Judicial Approaches in Mining Sector of India

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Abstract: **The growing demand for metals and minerals is continuously pushing up both domestic and international prices. Today, governments perform three primary functions in the minerals sector, information collection and dissemination, regulation, and tax collection. But at the same time environment protection and its preservation is also a concern for all because extraction of natural resources. The term Mining is closely linked with forestry and environment issues. A significant part of the nation's known reserves of some important minerals are in areas which are under forest cover. Further, mining activity is an intervention in the environment and has the potential to disturb the ecological balance of an area. However, the needs of economic development make the extraction of the nation's mineral resources an important priority. A framework of sustainable development will be designed which takes care of bio diversity issues and to ensure that mining activity takes place along with suitable measures for restoration of the ecological balance. Special care need to be taken to protect the interest of host and indigenous (tribal) populations through developing models of stakeholder interest based on international best practice.**

Keywords: **Mining Sector, Indian Industry, Judicial Approaches**

I. INTRODUCTION

Project affected persons need be protected through comprehensive relief and rehabilitation packages in line with the National Rehabilitation and Resettlement Policy.[1] Indian Constitution is perhaps one of the rare constitutions of the world which contains specific provisions relating to environmental protection. It puts duty on the "State" [2] as well as on "Citizens" [3] to protect and improve the environment. The judicial grammer of interpretation has made the right to live in healthy environment as sanctum sanctorum of human right. Now it is considered as an integral of right to life under article 21 of the Constitution. Though, the Supreme Court of India primarily is a court of appeals but it also has original jurisdiction over writs alleging violations of Individual basic rights.[4] The interpretations and decisions of Supreme Court are binding on all lower courts throughout the country.[5] Articles 32 and 226 of the constitution empowers the Supreme Court and the high court, respectively, to issue directions, orders or writs, including writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. The writs of mandamus, certiorari and prohibition are generally restored to environmental matters. The Indian judiciary has made an extensive use of these constitutional provisions and developed a new environmental jurisprudence in India. In India most of the environmental matters have been brought before the judiciary through "Public Interest Litigation" out of all legal remedies available for the protection of environment, the remedy under the constitution is preferred because of its relative speed, simplicity and cheapness.

Fortunately, in India, the people's response to ecological crises is very positive. In certain cases they have formed the pressure froups and exerted influence on the government to take decision on certain development projects only after making proper environmental impact assessment. The Supreme Court while developing a new environmental jurisprudence the Supreme Court under article 32 are not restricted and it could award damages in public interest litigation or writ petition in those cases there has been any harm or damage to the environment due to pollution. In addition to damages, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as deterrent for others not to cause pollution in any manner. The said approach of the Supreme Court is based on "Polluter Pays Principle".[6] "CHIPKO" movement and "APPIKO" movement (in Karnataka) for saving forest for exploitation are the example of people's responses. The judicial response to almost all environmental litigations has been every positive in India. It was observed by Hon'ble Supreme Court of India in *Indian Council for Enviro – legal Action v Union of India*,[7] that the

[1] National Mineral Policy , 2008 : for Non fuel and Non Coal Minerals, 2 (Government of India , Ministry of Mines)

[2] Article 48 A. The Constitution of India , 1950

[3] Article 51 A (g) , The Constitution of India, 1950

[4] Article 32 The Constitution of India

[5] Article 136 The Constitution of India

[6] M.C Mehta v Kamal Nath (1997) 1 SCC 702

[7] (1996) 5 SCC 281

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primary effort of the court while dealing with the environmental related issues is to see that enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of laws even though it is not the function of the Courts to see the day – to – day enforcement of the law, that being the function of the executive, but because of the non – functioning of the enforcement agencies to implement the law. The courts as of necessity have to pass orders directing them to implement the law for the protection of the fundamental right of the people to live in healthily environment. Passing out of the appropriate orders requiring the implementation of the law cannot be regarded as the court having usurped the function of legislature or the executive. Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. Continued tolerance of such violation of law not only renders legal provisions nugatory but such tolerance by enforcement machinery encourage lawlessness and adoption of means which cannot, or ought not to, be tolerated in a civilized society. A law is usually enacted because the legislature feels that it is necessary. Violation after enactment not only adversely affects the existing quality of life or defeats the purpose of its enactment but often result in ecological imbalance and degradation, the adverse effect of which has to be borne by the future generations. Though the judicial development of environment law has been vigorous and imaginative, yet at times it may found wanting.

