

The Goa Foundation

G-8, St Britto's Apartments
Feira Alta, Mapusa 403507 Goa
Email: goafoundation@gmail.com
www.goafoundation.org

15 June, 2015

The ACB/CBI, Goa
C/o The Superintendent of Police,
Anti-Corruption Branch,
Bungalow No.F-1, Type VI,
GMC Quarters, NH-17,
Bambolim 403202, Goa.

Re: Complaint under Section 13(1)(d) of the PC Act, 1988, against Mr Laxmikant Parsekar (also, Minister for Mines); Mr P.K. Sains, (also former Secretary, Mines, Goa Govt); and Mr Prasanna Acharya, (also Director of Mines & Geology, Panaji, Goa).

Dear Sir,

The following complaint is filed against the above named persons for offences committed by them under Section 13(1)(d) of the Prevention of Corruption Act, 1988 in the act of renewing 88 mining leases for mining in Goa with a total annual production capacity of 44 million tonnes.

The complaint charges that the above persons entered into a conspiracy to renew 88 mining leases to several persons in Goa. These renewals were carried out for extraneous considerations and appear to be corrupt acts, as will be the focus of the case made out below in this complaint.

The renewals resulted in colossal losses to the public exchequer and were therefore completely against public interest. They were carried out in wilful violation of the provisions laid down in the MMDR Act, Mineral Concession

Rules, 1960 and Supreme Court's orders. The actions attract Section 13(1)(d) of the PC Act.

As the corruption is connected with the enforcement of the MMDR Act, 1957, which is a Central Act, this complaint is filed with the CBI and the CBI has jurisdiction to entertain and to act on the complaint.

Background of the complainant:

The Goa Foundation is a registered NGO based in the State of Goa, India. All its members are citizens residing in Goa. All are in principle owners of the minerals in the State. State is a trustee of these resources on behalf of its citizens.

The Goa Foundation was the petitioner in Writ Petition (Civil) 435 of 2012 filed by it in the Supreme Court of India relating to illegal mining in the State. The judgment on the petition was delivered on 21-Apr-2014. Copy of the judgement is **Exhibit 1** (CD annexed).

The said judgment required the State of Goa to grant mining leases in the State of Goa in conformity with the provisions of the MMDR Act, 1957 and constitutional provisions.

Critically, the said judgement ruled that all iron ore mining leases in Goa had expired on 22-Nov-2007, and that any mining and sale of mineral ore from that date till the date on which all mining activity was suspended by order of the Goa Government on 10.9.2012 was illegal (i.e., a period of 5 years from 22.11.2007 to 10.9.2012).

As a consequence of the SC decision, there were two options available to the Goa Government (represented by the above-mentioned three persons) for renewal or reopening of the said leases:

- a) Renew the leases under section 8 (3) of the MMDR Act, 1957 with the same lease-holders.

Any renewal of a mining lease under Section 8 (3) would be in the form of a finding that the renewal was in the interests of mineral development in each instance.

Renewals under 8 (3) could not be carried out without a report from the IBM under the proviso to Rule 24 (3) of the Mineral Concession Rules,1960. IBM is the competent authority to advise the Government on lease renewal as it has the expertise and data on reserves – information not readily available to the State.

Or,

- b) Submit the leases to public auction for procuring maximum revenues for the State and the rightful owners, the people of the State.

Bombay High Court judgement dated 13.8.2014

Immediately after the above Supreme Court judgement of 21.4.2014, some of the former lease holders (28 parties) moved the Bombay High Court at Panaji to direct the State Government to renew their mining leases, as they had paid the relevant stamp duty for the mining lease deeds. Judgement on a batch of writ petitions was delivered by the High Court on 13 August, 2014. The Hon'ble High Court issued two directions in the said judgement:

“In the above facts and circumstances, we dispose of the writ petitions by passing the following order:

“(I) The Respondent – State of Goa is directed to execute the lease deeds under Section 8(3) of the MMDR Act in favour of the petitioners/lease holders who/which have already paid the stamp duty pursuant to the orders of the Government, in accordance with the Goa Mineral Policy, 2013 placed before the Supreme Court in Writ Petition (Civil) No.435/2012 and subject to the conditions laid down by the Apex Court in the said Writ Petition.

“(II) So far as the petitioners/lease holders who/which have not paid the stamp duty are concerned, the Respondent – State of Goa is directed to

decide their renewal applications under Section 8(3), as expeditiously as possible, and preferably within a period of three months from the date of receipt of copy of this order.”

