

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL JURISDICTION)**

Suo Motu PIL W.P.No. 1592 of 2015

Union of India and others

... Respondents

**MEMO OF OBJECTIONS TO THE REPORT DATED 20.6.2017 FILED BY THE
LEARNED AMICUS CURIAE
INCLUDING OBJECTIONS TO THE ANNEXURES TO THE SAID REPORT (COPY
OF WHICH WAS RECEIVED BY THE RESPONDENTS 8 AND 22 ON 22.3.18)**

The Respondents 8 and 22 herein submit as under:

1. The Respondents 8 and 22 had received the Report of the learned Amicus in two separate lots. When the Report was first filed into Court, the Respondents were given liberty to apply for and obtain copies from the Registry. These Respondents applied for copies of the Report. What they were given was only a 12-page Report. It was only at the hearing dated 8.3.18, that it was informed that the Registry would have to supply the Annexures separately. An application was promptly made, and copies of the Annexures were received by this Respondent.
2. The Respondents 8 and 22 submit that the Amicus Report (with its Annexures) present an erroneous picture, and will not be of much assistance to this Hon'ble Court in deciding the issues arising in the above PIL.
3. The Objections of Respondents 8 and 22 may be categorized as under:-

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4. The Objections thus are as under:-

I. INTRODUCTION ON BEACH SAND MINERALS:

1. In India, Beach Sand Mineral ("BSM") contains the following Minerals:

- a. Garnet
- b. Ilmenite
- c. Rutile
- d. Leucoxene
- e. Zircon
- f. Monazite
- g. Sillimanite

These Minerals are also called Placer Minerals. The same has been notified by the Government of India under Rule 69 (x) of the Mineral Concession Rules, 1960 as "Associated Minerals".

2. The following Acts are of relevance with respect to the above said Minerals:

- a. MMDR Act
- b. Atomic Energy Act

3. Under the MMDR Act, insofar as BSMs are concerned, the authority to grant leases and to oversee the operation of the lease, is the State Government. However, under Section 5 of the Act, Section 11 of the Act, and also in Rule 50 of the Rules, in all actions that the State Government desires to undertake, the prior approval of the Central Government is necessary. This enables a dual level control over the mining of the minerals. Insofar as the conservation and development of the minerals in question are concerned, the Central Government authorities are given jurisdiction under the MCDR.

4. Under the Atomic Energy Act, the following are the Authorities who have control over the above said Minerals being produced:
- a. Department of Atomic Energy – Apex Body
 - b. Atomic Energy Regulation Board – Body with respect to Health and Safety Regulations
 - c. Atomic Mineral Division – Inspecting Body
5. There is a popular misconception that BSMs are radioactive. This is a myth. As stated above, BSMs are a complex of several minerals. Each of these minerals have valuable day-to-day uses, which are of utmost importance for a growing economy like India. None of the BSMs are radioactive other than Monazite. **Monazite** is a rare phosphate mineral with a chemical composition of $(\text{Ce,La,Nd,Th})(\text{PO}_4,\text{SiO}_4)$, and thus contains other elements like Cerium(Ce) Lanthanum (La), and Neodymium (Nd) (known as “**Rare Earth Elements**”) besides Thorium.

Beach sand minerals (BSM) are a suite of seven minerals viz. Ilmenite, rutile, leucoxene, zircon, Sillimanite, garnet and monazite. These minerals are also known as Heavy Minerals (HM), as their densities range between 3.2 to 5.2 gram/cc which are higher than that of silica or quartz constituting the bulk of gangue materials in the beach sand. The first three of these minerals are titanium bearing minerals and they are mostly oxides of iron and titanium. The next three are silicates of zirconium (zircon), aluminum (Sillimanite) and iron aluminate (garnet). The last of the BSM is a phosphate of rare earths and thorium which render the mineral radioactive and is the only commercial source of rare earths in India.

(Source: Dr. R. N. Patra, Department of Materials Science and Engineering, IIT Kharagpur)

6. Unfortunately, most persons without taking the trouble to know the above facts simply assume that all BSMs are radioactive and must be banned at all costs.

7. BSMs have many beneficial uses, which make them very valuable all around the world. The following are the uses of Beach Sand Minerals:

Sl No	Mineral	Uses
1.	Ilmenite and Leucoxene	Manufacture of Titanium di-oxide (pigment for paint) Welding electrodes Processing of graded steel Manufacture of high quality photo grey sun glasses Manufacture of titanium metal
2.	Rutile	Ingredient in welding rod flux Feed stock for titanium di-oxide pigment Colouring agent in ceramic and glass products
3.	Zircon	Production of opacifiers, glazes and frits (for making ceramic tiles) Floor and decorative tiles Zirconium chemicals Zirconium metals for various uses
4.	Sillimanite	Refractory industry Foundry Precision investment casting Electrical porcelain Sanitary ware Abrasives
5.	Garnet	Sand blasting Water jet cutting Water filtration Abrasive paper and cloths Micronized garnet for polishing
6.	Monazite (Rare Earths in Monazite only)	Used in making magnets, glass, LEDs, batteries etc.

