned?"

290. Hence, these observations from the report raises relevant questions as to the role of authorities in AERB in inspecting and monitoring the monazite tailings storage sites.

291. Another point for consideration is that the DAE states that they have issued licence to the 8th Respondent under Rule 3 of the Atomic Energy (Radiation and Protection) Rules, 2004. According to the licence conditions, records of quantity and monazite content of the raw material, product and monazite enriched tailings shall be maintained by the mining companies. In response to the directions of this Court, Respondents 8 and 22 had submitted details of monazite tailings stored by them in designated site of their plant in Thiruvambalapuram Village in Tirunelveli District. In response, the DAE

has submitted a detailed affidavit in January, 2017, in which, they point out as “mismatch” in the figures provided by Respondents 8 and 22 about computed monazite resources, which needs to be investigated.

2.9 Stocks Belonging to Mining Companies have Monazite Concentration Beyond the Threshold Value:

292. Another point for consideration is that, many stocks of processed minerals (with THM > 90%) belonging to different mining companies, has been found to have considerable amount of monazite concentration beyond the threshold value of > 0.25% Monazite Equivalent and a significant quantity of monazite can be extracted from these stocks. It is a matter of concern that these stocks which are ostensibly ready for sale / export contains such high concentration and quantity of monazite.

293. So the core issue with broader ramifications is about the finding of significant quantity or concentration of monazite in different

stocks, especially in processed minerals stocks. On the presumption that the processed mineral stocks kept packed in bags in the godowns, ready for sale / exports, would have actually been dispatched, if the Special Team's Inspection and sealing of godowns and stockyards had not been carried out in mid-2017, a major issue of concern that arises is as to how much of previous stocks of processed minerals sold also had similar high concentration of monazite as part of the stocks sold.

294. In other words, could exports of processed minerals by different companies have contained significant quantities of monazite tailings mixed up as part of the stocks sold, is an issue that requires to be investigated by agencies competent, since it requires a multi disciplinary probe. This is a matter not just of commercial transactions but also involving National and

International security.

(3) Whether State Government is Empowered to Add Monazite and Other Atomic Minerals to the Existing Mining Leases Without Prior Approval of the Central Government?

295. This question is of utmost significance in the present matter. It is an undisputed fact that Monazite is a prescribed substance under the Atomic Energy Act and it is clear that private parties are prohibited from mining, processing, selling or exporting the mineral. So the pertinent question that arises is that, how come the State Government approved the adding of monazite to the 16 existing leases of the 8th Respondent without getting due permission from DAE as required under the law. **The DAE has explicitly denied granting any permission to the State Government for inclusion of Monazite in the existing mining lease granted to any private party. So the State Government by granting such permission without the sanction of the Central government/DAE has acted in contravention of the Atomic Energy Act and Rules therein.**

296. To counter this argument by the DAE, the Industries Secretary relies on a letter of DAE dated 24.09.2002, which states that licence for prescribed substance can be issued by the department, only on production of a copy of the mining lease obtained from the State

Government to state that State Government added monazite to the 16 mining leases of M/s V.V. Minerals, so that they could in turn, approach the Central Government to obtain the necessary Handling licence.

297. This contention by the State Government makes one wonder as to how the DAE granted handling licence for monazite to the 8th Respondent company, when they deny granting any sanction to State Government for inclusion of Monazite in the mining lease of the Respondent mining company in the first place. The Respondent mining companies had to submit the mining leases, while applying for handling licence. Had the DAE not verified the mining lease containing illegal inclusion of monazite? So, how can the DAE feign ignorance by stating that they did not grant approval to State Government to include monazite in mining lease, but parallelly they have granted Handling licence to the Respondent mining company. On what basis or record was handling licence accorded to the 8th Respondent company? Had the DAE failed to verify whether the State Government had powers or sanction of the Central Government to include monazite in the existing

leases? When the private mining company applied for Handling licence, Why the DAE failed to verify the contents of the mining lease to question the State government as to how they granted permission to include monazite in the mining lease of the said Respondent mining company without their sanction? This gives rise to the reasonable question as to the role of DAE officials in this issue of granting Handling licence and also why the DAE failed to take action, inspite of large scale reports available on monazite being dealt with by private players. Why did the monitoring mechanism remain silent and ineffective when the illegalities were perpetrating? Hence this Court feels that the role of DAE officials must also be enquired into by the appropriate agencies to identify if there is any collusion of officials in this major scam.

3.1 Is Approval Required for Grant of Mining Lease Pertaining to Other Atomic Minerals?

298. Proviso to Section 5(1) of the MMDR Act clearly states that:

“5. Restrictions on the grant of mineral concession.-

(1) A State Government shall not grant a mineral concession to any person unless such person-

(a) is an Indian national, or company as defined in 10[clause (20) of section 2 of the Companies Act,

2013 (18 of 2013)]; and

(b) satisfies such conditions as may be prescribed:

Provided that in respect of any mineral specified in Part A and Part B of the First Schedule, no reconnaissance permit, prospecting licence or mining lease shall be granted except with the previous approval of the Central Government.

Provided further that the previous approval of the Central Government shall not be required for grant of mineral concession in respect of the minerals specified in Part A of the First Schedule, where.-

(i) an allocation order has been issued by the Central Government under section 11A; or

(ii) a notification of reservation of area has been issued by the Central Government or the State Government under sub-section (1A) or sub-section (2) of section 17A; or

(iii) a vesting order or an allotment order has been issued by the Central Government under the provisions of the Coal Mines (Special Provisions) Act,

2015 (11 of 2015).]

Explanation. For the purposes of this sub-section, a person shall be deemed to be an Indian national,-

(a) in the case of a firm or other association of individuals, only if all the members of the firm or members of the association are citizens of India; and

(b) in the case of an individual, only if he is a citizen of India.

Provided also that the composite licence or mining lease shall not be granted for an area to any person other than the Government, Government company or corporation, in respect of any minerals specified in Part B of the First Schedule where the grade of such mineral in such area is equal to or above such threshold value as may be notified by the Central Government.”

299. Even for grant of mining lease for any other atomic mineral like Ilmenite, Rutile, Zircon, Leucoxene, under Part B of the First Schedule of the Act, prior permission is to be obtained from the Central Government before grant of mining lease for mining any atomic mineral(s).

300. The DAE has submitted that, even if permission was obtained by the State Government from the Central Government for grant of lease to any one atomic mineral, further permission should be obtained from the Central Government by the State Government for grant of lease to any other atomic minerals not originally granted by the Central Government.

301. Also Clauses (i) and (ii) to Sub Rule (1) of Rule 66A of the Mineral Concession Rules, 1960 specifies that, even if the original grant of mining lease by the State Government was for mining Garnet, if the mining lease holder discovers any atomic minerals under Part B of the First Schedule of the Act, the lessee shall not mine and dispose of such mineral and the lessee shall report the same to the Atomic Minerals Directorate for Exploration and Research (AMD), Hyderabad and thereafter obtain permission for including the atomic minerals in the lease and the State Government after obtaining such permission from the Central Government shall include the said atomic mineral(s) in the lease. Hence it is mandatory under the Act and Rules for the

State Government and the lessee to obtain the permission from the Central Government before granting mining lease to the lessee for mining atomic minerals.

3.2 Illegal Inclusion of Monazite and Other Heavy Minerals in Existing Mining Leases Without Prior Approval of the Government of India:

302. It is pertinent to note that the contentions of the DAE had listed out the formalities to be followed prior to grant of licence to mine atomic minerals. It is shocking that the State Government had not obtained the prior permission from the Central Government/DAE as required under the Act.

303. Though the titanium ores and its concentrates (Ilmenite, Rutile, Leucoxene and Zirconium, its alloys including zircon) were removed from the list of prescribed substances under the Atomic Energy Act, 1962 with effect from 01.01.2007, it still continued to be atomic minerals under the MMDR Act. Hence with effect from 01.01.2007, the State Government ought to obtain permission from

Central Government/DAE for grant of mining lease for such minerals as mentioned above.

304. Further, Part B of the First Schedule to the MMDR Act lists the Atomic minerals. It is mandatory for the State Government to obtain permission from the Central Government before granting mining leases to mine minerals specified in Part B of the First Schedule to the MMDR Act. Hence, the law lays down that it is mandatory under the Act and Rules for the State Government and the lessee to obtain permission from the Central Government before granting mining lease to the lessee for mining atomic minerals. There has been a clear transgression of the Act and Rules by the State Government, which is a serious matter thereby paving way for the offence of illegal mining, processing, transporting and exporting of BSMs.

305. It is clearly established through the proceedings of the Commissioner of Geology and Mining in Rc No.6617/MM7/2011 dated 30.11.2012. The Commissioner of Geology and Mining, based on the proposal of the District Collector, Tirunelveli, had passed orders on the

proposal of M/s.V.V.Mineral forwarded to the State Government. The said proposal sought for inclusion of associated minerals such as Silimanite, Leucoxene, Zircon and Monazite along with their existing mining lease.

