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MAHARASHTRA POLLUTION CONTROL BOARD

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Kalpataru Point, 2nd, 3rd & 4th floor,
Opp. Cine Planet Cinema,
Near Sion Circle, Sion (E),
Mumbai-400 022.

MPCB/AS(T)/B- 5110 *Date: 23.08.2012*

To,

Sr. Law Officer,
M.P.C. Board,
Mumbai.

Sub: Environment Clearance at the time of Renewal of Mining Lease: Judgement of the High Court of Delhi.

Ref: Letter received from Federation of Indian Mineral Industries vide letter No, C/60/12/917 dated 1.08.2012.

Please find enclosed herewith copy of the Judgement of Hon. High Court of Delhi regarding Environment Clearance at the time of Renewal of Mining Lease.

You are requested to do the needful at the earliest.

(V.B. Waghjale) 23/8/12
Assistant Secretary (Technical)

Encl: a/a.

Miss
Sunita
Pl run after examining through FIC C'O
& give me one soft copy
& place on website
& circulate it to
Cdl 12 DOs & 14 DDs
to bring to the

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FEDERATION OF INDIAN MINERAL INDUSTRIES
FIMI HOUSE, B-311, Okhla Industrial Area, Phase-I, New Delhi-110020 (India)
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C/60/12/917

1 August, 2012

120807ET0339

Shri Jatinder Singh Sahni
Chairman,
Maharashtra State Pollution Control Board
Kalpataru Points, 3rd & 4th Floor,
Opp. Cine Planet, Sion Circle, Sion (E),
Mumbai-400 022
Maharashtra

Dear Sir,

Sub: **Environment clearance at the time of renewal of a mining lease : Judgment of the High Court of Delhi**

We send herewith a copy of the Judgment delivered by the Hon'ble High Court of Delhi which has held that if a lease holder already has a valid and subsisting EC, there cannot be a requirement that during the validity and subsistence of the said EC, he would be asked to get another EC at the point he seeks renewal.

We quote hereunder the operative paragraph giving Judgment of the Hon'ble High Court of Delhi :

> *In our view, it does not mean that if a person has a valid and subsisting EC at the point of time he seeks a renewal of the mining lease, he would still be required to obtain another EC prior to the grant of renewal by the respondents. That, in our view, is not the intent and purport of the Supreme Court directions in **M.C. Mehta** (supra). The clear direction of the Supreme Court was that there ought not to be any mining activity without an EC. If the lease holder already has a valid and subsisting EC, there cannot be a requirement that during the validity and subsistence of the said EC, he would be asked to get another EC at the point he seeks renewal. We agree with the learned counsel for the petitioners that if the intent of the respondents was to comply strictly with the directions and observations of the Supreme Court in **M.C. Mehta** (supra), the same would be fully realized by reading the amendment introduced to Colum No.5 of the Schedule 1(a) of the Notification of 2006 by virtue of the Notification of 2011 in such a way that it would not apply to mining projects / units which already possess valid and subsisting ECs. It is declared accordingly. This being the position, there is no need for us to examine the alternative prayer of the petitioners. The writ petitions are allowed as above. There shall be no order as to costs.*

Thanking you,
Yours faithfully,

(R.K. SHARMA)
SECRETARY GENERAL

Encl: **As above**

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THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 01.08.2012

\+ **W.P. (C) 2025/2012**

M/S S.N. MOHANTY & ANOTHER ... Petitioners

Versus

UNION OF INDIA & OTHERS ... Respondents

Advocates who appeared in this case:
For the Petitioners : Mr Parag Tripathi, Sr Advocate with Mr R.M. Patnaik, Mr Anand Varma and Mr Anuj Bhandari
For the Respondents 1-3 : Mr Sachin Dutta

AND

WP (C) 1430/2012

FEDERATION OF INDIAN MINERAL INDUSTRIES ... Petitioner

Versus

UNION OF INDIA & OTHERS ... Respondents

Advocates who appeared in this case:
For the Petitioners : Mr Parag Tripathi, Sr Advocate with Mr R.M. Patnaik, Mr Anand Varma and Mr Anuj Bhandari
For the Respondents 1-3 : Mr S.C. Sharma

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J

1. These writ petitions raise common issues and are, therefore, being dealt with together. We shall, however, be referring to the facts of WP(C) No.2025/2012 (M/s S.N. Mohanty and Another v. Union of India and Another) for the sake of convenience. Furthermore, we shall be considering the facts insofar as the petitioner No.1 in that writ petition, namely, M/s S.N. Mohanty, is concerned.