(Source: Indian Minerals Yearbook 2013, Indian Bureau of Mines)

8. India is blessed with an abundance of BSMs, primarily due to its long coastline, coupled with volcanic origin. India is one of the world leaders in this regard.

World Ilmenite Production

(Data in thousand metric tons of contained TiO₂)

Country	2012	2013
United States	300	300
Australia	940	940
Brazil	45	45
Canada	750	770
China	960	950
India	340	340
Madagascar	380	430
Mozambique	350	480
Norway	360	400
South Africa	1,100	1,100
Sri Lanka	32	32
Ukraine	360	410
Vietnam	510	500
Other countries	74	90
World total	6,500	6,790

Source: USGS, 2014

9. Unfortunately, India has one of the world's lowest Reserves-To-Production Ratio (R/P) of Ilmenite. It was for this reason that the Policy on Beach Sand Minerals was revised in 1998 to foster private sector participation.
10. These BSMs are the resultant products of Kondalite rocks occurring on the high ranges of the Western Ghats. These rocks get disintegrated due the process of weathering, erosion and washed off from the Hill tops and transported down the slopes during rainy season through the river course on the plains and eventually into the sea. Therefore, this geological process can take place only in select places wherever the host rock containing these placer minerals occurs on the hill top.

11. Therefore, the process of transportation and deposition are dependent on the intensity of rain fall and the velocity of surface run off. Therefore, there is a wild day to day and season to season fluctuations of the deposition in terms of quantity and individual minerals in the coastal areas. In the coastal tract also these deposits are washed ashore on the beaches during high tides. These deposits of placer minerals are also subjected to be carried away by the wind action towards inland. The State Government and the Central Government are fully aware that, in replenishable deposits, the individual mineral percentage and the total heavy mineral may vary due to the various factors such as rain, sea current, wind direction, speed and velocity etc.
12. This is the reason for vast accumulation of placer minerals on the inland patta lands which are situated away from the beach due to the aeolian action. The deposited heavy minerals are further transported to the inland by the wind action. The lessee cannot prevent the same. But he can collect the minerals deposited in his mining lease area.
13. Even on the continental shelf portion also it is to be pointed out that if these deposits are not allowed to be exploited, there is a possibility of these placer minerals being washed away deep into the sea of other regions also. An officer by name Shri.Ramanan of Indian Bureau of Mines had conducted a detailed study for two years and submitted a report on this particular matter of placer minerals being washed away from Indian seashore into other places like Sri Lanka and

elsewhere. The report further highlights that this results in loss of mineral wealth to our country and also employment opportunity to several thousand workers in India in addition to foreign exchange earnings.

14. It is relevant to point out that one of the main minerals contained within the beach sand is "Ilmenite". Due to the earlier belief about its physical properties, based on imperfect scientific knowledge, Ilmenite was classified as a "prescribed substance" under the Atomic Energy Act. Not a single country in the world has categorized Ilmenite as an Atomic Mineral. Even Indian scientists are aware that Ilmenite is not radioactive. However, the classification of Ilmenite as 'Atomic Mineral' done way back in the 1950s, still seems to govern popular thought in the 21st century.

The titanium bearing minerals (ilmenite, rutile, leucoxene), garnet and sillimanite are not radioactive minerals.

- AERB Newsletter (2010)

15. India has a coast line of 6000 Kms. Out of which AMD has explored about 2000 kms which alone the reserve is estimated to have 348 Million tons of Ilmenite (1/3rd of the total world reserve) and the current rate of exploitation is only 0.001%. (Source: Joint Secretary Govt., of India speech in the plenary sessions meeting). By the 1990s, the Government realized that such view was not only scientifically wrong, but also against India's national interest, because it resulted in locking up millions of tons of Ilmenite which is a primary source for Titanium, one of the most important metals in the world. In fact, there was even a study conducted into this issue, which showed that of all the countries in the world, India had the highest Ilmenite reserves, but the lowest production percentage, i.e. 0.001%. In order

to set right this anomaly, the Government began undertaking a series of steps:

- i. At first DAE permitted private companies to get mining lease for garnet alone with NOC from DAE.
- ii. Subsequently DAE Notified Policy on Beach Minerals on 6.10.98 and permitted the private players to get mining lease for Ilmenite, Rutile etc., subject to the handling license issued by DAE. On the above said policy it is specifically mentioned by Govt., of India that, *“considering the growing demand for these minerals and / or their value added products in the domestic as well as international markets and the potential available in the country, setting up of new plants for exploration of the deposits in fresh locations would be in the interest of the country. Production of various value added products of these minerals is, however highly capital intensive and it may not be possible for only the PSUs (both Central and State owned) operating in this field to set up the new plants on their own. It is, therefore, necessary to allow the private sector to set up such plants within the framework of some broad guidelines”*.
- iii. On 5.5.2000 the DAE, Government of India, stated, *“This Department has no objection for these companies utilizing the accumulated tailings for production of Ilmenite, etc and sell thereof subject to satisfying the quantities indicated in the licenses obtained by them”*.
- iv. The DAE further clarified the issue by its letter dt. 5.6.2000, wherein it is stated that, *“since the mining activity in respect of these tailings is already over, there may be no need to obtain a separate mining lease in respect of the tailings for which the*

mining activity has already been undertaken. However, the companies may be required to pay royalty at the applicable rates for the quantity of Ilmenite to be separated and sold by them from the accumulated tailings”.

- v. The 3rd clarification in the sequence was issued by Govt., of India, Ministry of Mines on 16.8.2000, wherein it stated that, *“Thus, the position of the rules read with the department of mines Circular No. 16(5)/98/M/VI dt. 28.12.99 is very clear. Nonetheless to obviate any doubt, it is clarified that for disposal of garnet tailings, rich in Ilmenite or some other prescribed substance, the inclusion of the prescribed substance in the existing mining lease of garnet is not required.”.*

This policy continued and there was further liberalization, such as permitting 100% FDI in mining of Ilmenite, as well as placement of Ilmenite in the export OGL list. All of these ultimately culminated in the Central Government Notification removing Ilmenite, Rutile, Leucoxene and Zircon from the list of prescribed substances, effective from 1.1.07 and the handling license system was dispensed and another license for factories under Radiation Protection Rules was introduced for processing beach minerals.

16. According to the abovementioned 1998 Policy on BSMs, wholly Indian owned companies are permitted to enter in the beach mineral mining (Production of Ilmenite, Rutile and Zircon) and mineral separation either with or without joint venture with State or Central Govt., companies with a condition that, monazite if any produced it should be disposed off by the lessee at its cost in accordance with the directions issued by AERB.

17. Thereafter, as stated supra, in the year 2007, Ilmenite, Rutile, Zircon and Leucoxene were de-listed from the prescribed substances under Atomic Energy Act. Therefore, all the Beach Sand Miners were not required to obtain a license under the Atomic Energy (working of mines and minerals and handling of prescribed substances) Rules, 1984. However, since BSM were inherently associated with Monazite, requirement was made to obtain a license from AERB under the Atomic Energy (Radiation Protection) Rules 2004. Meantime, Govt., of India also stopped the production of monazite and rare earths from 2004 itself, since there is no demand for this as, these all are freely available in the overseas countries.

The Minister said that Indian Rare Earths Limited (IREL), a PSU under the administrative control of DAE, has been processing Monazite at its Rare Earths Division at Alwaye, Kerala. During the period 1952 to 2004, IREL has processed Monazite to produce Rare Earths compounds. In 2004, this has stopped due to lack of market, as materials from another Asian Country became available at a much lower cost. Recently IREL has set up a plant at Orissa Sand Complex (OSCOM), Odisha to process 10000 tonnes of Monazite per annum. IREL has set up a facility at its Rare Earths Division, Alwaye, Kerala, to produce Separated High Purity Rare Earth utilising mixed rare earth chloride produced from Monazite processing plant at Odisha.

Source : **Study for Exploration of Rare Eaths**, Press and Information Bureau (26.11.2014)

18. Proceeding further, the Department of Atomic Energy vide order dated 18.4.2007, dispensed with the Monazite Test Certificate for export of Ilmenite. Since all the ports have facilities to detect radiation in the cargos, therequirement of Monazite Test Certificate became redundant.

19. Therefore, until 2013, these Respondents were operating its mining leases, as per the above said Laws and Regulations and also by abiding with the instructions issued by Government of India from time to time.

20. Private sector participation is the need of the hour, to ensure that these benign minerals are optimally extracted.

II. ENVIRONMENTAL CONCERNS - MISPLACED

1. An oft-repeated criticism of mining of BSM is that it causes environmental problems. This is simply a gross generalization, without any regard to facts.
2. BSMs are unique in the world, that they are the only minerals which are 'replenishable'. The learned Amicus has recognized this fact in his report. Even the Department of Atomic Energy has recognized this fact in the Nagar Committee Report.
3. A replenishable mineral is one which Nature creates fresh reserves of, as and when the old reserves are removed. These are to be viewed in distinction from 'In Situ Minerals', which are gone once for all, once they are removed.
4. Therefore, these minerals are to be found in the top few metres of beach sand. Once they are removed, they are fully replenished in a matter of weeks or months, by the action of wind and tide. Thereafter, the miner is only required to scoop the top layer once again.