Further this proceeding also carries a reference to Government Letter (Ms) No.201/MMD2/2012-2 dated 26.11.2012, whereby the State Government had directed the Commissioner of Geology and Mining to take necessary action for inclusion of the minerals Silimanite, Leucoxene, Zircon and Monazite as provided under G.O. (Ms) No.133, Industries (MMA1) Department, dated 04.05.1998. Based on the directions of the State Government the minerals Silimanite, Leucoxene, Zircon and Monazite were included in the mining lease of the 8th Respondent. The lease conditions stipulate that only the lessee should get Handling licence. But the fundamental point is that the State Government has no authority to grant the inclusion of a prescribed substance like Monazite to the existing mining lease without the prior permission of the Central Government. The Government owned undertaking Indian Rare Earths Limited (IREL) is the only Company empowered to deal with Monazite in India. No private company is allowed to deal with Monazite. Hence a very relevant as to on what basis the State

Government directed the inclusion of Monazite to the existing mining lease of the 8th Respondent arises and the State Government failed to provide any satisfactory answer. Further, The Commissioner of Geology and Mining too acted upon this direction and passed a consequential order of inclusion of Monazite to the lease thereby committing a grave illegality. **This entire process of inclusion of such a prescribed substance without the sanction of the Central Government ought to be viewed seriously and the level in which the State Government had bent its machinery and the laws of the land to grant such an unlawful lease to the 8th Respondent must be examined to unearth the presence of any political nexus, if any, and the connivance of the officials and the lessees must be probed in detail.**

306. Since the policy decision of Central Government /DAE is to not allow private players to process monazite due to National Security reasons, only handling licence is granted for storing them separately in accordance with directives issued by AERB while granting handling licence under the Atomic Energy (Radiation Protection) Rules, 2004.

307. Therefore, when Monazite is listed as a prescribed substance and there is a clear embargo in mining, processing, transporting or exporting Monazite by private players, there arises a pertinent question as to how the State Government included the four atomic minerals including the prescribed substance- Monazite. When DAE has not given any permission to State Government for inclusion of Monazite in mining lease granted to any of the private parties, the illegal inclusion by the State Government of Monazite and other prescribed substances like zircon and leucoxene in existing mining leases of private parties without obtaining permission from DAE raises several questions on the role of officials in the State Government in granting such illegal permission thereby imposing threat to National security. Even if the mining lease was modified to include Monazite, then the same is without sanction of the Central Government and amounts to violation of the Act and Rules in force.

308. The DAE has categorically submitted that inclusion of other atomic minerals like Ilmenite, Rutile, Zircon in any existing mining lease without prior permission of the Central Government was also not permissible

and therefore illegal. Whether it is modification of the Mining plan under Rule 10 of the MCDR, 1988 or Review of mining plan and submission of Scheme of mining under Rule 10(2) of MCDR or Modification of scheme of mining at all stages, prior approval of the Central Government is required. Therefore, a summary of the above position of law makes it clear that Monazite being a prescribed substance under Atomic Energy Act and private parties are prohibited from mining, processing, selling or exporting the mineral, there is no valid or justifiable reason to add the Monazite to the existing leases of the private parties. Moreover when the mineral Monazite is related to the issues concerning National security, this cannot be viewed lightly. Such violations ought to be viewed seriously and the State Government by approving the proposals of the private parties to mine four atomic minerals including Monazite by adding these minerals to the pre-existing leases for mining Garnet, Rutile and Ilmenite only has paved way for the illegality. This necessitates serious actions against the officials involved and a probe into the events leading to such grant of illegal approvals ought to be carried out to cull out any instances of corruption and collusion between the officials and the private mining lessees and appropriate legal action including criminal

prosecution needs to be instituted against such Government officials and private mining parties involved.

(C) Royalty:

(1) Royalty Settlement:

309. Royalty is a consideration paid by a mining lessee to the lessor for enjoyment of mineral rights and to compensate for the loss of value of minerals suffered by the owner of the minerals. It is the payment of tax to the Government for the (owner) mineral right for the privilege granted by him for mining and producing/dispatching of minerals.

310. As held in ***Mineral Development Authority*** case cited *supra*, the essential characteristics of royalty are that:

- (i) it is a consideration or payment made to the proprietor of minerals, either the Government or a private person;
- (ii) it flows from a statutory agreement (a mining lease) between

the lessor and the lessee;

(iii) it represents a return for the grant of a privilege (to the lessee) of removing or consuming the minerals; and

(iv) it is generally determined on the basis of the quantity of the minerals removed.

1.1 Royalty- Legal Position:

311. Royalty was initially collected based on a fixed rate for BSM as specified in Second schedule of MMDR Act. In 1997, this Second schedule was amended by introducing calculation of royalty based on ad valorem value. “Ad valorem” means royalty is calculated as a percentage of the value of the minerals, which is usually based on the sale price or market value of the minerals. This covered major minerals including all BSMs.

312. Based on this amendment, the Tamil Nadu Government, vide Government Letter Ms.No.488, Industries (MMD2) Department, dated 12.08.1998, issued guidelines for computation of royalty on an

ad valorem basis. Again, vide letter (D) No. 131 Ind. (MMD2) Department, dated 13.06.2000, revised instructions were issued with partial modifications.

However, no amendments were made to Section 9(2) or the Second Schedule of the MMDR Act. Section 9 deals with royalties in respect of mining leases.

Section 9(2)- “The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that minerals”.

313. The Second Schedule deals with the rates of royalty. In the case of Mineral Area Development Authority cited supra, the Apex Court dealt with the rates of royalty payable in respect of minerals in the Second Schedule of the MMDR Act. It states that the rates of royalty payable are computed either on an ad valorem basis at a

specified percentage of the average sale price or at specific rates on per tonnage basis. Paragraph

No.71 of the judgment reads as under:

“71. The rates of royalty payable in respect of minerals in the Second Schedule to the MMDR Act are computed either on an ad valorem basis at a specified percentage of the average sale price or at specific rates on per tonnage basis. While Section 9 authorises the charging of royalty, the Second Schedule provides the method of computation. The rate of royalty and method of computation differ from mineral to mineral. This Court has held that the Second Schedule has to be read as a part and parcel of Section 9.”

314. Subsequently in September 2000, in the Mineral Concession

Rules, 1960, Rules 64-B, 64-C, 64-D was introduced. Rule 64-B of the MCR, 1960 specifies how royalty is calculated when minerals undergo processing either within or outside the leased area.

Royalty for minerals processed within the leased area:

Scenario: When the run-of-mine (ROM) mineral (the mineral extracted during mining in its primary state is called run-of-mine (ROM), [which may or may not be useable in its primary state depending on the minerals and its grade] is processed within the leased area itself (i.e., processing happens at the mine site).

Royalty Calculation:

Royalty is charged on the processed mineral that is removed from the leased area. This means that after processing, the final product (Such as concentrates, refined minerals, or any other processed form) is subject to royalty, which is determined based on the processed mineral quantity and its value.

Example: If a mine processes iron ore into concentrated iron within the lease area, the royalty will be calculated on the concentrated iron ore when it is removed from the site.

Royalty for minerals processed outside the leased area:

Scenario: When the run-of-mine mineral is removed from the leased area and taken to a processing plant outside the leased area for further processing.

Royalty Calculation:

- (1) Royalty is charged on the unprocessed run-of-mine mineral (the raw ore) when it is removed from the leased area, not on the processed product.
- (2) The royalty calculation, in this case, is based on the quantity and value of the unprocessed mineral that is extracted from the mine, not the final product after processing.

Example: If the unprocessed coal is removed from the mining lease area and transported to an off-site plant for washing or refining, royalty will be calculated on the unprocessed coal as it is removed from the mine site, not on the refined coal after processing.

315. Rule 64-C provides for royalty on tailings or rejects. Rule 64-D deals with Guidelines for computing royalty on minerals on ad valorem basis. This clause underwent amendments in 2003 and 2009. In the year 2003, amendment to Rule 64-D of MCR, 1960 was effected by substituting the earlier Guidelines with two new provisions:

Case 1 - one for all non atomic and non fuel minerals and

Case 2 - another for atomic minerals.

Under this amendment, for calculation of royalty in the case of ; **Case 1** - all non atomic and non fuel minerals, the new provision clarified that the State wise average value for all non atomic minerals as published by IBM shall be the bench mark value with the State Government being permitted to add 20% to this benchmark value for the purpose of computation of royalty. Garnet and Silimanite come under this category.

Case 2 - In the case of Atomic Minerals, which includes Ilmenite, Rutile, Zircon, Leucoxene, the Guidelines provided for ad valorem royalty for sale in domestic market as contrasted to direct export. In both cases, the Guidelines stipulated the permissible deductions from the sale price of the separated minerals like the cost of transportation (for sale in domestic market) and loading and unloading charges in port, port charges, insurance charges, royalty, taxes and interest charges on loan in the case of direct export.

316. Further amendments were carried out to Rule 64-D on

10.12.2009 by changing the very title itself to “Manner of payment of royalty on ad valorem basis”. The earlier Guidelines by the way of Case 1 and Case 2 introduced in the year 2003, were dropped. More specifically, Case 2 referring to atomic minerals was dropped altogether. In contrast, a new provision, Rule 64-D(1)(i) covering all non atomic and non fuel minerals was introduced stating that State wise sale price for different minerals as published by IBM shall be the sale price for computation of royalty.