2. The prayers made are, *inter alia*, as under:-

> "(a) Declare that the notification dated 4th April 2011 shall not be applicable to mining projects / units which already possess valid and subsisting Environmental Clearances (EC);
>
> (b) In the alternative to prayer (a), issue an appropriate writ order quashing the Notification SO No.695(E) dated 4th April, 2011 issued by the Ministry of Environment and Forests, Government of India insofar that it seeks to substitute Column 5 of Item 1(a) of Notification SO No.533(3) dated 14th September, 2006."

3. As can be seen from the prayers indicated above, the petitioners essentially seek a declaration that the notification dated 04.04.2011 is not applicable to mining projects / units, which already possess valid and subsisting environmental clearances. It is only in the

alternative to this, that a prayer has been made for issuance of an appropriate writ or order quashing the said notification dated 04.04.2011 issued by the Ministry of Environment and Forests, Government of India to the extent it seeks to substitute Column No.5 of Item No.1(a) of the Notification dated 14.09.2006.

4. Before we embark upon a discussion of the rival contentions of the parties, it would be appropriate to briefly refer to the relevant provisions of the said two notifications. The notification dated 14.09.2006 (hereinafter referred to as 'the Notification of 2006') was issued by the Ministry of Environment and Forests under Sections 3(1) and 3(2)(v) of the Environment (Protection) Act, 1986 read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986 and was in supersession of the earlier Notification of 27.01.1994. By virtue of the Notification of 2006, the Central Government directed that on and from the date of the publication of the said notification, the required construction of new projects or activities or the expansion or modernisation of the existing projects or activities listed in the Schedule to the said Notification entailing capacity addition with change in process and / or technology can be undertaken in any part of India only after the prior environmental clearances from the Central Government or, as the

case may be, by the State Level Environment Impact Assessment Authority duly constituted by the Central Government under Section 3(3) of the said Act, in accordance with the procedures specified in the notification. It is important to note that this notification was in respect of new projects or activities or the expansion or modernisation of the existing projects or activities listed in the Schedule to the Notification which entailed capacity addition with a change in process and / or technology.

5. We now move on to paragraph 2 of the Notification of 2006 which reads as under:-

> "**2. Requirements of prior Environmental Clearance (EC)**:- The flowing projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:
>
> (i) All new projects or activities listed in the Schedule to this notification;
>
> (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned

sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product – mix in an existing manufacturing unit included in Schedule beyond the specified range."

Paragraph 7(1) is also relevant and the same reads as under:

> "7. **Stages in the Prior Environmental Clearance (EC) Process for New Projects:-**
>
> **7(i)** The environmental clearance process for new projects will comprise of a maximum of four stages, all of which may not apply to particular cases as set forth below in this notification. These four stages in sequential order are:-
>
> - Stage (1) Screening (Only for Category 'B' projects and activities)
> - Stage (2) Scoping
> - Stage (3) Public Consultation
> - Stage (4) Appraisal"

6. We now move on to paragraph 9 of the said Notification of 2006 which is with regard to the validity of the Environmental Clearance (EC). The same reads as under:-

> "9. **Validity of Environmental Clearance (EC):** The "Validity of Environmental Clearance" is meant the period from which a prior environmental clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted under sub paragraph (iv) of paragraph 7 above, to the start of production operations by the project or activity, or completion of all construction operations in case of construction projects (item 8 of the Schedule), to which the application for prior environmental clearance refers.

> The prior environmental clearance granted for a project or activity shall be valid for a period of ten years in the case of River Valley projects [item 1(c) of the Schedule], project life as estimated by Expert Appraisal Committee or State Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects and five years in the case of all other projects and activities. However, in the case of Area Development projects and Townships [item 8(b)], the validity period shall be limited only to such activities as may be the responsibility of the applicant as a developer. This period of validity may be extended by the regulatory authority concerned by a maximum period of five years provided an application is made to the regulatory authority by the applicant within the validity period, together with an updated Form 1, and Supplementary Form 1A, for Construction projects or activities (item 8 of the Schedule). In this regard the regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee as the case may be."