The Beach Sand Mineral deposits comprise an unique assemblage of minerals like garnet; ilmenite; rutile; zircon; sillimanite and leucoxene. All of them are in loose and uncombined states. Unlike metallic or non-metallic / industrial minerals, once mined, the area becomes depleted for further viable exploitation, the Beach Placer mineral deposits are constantly 'replenishable'. Due to the "replenishable reserves", the insitu' reserves may keep on changing.

The field studies in the Tirunelveli coast of Tamil Nadu, recently conducted by Sri. R. Srinivasan, former Director of Geology & Mining, Tamil Nadu, have brought to light that almost 100% replenishment takes place in the 'inter tidal zone' [18 – 25 m wide]; about 50% in the 'Beach area' [45 – 60 m from the HTL] and about 30% in the 'Berm area' [150 m – 230 m from HTL]. This is a rare feature among the "wasting assets".

Source: UN Framework Classification and Indian Mining Industry, A.K. Bhandari (2013)

5. Such deposits of BSMs are called 'placer' deposits. Once the top layer of sand containing the placer deposit is removed, it will always be replenished by fresh action of wind and tide. This unique characteristic of placer deposits makes it impossible to assess the full extent of reserves in any particular area, since the mineral is replenished as and when it is removed. This fact has been recognized by the Government itself, which had constituted a Committee for this purpose, known as "Nagar Committee". This fact has also achieved judicial recognition before this Hon'ble Court in the judgment of this Hon'ble Court dated 04.12.1997 made in W.P. No.5386 of 1997.
6. Yet another unique feature of placer deposits is that, being formed by the action of wind and tide, they are predominantly found only along sea coast and very rarely elsewhere.

Beach sand minerals, found amongst the Atomic Minerals in MMDR Act, are minerals found in the sand of the beaches along 6000 kilometers coastline of the country.

SOURCE : National Mineral Policy 2008

7. This Hon'ble Court has also recognized the fact that these associated minerals are always found only along coast, in the aforementioned judgment and also in the judgment dated 09.09.1996, issued in W.P. No.11971 of 1995.
8. Prior to 1991, there existed no policy of the Government specifically pertaining to the coastal zone. In 1991, the Central Government issued S.O.114 dated 19.02.1991, setting out Government's

Coastal Regulation Zone Policy ("CRZ Policy"). A perusal of the policy discloses the following:

- i. The CRZ Policy identified certain activities as "prohibited". All other activities were permitted, subject to the provisions of the Policy.
 - ii. Paragraph 2(ix) shows that while mining is prohibited in the CRZ area, a specific exception is carved out in respect of mining of minerals which are not available outside CRZ areas. Therefore, such beach mineral mining was not a prohibited activity.
 - iii. Paragraph 3 of the Policy gives the details of the manner in which permissible activities are regulated. A reading of the Policy would show that no express prior clearance is envisaged in respect of mining of such rare minerals, which are not found outside CRZ areas.
9. It was only in 2002 that the CRZ Policy came to be amended. It was only after this that Paragraph 3 (2) (iii) (b) was introduced in the CRZ Policy, 1991, wherein mining of beach sand minerals began to require an express clearance under the Policy. These Respondents have complied with the said requirement after the amendment of the Policy.
10. These minerals providentially exist only in areas of thin human habitation. The soil is also naturally saline, and people do not have any other livelihoods, other than fishing. Removal of the top layer of the beach sand, has no impact on any other industry or animal or fish.

Epidemiological studies carried out in naturally high background radiation areas (NHBRAs) indicate no cases of cancer or any other abnormalities

that can be attributed to the background radiation levels.