1.2 Rule 64-D - Manner of Payment of Royalty on Minerals on Ad

Valorem Basis:

317. Rule 64-D(i) (I) is as extracted below,

*“(1)Every mine owner, his agent, manager, employee, contractor or sub-lessee shall compute the amount of royalty on minerals where such royalty is charged **on ad valorem basis** as follows:*

(i) - ‘for all non-atomic and non fuel minerals sold in the domestic market or consumed in captive plants or exported by the mine owners (other than bauxite and laterite despatched for use in alumina and metallurgical industries, copper, lead, zinc, tin,

nickel, gold, silver and minerals specified under Atomic Energy Act), the State-wise sale prices for different minerals as published by Indian Bureau of Mines shall be the sale price for computation of royalty in respect of any mineral produced any time during a month in any mine in that State, and the royalty shall be computed as per the formula given below:

Royalty = Sale price of mineral (grade wise and State-wise) published by IBM X Rate of royalty (in percentage) X Total quantity of mineral grade produced/ dispatched:

Provided that if for a particular mineral, the information for a State for a particular month is not published by the Indian Bureau of Mines, the latest information available for that mineral in the State shall be referred, failing which the latest information for All India for the mineral shall be referred.”

1.3 Purpose of Rule 64-D:

318. The main goal of Rule 64-D is to establish a fair and transparent system for calculating royalty based on the value of the

minerals. By tying the royalty to the sale price or market value, the rule ensures that the government receives a fair share of the profits generated from mineral extraction. The ad valorem system allows the royalty to be more responsive to market fluctuations, making it a more dynamic and equitable method for both the government and the mine operators.

Sale Price Determination:

The sale price for computing the royalty is derived from the State-wise sale prices for different minerals, as published by the Indian Bureau of Mines (IBM). These prices are used for every mineral produced during a particular month within that state. If IBM does not publish the sale price for a particular mineral in that state for a given month, the latest available sale price for that mineral in the state will be used. If even that information is unavailable, the All India sale price is to be referred to.

Royalty Calculation Formula:

The formula for computing royalty is:

Royalty = Sale Price of Mineral (Grade-wise and State-wise) x Rate of Royalty (%) x Total Quantity of Mineral Produced or Dispatched. The rate of royalty (in percentage) is typically defined by the Government and varies depending on the type of mineral.

318. It should be pointed out that the provision introduced in 2000 allowing for permissible deductions from the total sale value realised, were dropped. This meant that the total sale value of each of the BSM had to be considered.

319. Further royalty is leviable on each individual BSM on 'advalorem' basis, which implies that royalty amount should be collected separately for each consignment according to, whether it was sold in the local market or was exported and on the basis of the sale value for each consignment. Since the ad valorem rates for each BSM is a % and not a fixed amount, it is important to note that royalty amount due to be paid will vary depending on the sale price of each mineral and consignment and quantum of mineral sold. This system is crucial for the mineral industry, as it helps align the interests

of mine operators and the Government, contributing to the sustainable and equitable extraction of minerals.

320. In 2014, the royalty rate for BSM in the Second schedule was changed, whereby royalty rate for Garnet was changed from 3% sale price to 4% average sale price and rate of royalty for all other BSM were unchanged. In 2016, few major changes were brought about to the MMDR Act. A new item was added to Part B- 'Atomic Minerals' of the First schedule of the MMDR Act, 1957 which reads as follows:

“12. Beach Sand Minerals i.e., Economic Heavy Minerals found in the teri or Beach Sand, which include ilmenite, rutile, leucoxene, garnet, monazite, zircon and sillimanite.”

321. Around the same time, the MCR, 1960 was repealed and substituted with two new Rules, these are -

- (1) The Minerals (Other than Atomic and Hydro carbons Energy Minerals) Concession Rules, 2016 (w.e.f 04.03.2016).
- (2) The Atomic Minerals Concession Rules, 2016 (w.e.f 11.07.2016) (AMCR)

It is to be pointed out that the provisions of Rule 23 (2) of the AMCR, 2016 provided for ad valorem royalty on all atomic minerals (after the 2016 amendment, atomic minerals include all the 7 BSMs) which shall be based on the state wise sales price of each minerals as published by the Department (DAE, IBM or State Government).

322. The rate of royalty for major mineral has been revised with effect from 02.09.2019 vide G.S.R. 622(E). However, there is no change in the rate of royalty for BSMs.

323. The royalties in respect of mining leases is specified in Section 9 of the MMDR Act, 1957. Royalty is a variable return and it varies with the quantity of minerals extracted or removed. In case of ad valorem rates, the royalty is payable as per the mandate of Rule 64-D of MCR, 1960 in the manner prescribed thereunder. It casts an obligation on the mine owner to compute the amount of royalty on minerals, where it is charged on ad valorem basis.

324. It is essential to note that mining leases are granted for the mining specified minerals and not for mining raw sand (ROM). Minerals including Garnet, Sillimanite, Rutile, Ilmenite, Leucoxene, and Zircon are mined using the leases granted. It would be completely irrelevant to apply Rule 64-B(2) as it applies to run-of-mine minerals, which is the raw sand here.

325. In case, run of mine mineral is removed from the leased area to a processing plant, which is located outside the leasehold area, the royalty shall be computed on the “unprocessed run of mine mineral”. The bare reading of the Rule makes it clear that the methodology envisaged under Rule 64-B cannot be applied to a “Raw Sand” to avoid liability to pay ad valorem royalty on Beach Sand Minerals. Rule 64-B applies only to minerals with a prescribed flat rate in the Schedule, not to those with an ad valorem royalty.

326. This provision was wrongly adopted on the ground that the lessees are taking the unprocessed raw sand from the mining site and processing it elsewhere. It is to be understood that the mines from where the

raw sand is mined are located on the seacoast in or near the Coastal Regulation Zone (CRZ). Therefore, the raw sand has to necessarily be taken to processing plants of each mining companies located outside the leasehold areas. Further, when such wealthy minerals are being extracted from this raw sand after processing, how can the royalty be imposed just on raw sand. Also, the Second Schedule of the Act does not prescribe any rate of royalty for “Raw Sand”.

1.4 Distinction Between Rules 64-B and 64-D:

327. The key distinction between Rule 64-B and Rule 64-D is that, in the case of Rule 64-B, it is based on processing of minerals within or outside the leased area, whereas Rule 64-D deals with royalty calculation on sale price or metal content of minerals. In simpler terms, with respect to Rule 64-B, the focus is on the processing stage (processed or unprocessed), whereas Rule-64 D focusses on value of the minerals through sale price or metal content.

328. When the primary intent behind the grant of a mining lease is to extract minerals and either sell them locally or export them, it is naturally understood that the fixation of royalty should be based on the value of the minerals alone. It would be unfair to fix the royalty on ROM (raw sand) based on the ground that, as per Rule 64-B(2), since the ROM mineral is removed from the lease area and taken to a processing plant located outside the leased area, royalty should be fixed on the unprocessed ROM. This is a complete wrong application of the Rule. The royalty should be affixed to the value of the minerals removed. More so, when Section 9 read with Second schedule specifically states ad valorem value of the mineral as the basis for fixation of royalty.

329. It is noteworthy that, it is not plain raw sand that has been mined by the lessees. It composes of mineral rich raw sands and post processing only the minerals can be extracted. It is impossible just to mine minerals separately. If this argument that the processing plants are located outside the leasehold areas and as such the payment of royalty on the "Raw Sand" should be applied under rule 64-B(2) is accepted, then it would make the ad

valorem rate prescribed under the Second schedule of the Act redundant. When section 9 and Second Schedule of the MMDR Act are read together, it expressly mandates ad valorem basis for fixation of royalty, and any deviation from this would make the very fixation of royalty on ad valorem basis frivolous. Further the legislative intent behind provision for levying ad valorem royalty on beach sand minerals will be defeated and will result in significant revenue loss to the State Exchequer.

330. It is also pertinent to note that the raw sand does not find mention in the Second Schedule nor is there any rate prescribed for it. On the other hand, the Second Schedule specifically mentions Garnet, Sillimanite, Rutile, Ilmenite, Leucoxene, and Zircon, for which royalty is payable on ad valorem basis. It is useful to also note that the mining leases also are given for the above-mentioned minerals and not for raw sand. The ad valorem royalty rates at the relevant time were as follows:

- (1) Garnet (abrasive) @ 3 % of average sale price on ad valorem basis
- (2) Ilmenite, Rutile, Zircon and Leucoxene @ 2% of average sale price on ad valorem basis.

(3) Sillimanite @ 2.5% of average sale price on ad valorem basis.

331. Therefore, where the Second Schedule prescribes royalty to be paid on ad valorem basis, Rule 64-D alone will apply and not Rule 64-B.

