

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. NO. /2015

IN

WRIT PETITION (CIVIL) NO. 435/2012

IN THE MATTER OF:

GOA FOUNDATION

...PETITIONER

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENTS

AND IN THE MATTER OF:

GEETABALA PARULEKAR,  
widow, aged 74 years,  
married, Indian National,  
residing at House No. 79,  
Altinho, Mapusa, Bardez,  
Goa.

Through  
Power of Attorney  
Sh. Rajiv Kumar

VERSUS

1. GOA FOUNDATION,  
a Society registered under  
the Societies' Registration Act, 1860,  
having its Registered Office at  
7, Le Brag Chambers,  
Mapusa, Goa,  
through its Secretary and  
Authorized Representative,  
Dr. Claud Alvares.

2. STATE OF GOA,  
Through its Chief Secretary,  
State Secretariat,  
Porvorim, Bardez-Goa.

3. MINISTRY OF ENVIRONMENT AND FORESTS,  
through its Secretary,  
Ministry of Environment & Forests,

CGO Complex, Lodhi Road,  
New Delhi.

4. MINISTRY OF MINES,  
through its Secretary,  
Ministry of Mines,  
New Delhi.

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...RESPONDENTS

**APPLICATION FOR DIRECTIONS AND MODIFICATION**

**MOST RESPECTFULLY SHOWETH:**

1. The Applicant states that the Applicant was arrayed as Respondent No. \_\_\_ in Writ Petition (Civil) No. 435/2012. The Applicant states that this Hon'ble Court vide Judgment and Order dated 21/4/2014 has been pleased to dispose of the Writ Petition (Civil) No. 435/2012. A copy of the Judgment and Order dated 21/4/2014 as reported in **2014 (6) SCC 590** is hereto annexed and marked as "**ANNEXURE A-1**" to this Application.
2. The Applicant states that whilst disposing the said Writ Petition, this Hon'ble Court, inter alia directed that henceforth the Mining Lessees of Iron Ore will have to pay 10% of the sale price of the Ore sold by them to the Goan Iron Ore Permanent Fund. The directions as regards payment of 10% of sale price of the Ore to the Goa Iron Ore Permanent Fund are found in Paragraphs 78 and 88.9 of the reported Judgment and Order dated 21/4/2014.
3. That it is respectfully submitted that the aforesaid directions were issued by this Hon'ble Court keeping in light the fact that there was no legislation that governed the field and therefore, under Article 32 this Hon'ble Court issued the aforesaid directions. It is now settled by this Hon'ble Court that directions and/or guidelines issued by this Hon'ble Court under Article 32 or 142 will operate only till the appropriate legislature does not legislate on the subject matter and fill the legal vacuum. It is

submitted that this Hon'ble Court in the case of **Vishaka v. State of Rajasthan, (1997) 6 SCC 241** had observed as under:

*"16. In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplaces, we lay down the guidelines and norms specified hereinafter. for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution."*

*"18. Accordingly, we direct that the above guidelines and norms would be strictly observed in all workplaces for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These writ petitions are disposed of, accordingly."*

4. That such powers of this Hon'ble Court were further explained by this Hon'ble Court in the case of Vineet Narain vs Union of India (1998) 1 SCC 226 wherein it was observed as under:

*"49. There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Article 144 of the Constitution. In a catena of*

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*decisions of this Court, this power has been recognised and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role. It is in the discharge of this duty that the IRC was constituted by the Government of India with a view to obtain its recommendations after an in-depth study of the problem in order to implement them by suitable executive directions till proper legislation is enacted. The report of the IRC has been given to the Government of India but because of certain difficulties in the present context, no further action by the executive has been possible. The study having been made by a Committee considered by the Government of India itself as an expert body, it is safe to act on the recommendations of the IRC to formulate the directions of this Court, to the extent they are of assistance. In the remaining area, on the basis of the study of the IRC and its recommendations, suitable directions can be formulated to fill the entire vacuum. This is the exercise we propose to perform in the present case since this exercise can no longer be delayed. It is essential and indeed the constitutional obligation of this Court under the aforesaid provisions to issue the necessary directions in this behalf. We now consider formulation of the needed directions in the performance of this obligation. The directions issued herein for strict compliance are to operate till such time as they are replaced by suitable legislation in this behalf."*

*"52. As pointed out in Vishaka [(1997) 6 SCC 241 : 1997 SCC (Cri) 932] it is the duty of the executive to fill the*

vacuum by executive orders because its field<sup>5</sup> is coterminous with that of the legislature, and where there is inaction even by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations under the aforesaid provisions to provide a solution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field."