SOURCE: Department of Atomic Energy, FAQs

III. MINERAL SEPARATION PROCESS – A NOTE

1. For the sake of clarity we give below the process followed by us in processing the Beach Sand Minerals:

- i. The mined alluvial sea sand will be fed in the spirals. The waste will be removed and used for backfilling.
- ii. Thereafter, the sand comes out from the spiral plant, after processing, what emerges is 85% to 95% of HM and 5% to 15% of waste sand. The HM will be taken to the dry plant drying yard for sun drying. The waste sand will go for backfilling.
- iii. In the Dry Plant, by process of magnetic separation and gravity separation, useful minerals such as Garnet, Ilmenite are separated. The remaining heavy mineral containing tailings will be transported to our wet plant at Vijayapathi for further processing. Again this will be transported to Authoor for further processing.
- iv. At the end of this, we will get heavy minerals like Ilmenite, Rutile etc. The remaining tailings from the processing are two types depending on which circuit they come from:-
 - a. Monazite Lean Tailings:- Middlings with less than 5% Monazite
 - b. Monazite Rich Tailings:- Tailings with more than 5% Monazite.
- v. The monazite rich tailings will be transported to tailings storage trench in Thiruvambalapuram village near Vijayapathi plant by following the guidelines issued by AERB and store under the institutional control of Govt., of India.
- vi. In this regard this Respondents invites attention to the AERB instructions, Guidelines and Directions issued time to time, which specifically answers the issues raised in this PIL, but which the learned amicus has neither called from us nor sought our answer to.
- vii. As per AERB's directives, the Monazite Rich Tailings are placed under the institutional control of AERB at this Trench.

As such, AERB has not prescribed any safe limit for monazite in sand. This is because monazite in beach sand varies from place to place. The beach sand of Orissa contain around 0.1%- 0.2% monazite while that in Tamilnadu contain generally around 2-3%. It is therefore stipulated that prior to disposal of monazite enriched tailings (obtained after preferential separation of other heavy minerals), it should be mixed with quartz rich sand before backfilling (if quantity of monazite enriched tailings is large and monazite concentration in tailings is < 5% or stored in trenches and topped with quartz rich sand (if quantity of monazite enriched tailings is less and monazite concentration in tailings is > 5%) so that there is no increase in the background radiation levels.

SOURCE: Department of Atomic Energy, FAQs

2. These Respondents have, at all times, followed the AERB Safety Guidelines, which stipulate thus:-

(ii) Disposal in Trenches

Disposal of the tailings in earthen trenches (earthen pits or brick lined pits) located within the plant premises and topping with silica rich sand should be adopted by facilities when the monazite content in the tailings is high (more than 5 %) and the quantity of tailings generated is comparatively less as encountered in Type II and Type IV facilities. Trenches should be periodically topped with silica tailings to reduce the radiation fields to natural levels encountered in the area.

The trenches should not be filled up to the surface with monazite enriched tailings. Sufficient free board space (preferably one metre) should be left in the trenches for topping with silica rich tailings so as to prevent the topping from getting eroded by wind action and exposing the monazite enriched tailings. The surface of the trenches after filling should be leveled with the surface topography and the boundary of the pits should be demarcated with proper identification.

The design of the earthen trenches should take into consideration the prevailing water table in the area. The monazite enriched tailings should be transported by mechanized means such as pumping, conveyors, and covered trucks and dump trucks/bins to the disposal site.

These trenches should be under the institutional control of the facilities. Institutional control consists of those actions, mechanisms, and arrangements implemented to maintain control of a waste management site after closure, as required by the AERB. This control should be active (for example, monitoring, surveillance, remedial work) or/and passive (for example, land use control).

3. Thus, the residual material at the end of the mineral separation process is only a tailings, which is disposed of, in accordance with the regulations set out by the AERB. These are well established procedures.

IV. BACKGROUND FACTS BEHIND THE PRESENT PIL

1. It is submitted that in the year 1989, one Dhaya Devadoss, competitor and rival of these Respondents, had contacted several clients of these Respondents. The intention was to solicit them and ensure that Dhaya Devadoss get the contracts.
2. With this as the view, the said Dhaya Devadoss, sent various letters to these Respondents' buyers stating that these Respondents were undertaking illegal mining. However, even after such letters, the buyers continued its transactions with these Respondents.
3. Naturally, enraged by the failure to solicit Respondents' customers, Dhaya Devadoss sent various false complaints to several Government Authorities complaining about illegal mining. But this none of the complaints were proved as against these Respondents.
4. Therefore, with a sole motive to stop the Respondents' business, Dhaya Devadoss in the name of Federation of Indian Placer Mineral Industries, instituted a Public Interest Litigation in W. P. No. 5549 of 2007. It is pertinent to point out here that, except his own company no other company is member to the Federation. That Federation is originally a company registered under Indian Companies Act, but he got the name as Federation only to make complaint against the respondents. It is submitted that in the said WP widespread allegations were made against these Respondents. Mr. Dhaya Devadoss's motive was to attract overseas customers, to prevent VVM from getting Mineral Concession, to allege illegal mining and thereby diverting the attention from his own illegal mining etc.

5. Thereafter, in 2012, Dhaya Devadoss, in his personal capacity, also filed W.P. No. 1233/2012. In this Writ Petition, Dhaya Devadoss again made false allegations against various Miners. It is relevant to state here that this PIL was with respect to mining of all the Minerals, including Monazite.