332. When Section 9(2) stipulates that the mining lessee shall pay royalty on the minerals removed from the lease site at the rate specified in the Second Schedule, reliance should immediately be placed on the rates of royalty prescribed in the Second Schedule. The Schedule clearly states that the royalty is fixed on an ad valorem basis for the specified minerals. Further, when it comes to ad valorem fixation of royalty, Rule 64-D of the Mineral Concession Rules (MCR) shall apply. This ad valorem shall be calculated based on the sale price of each mineral. **Hence, it is implicitly clear that Section 9(2) of MMDR Act and Second Schedule to the Act and Rule 64-D of MCR should be read together for computation of royalty on ad valorem basis for the minerals. Hence, it becomes crystal clear that the royalty rate for each of the six BSMS is fixed on an *ad valorem* basis.** This fixation ranges from 2 to 4% of the sale price of each mineral.

333. It is also to be noted that the Department itself has computed royalty on ad valorem basis on all mining companies, including 8th Respondent/ M/s.V.V. Minerals, under Rule 64-D until the period 2007 - 2008. However, in 2012, when District Officials of Tirunelveli District were computing the Royalty Payment for the period 2008-09, 2009-10, 2010-11 and 2011-12, they have selectively chosen to apply Rule 64-B and charged royalty on a flat rate of Rs.20 to 45 per MT of raw sand only in respect of 8th Respondent/ M/s.V.V. Minerals, 9th Respondent/ M/s.Transworld Garnet India Pvt Ltd and 13th Respondent/Industrial Minerals India Private Ltd, all of whom were sister concerns of 8th Respondent/ M/s.V.V. Minerals at the relevant point in time. In contrast, the same Tirunelveli District officials computed ad valorem royalty for the other companies, viz., 10th Respondent/Beach Mineral Sands Company, 17th Respondent/Beach Mineral Company Pvt Ltd, under Rule 64-D on sale price of mineral. This is clearly arbitrary and illegal. There must be an enquiry into the rationale and motive behind such arbitrary fixation of royalty.

334. Thus, when the legislation itself prescribes ad valorem royalty for the minerals, the mining companies cannot take undue advantage of Rule 64-B to avoid liability to pay ad valorem royalty.

(2) Illogical and Wrongful Application of Law in Royalty Settlement

Proceedings:

335. The authorities concerned after wrongfully computing Royalty only on ROM (raw sand), based on Rule 64-B(2) of MCR, the proceedings then follow an arbitrary logic in terms of reconciling the differential % of ad valorem royalty stipulated for different BSMs in the Second Schedule of the

MMDR Act. At page 8 of the Proceedings, the Settlement records that;

“The royalty for Garnet is 3% on ad valorem sale price. For all other minerals, Ilmenite, Rutile, Zircon, Silimanite, Leucoxene, the royalty is only 2% on ad valorem basis. Hence the highest royalty rate of 3% has to be taken to fix up royalty for the whole ROM material according to Rule 64-B of MCR: 1960”.

336. It appears that the officials finalizing the Settlement seem to be projecting that they were deciding on the higher rate of 3% uniformly for the entire quantum of ROM transported as a justification for the arbitrary method of deciding that royalty is chargeable only on raw sand and not the actual BSM sold each year. There is no legal sanctity or provision to support this logic or method. What is intriguing about the method followed by the officials is that they have ignored the crucial fact that, in the Mining Lease Granting Orders (G.O./Proceedings) and in the Mining Lease Deed

executed in respect of all the mining leases, it has been specifically stated that royalty should be collected at the rate specified in the Second Schedule of the MMDR Act, 1957, on the actual quantum of each processed mineral, i.e., Garnet, Ilmenite, Rutile, Zircon, etc., sold. Such being the clear condition agreed upon by the mining company and the Government about payment of ad valorem royalty, the method followed in this Settlement Proceedings has resulted in a huge loss of revenue to the State by way of very low royalty collections, when in fact, the company has sold huge quantities of BSMs

through export during these years and thereby earned huge income in those periods.

2.1 Low Royalty Fixation by IBM:

337. It has been observed by the Bedi committee that the Domestic sale price of Tamil Nadu as published by IBM, is at much lower rate as compared to other States.

338. For Example, in August 2013, as per data published in the IBM, the sale price of Garnet was Rs.377 per MT for Tamil Nadu, but Rs.8,833 per MT for Andhra Pradesh and Rs.5,500 per MT for Odisha. But it is to be noted that the export price of Garnet is Rs.15,000-Rs.18,000 per MT and hence the lessees have benefited a lot due to this shocking undervaluation. When the issue of undervaluation was raised, the sale price was refixed in

January 2014 at Rs. 5,600 MT for Tamil Nadu. But the Government of Tamil Nadu has lost a chunk of its revenue due to this undervaluation.

339. Due to the low fixation of the sale price for royalty, the total royalty earnings for Garnet in Tamil Nadu were Rs.5.47 Crore in 2013-2014. Further, the total royalty earnings from various beach minerals in the State have been between Rs.9 Crore to Rs.10 Crore only for few years, whereas individual lessees have been exporting minerals worth hundreds of crores, with the State Government receiving a relatively small amount from this.

340. The Amicus Curiae report also expresses concern that due to the low fixation of royalty for Garnet, the beneficial effect of this depressed sale value was enjoyed by the mining companies during the Royalty Settlement Proceedings undertaken in 2012-2013. These settlement proceedings, covering the years 2008-2009 to 2011-2012, and the computation of royalty for the 8th Respondent company, were undertaken under Rule 64-B(2) and Rule 64-D of the Mineral

Concession Rules (MCR), 1960. The ad valorem royalty to be paid by the company was calculated at 3% of the above amount, ranging between Rs.8.25 (for 2006), Rs.18.06 (for 2010), and Rs.12 (in 2013) per metric ton (MT) of raw sand.

341. In contrast, if the per MT sale value of Garnet, as reported for Odisha (by IBM), or the export sale value (as reported by the companies themselves to the Customs Department), or the sale value of Garnet as reported by IREL, had been taken as the base value, a significantly higher sum of royalty would have been levied.

2.2 Misleading Data in Royalty Settlement Proceedings:

342. The Amicus Curiae report states that there is a calculated attempt to misrepresent and defraud on the payment of royalty. As per the statement of the major lessee, the 8th Respondent have sold major portion of the minerals in the local

market and direct export is very meagre. But in contrast, in various Court documents placed before this Court, 8th

Respondent and 22nd Respondent claim that, they are 100% Export Oriented Unit (EOU) company earning valuable foreign exchange for the exchequer. This misrepresentation as stated in the Amicus Curiae report is to evade higher royalty as the sale value for local sales is comparatively lesser than export sales, so the determination of royalty will be much lesser compared to the royalty, which will be leviable on exports.

2.3 False Declaration made by the 8th Respondent:

343. A very shocking fact that stands out from the study of the actual

Royalty Settlement proceedings is the declaration of the company M/s.V.V.Mineral that the total quantum of Garnet and Ilmenite exported during 2005-2006 to 2007-2008 was only 1,765 MT. This data provided by M/s. V.V. Mineral at the time of Royalty Settlement of 1,765 MT of BSM exported is shown to be as incorrect by their own declaration made to the Taluk Level Committee of Tirunelveli in June, 2016, in which they claim to have exported 8,83,865 MT of BSMs during the same period. Even if it may be argued that

this figure includes exports from all the three districts, considering that 27 out of 34 mines of M/s. V.V. Mineral are located in Tirunelveli District, it can safely be assumed that a substantial proportion of the 8,83,865 MT of BSM exported in the three years came from Tirunelveli District.

344. What stands out in stark contrast, is that as against the claim of M/s.V.V. Mineral of having sold 2,74,835.91 MT of BSMs locally for the 3 years period 2005-06 to 2007-08, the comparative figure of local sales of BSMs for the same period as declared before the Taluk Level Committee in 2016 is 28,885.66 MT only.

345. This comparison echoes huge difference in declaration made by the companies before two different authorities. It can be inferred clearly that the company attained undue monetary benefit, due to these false declaration and would amount to wilful suppression of fact.

2.4 Improbability of Export of Only 5 MTs of Ilmenite During the 3 Year Period from 2005-2006 to 2007-2008:

346. According to AC report another curious fact that surfaces in the analysis of the Royalty Settlement Proceedings is the claim of M/s. V.V. Minerals that in all the three years between 2005-06 to 2007-08, they exported a total quantum of only 5 (Five) MTs of Ilmenite, that too in 2005-2006 alone.

347. Apart from this quantum of 5 tonnes exported in 2005-06, according to the company's claim, no Ilmenite was exported in the years 2006-2007 and 2007-2008. In contrast to the 5 MTs of Ilmenite exported by M/s. V.V. Minerals in the 3 years period, the same Royalty Settlement Proceedings shows the quantum of Ilmenite sold locally by the lessee company for the 3 years to be 4,97,115.42 MTs.

348. On analysis of Quantum of Ilmenite declared by M/s.V.V.Mineral as sold in Royalty Settlement Proceedings,

2009 with Customs Department data on exports from Thoothukudi port, it is evident that these figures are extremely doubtful, and have been presented only to enable fixation of low royalty.

(3) Royalty Calculations and Payments:

349. It is pertinent to note that the State Government has accepted the royalty calculation done by the Amicus Curiae. The State Government has admitted that royalty must be calculated under Rule 64-D of MCR, 1960. Further, the Hon'ble Supreme Court in **Common Cause's** judgment cited *supra* has explained the scope of recovery of cost that, if there was illegal mining, the defaulting lessee must bear consequences of the illegality and not be benefited by pocketing 70% of illegally mined ore.