I am annexing copy of the Bombay High Court judgement dated 13.8.2014 as **Exhibit 2** (CD annexed).

I am also herewith informing the CBI that the Goa Foundation has already filed an SLP challenging the Bombay High Court order dated 13.8.2014 which is pending adjudication before the Supreme Court of India.

MMDR 1957 Amendments

In November 2014 or thereabouts, the Union of India decided for various reasons (including judicial pronouncements) to amend the MMDR Act, 1957. The complainant, together with a few others, was called by the Ministry of Mines for a hearing on these amendments in December 2014.

Thereafter, as per copy of the press reports annexed as **Exhibit 3** to this complaint, the Cabinet took a decision to notify the amendments to the MMDR Act – which would enable only auctioning of mineral ore leases in future – to be issued in the form of an Ordinance.

It appears that after the Cabinet meeting had been held, another meeting was called at the instance of the mining lobby from Goa and elsewhere, during which further amendments were made to protect the interests of the said lobby. These specific provisions allowed mining leases “already renewed” to operate for a fresh period of 20 years.

In view of these changes, large-scale attempt was made by the three persons against whom this complaint is made, together with the mining lobby, to renew leases as speedily as possible before the Ordinance came into effect. In fact, there appears to have been an unholy scramble to grant renewals *en masse*. The three persons named in this complaint facilitated and approved the renewals, disregarding all laws, regulations and requirements of the order of the Supreme Court in its judgement dated 21.4.2014.

I am setting out the relevant details concerning the 28 writ petitioners who appeared before the High Court and the date of the renewal/non-renewal of their leases by the State Government in **Table A** annexed to this complaint.

I am listing in **Table B** (annexed to this complaint), the dates on which other mining leases were renewed *en masse* in the State of Goa. Suffice it to say that in the period of just one week, as **Table B** shows, a total of 56 mining leases were renewed. This was obviously on the basis of prior information being available to the State Government about impending change in law.

The State of Goa, represented by the three persons named in this complaint, renewed these 88 mining leases thus in extremely suspicious circumstances and, as will be shown below, caused colossal losses to the public exchequer.

Loss to Public Exchequer Quantified:

We have attempted to quantify the loss to the public exchequer from renewal of 88 mining leases, using an eight year historical weighted average (2004-2012), as follows:

1	Total quantity permitted for extraction as per ECs granted in 88 leases:	43.973 million metric tonnes (MMT), for at least 12 years (Nov-Jan 2014 – 21-Nov-2027)
2	Value of mineral ore @ Rs. 311.12 crores per MMT	Rs. 164,172 crores
3	Extraction costs for 43.973 million tonnes @ Rs. 120.25 crores per MMT	Rs. 63,453 crores
4	Net value of iron ore @ Rs. 190.87 crores per MMT	Rs. 100,720 crores
5	Royalty @ Rs. 8.46 crores per MMT to Goa Govt	Rs. 4,467 crores
6	Goa Iron Ore Permanent Fund @ 10% of sale value, Rs. 31.11 crores per MMT	Rs. 16,417 crores
7	Net loss to the public of Goa: Rs. 151 crores per MMT	Rs. 79,836 crores

If we assume the total quantity permitted for extraction capped at 20 million tons, for at least 12 years (22-Nov-2015 – 21-Nov-2027), as required by the judgement dated 21.4.2014, following would be the scenario:

1	Total quantity permitted for extraction as per ECs granted in 88 leases:	20 million metric tonnes (MMT), for at least 12 years (Nov-Jan, 2014 – 21-Nov-2027)
2	Value of mineral ore @ Rs. 311.12 crores per MMT	Rs. 74,669 crores
3	Extraction costs for 20 million tonnes @ Rs. 120.25 crores per MMT	Rs. 28,860 crores
4	Net value of iron ore @ Rs. 190.87 crores per MMT	Rs. 45,810 crores
5	Royalty @ Rs. 8.46 crores per MMT to Goa Govt	Rs. 2,032 crores
6	Goa Iron Ore Permanent Fund @ 10% of sale value, Rs. 31.11 crores per MMT	7,467 crores
7	Net loss to the public of Goa: Rs. 151.30 crores per MMT	Rs. 36,311 crores

It may be recalled that the Supreme Court set aside by a detailed judgement coal block allocations made by the Central Government fairly recently. Pursuant to the judgement, some coal blocks have now been auctioned for a sum exceeding Rs.3.5 lakh crores. Similarly, auction from the sale of spectrum has netted the government more than Rs.1 lakh crore.