6. Pending the above said Writ Petitions, in 2013, the District Collector of Tuticorin released a Report to the media about alleged illegal mining by various entities. This was done under the instructions of Late Mr. Sundaram who was working under Mr. Dhaya Devadoss. It is relevant to state here that the said Report was a concocted one and no inspection was conducted prior to the said Report. Moreover, no enquiry was conducted before preparing the Report. It is pertinent to point out here that, for making an inspection, normally a notice to the lessee will be served and the inspection will be carried out in the presence of the lessee or his representative by following the procedure laid down section 100 of CRPC. The same procedure was followed while inspection was carried out in Dhayadevadas mining leases. However, no such such procedure has been followed either by Mr. G. S. Bedi, or by the District Level Committee, nor also by the learned Amicus. There are so many documents that the Respondent has which would show that it is entirely legal in its actions. However, till date all the above three persons have preferred to do private investigations and prepare their own reports without regard to the views of this Respondent.

7. The Mines Tribunal of the Government of India (the revisional authority under the Act) has in prior cases decided that a report prepared behind the back of the lessee has no value.

See the Final Order dt. 15.01.2015 in Revision No. 3/2014 in Arjun Ladha Vs. State of Odisha, wherein it is held, "A Physical survey of the area and examination of the dimension of the pits cannot be done behind the back of the affected party and if it so done, it cannot be held to be sustainable".

This Honorable Court also in W.P. 1143/79 and 1150/1979 in the case of Mineral Enterprises Firm represented by Partner F.Manohar Lal Vs. Collector of Salem has decided that, the inspection should be in the presence of the lessee and all the relevant documents should be given for taking action).

8. Unfortunately, in this case, the learned Amicus has made his report ready without hearing the Respondents and the same has been circulated in the media. This creates an atmosphere of prejudice which precludes the possibility of a fair hearing. Even the District Collector, in his Report dt. 6.8.13, did the exact same thing.

9. In fact, the said Report was prepared by officers who did not even inspect the areas. This Report was prepared in the District Collector's residence. All of the above said information has been issued to these Respondents under RTI.

10. In consequence to the above said news release and the Report of the District Collector alleging illegal mining, the State Government of Tamil

Nadu issued following two GOs for the purpose of inspection of mining leases:

- a. G.O. Ms. 156 dated 8.8.2013 – To inspect and submit a Report on the alleged illegal mining in Tuticorin District
- b. G.O. Ms. 173 dated 17.9.2013 – To inspect and submit a Report on the alleged illegal mining in Tirunelveli, Kanyakumari, Madurai and Trichy

It is relevant to state here that the Inspection Committee under the GOs were headed by the then Revenue Secretary, Mr. Gagandeep Singh Bedi.

11. Thereafter, W.P. Nos. 1233/2012 and WP No. 5549/2007 came up for final hearing before this Hon'ble Court. During the hearing, the Government submitted to the Hon'ble Court about pendency of the above mentioned GOs. After taking into consideration of the above said GOs, the Hon'ble Court passed the following orders:

"34. In such circumstances, in view of the fact that a committee of experts, under the Chairmanship of Mr. Gagandeep 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 representation 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 enquiries 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."

Therefore, in true spirit and object of the Hon'ble Court's order, the Bedi Committee, which was supposed to only inspect the Mining Leases, was turned into a quasi- judicial authority which was supposed to receive representations and make enquiry.

12. It is submitted that although the above said order in WP No. 1233/2012 was passed on 12.12.2013, the inspection was conducted by Mr. Bedi much prior to the said order. Inspections in Thoothukudi District was conducted in August 2013 and inspections in other Districts were conducted in September 2013. Only enquiry as

envisaged by the Hon'ble Division Bench was pending. It is relevant to state here that these inspections were carried out without issuing prior notice and was done behind the back of the lessees which is against the Tribunal order as well as the Honourable Supreme Court and against the order passed by the Honourable Division bench.

13. Although these Respondents believed in the transparency of Mr. Bedi at the time of passing of the above said order, the enquiry was not conducted as per the orders of the Hon'ble Division Bench. The following dates and events would go to show that Mr. Bedi was acting in a prejudicial manner and against the interests of these Respondents:

1.	17.10.2013	Pursuant to the above said G.O.Ms. No. 156 , inspection was conducted in Tuticorin District	
2.	7.11.2013 to 9.11.2013	Pursuant to the above said G.O.Ms. No. 173 , inspection was conducted in Tirunelveli and Kanyakumari District	
3.	12.12.2013	Judgement passed in WP Nos. 1233/2012 etc.	Pg. 60 of the Type Set of the Appellant in W.A. 1168 and 1169 of 2015
4.	24.12.2013	Representation submitted by Dhaya Devadoss	
5.	30.12.2013	Representation made by Transworld Garnet India Pvt. Ltd. to the 2 nd Respondent Committee	Pg. 94 of the Type Set of the Appellant in W.A. 1168 and 1169 of 2015
6.	30.12.2013	Representation made by V.V. Mineral to the 2 nd Respondent Committee	Page 81 of the Type Set of the Appellant in W.A. 1168 and 1169 of 2015
7.	5.2.2014	Dhaya Devadoss was invited by the 2 nd Respondent Committee for personal hearing	Page 145 of the Typed Set of the Petitioner in W.P. No. 19641/2014