350. The Hon'ble Supreme Court clarified that in the case of mineral unlawfully mined and transported,

“... there can be no compromise on the quantum of compensation that should be recovered from any defaulting lessee - it should be

100%.”

It must be pointed out that apart from the cost of mineral, the State Government can also recover royalty on the quantum of mineral unlawfully transported as provided in section 21(5) of the Act itself.

351. The Amicus Curiae prepared a "Consolidated Summary of

Royalty and 'Cost of Minerals' due to be recovered from BSM Mining Companies", which computes the total amount to be recovered from the mining companies both for the pre-ban period 2000-01 to 2013-14 (upto September, 2013) and the post-ban period covering the years 2014, 2015 and 2016.

Consolidated summary of Royalty and Cost of mineral due to be recovered from lessees:

Sl.NO	Name of th Lessee/Plant owner	Royalty and Cost of mineral due to be recovered for unlawful/Illegal transport of BSM (in Rs.)
1	M/s.V.V.Mineral (R8, R22)	35,81,11,76,202
2	M/s.Transworld Garnet India (P) Ltd., (R9)	4,78,34,94,227

3	M/s.Industrial Mineral India (P) Ltd., (R13)	82,51,69,343
4	M/s.Beach Mineral Sands Company and their sister companies & M/s.Beach Mineral Company (P) Ltd., (R10, R16, R18, R19), (R17)	9,21,69,81,216
5	IOGS Group (M.Ramesh (R11) and K.Thangaraj (R12)	4,92,67,36,512
6	M/s.Industrial Mineral Company (R15)	2,76,08,66,333
	Total	58,32,44,23,835

(Rupees Five Thousand Eight Hundred and Thirty Two Crores Forty Four Lakhs Twenty Three Thousand Eight Hundred and Thirty Five only).

3.1 Post Ban Period – Royalty Calculations:

352. It is the claim of all the various mining companies that the entire

stock of BSMs comprising of processed and semi-processed BSMs and raw sand, belongs to them and that they have validly paid advance royalty for the raw sand. Hence, the entire stock estimated by the Sahoo Committee to be kept in their godowns should be returned to them.

353. The Second Report of the Amicus Curiae which presented a summary of the findings of the Sahoo Committee

concluded that the entire stocks of BSMs including raw sand held by them in 2018 was illegally mined by them, and could not have been part of the raw sand or processed BSMs mined by the mining companies prior to the ban of transportation and mining imposed by the Government of Tamil Nadu in August - September, 2013.

354. The BSMs quantum of 1.50 Crore MTs found by Sahoo Committee in 2018, therefore cannot be based on the legally mined raw sand, and processed BSMs as all mining and processing was banned from August/September, 2013 and the mining companies have reported that they stopped mining altogether. It is for a similar reason that in the Second Report of the Amicus, it was concluded that "Therefore the stocks held by different mining companies, who are Respondents in this case, should be held to be illegally mined".

355. For a similar reason, the total stock of 1.4 Crore MTs of BSMs found by the Reassessment Committee in 2021-2022 and reported in RR2023 could not be from the balance of raw sand left

with the mining companies, at the time of the ban in August-September, 2013 and should be declared fully illegal.

356. In sum, the entire stock of 1.5 Crore MTs of BSM stock found by Sahoo Committee, in 2018 and the stock of 1.40 Crore MTs of BSM stocks found by the RR – 2023, should be held to be totally illegal and the legal consequence of such a finding of on illegally mined and processed BSMS will have to follow.

(D) Role of Officials:

357. A scam as huge as this is unseen in the history of Tamil Nadu and this unfortunate offence at the cost of natural resources would have been highly impossible without the active collusion of the officials across different departments of the Government. This Court is shaken on coming across findings in the reports stating as to how our National security was put at risk through the irresponsible and malafide actions of the officials and the lessees. This Court would be failing in its constitutional duty, if it remains a mute spectator when our National wealth and resources are put at risk. A

thorough and detailed probe into the allegations of the Government officials involvement in this major scam is inevitable.

358. Any reasonable man cannot deny the involvement of officials in this illegal mining keeping the backdrop of the facts and findings in this case. The brazenness with which this illicit action was done shows the level of support found in the then Government administration during the period when illegalities was perpetrated. The political patronage to this huge scam cannot be ruled out. This Court has witnessed cases, where officials find shelter in unavoidable systemic delays and by the time the issue comes to the fore, the perpetrators walk away legally unscathed. The Officials involved in the scam, irrespective of the positions they hold in the system ought to be inquired and requisite action should be taken including disciplinary action and criminal prosecution or both as the case may be.

359. This exploitation of natural resources at the cost of people's life, health and National revenue is not a child's play. Already the environmental damage today is becoming a cause of international concern and adding to

that, just to satiate the greed of a few, the future of our natural resources and human life cannot be put in jeopardy. It is agonising to see the amount of loss to the State exchequer. The amount of public money left uncollected by the officials due to their neglect/ corruption/ collusion is nothing short of breach of Public trust. The Government Officials involved in this scam have betrayed the people of Tamil Nadu and have done great disservice to the Nation. The total amount of royalty to be paid by the lessees as derived by the Amicus comes to the tune of Rs.5832.29 Crores. The public revenue loss is unimaginable. The people could have benefited from this revenue in innumerable ways through good infrastructure, education, medical facilities, welfare schemes and so forth. Instead it went into the pockets of law evaders and law breakers due to the inaction of the Government officials concerned.

360. The most shocking details that emerge from the findings is that, inspite of the ban on illegal mining in Tamil Nadu, the offence was ongoing with the connivance of the officials in-charge. The illegal transportation, storage and export was taking place and the Sahoo report exposes the reduction of the stock in godowns and the Reassessment Report also reveals

that the offence was unstoppable. The CCTV cameras installed were damaged and the sealed godowns were left unmonitored thereby allowing for theft of the illegally mined sand. There has been a complete failure on the part of District administration by being a mute spectator.

361. This seems to be an organised method of illegalities committed for over a decade. The conduct of the lessees and inactions adopted by the officials exhibit ways, in which there has been exploitation of the loopholes in the system. It is saddening that the system had watched its own officials plunge down into the rabbit hole of corruption one by one.

(1) Contradictory Reports:

362. There was a Joint Inspection conducted pursuant to directions by the Director of Environment and Forest, Government of India, New Delhi. This report has recorded that M/s.V.V.Mineral has complied with all requirements of MMDR Act and Rules and indulged in no illegal mining and has also complied with Environmental Clearances.

363. It is pertinent to point out that the Principal Secretary to the Government of Tamil Nadu in his counter dated December 2016 has categorically stated that this report has not been authorised by the Government and hence, it should not be taken on record.

364. The Government of Tamil Nadu has stated that it could not have been possible for the Joint Inspection team to have conducted a detailed study on illicit mining of Beach Sand Minerals in 4 days. It is stated that the Government does not accept this report, as they have already constituted a special team headed by Mr. Gagandeep Singh Bedi, IAS and the report has also been submitted to the Court. The counter has also pointed out that the findings of the Joint Inspection team that the mining lessees have obtained licences from AERB and mining has been carried out as per approved mining plans, is not supported by any documents. The Report has stated that all royalty has been paid and exports are within limits, without verifying the reconciled statement of State Government and without the export details. On the contrary, the Principal Secretary to the Government of

Tamil Nadu has pointed that the District Level Committee constituted by the District Collector, Tirunelveli, as per G.O.Ms.No.179, Industries (MMD.1) Department, dated 27.07.2015 on 18.10.2016 and 09.11.2016 reported excess quantum of raw sand, Garnet, Ilmenite, Rutile, Zircon, Sillimanite, and Leucoxene against the quantity permitted in the approved mining plan / approved scheme of mining were transported by M/s.V.V.Mineral in respect of their 20 mining leases out of 27 areas. In view of the violations detected, the royalty account for the period 2000-2001 to 2015-2016 shall be construed to be null and void. Hence, the finding of the Joint Committee that the transported minerals already suffered royalty is not correct. The accounts of M/s.Transworld Garnet India Private Ltd, M/s.Beach Mineral Sand Company, M/s.Indian Ocean Garnet Sand Company are all in the same line. It is stated that the State Government has not granted any permission to carry out inspection after the ban of beach sand mining in the State.