Reading the above provisions of the notification, it becomes clear that the requirement of an EC is prescribed only in respect of the following projects or activities:-

1) New Projects or activities listed in the Schedule to the Notification;
2) Expansion and modernisation of the existing projects or activities listed in the Schedule to the Notification with addition of capacity beyond the limits specified for the concerned sector, i.e., projects or activities which cross the threshold

limits given in the Schedule, after expansion or modernization;

3) Any change in product – mix in an existing manufacturing unit included in the Schedule beyond the specified range.

7. It is also clear that prior environmental clearance granted for a project or activity is to be valid for a period of 10 years in the case of river valley projects, and, insofar as mining projects are concerned, the validity of the EC is for the project life as estimated by the Expert Appraisal Committee or the State level Expert Appraisal Committee, subject to a maximum of 30 years. Insofar as the other projects are concerned, the validity of the EC is five years.

8. In the present case, we are concerned with mining projects and, therefore, the validity of the EC would be for the entire project life, but subject to a maximum of 30 years. In other words, if the project life extends beyond 30 years, the EC would be available only for 30 years and after that a fresh EC would be required.

9. We are now required to consider the Schedule to the said Notification of 2006 which provides a list of projects or activities

requiring prior EC. We are concerned only with Item No.1(a) of the Schedule which reads as under:-

"SCHEDULE
(See paragraph 2 and 7)
LIST OF PROJECTS OR ACTIVITIES REQUIRING PRIOR ENVIRONMENTAL CLEARANCE

Project or Activity	Category with threshold limit			Conditions if any
	A	B		
1	xxx	xxx	xxx	xxx
(1)	(2)	(3)	(4)	(5)
1(a)	Mining of minerals	^{3} 50 ha. of mining lease area Asbestos mining irrespective of mining area	<50 ha ^{3} 5 ha. of mining lease area	General Conditions shall apply. Note Mineral prospecting (not involving drilling) are exempted provided the concession areas have got previous clearance for physical survey

"

In Column (5) containing the conditions, it is mentioned that General Conditions shall apply. It is followed by a note which does not concern the present controversy.

10. Now, by virtue of the Notification dated 04.04.2011, several amendments were introduced in the said Notification of 2006. In other words, the Notification dated 04.04.2011 (hereinafter referred to as 'the Notification of 2011') was an amending notification seeking to amend

certain parts of the earlier Notification of 2006. The amendment with which we are concerned is the one that has been brought about in Column (5) of Item 1(a) of the Schedule. The entire contents of the earlier Column (5) are to be substituted by the following:

> "General condition shall apply.
> Note
> (i) Prior environmental clearance is as well required at the stage of renewal of mine lease for which appliance should be made up to one year prior to date of renewal.
> (ii) Mineral prospecting is exempted.
> xxxx xxxx xxxx"
>
> (Underlining added)

11. It is apparent that by way of the Notification of 2011, an amendment has been introduced in the Notification of 2006, whereby it is now a requirement that even at the stage of renewal of a mining lease and not just at the stage of grant of initial lease, prior environmental clearance is necessary.

12. Mr Parag Tripathi, the learned senior counsel, appearing for the petitioners, submitted that the prayers made are fashioned in such a way that the grant of the declaration sought would remove the grievance of the petitioners as well as save the Notification. It is for this reason that the petitioners seek a declaration to the effect that the Notification of

04.04.2011 does not apply to mining projects / units which already possess valid and subsisting environmental clearances (ECs). According to Mr Parag Tripathi, if such a declaration is granted, there would be no need for the petitioners to seek the quashing of the Notification of 2011 to the extent it seeks to substitute the contents of the Column No.5 of Item No.1(a) of the Schedule to the Notification of 2006. Mr Tripathi submitted that there is no logic in the requirement of an Environmental Clearance at the renewal stage in cases of persons, like the petitioners, who were working the mines and already had valid and subsisting ECs. He further submitted that the EC itself imposed stringent conditions which could not be deviated from. It was pointed out that, for example, the EC given to M/s S.N. Mohanty on 15.01.2007 comprises of several Specific Conditions as well as General Conditions.