II. THE JUDICIAL ATTITUDE

The Judiciary has not only played a pivotal role in a manner to interpret the laws but also it has shown judicial activism by entertaining public interest litigations. The Supreme Courts and the High Court's protecting the environment and promoting sustainable development have delivered many important judgments some of them are discussed in this article :-

R.L. & E. Kendra Dehradun v State of U.P.,[8] was the first case of its kind in the country involving issues relating to ecological balance. The case arose from haphazard and dangerous limestone quarrying practices in the Mussoorie Hill Range of Himalayas. The mines in the Doon Valley area denuded the Mussoorie Hills of trees and forest cover and accelerated soil erosion. The Supreme Court was cautious in its approach when it pointed out that it is for the government and the Nation and not for the court, to decide whether the deposits should be exploited at the cost of ecology and environment or the industrial requirements should be otherwise satisfied. The concern of the court for protecting and maintaining the ecological balance in Doon Valley was evident when it was observed that We are not oblivious of the fact that natural resources have got to be tapped for the purpose of the social development but one cannot forget at the same time that tapping of resources' have to be done with the requisite attention and care so that ecology and environment may not be affected in any serious way. There may not be depletion of water recourses and long term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation. Further the court noted that mining activity has to be permitted to the extent it is necessary in the economy and defence interests of the country as also for safeguarding of the foreign exchange position. The Court allowed a mine to operate until the expiry of lease as an exceptional case on undertaking by the lessee that he would subject land taken on lease to afforestration. but when it was brought to the notice that the lessee had made a breach of undertaking and was continuing mining in an uncontrolled manner causing damage to the forest cover area, the Court directed the lessee to pay rupees three lacs to the fund of the monitoring committee which has been constituted earlier by court. In *State of Assam v. Om Prakash Mehta* [9] the Supreme Court has held that the MMDR Act, 1957 (Mines and Minerals (Development and Regulation Act) and the MC Rules, 1960 contain a complete code in respect of the grant and renewal of prospecting licences as well as mining leases in lands belonging to the Government as well as lands belonging to private persons. Also in *Quarry Owners' Assn. v. State of Bihar* [10] the Court held that both the Central and the State Government act as mere delegates of Parliament while exercising powers under the MMDR Act and the MC Rules. The Mining projects of major minerals of more than 5 hectares lease area require environmental clearance as per the Environmental Impact Assessment (EIA) Notification dated 27 January 1994. After the Supreme Court judgment in *M. C. Mehta v. Union of India and Others,*[11] the said EIA notification was amended on 28 October 2004 to include all mining projects of more than 5 hectares that had until then not obtained environment clearance and they were required to obtain the same at the time of the renewal of the lease.

Recently the Statute for major minerals in the country underwent a paradigm shift as the central government has amended the Mines and Minerals (Development and Regulation) Act, 2015, with effect from 12.02.2015. The important change that has been introduced are the result of principles that has been laid down in several Judgments of the Supreme Court, notably:-

1. Judgment dated 02/02/2012 in WP (Civil) 423/2010 and WP (Civil) 10/2011 (commonly known as 2G Judgment) titled as Center *for Public Interest Litigation and others v Union of India and others* and *Dr Subramanian Swamy v Union of India and others.*

[8] AIR 1987 SC 359

[9] (1973) 1 SCC 584

[10] (2000) 8 SCC 655

[11] WP (civil) 4677 of 1985, Judgment dated 18 March 2004, Supreme Court of India

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2. Supreme Court's opinion dated 27/09/2012 on president of India reference dated 12/04/2012
3. Judgment dated 25/08/2014 in WP (Cri) No 120/2012 in the matter of *Manohar Lal Sharma v The Principle Secretary and Ors* (Knows as Allocation of Coal blocks Judgement)

The most important change that has been introduced by the Amendment Act is that mineral concessions henceforth can only be granted through auction. However the Hon'ble Supreme Court in its order dated 02.02.2012 in WP Center *for Public Interest Litigation and others v Union of India and others* [12] and *Dr Subramanian Swamy v Union of India and others.*[13] Had questioned the 'first – cum – first served' policy for alienation of natural resources / public property, and observed that auction was the best method for allocation of natural resources. The Court in its order, inter – alia, framed following questions:-

1. Whether the exercise undertaken by the DoT from September 2007 to March 2008 for grant of UAS License to the private respondent in terms of the recommendation made by TRAI is vitiated due to arbitrariness and malafides and is contrary to public interest?