365. Based on the Amicus Curiae report findings, it is clear that these inspection reports reveal a certain degree of false findings trying

to divert the issues and subvert crucial wrongdoings. From the narration above, it is evident that, though it does appear that between 2003 and 2015, there were as many as 10 inspection reports, a closer examination reveals that actual field based verification and detailed examination of records was undertaken only in the reports dated May, 2007 and Mr.Gagandeep Singh Bedi Report. Further, these are the only two reports, which was undertaken by senior officers of the State. The other inspection were conducted by officials at a subordinate level, whose failure to perform duties has resulted in such large scale illegal mining. Moreover, though the other reports mention that they have undertaken field inspections, the content of the reports do not reflect the same. The entire exercise in the other reports was limited to the allegations in the complaints and providing a response to the same. Hence, the reliance placed by the Respondents on these irregular reports cannot be accepted. It was completely unreasonable on the part of the officials involved in these inspections to claim that there was no illegal mining and that no violations were committed. This finding cannot be accepted in the light of tonnes of evidences unearthed by

the Special teams constituted by the Government, who have expertise and knowledge and indulged in extensive method of surveying and field inspection before submitting the report. When the findings and evidences on the face of it reveal the massive scale of illegal mining, it is impossible to even assume otherwise. The entire illegalities was committed right under the watch of the State Government officials and they failed to take any action and chose to stay silent. Some officials have gone a step further by denying any such illegal mining/transportation/storage to have taken place.

366. To deny any knowledge of a scam as huge as this, which is an organised crime and planned to the tee at all levels in terms of executions by bending and subverting the laws of the land is unheard of. This is deeply disturbing and alarming. Hence, the officials who have claimed that no allegations have taken place inspite of repeated complaints received by them and the officials, who have submitted reports with untrue and false findings claiming no illegal mining has taken place inspite of having knowledge about the same, should be

brought to the book and enquired about their involvement in this scam.

Any such nexus between the perpetrators and officials, who submitted reports with false findings denying illegal mining in the area, where offence was committed must be ascertained. Giving false inspection reports is degrading the position of office held by them and strict action must be taken against officials, who for a certain consideration in return sided with the wrongdoers, thereby trying to bury the issue.

(2) Stages of Neglect/ In-Action/ Corruption of Officials':

367. A high level Probe needs to be instituted to examine how mining approvals were given and to fix accountability for the same. Considering the high value of the minerals and the advantages gained by being permitted to mine a higher quantity of minerals, the probe should also explore possibilities of different types of influences leading to the granting of approvals of mining plans on the part of officials of IBM and AMD. The highest levels of officials in the decision making chain should be personally held liable for decisions found to be of doubtful or questionable nature.

368. The failure of the State departments including the Industries

Department and the Department of Geology and Mining of the Tamil Nadu Government to exercise constant vigil and cross check claims of mining companies against the official documents has cost a lot for the State. There has been a collapse of the entire monitoring mechanisms in terms of keeping a check on illegal mining. This being a crucial sector of revenue for the Government, it is highly essential that the monitoring agencies and executive mechanisms are strengthened and upgraded to suit the current technological developments.

369. A reading of the report findings reveal total failure on the part of District Mines officials to check as to whether the Transport Permits they have been issuing over the years, are according to the approved Mining Plan/Scheme of Mining and the approved quantities permitted to be transported. Considering the massive scale of unlawful transport of raw sand and the different beach minerals, it is apparent that the district mines officials have at no time bothered to check the Approved Mining Plans and Scheme of Mining. What is shocking is

that the District Collector, who annually arrives at a reconciliation of Royalty payments which requires examining Transport Permits, have also over the years, failed in their duty to reconcile the quantum of raw sand and minerals transported against the quantum of such minerals approved in the Mining Plans and Scheme of Mining. Considering the quantum of unlawfully mined minerals and the huge financial loss this entails, it is important that a extensive probe is instituted into this issue.

370. The Show Cause notices issued by IBM officials clearly reveal that, even as far back as in 2006 - 07 itself, they were fully aware of the brazen and open violation of the laws by the mining companies. As noted before, in some cases, the illegally transported raw sand production was sometimes 14 to 18 times more than the quantity permitted to be transported. Yet apart from giving token notices, the IBM officials did nothing to strictly enforce the law.

371. As rightly raised in the Amicus Curiae report, the moot question is, as to whether the inaction of the officials to enforce the law is sheer inaction and indifference or did it arose from collusion with

mining companies. This aspect requires detailed investigation by the investigating agencies.

372. The Amicus Curiae report reveals that the inaction of the State Government officials, despite evidence of the numerous illegalities committed by the mining companies in general, and more particularly M/s.V.V.Mineral and other mining companies controlled by Mr.S.Vaikuntarajan or being run by close family members, is very obviously the result of considerable influence wielded by 8th and 22nd Respondent and the close nexus with the decision makers in the highest levels of bureaucracy and political executive. Further study of the Amicus Curiae report divulges crucial findings about inclusion of Monazite and four atomic minerals to the existing mining leases of the mining companies. At the instance of a mere request to the Government, the above unauthorised and illegal inclusion of Monazite to the existing lease of the private lessees was carried out by the State Government.

373. This ought to be probed in detail and the Amicus Curiae report findings pinpoint at a political nexus angle, which needs in-depth investigation. Political patrons involved in this must be brought into the zone of enquiry and if resulted in adverse findings, then strict legal prosecution based on the same must be effectuated.

374. A serious probe needs to be undertaken, as to understand the modus operandi adopted by the illegal miners to clandestinely transport and export the minerals despite the ban imposed. In spite of the widespread knowledge of banning of BSM mining in Tamil Nadu with effect from August 2013, the Customs and Port Authorities continued to permit large scale exports during the said period. The Customs claims lack of intimation about the said ban. This lack of coordination and inaccess to crucial information ought to be addressed by creating a common digital platform carrying informations on mining, approvals, licences, storage, transport permits and exports, which can be accessed by all the Government departments and monitored by a central system. Transparency must be ensured.

375. The collusion/inaction of the officials to this entire process must be enquired and the way in which law was circumvented to get the requisite mining approval, transport permits, custom clearance must be examined and adequate measures to fool proof the system must be adopted.

376. There has been a lapses on the part of the IBM and DAE in granting approval of mining leases, which allowed mining in inter tidal zone inspite of CRZ notification and clearance prohibiting the same.

2.1 Role of Officials in Royalty Settlement Proceedings Must be Investigated:

377. An analysis of the Royalty settlement proceedings shows the role of official and also the mining companies in subverting the law to ensure that proper royalty assessments were not made on the exact quantum of BSMs sold by the mining companies each year, thereby resulting in major loss to the State revenue and unjust enrichment of

the mining companies concerned. There is a key finding in the Amicus Curiae report that the officials of the District Geology and Mining department, as also the District Collectors of each of the three districts Tirunelveli, Thoothukudi and Kanniyakumari have not only acted in violation of the requirements of the provisions of Section 9 and Second Schedule of the MMDR Act, 1957 and provisions of Rule 64D MCR, 1960, but have actually colluded and connived with different mining companies to ensure beneficial fixation of royalty, thereby reducing the royalty amount that the companies need to pay to the Government each year of the assessment period, but also to ensure that the mining companies gained financially by defrauding and cheating the Government of just dues for the mineral sold by them.

378. This can be further deduced from the wrongful application of Rule 64B(2) of MCR, 1960 for calculation of royalty on ROM transported and that too this wrongful method was adopted arbitrarily only for companies associated with M/s.V.V.Mineral, including M/s.Transworld Garnet India(P) Ltd and M/s.Industrial Minerals India

(P) Ltd in royalty proceedings concluded in 2012-2013 for all three districts. Also the Amicus Curiae report raises a pertinent query, as to whether the entire settlement process was orchestrated from a central place since the same reasoning, verbatim, was used in settlement proceedings in the three districts. This is exposed from even a cursory reading of the Royalty Settlement Proceedings for Thoothukudi District which in the heading reads as though it is the “Proceedings of the District Collector, Tirunelveli District”. Though the District Collector is correctly named, the earlier line shows that the proceedings for Tirunelveli was used. This aspect requires investigation. The method followed for computing royalty based on raw sand transported for Tirunelveli District was also applied in Thoothukudi District as well.

379. Also the royalty settlement proceedings prior to 2012-2013 were made under Rule 64D of MCR, 1960. The sudden change in the procedure adopted by the District mining department and endorsed by the District Collectors by fixing royalty on raw sand (ROM) under Rule 64 B(2) has not been explained in the Royalty settlement

proceedings. Hence, based on the records and reports presented before this Court, it is more than apparent on the face of the records that without the active and conscious collusion of the officials, especially at the highest levels, such a major BSM scam, as massive as this, would have been highly improbable.

(3) Accountability and Transparency:

380. Each and every public servant receiving salary from tax payers money is accountable to the citizens of this country. Officials across all departments are answerable to the complaints before them. Any inaction or neglect on the part of these officials shall be dealt with seriously by the

District Collectors and in the event of any inaction on the part of concerned District Collectors, appropriate action against the Collectors shall be initiated by the Government.

381. The District Collectors are responsible and accountable for any illicit mining happening in their district. They are responsible for

the efficient functioning of the Mining Department in the District concerned and any noncompliance with the provisions of MMDR Act and its corresponding Rules must be dealt with strict legal action. Any complaints on illegal mining received, ought to be dealt by the competent authorities and the ultimate accountability is on the District Collectors.

382. When officials fail to act on complaints and remain mute spectator to the wrong doings happening, it is not only unconstitutional, but erodes public confidence, thereby leading to systemic dissolution. Power has been constitutionally granted to the executive to act for the protection and benefit of the public and any omission to act is in itself unconstitutional.