13. Before we examine the contentions of the EC granted to M/s S.N. Mohanty, it may be relevant to point out at this stage that M/s S.N. Mohanty had been working the mines under a mining lease granted to it on 02.04.1982 for a period of 30 years. At that point of time, there was no requirement of obtaining an EC. It is subsequent to the enactment of the said Environment Act and the decision of the Supreme Court in ***M.C. Mehta v. Union of India and Others*: 2004 (12) SCC 118** that the

petitioner No.1 (M/s S.N. Mohanty) thought it advisable to apply for an EC even prior to the due date of renewal of the mining lease. It is in this backdrop that, before the initial 30 years period of the mining lease expired, that is, much prior to 02.04.2012, in the year 2006-07 itself, the said M/s S.N. Mohanty applied for an EC and the same was granted on 15.01.2007. As we have seen above, the said EC is for the project life, subject to a maximum of 30 years. The petitioner No.1's mining lease was, as mentioned above, initially for a period of 30 years and it was renewable for another two periods of 20 years each. The first renewal fell due, as mentioned above, on 02.04.2012. Thus, it is clear that even prior to the renewal falling due on 02.04.2012, the said M/s S.N. Mohanty had obtained the EC on 15.01.2007.

14. The EC granted to the said M/s S.N. Mohanty indicated in paragraph 2 that the Ministry of Environment and Forests had examined the application in accordance with Section 12 of the EIA Notification, 2006 read with para 2.1 1(i) of the Circular No.J-1-11013/41/2006-IA.II(I) dated 13.0.2006 (sic) and accorded the EC to the Rakela Iron Ore Mining Project of M/s S.N. Mohanty for an annual production capacity of 3,00,000 tonnes (0.3 million tonnes) of iron ore by opencast semi mechanized method involving mining lease area of 18.31 ha, subject to

implementation of the specific and general conditions and environmental safeguards prescribed in the said EC. The Specific Conditions require compliance with detailed instructions with regard to, *inter alia*, regular monitoring of ground water level, plantations, dimensions of retaining walls, forestry clearance, catch drains, top soil, rain water harvesting, vehicular emissions, blasting operations, manner in which drills are to be operated, sewage treatment plant, etc. Apart from this, compliance is also required with the General Conditions. One of the General Conditions is that there should be no change in the mining technology and scope of work should be made without prior approval of the Ministry of Environment and Forests. Another condition is that no change in the calendar plan, including the excavation quantum of mineral iron ore and waste should be made. Measures should be taken for control of noise levels below 85 dBA in the work environment. It is also required that industrial waste water should be properly collected and treated so as to conform to the prescribed standards. There are several other such General Conditions which require compliance on the part of the person to whom the mining lease has been given.

15. Importantly, paragraph 3 of the EC stipulates that the Ministry or any other competent authority may alter / modify the above Special or

General Conditions or stipulate any further conditions in the interests of environment protection. Paragraph 4 of the EC further stipulates that failure to comply with any of the conditions mentioned above may result in withdrawal of the clearance and attract action under the Environment (Protection) Act, 1986.

16. It was, therefore, contended on behalf of the petitioners that the conditions indicated in the EC fall in a very broad spectrum and give ample powers to the respondents to regulate the environmental conditions. In this backdrop, Mr Tripathi submitted that the amending Notification of 2011, which introduced a stipulation requiring an environmental clearance at the renewal stage even in respect of those who already had an environmental clearance, would be an arbitrary and onerous condition. He submitted that the preparation leading upto the application of an EC required enormous financial expenditure which could run into more than a crore of rupees and which also entailed a time consuming process which would, in the minimum, be of 210 days. It was, therefore, submitted by Mr Tripathi that the Notification of 04.04.2011 should be read in such a way that it applied only to those mining operations which did not already have an EC at the time they sought renewal of the mining lease. The notification ought not to apply

to those persons who already have a valid and subsisting EC which would cover the entire period of renewal that they were seeking. In the facts of M/s S.N. Mohanty, the EC was granted on 15.01.2007 and was valid for 30 years, whereas the renewal that is sought with effect from 02.04.2011, would be for 20 years and, as such, the EC, which had already been given to the petitioner No.1 (M/s S.N. Mohanty), would cover the entire period of renewal also. It was, therefore, contended that apart from being arbitrary, it would be illogical to require a person, such as M/s S.N. Mohanty to once again apply for an EC when it already possessed a valid and subsisting EC.

17. Mr Tripathi reiterated that it was not their intention to seek the quashing of the notification or any part thereof, but, to seek a declaration, as indicated above, which would save the notification as also remove the grievance of the petitioners.