5. The Applicant most respectfully submits that on account of subsequent events, which have occurred, more particularly, coming into force of the Mines and Minerals (Development & Regulation) Amendment Act, 2015 with effect from 12<sup>th</sup> January 2015, the issue pertaining of the formation of the fund as well as the aspect of contribution would necessarily have to be governed by the statute. A copy of the Mines and Minerals (Development & Regulation) Amendment Act, 2015 is hereto annexed and marked as "**ANNEXURE A-2**" to this Application.

6. The Applicant states that the MMDR Act, 1957, has been exhaustively amended by the Parliament by bringing into force the Mines and Minerals (Development & Regulation) Amendment Act, 2015. The same received the assent of the Hon'ble President of India on 26<sup>th</sup> March, 2015 and was brought into force retrospectively on 12/1/2015. The Central Government which is concerned with and responsible for regulation and control of the mining and mining related operations in the entire Country, has brought about the amendment to the Principal Act. The Applicant states that in the MMDR Act, 1957, prior to the amendment, there was no provision for payment of additional amount, apart from the royalty and other statutory dues by the Mining Lessees, for the mining affected people and/or areas. The only requirement under the Mineral Conservation and Development Rules, 1988 was that the mining lessee would undertake rehabilitation after exhaustion

of the minerals. It is in this background that this Hon'ble Court issued the aforesaid directions.

7. The Applicant states that by way of amendment, the Parliament has introduced/inserted Section 9B in the Principal Act, which reads thus:-

*"9B(1) In any district affected by mining related operations, the State Government shall, by notification, establish a trust, as a non-profit body, to be called the District Mineral Foundation.*

*(2) The object of the District Mineral Foundation shall be to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government.*

*(3) The composition and functions of the District Mineral Foundation shall be such as may be prescribed by the State Government.*

*(4) The State Government while making rules under sub-sections (2) and (3) shall be guided by the provisions contained in article 244 read with Fifth and Sixth Schedules to the Constitution relating to administration of the Scheduled Areas and Tribal Areas and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.*

*(5) The holder of a mining lease or a prospecting licence-cum-mining lease granted on or after the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the*

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*royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount which is equivalent to such percentage of the royalty paid in terms of the Second Schedule, not exceeding one-third of such royalty, as may be prescribed by the Central Government.*

*(6) The holder of a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount not exceeding the royalty paid in terms of the Second Schedule in such manner and subject to the categorization of the mining leases and the amounts payable by the various categories of lease holders, as may be prescribed by the Central Government”.*

8. The Applicant states that Section 9B specifically provides for establishment of a Trust as a Non-profit body by the State Government to be called **“District Mineral Foundation”**. Sub-section (2) clearly provides that the object of District Mineral Foundation shall be to work for the interest and benefit of the persons and the areas affected by mining related operations, as may be prescribed by the State Government. The composition of the District Mineral Foundation is also to be prescribed by the State Government.

9. In case of Mining Leases renewed/granted on or after the coming into force of the Mines and Minerals (Development & Regulation) Amendment Act, 2015, in terms of sub section (5) it is provided that in addition to the royalty, the concerned Lessee shall pay to the District Mineral Foundation an amount which is equivalent to such percentage of the royalty paid in terms of

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Second Schedule, not exceeding 1/3<sup>rd</sup> of such royalty, as may be prescribed by the Central Government.

10. In so far as the Mining Leases renewed/granted prior to the coming into force of the Mines and Minerals (Development & Regulation) Amendment Act, 2015, are concerned, it is stipulated in terms of sub-section (6) that in addition to the royalty, the Mining Lessee shall pay an amount not exceeding the royalty paid in terms of Second Schedule, in such manner and subject to the categorization of the Mining Leases and the amounts payable by the various categories of leaseholders, as may be prescribed by the Central Government. The Applicant's Lease having been renewed prior to 12<sup>th</sup> January, 2015, the Applicant is governed by sub-section (6) of section 9B.