383. Fixation of accountability is of primacy in the issue on hand.

Sand mining has become uncontrollable and unless accountability is fixed, the officials tend to wriggle away from their responsibilities. It is surprising that this unfortunate illegality has been going on for decades irrespective of

the change in governance. There appears to be a clear political nexus in this and the investigating agencies must investigate thoroughly to cull out the perpetrators. The illegal sand mining in the State of Tamil Nadu is operating in the form of a sand Mafia, a completely organised crime, with money power and political power.

384. Activist and journalists have not been given adequate protection by the District Administration. When officials fail in their duties, the common man rises to the occasion to expose the illegalities committed. But the officials only end up giving a tough time to them and many of the activists operate sans any Police protection. It is the obligation of the District Administration including the Collector and Superintendent of Police to provide adequate protection and ensure safety of the people, who come forward to report about illegal sand mining. Failure to guarantee protection to people, who come forward to report on sand mining crimes will entail strict action against the concerned officials including the Superintendent of Police of the concerned district.

385. This Court is forced to fix accountability on the topmost official today because for years, the State Government has failed to hold the officials accountable inspite of the numerous orders passed by this Court, directing the Government to fix accountability on those incharge. Hence, this Court holds that the District Collector shall be the responsible officer to ensure that illegal sand mining is prevented in their concerned districts. The District Collectors shall take all necessary action to put an immediate stop to illegal sand mining across all districts in the State of Tamil Nadu. Any failure to do so, shall invite prosecution, under the relevant laws in force against the District Collector concerned.

386. Any reports of crime pertaining to illegal mining and transporting of raw sand shall be viewed seriously by the Superintendent of Police in the concerned district and inaction on their part shall invite similar legal action.

387. This Court is astonished, as to how the authorities failed to take any responsibility for this decade-long illegalities perpetrated by the sand Mafia. This Court wonders, how they are able to turn a blind eye and remain mute spectators, when loads of illegally mined sand are transported across borders without any checks and this Court feels it to be an unjustifiable act on the part of the officials incharge. The Department of Geology and Mining must own up and take responsibility. Even in the latest report submitted in 2021 (Reassessment Report) there has been an estimate of shortfall of stocks of raw sand from sealed godowns. Further, additional fresh stock of illegally mined raw sand has also been reported in the inspection. This is after the ban of mining was effected way back in August, 2013. So this shows that till 2021-2022, the illegality was still carrying on. This shows the blatant disregard for the orders of this Court.

388. Corruption in mining has become a norm and has been standardised by the officials involved. A pattern can be drawn from

these illicit sand mining operations. The triangular link is undeniable here between the political, executive and the mining lessees. It has become a systemic corruption.

X. Conclusion:

389. This issue has been agitated for nearly a decade. The Respondents are trying to use the judicial process to wriggle away from the consequences arising out of their illegal actions. Committee after committee formed and re-agitating on the same point of issue will not pave any way to the ends to justice. In the eyes of this Court, the Bedi Committee, Sahoo Committee, Reassessment Committee and the learned Amicus Curiae have carried out a fair and impartial task in inspecting and evaluating the extent and quantum of illegal beach sand mining carried out.

390. By seeking formation of more new committees and by alleging bias on the existing ones is a mere abuse of judicial process. When the committee have carried out a fair task, making vague, whimsical allegations for protracting the process will meet no viable result. The attitude of the

Private Respondents raises doubts, as to whether this is a strategy adopted by them to prolong the process. Ultimately, the core issue is whether illegal beach sand mining/transportation had taken place, if so, to what extent and what are the damages/loss incurred.

391. An examination of the various committee reports and the Amicus Curiae reports prove the case of illegal beach sand mining. The methodology adopted by the committee on careful examination by this Court is free from bias and is not in transgression of natural justice principles. And the reports have been elaborately made after inspection. The Amicus Curiae appointed by this Court also based on a separate and detailed report has uncovered the presence of Monazite in the mined minerals, which is prescribed substance under the Atomic Energy Act and the mining companies have no right to deal with the same.

392. The committees have outlined various other illegalities and irregularities in transport, storage and dealing of these illegally mined beach sand minerals, thereby causing a grave danger to the environment.

393. It is to be noted that there are a plethora of judgements on the issue of illegal sand mining, guidelines to be followed, measures to be taken, enforcement mechanisms so on and so forth. But it would be an understatement to say that this has not been effectively adopted or followed by the implementing officials at the ground level. There are many ways prescribed by various agencies, departments and the Government to curb illegal beach sand mining including legal frameworks such as the MMDR Act, various other environmental legislations, Sustainable Sand Mining Management Guidelines (SSMG) 2020, Enforcement and Monitoring Guidelines for Sand Mining (EMGSM) 2020. But the core question for consideration is why can't the illegal sand mining be stopped inspite of the humongous Government resources, funds and time spent to draft these legislations, measures and guidelines. The simple answer that can be deduced through the careful examination of the records and reports before us reveals the large scale corruption and collusion across departments, officials and bureaucracy. A systemic implementation failure has paved way for the huge loss to the National and State exchequer, which ought to be remedied at the earliest. Stringent and strict actions are the need of the hour

to curb the illegalities and irregularities proliferating from illegal beach sand mining.

394. The scale and magnitude of the lorries unlawfully transporting illegally mined raw sand and minerals across districts without any lawful obstruction in place, to stop this crime, is mind boggling and disheartening. Natural resources being exploited is one thing, but when done beyond legally permissible limit to benefit a handful of people at the expense of the National economic interest and affecting the Country's overall growth and at the cost of people's livelihood has shaken the conscience of this Court. These are issues which need to be dealt with at the earliest and the way in which our Judicial process has been used to thwart the law from taking the right course of action is discernible from the endless litigations filed across different courts. Litigating and re-litigating on the same issues and trying to weave knot after knot till nobody knows how to unknot it. This modus seldom paves any benefit. It eventually itself becomes a point of accusation against the law breakers. Law can be bent. True. But it bends only for Justice. Our Nation is great in a way that Laws cannot be a mute spectator for long. Conscience

and Spirit of our Courts cannot be doused easily and our Constitution keeps the heartbeat alive to ensure that People of this Country can never be wronged.

395. The findings of both the Bedi committee report and the Amicus Curiae report are shocking and the layer by layer violations across different spectrums in the Governance is disturbing and requires a thorough multi disciplinary investigation to unearth the perpetrators involved in this horrendous war against nature.

396. Our Great Nation has a mineral rich coastline, which is our National Wealth. The natural resources in our country, which we are proud of ought to be protected at all costs. It is not only the question of environmental damages that can be caused, but it is also our National wealth that needs protection. It is also important to state that due to the immense mineral wealth, which we possess, mining is an important facet of Indian economy. Mining sector is a contributor to the growing Indian economy. Therefore, the violations and breaches of the mining laws will have huge implications on the

National economy. The mineral wealth ought to be protected on one hand and the legally permitted mining, which is a contributor to the Indian economy ought to be monitored and audited regularly. When the officials involved in this process indulge in corruption/collusion or negligence, it will throttle our Nation's economic growth.

397. Executive is the lifeline of a healthy economy. Even if a single cell is malignant, then the entire system becomes cancerous. To prevent any further multiplication of the illegalities, the cancerous cells ought to be removed at the earliest. Identification and action against those involved in this systemic violations, irrespective of the position they hold, is imminent. Hence, this Court has come to an irresistible conclusion and inclined to pass the following directions in the interest of Equity, Justice and good Conscience:

- (a) This Court after careful analysis and extensive discussions as detailed above holds all the findings in Mr.Gagandeep Singh Bedi's Report, Mr.Satyabrata Sahoo's Report, Reassessment Report and the Amicus Curiae's Reports valid and sustainable in the eyes of law.

- (b) In the light of the elaborate discussions in W.A.No.1168 and 1169 of 2015, heard together along with the present suo motu PIL, the constitution of the expert committee headed by Mr.Gagandeep Singh Bedi, I.A.S vide G.O.Ms.No.156, Industries Department, dated 08.08.2013 and G.O.Ms.No.173, Industries Department, dated 17.09.2013 by the State Government in exercise of powers conferred under Section 24 of MMDR Act to inspect and file report in regard to illicit mining of BSM is upheld.
- (c) The reports and findings of the Special Team headed by Mr.Gagandeep Singh Bedi, I.A.S., pertaining to the illegal mining and transport of 1.01 Crore M.T of raw sand over an extent of 234.55.0 hectares of non-leased out areas in the three coastal districts is held valid and sustainable in the eye of law.
- (d) The report of the Special Team headed by Mr.Satyabrata Sahoo, I.A.S., and findings on the quantum of stocks kept with the private respondents to the tune of 1.50 Crore M.T in the three districts is held to be legally valid.
- (e) The quantum of BSMs unlawfully mined and transported by the private respondents during the pre-ban period as estimated by the

Learned Amicus Curiae in his first report dated 20.06.2017 is held valid.