18. The learned counsel appearing on behalf of the respondents submitted that the amendment, which has been introduced by virtue of the Notification of 2011, was with a view to conform to the directions and observations of the Supreme Court in the case of ***M.C. Mehta*** *(supra)*. Mr Sachin Dutta, appearing for the respondents in one of the petitions,

submitted that they have been candid enough to state that in their earlier notification of 2006, they had not properly brought out the intendment of the Supreme Court in ***M.C. Mehta*** *(supra)* inasmuch as there was no provision relating to the renewal of a mining lease. He submitted that there is a specific direction given in ***M.C. Mehta*** *(supra)* in paragraph 76 thereof to the extent that it is settled law that the grant of renewal is a fresh grant and must be consistent with law. Thus, according to Mr Dutta, the very same conditions which necessarily apply at the stage of grant of a mining lease, would also apply at the stage of renewal of the said lease. One of the conditions necessary for the grant of a fresh mining lease is that there must be a prior EC. So, if the same conditions were to apply, at the time of renewal of the lease, it would mean that a prior EC would also be necessary at the time of the renewal of the lease and, it is because of this understanding of the Supreme Court decision in ***M.C. Mehta*** *(supra)*, which has dawned upon the respondents, albeit after some delay, they have brought out the said amending Notification of 2011 so that renewals are also brought within the ambit of the Notification of 2006. In sum and substance, Mr Dutta as also the other counsel, appearing on behalf of the respondents, submitted that they were

simply implementing their understanding of the Supreme Court decision in ***M.C. Mehta*** *(supra)* insofar as renewals were concerned.

19. We have already seen that the Notification of 2006 did not speak of renewals. But, it must be noted that the said Notification of 2006 was clearly in respect of (1) new projects or activities listed in the Schedule to the said Notification; (2) expansion and modernization of the existing projects or activities, etc.; and (3) any change in the product mixed in an existing manufacturing unit, included in the Schedule to the Notification beyond the specified range. In other words, the scope of the Notification of 2006 was essentially to cover all the new projects, expansions, modernizations, change in technology, change in capacity, change in product mix, etc. This meant that it was targeted in respect of any change. In other words, the requirement of an EC was necessary whenever there was any change. Be it by setting up new projects or expanding an existing one or changing the technology of the existing project or changing the product mix of an existing manufacturing unit. If we read the Notification of 2006 strictly, it did not apply to a situation where there was no change. We realize that the notification of 2006 was introduced after the decision of the Supreme Court in ***M.C. Mehta*** *(supra)*. Therefore, it would be necessary for us to examine the scope

and width of the observations and directions given in ***M.C. Mehta*** *(supra)*.

20. In the context of the applicability of the earlier Notification of 27.01.1994, which was superseded by the Notification of 2006, the mining lease holders had urged before the Supreme Court that the leases in question do not relate to expansion or modernization of any activity as postulated by the said notification. They further contended that the said Notification of 1994 applied only to a new project which meant that it would apply to mining leases granted after the issuance of the notification. It was argued on behalf of the lease holders that the renewal of the existing mining lease was neither an expansion nor modernization nor was it a new project and, therefore, the Notification of 1994 would have no applicability at the time of consideration of the renewal of the lease. The contention, therefore, before the Supreme Court was that since a renewal did not fall within the scope of expansion or modernization nor was it a new project, therefore, the Notification of 1994 would not apply to mining leases even at the stage of renewal. Consequently, it was argued before the Supreme Court that no EC would be necessary in such cases even at the time of renewal. It is in this backdrop that the Supreme

Court, negativing the contentions raised on behalf of the mining lease holders, held as under:-