2. Whether the policy of first – cum – first - served followed by the Dot for grant of licences is ultra vires the provision of Article 14 of the Constitution and whether the said policy was arbitrarily changed by the Ministry of Communication and Information Technology (hereinafter referred as 'the Minister of C & IT), without consulting TRAI, with a view to favour some of the applicants?

Regarding above these two questions the Supreme Court has held that there is a fundamental flaw in the first-come-first-served policy inasmuch as it involves an element of pure chance or accident. In matters involving award of contracts or grant of licence or permission to use public property, the invocation of first-come-first-served policy has inherently dangerous implications. Any person who has access to the power corridor at the highest or the lowest level may be able to obtain information from the Government files or the files of the agency/instrumentality of the State that a particular public property or asset is likely to be disposed of or a contract is likely to be awarded or a licence or permission is likely to be given, he would immediately make an application and would become entitled to stand first in the queue at the cost of all others who may have a better claim. This Court has repeatedly held that wherever a contract is to be awarded or a licence is to be given, the public authority must adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. To put it differently, the State and its agencies/instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy 86 applicants. When it comes to alienation of scarce natural resources like spectrum etc., it is the burden of the State to ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in protection of national/public interest. In our view, a duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden and the methods like first-come-first-served when used for alienation of natural resources/public property are likely to be misused by unscrupulous people who are only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. In other words, while transferring or alienating the natural resources, the State is duty bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process. In the matter of *Manohar Lal Sharma v The Principle Secretary and Ors* [14] the Supreme Court has quoted an earlier decision in *Schidanand Pandey* [15] after noticing *Kasturi lal's case* [16] that State owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule. It is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule, but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism.

III. CONCLUSION

A closer look at the judicial process and approach on environmental issues makes it clear that the efforts made by judiciary to arrive at the decision in resolving environmental disputes has gone beyond the interpretation of the law in its strict sense. These above pronouncements of the Hon'ble Supreme Court requires the State action to be unbiased, without favoritism or nepotism; and to be in pursuit of promotion of healthy competition and equitable treatment; and that it should conform to the norms which are rational, informed with reasons and guided by public interest. It has also been held by the apex Court that if a policy or law is patently unfair to the extent that if falls foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate

[12] WP (Civil) 423/2010, Supreme Court of India

[13] WP (Civil) 10/2011, Supreme Court of India

[14] WP (Cri) No 120/2012 , Supreme Court of India

[15] Sachidananda Pandey v State Of West Bengal & Ors, 1987 SCR (2) 223

[16] Kasturi Lal Lakshmi Reddy & Ors. v. State of J&K & Anr.; (1980) 4 SCC 1

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in striking it down. Therefore, the government action is to be fair, reasonable, non discriminatory, transparent, non – capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment. If these objectives are not met, then such action by the Government (State or Central) can be called in question as being violative of the letter of the Article 14 of the Constitution Moreover in the terms of Article 141 of the Constitution of India, the Supreme Court is enjoined to declare law. The Law declared by the Supreme Court is the law of the land. It is a precedent for itself and for all the Courts / Tribunals and authorities in India. A Statute is binding; but it is the statute, as interpreted by the Supreme Court that is binding in all. Considering the above views of the Supreme Court in order to infuse greater transparency and instill credibility, the Ministry of Mines and Minerals had taken a decision that in all cases for grant of prior approval of the Central Government in cases non – notified areas, to advice State Government to notify such areas. On a transparency scale, notified cases rank much higher than the non – notified cases. Further the Central Government issued guidelines dated 30.10.2014 in suppression of all guidelines issued earlier to streamline the mineral concession procedure with the principles laid down by the Supreme Court in its judgment in various cases mentioned in the preceding paragraphs. Accordingly, all the State Governments were advised to examine the case and consider notifying it in accordance with the Ministry's Guidelines dated 30.10.2014.

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