In the case of Karnataka iron ore mines, the category C mines which were cancelled by the Supreme Court of India in its judgement in the Bellary mining case are proposed to be auctioned at a floor of 35% of the IBM stipulated price.

In contrast, the 88 mining leases have been renewed at zero cost of the value of the ore to various persons and companies, thus wholly disregarding

directions of the Supreme Court of India that the disposal of natural resources should be under a regime that “maximises revenues”.

Illegality resorted to in the processing of granting the renewals

A large number of leases got signed on January 6 and January 12, 2015. The two days show extraordinary productivity in the Mines Department in giving away public assets to private interests through renewals of leases, especially when the cabinet approved ordinance would have immensely benefited the public by mandating auctions. Following specific methods were resorted to by the persons against whom this complaint is made:

a) 8 (3) renewal orders on different footing from 8 (2) renewal orders

Though the Supreme Court judgement clearly stated that the orders for renewal under 8 (3) must be reasoned orders, in all the 56 cases, the same order was simply duplicated and copied, with some minor changes in each case, in order to facilitate speedy renewals. I am enclosing copies of the 88 second renewal orders as **Exhibit 4 colly** (CD annexed). Each order discloses several inconsistencies. Data analysis of these 88 lease renewal documents is at **Table C** annexed to this complaint.

b) No IBM concurrence

The MCR Rules, 1960, need an expert opinion on the need to renew the lease under Section 24 (3) from the IBM. It is only after a period of 3 months from the date of an application from the Mines Department – and if the IBM does not reply – that the Department may assume consent or concurrence with the renewal proposal. However, for arriving at an opinion for second renewal, reference to Section 24(3) from the IBM would be mandatory, as the State Government presently does not have the necessary competence in the matter. The Department of Mines & Geology, in fact, does not have even a trained geologist!

However, as it is obvious in the cases listed in **Table C** (annexed with this complaint) letters were written to the IBM in the week immediately preceding the renewal in the cases of TCs 14/58, 86/53, 41/55, 4/55, 29/55,

14/52, 45/54, 6/49, 10/51, 3/57, 24/57, 48/58. Before these letters could have reached the IBM inward registers, the persons named in the complaint had already accommodated the lease holders concerned and approved their leases.

It can also be seen from the same table that in most cases the Department has not bothered to even wait for the response from the IBM but has proceeded with renewals under deemed approval of IBM. In some cases, where there has been a contrary opinion or a cautionary opinion, this has been simply ignored. In the case of Geetabhai Parulekar, for example, a very influential party, a negative opinion has been received from the IBM. However, this has been circumvented by writing for a fresh opinion and then claiming 3 months deemed approval from IBM. In the case of one of the Codli mines belonging to Sesa Sterlite, the lease has been approved despite the fact that the IBM has warned the State Government that even the first renewal of the lease has not been approved.

c) Leases renewed on 12.1.2015 when no such provision for renewal exists

The haste to approve the grant of renewal was so unseemly that 31 mining leases were renewed on 12.1.2015, when the specific provision which allow renewals (Section 8(3)) was no longer available on the statute book of the country. Therefore, the decision to renew in all 31 cases is clearly illegal. Their bunching on this date raises many suspicions. (We should comment that a similar situation has arisen in Karnataka where 12 leases have been renewed on January 12 itself. There, the BJP¹ (which is in the opposition) has been found protesting the acts of the Congress government! The renewal of all these 31 cases therefore needs to be placed on a separate footing altogether and thoroughly investigated.

¹ <http://www.thehindu.com/news/national/karnataka/cm-received-kickbacks-in-renewal-of-mining-licenses-bjp/article6928822.ece>

d) Renewal in absence of a Mining Lease Renewal Policy

As per the SC order, the leases were to be renewed or granted in line with a notified policy. A draft policy was placed on the website of the Department of Mines & Geology on 1-Oct-2014, well before any lease was renewed. This policy clearly stated that it was subject to vetting for "*exact legal requirements from specific necessities as also from financial view points.*" This document further goes on to state that after such vetting is completed, the policy will be notified thereafter.