11. The Applicant respectfully submits that Section 9B fully takes care of the mining affected persons/areas. It covers all leases throughout the Country, whether renewed/granted prior to the coming into force of the Mines and Minerals (Development & Regulation) Amendment Act, 2015, or post coming into force of the Mines and Minerals (Development & Regulation) Amendment Act, 2015. The amount to be contributed by the Lessees is to be prescribed by the Central Government, who also fixes the royalty to be paid by the Mining Lessees in terms of the MMDR Act, 1957. The Applicant states that the contribution towards the District Mineral Foundation is part of the regulatory function of the Central Government in terms of Entry 54 of the Union List of the Constitution of India. The Central Government has the requisite knowledge, expertise and the experience about the Mining Industry to fix appropriate amount required to be contributed to the District Mineral Foundation, by taking into consideration the interests of all stakeholders.



12. The Applicant states that the direction of this Hon'ble Court for contribution of 10% of sale proceeds to the Goan Iron Ore Permanent Fund by the Mining Lessees in Goa was issued when there was no provision for setting up District Mineral Foundation for taking care of the persons and the areas affected by mining related operations. The intention, object and purpose in providing for contribution of 10% sale proceeds to the Goan Iron Ore Permanent Fund, has now been expressed in the form of legislation.

13. The Applicant states that the establishment of District Mineral Foundation and contribution to the District Mineral Foundation by the Mining Lessees applies across the board to all the Mining Lessees in the Country, including the Mining Lessees in the State of Goa. The Mining Lessees in the State of Goa and the other Lessees in the Country are governed by the same set of Rules and Regulations, i.e. MMDR Act, 1957 and the Rules made thereunder.

14. The Applicant submits that there is a distinct overlap between the legislation and the directions as the avowed object of creation of the fund is the same.

15. The Applicant respectfully submits that the legislature has entrusted the Central Government, which is entrusted with the duty to control and regulate the mining operations in the entire Country, and has thought it fit in its wisdom and perhaps has taken a cue from the directions of this Hon'ble Court, in coming up with the Amendment, whereby the District Mineral Foundation would be set up and contributions from the Mining Lessees shall be made to the District Mineral Foundation to take care of the mining affected person and/or areas.

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16. In the aforesaid circumstances, it is humbly prayed as under:-

**PRAYERS**

(A) Direct that the mining lessees of iron ore in the State of Goa would be governed only by the provisions of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 for the purpose of contribution and creation of Fund;

(B) Such other and further reliefs that this Hon'ble Court deems fit and proper.

FILED BY:

(YASHRAJ SINGH DEORA)

Advocate for the Applicant

Place:-NEW DELHI.

Dated:-

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Goa Foundation

...Petitioner

-Versus-

Union of India & Ors.

...Respondents

IN THE MATTER OF:

Geetabala M. N. Parulekar

...Applicant

AFFIDAVIT

I, Shri. Rajiv Kumar, aged about 43 years, Indian National, residing at Old Goa, Goa presently at New Delhi, Power of Attorney Holder of Smt. Geetabala M. N. Parulekar, widow, aged 76 years, Indian National, residing at House No. 79, Altinho Mapsua, Bardez, Goa, do hereby solemnly affirm and declare as under

1. That I am the Power of Attorney holder of Smt. Geetabala Manohar Naik Parulekar (Applicant herein) and am well conversant with the facts of the case and I am competent to depose to this affidavit.
2. That the statements of the facts contained in the accompanying application in the aforementioned Writ Petition are true and correct to my knowledge and belief.
3. That the annexures filed with the accompanying application are true copies of their respective originals.

  
DEPONENT

**VERIFICATION:**

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I, swear that the contents of my above affidavit are true and correct to the best of my knowledge and belief and the information is derived from the record of the case and nothing material is suppressed or concealed therefrom.

Verified at \_\_\_\_\_ on this the \_\_\_\_\_ day of August, 2015.

  
DEPONENT