8.	12.2.2014	Notice to Dhaya Devadoss for personal hearing	
9.	13.2.2014	Dhaya Devadoss was invited by the 2 nd Respondent Committee for personal hearing	Page 146 of the Typed Set of the Petitioner in W.P. No. 19641/2014
10.	28.4.2014	Dhaya Devadoss was granted personal hearing	Page 146 of the Typed Set of the Petitioner in W.P. No. 19641/2014
11.	29.4.2014	Letter from the 2 nd Respondent to V.V. Mineral (enclosing a representation dt. 24.12.2013 from the Dhaya Devadoss)	Page 70 of the Typed Set of the Appellant in W.A. 1168 and 1169 of 2015
12.	12.5.2014	VV Mineral was asked to give parawise remarks to the representation submitted by Dhaya Devadoss.	
13.	19.5.2014	VV Mineral gave parawise remarks and asked for copies of annexures mentioned in the letter dated 15.5.2014	Page 108 of the Typed Set of the Appellant in W.A. 1168 and 1169 of 2015
14.	June 2014	V.V. Mineral came to know of the personal hearing granted to Dhaya Devadoss on 28.4.2014, only when the Government filed a Counter Affidavit in W.P. (MD) No. 8562/2014 before Madurai High Court.	

14. Moreover, Mr. Bedi had personal bias against these Respondents due to certain earlier proceedings initiated by these Respondents against Mr. Bedi before the National Human Rights Commission in 1998.

15. It is submitted that due to the above said actions, these Respondents filed W.P. No. 19641/2014 and W.P. No. 16716/2014 for the following relief:

“It is therefore prayed that the this Hon’ble Court may be pleased to issue a writ in the nature of a Writ of Mandamus, directing the 2nd respondent to scrupulously, unbiasedly and fairly comply with the directions issued in the order dated

12.12.2013 made in WP (MD) No.1233/2012, while conducting enquiry and before submitting any report, in pursuance of GO Ms No.156 (Industries) dt.8.8.2013 and GO Ms No.173 (Industries) dt 17.9.2013, issued by the 2nd Respondent herein and also forbearing the 3rd Respondent from heading the 2nd Respondent Committee, in submitting such report and thus render justice."

"It is therefore prayed that this Hon'ble Court be pleased to call for the records of the 1st Respondent, pertaining to the GO Ms No.156 Industries dated 8.8.2013 and consequential Go Ms No.173 Industries dated 17.9.2013 and quash the same and render justice."

16. After detailed hearing in the above said Writ Petitions, the Hon'ble Madras High Court allowed the Writ Petitions. It is submitted that as against these Respondents G.O. Ms Nos. 156 dated 8.8.2013 and G.O. Ms. No. 179 dated 17.9.2013 were quashed and a Retd.High Court Judge was appointed in place of Mr. Bedi to conduct enquiry and pass orders in compliance with the order of the Hon'ble Division Bench in WP No. 1233/2012.

17. Pausing for a moment, it is submitted that throughout the hearing in the above said Writ Petition, the State Government submitted that the inspections were not complete and that Mr. Bedi's Report was awaited.

18. It is submitted that thereafter, as against the above said order, the State Government filed W.A. Nos 1168 and 1169/2015. The same

is pending before this Hon'ble Court. Even during the hearing in the Writ Appeals, the State Government submitted that the Bedi Report was not complete and that the same was awaited.

19. At this stage, the present Writ Petition came to be filed by one Victor Rajamanickam against all the Beach Sand Miners in the State (apart from his own employer, Mr. Dhaya Devadoss).

20. On 23.1.2015, when the above Writ Petition came up for hearing before this Hon'ble Court, it was submitted that all the issues of illegal mining of minerals mentioned in this Writ Petition was already covered and considered in WP No. 1233/2012.

21. It was for these reasons that this Hon'ble Court restricted the scope of the Writ Petition to illegal mining of Monazite. On 23.1.2015, the following orders were passed:

"Learned counsel for the petitioner submits that he confines his grievance to what he claims to be unauthorised beach sand mining of monazite mineral, which is not capable of being mined, unless permission is granted by the Central Government.

Notice to respondents Nos.1 and 3 is accepted by Mr.S.Kesavan, Senior Counsel. Notice ordered to respondents Nos.5 to 7 and 23 is accepted by Mr.S.T.S.Moorthy learned Government Advocate.