> "75. Be that as it may and reverting to legal position in Ambica Quarry Works v. State of Gujarat and Ors.: 1987 (1) SCC 213, though a case under Forest (Conservation) Act, 1980 rejecting the contention that approval at the stage of renewal was not necessary and also the plea that since the leaseholders had invested sum of money in mining operation, it was the duty of the authorities to renew the lease, it was held that having regard to the awareness that deforestation and ecological imbalances as a result of deforestation have become social menaces and the same should be prevented and that the concept that power coupled with the duty enjoined upon the respondents to renew the lease stood eroded by the mandate of the FC Act. It was held that The primary duty was to the community and that duty took precedence. In such cases, the obligation to the society must predominate over the obligation to the individuals. It would be apposite to reproduce what was said by Justice Mukherjee (as he then was) in paras 14 and 15 which read thus:
>
> > "14. Here the case of the appellants is that they have invested large sums of money in mining operations. therefore, it was the duty of the authorities that the power of granting permission should have been so exercised that the appellants had the full benefits of their investments. It was emphasized that none of the appellants, had committed any breach of the terms of grant (SIC)or were there any other factors disentitling them to such renewal. While there was power to grant renewal and in these cases have were clauses permitting renewals, it might have cast a duty to grant such renewal in the facts and circumstances of the cases specially in view of the investments made by the appellants in the areas covered by the

quarrying leases, but renewals cannot be claimed as a matter of right for the following reasons.

15. The rules dealt with a situation prior to the coming into operation of 1980 Act. '1980 Act' was an Act in recognition of the awareness that deforestation and ecological imbalances as a result of deforestation have become social menaces and further deforestation and ecological imbalances should be prevented. That was the primary purpose writ large in the Act of 1980. therefore the concept that power coupled with the duty enjoined upon the respondents to renew the lease stands eroded by the mandate of the legislation as manifest in 1980. Act in the facts and circumstances of these cases. The primary duty was to the community and that duty took precedence, in our opinion, in these cases. The obligation to the society must predominate over the obligation to the individuals."

76. In Rural Litigation and Entitlement Kendra v. ***State of U.P.***: 1989 Supp (1) SCC 504, agreeing with views expressed in Ambica Quarry Works v. State of Gujarat and Ors.: 1987 (1) SCC 213, it was held that the FC Act applies to renewals as well and even if there was a provision for renewal in the lease agreement on exercise of lessee's option, the requirement of the Act had to be satisfied before such renewal could be granted, in State of M.P. and Ors. v. *Krishnadas Tikaram*: 1995 Supp (1) SCC 587, these two decisions were relied upon and it was held that even the renewal of lease cannot be granted without the prior concurrence of the Central Government. It is settled law that the grant of renewal is a fresh grant and must be consistent with law.

77. We are unable to accept the contention that the notification dated 27th January, 1994 would not apply

> to leases which come up for consideration for renewal after issue of the notification. The notification mandates that the mining operation shall not be undertaken in any part of India unless environmental clearance by the Central Government has been accorded. The clearance under the notification is valid for a period of five years. In none of the leases the requirement of notification was complied with either at the stage of initial grant of the mining lease or at the stage of renewal. Some of the leases were fresh leases granted after issue of the notification. Some were cases of renewal. No mining operation can commence without obtaining environmental impact assessment in terms of the notification."
>
> (Underlining added)

21. Thus, it is apparent from the above extract that the decision of the Supreme Court was that since the renewal of a lease was like a fresh grant, it must be consistent with law. It did not matter if the initial grant was prior to the Notification of 1994. Even if the Notification of 1994 was to be prospective, it would certainly apply to renewals subsequent to 1994. Thus, a prior EC would be necessary whenever a renewal was sought of the initial grant. All that the Supreme Court meant was that after 1994, there could be no fresh grant or renewal of an existing lease unless and until there was a prior EC.

22. In our view, it does not mean that if a person has a valid and subsisting EC at the point of time he seeks a renewal of the mining lease, he would still be required to obtain another EC prior to the grant of

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renewal by the respondents. That, in our view, is not the intent and purport of the Supreme Court directions in ***M.C. Mehta (supra)***. The clear direction of the Supreme Court was that there ought not to be any mining activity without an EC. If the lease holder already has a valid and subsisting EC, there cannot be a requirement that during the validity and subsistence of the said EC, he would be asked to get another EC at the point he seeks renewal. We agree with the learned counsel for the petitioners that if the intent of the respondents was to comply strictly with the directions and observations of the Supreme Court in ***M.C. Mehta (supra)***, the same would be fully realized by reading the amendment introduced to Colum No.5 of the Schedule 1(a) of the Notification of 2006 by virtue of the Notification of 2011 in such a way that it would not apply to mining projects / units which already possess valid and subsisting ECs. It is declared accordingly. This being the position, there is no need for us to examine the alternative prayer of the petitioners. The writ petitions are allowed as above. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

August 01, 2012
dutt