- (f) The quantum of minerals illegally exported by the private respondents during the post-ban period i.e. from January 2014 to December 2016 as estimated by the Learned Amicus is held valid.
- (g) The methodology adopted by the Amicus Curiae about illegal mining of BSMs by using Three way method and the Reverse calculation method is held valid.
- (h) The second report filed by the Learned Amicus Curie in the year 2018 in response to findings of the Sahoo Committee report and declaring the entire stocks kept with the private respondents in the three districts as illegally mined, transported and stored one is held valid.
- (i) The third report and findings of the Learned Amicus filed in the year 2019 estimating the quantum of revenue loss caused to the state exchequer to be recovered from the private respondents to the tune of Rs.5,832 Crores towards the cost of the minerals and royalty for the quantum of minerals unlawfully mined, stored, transported and exported during the post-ban period is held legally valid.

- (j) The findings of the Reassessment Report submitted to the Government in the year 2023 to the effect that a total quantum of 1.40 Crore M.T of stocks were available with the private respondents as illegally mined stocks in the three districts is held valid.
- (k) The premature termination of BSM mining leases by invoking Section 4A(1) and 4A(3) of MMDR Act, 1957 in terms of the directives dated 01.03.2019 issued by the Ministry of Mines, Government of India is held valid in law.
- (l) The second report and findings of the Learned Amicus on the huge quantum of Monazite contained in the stocks of all the private respondents in the three districts is held valid.
- (m) The entire stocks of 1.4 Crore M.T as reassessed by the District Collectors in their Reassessment Report dated 28.11.2023, comprising processed mineral, semi processed mineral and raw sand and the stocks having huge presence of Monazite, which is a prescribed substance under the Atomic Energy Act, 1962 is held valid.
- (n) The request of the State Government for handing over of the entire stocks held by the mining companies to IREL India Limited is granted. Hence the entire stocks of raw sand, processed or semi-

processed BSMs held by the Lessees/ Mining companies, which are sealed in godowns, factories, stockyards and premises of the mining companies is directed to be handed over to IREL India Limited forthwith.

- (o) The actions of the State Government on inclusion of not only Monazite but also other atomic minerals like Leucoxene, Zircon and Sillimanite to the existing mining leases of the private respondent companies without the prior permission of the Central Government is held invalid.
- (p) The Public Notice No.50 of 2016 dated 23.11.2016 issued by the Customs department to verify the source of BSMs and for production of requisite certificate from the District Collectors certifying legal source of minerals to permit export under section 50 of the Customs Act, 1962 is held valid.
- (q) The royalty accounts as settled by the District Collectors of Tirunelveli, Thoothukudi and Kanniyakumari computing the royalty for the quantum of raw sand transport by arbitrarily applying Rule 64-B(2), MCR in favour of M/s.V.V.Mineral (R8), M/s.Transworld Garnet India Private Limited (R9) and M/s.Industrial Mineral India Private limited (R13) is held legally invalid.

- (r) The royalty accounts wrongfully settled by the District Collector of Tirunelveli, Thoothukudi and Kanniyakumari by computing royalty for raw sand transported by wrongful application of Rule 64-B(2) of MCR, 1960 in respect of M/s.V.V.Mineral (R8), M/s.Transworld Garnet India Private Limited (R9) and M/s.Industrial Mineral India Private Limited (R13), unsettled by the State Government is held valid.
- (s) The computation of royalty on ad valorem basis for the actual quantum of minerals sold/ exported under the provisions of Section 9(2) read with Second Schedule of the MMDR Act and Rule 64-D of MCR, 1960 in the light of third report of the Amicus, is held legally valid.
- (t) The State Government is directed to initiate all necessary actions to recover the cost of minerals and royalty as per the findings in the Amicus Report relating to post ban period which held the 1.5 crore MTs of BSMs found by Sahoo Committee in 2018 and the stock of 1.40 Crore MTs of BSM stocks found by the RR-2023 as illegally mined and processed and hence all legal consequence to that effect shall follow.
- (u) **It is also undeniably established from the discussions above that Right from the grant of mining lease/approval/license to grant of transport permits to illegal inclusion of monazite in**

mining lease to lack of efficient monitoring to arbitrary and legally questionable royalty settlement proceedings to lack of initiation of appropriate action when required and complete shedding of accountability on the part of the officials concerned, top to bottom, across departments and executive spectrum, there appears on the face of it a scheme of collusion, corruption and connivance among political, executive and the private mining lessees. The involvement of Government officials and illegalities perpetrated by them including political nexus in support of this scam should be investigated thoroughly. This is an imminent necessity to prevent corrosion of public trust in the system.

- (v) In the light of above discussions, this Court finds it a fit case to refer the matter to CBI. Hence based on the findings in the Committee reports discussed above and based on all other materials available on record, the CBI is directed to register criminal cases and launch investigations. Also any pending cases relating to the issues discussed in this judgment registered by the Tamil Nadu Police is directed to be transferred to the CBI for enabling effective investigation. All related case files shall be handed over to the CBI within a period of four weeks.

(w)The Director, CBI shall constitute required number of Special Investigation Teams, consisting of officials with expertise and High integrity to conduct the investigations into this scam. Further, The Director, CBI is directed to monitor the investigation of the SITs to be constituted.

(x) The key issues that needs to be investigated includes:

(1)The modus operandi of the illegal beach sand mining Mafia.

(2)The role of officials including the omissions and commissions of all the officials from the senior most official in the Chain of command responsible for this huge economic loss to the State exchequer.

(3)The Corruption and connivance of the officials with the mining companies indulged in illegal beach sand mining, transportation, storage and export must be probed across all departments which are accountable and responsible.

(4)The role of officials involved in the Royalty settlement proceedings whereby arbitrary fixation of royalty was done by benefiting the respondent companies must be investigated.

- (5)The political nexus to the massive scam cannot be ruled out. Hence the the CBI is directed to investigate into the alleged political nexus and the role of the policy making authorities in conspiring with the private mining companies shall be investigated.
- (6)A multi disciplinary probe is also required to enquire into the crucial findings of high concentration of monazite found in the processed stocks and whether such a prescribed substance was exported by the mining companies ought to be investigated, since it is a matter concerning National security.
- (7)The illegal inclusion of Monazite by the State Government without the prior sanction of the Central Government as statutorily required needs to be investigated to cull out any political-executive-private mining companies nexus in this issue.
- (8)Apart from the key issues discussed above, the CBI can further expand the investigations on all other aspects pertaining to this case and file final report before the Jurisdictional Court.
- (9)Considering the high economic value of the illegal mining and export and since the scale of financial loss to the State Exchequer runs to thousands of crores, the Government of India is directed to scrutinise into all the financial and commercial

transactions of the Respondent mining Companies dealing with BSMs and refer the matter for investigation to the Enforcement Directorate, Income Tax Department, Customs and Excise Department and Commercial Taxes Department and by any other competent agencies as required.

(10) Based on the investigation, the Government of Tamil Nadu and the Government of India, as the case may be, are directed to initiate suitable departmental disciplinary proceedings simultaneously against the officials involved in the scam.

(11) Liberty is granted to any person to initiate contempt proceedings in the event of violation of any of the directions issued by this Court in the present Judgment.

398. Accordingly, the Writ Petition stands disposed of. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

[S.M.S., J.] [M.J.R., J.]
17.02.2025

JENI/GD

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

Note: *The Registry is directed to communicate the copy of this order to;*

*1. The Director, Central Bureau Investigation,
Plot No.5-B, CGO Complex, Lodhi Road,
New Delhi – 110 003.*

*2. The Joint Director and Head of Zone,
3rd Floor, E.V.K., Sampath Building,
College Road, Chennai – 600 006.*

To

1.The Secretary to Government,
Union of India,
Government of India,
Ministry of Mines, D Wing,
3rd Floor, Shastri Bhavan,
New Delhi-1.

2.The Secretary to Government,
Government of India,
Department of Atomic Energy,
Anushakthi Bhawan, C.S.M.Marg
Mumbai-1.

3.The Secretary to Government,
Government of India,
Ministry of Environment and Forests,
Pariyavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi-3.

4. The Regional Controller of Mines,
Indian Bureau of Mines,

Rajaji Bhavan,
Chennai-90

5.The Chief Secretary to Government,
The State of Tamil Nadu,
Government of Tamil Nadu,
Fort St.George, Chennai-9.

6.The Secretary to Government,
Industries Department,
Government of Tamil Nadu, Fort
St. George, Chennai-9.

7.The Commissioner of Geology and
Mining, Government of Tamil Nadu,
Guindy, Chennai-32, Tamil Nadu.

8.The Member Secretary,
Tamil Nadu Pollution Control Board (TNPCB), Panagal Maaligai,
76, Mount Salai, Guindy, Chennai 600 032.

9.The Principal Secretary,
Government of Tamil Nadu,
Ministry of Environment and Forests,
Fort St.George, Chennai 600 009.

10.The Director, Central Bureau Investigation,
Plot No.5-B, CGO Complex, Lodhi Road,
New Delhi – 110 003.

11.The Joint Director and Head of Zone,
3rd Floor, E.V.K., Sampath Building,
College Road, Chennai – 600 006.

SUO MOTU W.P.No.1592 of 2015

S.M.SUBRAMANIAM, J.
and M.JOTHIRAMAN,
J.

JENI/GD

SUO MOTU W.P.No.1592 of 2015

17.02.2025