As per all legal norms, a policy comes into force when it is gazetted. A final Goa Grant of Mining Leases Policy, 2014² was notified in the Government Gazette only on 20-Jan-2015. *Interestingly, this is after the 88 leases had already been renewed.* The MMDR Amendment Ordinance, 2015 notified on 12-Jan-2015, however, eliminated the possibility of granting renewals of leases without auction. Consequently, the policy was infructuous on the day it was issued. Thus it is clear that the leases were renewed without a policy in force, in wilful disregard of the judgement of the Supreme Court.

e) Leases renewed despite on-going investigations into illegalities

Many of the leases renewed had a number of violations reported during their past activity of mining. There have been a number of other reports with adverse findings. These include the Public Accounts Committee Report, the Shah Commission Reports 1-3, the Central Empowered Committee Report as well as the Expert Appraisal Committee Report (MOEF Committee chaired by Vishwanath Anand). Copies of these reports can be supplied to the CAG on request.

A number of parallel civil and criminal investigations are underway that have implications for the mining leases. For example, the Shah Commission Report 3 deals with under-invoicing of exports of iron ore. Sesa Sterlite has been named multiple times in this report. The Enforcement Directorate has initiated an investigation into the findings of this report. Despite this cloud of widespread illegal practices and on-going serious investigations, the

² 1415—52-SI-EOG-2

mining leases have been renewed. Under any normal circumstances, such entities would not be considered appropriate entities to issue leases to – they fail “the fit and proper person test”. Just like a contractor whose bridges fail due to poor construction would not be selected to build another bridge – he is not a fit and proper for further contracts for building bridges.

The Supreme Court on Maximum Revenues from Natural Resources

In its judgement dated 21.4.2014, the Supreme Court directed the state of Goa to grant mining leases in accordance with its policy decision, the law (the MMDR Act) and in accordance with constitutional provisions. Constitutional provisions require the State of Goa to maximise what it receives for natural resources, unless there is an overriding social or welfare purpose. This would usually require an auction. In fact, the landmark 2G Presidential Reference judgment of the Supreme Court of India observes:

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

The Goa Foundation has written to the Chief Minister on 15-May-2014 sharing the analysis, and recommending a way forward to maximising revenues, and dealing with the interim dislocation. We have also written on 29-May-2014 pointing out the implications of the Supreme Court judgment in the 2G Presidential Reference case. Our Press Note dated 12-Dec-2014 also lays out the logic and a potential path for the Government to take. All

these documents are annexed as **Exhibit 5 colly** and are to be found in the CD annexed. The Goa government and the officials named in the complaint are well aware of the constitutional position enunciated by the Apex Court.

In addition to the above, we note the following:

1. Rs. 1083.63 crores has been paid / demanded as stamp duty for these leases. This was calculated as per the Stamp Act as 15% of the royalty over 20 years assuming extraction at the EC limits (43.973 MMT). This implies an anticipated total collection of royalty of Rs. 7,224 crores over 20 years, or Rs. 361.21 crores a year. However, the leases last for another 12 years. Therefore, the royalty estimated is Rs. 4,335 crores. Our estimate is Rs. 4,467 crores, which is very close.

The stamp duty charge has been levied by the Government of Goa for the purpose of the stamp duty payable under the Stamp Duty Act. Such a charge does not reflect the value of the ore handed over through the leases to private persons and does not fall under the category of maximizing of revenue.

2. We also note here that an amount conservatively estimated at Rs. 118,663 crores is recoverable on account of illegal mining after 22-Nov-2007. The Goa Foundation has written to the Goa government on 30-Apr-2014 and again on 11-Dec-2014 (**Exhibit 6 on CD**). In a similar situation in Odisha, the state government renewed the lease from the date of execution, rather than the prior date of expiry (**Exhibit 7 on CD**). However, this has not been done in the cases of renewal of the 88 leases in Goa. By renewing the leases without specifying a date from which the lease would take effect, the State of Goa is willing to create a situation by which it can deny its legitimate claim to Rs. 118,663 crores for itself and the welfare of the people – this is more than Rs. 8 lakhs per person (population of 15 lakhs).

Therefore, the total loss to the people of the State is conservatively Rs.1,50,000 crores, and may easily cross Rs. 2,00,000 crores.

We request you to investigate this complaint. The Goa Foundation will be glad to assist with the inquiry, if called upon to do so.

Sincerely,

A handwritten signature in black ink, appearing to read 'Claude Alvares', with a horizontal line underneath.

Dr Claude Alvares
Director

Encl:

- 1) Tables A-C
- 2) CD with Exhibits 1-7