Notice to Respondents 2 and 4 and private parties. Private notice to all private parties is also permitted.

Affidavit be filed by the official respondents within four weeks. Rejoinder be filed within two weeks thereafter. List on 17.03.2015."

22. Pausing for a moment, these Respondent make would clarify that they do not undertake mining operations with respect to Monazite. It is only a Mineral which forms part of the Associated

Mineral. It is submitted that the PIL has been filed on a wrong footing that Beach Sand Miners undertake mining operations with respect to Monazite.

23. It is submitted that on 27.7.2015, during the pendency of the present proceedings, the State Government issued G.O. Ms No. 179 (Industries Department). Under this G.O., a three tier committee was set up to enquire into the allegations against the Beach Sand Mining. The Committees were Taluk Level Committee, District Level Committee and State Level Committee. It is relevant to state here that this G.O, till date, has not been notified in the Official Gazette. Moreover, this G.O. was never placed before the State Legislature for approval thereby being ultra vires of Sec. 28 of the MMDR Act. Although the said G.O. recites as though it was issued in pursuance of some order of this Hon'ble Court, in fact, it is not so. There is no such order traceable in the Registry of this Hon'ble Court. At any rate, this Hon'ble Court would never give license to Government to issue orders in violation of statutory provisions. W.P Nos. 514, 515, 577, 578, 6298, 6300 of 2017 before this Hon'ble Court are challenging the above said G.O.

24. Thereafter, these Respondents learnt that present PIL was filed with an ulterior motive and in personal interest. It is submitted Mr. Victor Rajamanickam also filed an Affidavit in the present Writ Petition and stated that he is associated with Mr. Dhayadevadoss, Late Mr. Sundaram, and has been acting together in exposing illegal beach sand mining. Mr. Victor Rajamanickam also tendered an unconditional apology and withdrew from the present proceedings.

25. Thereafter, accepting the above said Affidavit, this Hon'ble Court on 28.1.2016 converted the present Writ Petition into a Suo Motu PIL and appointed Dr. V. Suresh as an Amicus Curiae in the matter. It is relevant to state here that Dr. Suresh had represented Mr. Sundaram, who was acting against these Respondents in WP Nos. 1233/2012 before this Hon'ble Court.

26. Prior to withdrawal of Mr. Victor Rajamanickam from these proceedings, he had filed WMP No.1 of 2015 in the present Writ Petition to stop the exports of minerals by the Respondents herein. This WMP was dismissed by this Hon'ble Court on 17.3.2015.

27. It is submitted subsequently, on 21.11.2016, the Learned Amicus sought various directions before this Hon'ble Court. One such significant direction, which was similar to the prayer sought for by the erstwhile Writ Petitioner, was to stop the exports of Minerals. On 21.11.2016, this Hon'ble after hearing the Respondents rejected this request.

28. Thereafter, it is submitted that the Learned Amicus, without the knowledge of this Hon'ble Court nor the Respondents herein issued various communications dated 27.10.2016 to the District Collector, Tuticorin and Tirunelveli requesting for documents which were not directed by this Hon'ble Court.

29. When matters stood thus, Dhaya Devadoss and one Mr. Kumaresan, half-brother of the 8th Respondent herein filed complaints

before the Taluk Level Committee set up under G.O. Ms No. 179. The Taluk Level Committee took up the Complaint and issued notice to these Respondents. Therefore, a separate proceedings were initiated which re-agitated the issues which were subject matter of WA No. 1168 and 1169/2015.

30. It is relevant to state here that thereafter Mr. Kumaresan, half-brother of the 22nd Respondent therein filed an Application implead himself in the present proceedings. This was dismissed by this Hon'ble Court on 20.9.2016 and directed Mr. Kumaresan to file all the complaints to the Learned Amicus.

31. Thereafter, on 11.6.2016, the Taluk Level Committee rejected the Complaints of Mr. Kumaresan and Dhaya Devadoss thereby holding that there was no illegal mining.

32. Thereafter, the District Level Committee, Suo Motu took the above said order on Appeal and passed orders on 9.11.2016 setting aside the Taluk Level Committee order. It is pertinent to state here that no hearing was afforded to these Respondents before passing the order. It is relevant to state here that as against this order, these Respondents have filed Revision Application No.27/(12)/2016/RC-II and 27/(16)/2016/RC-II. Other Respondents in the present Writ Petition have filed WP Nos. 512,513,573,574,6299,6300,6301,6679, and 6680 of 2017 which are pending before this Hon'ble Court.

33. It is submitted that on 14.2.2017, the District Collector without hearing the respective lessees, Suo Motu passed orders similar to that

of the above said order dated 9.11.2016. It is submitted the above said orders dated 9.11.2016 and 14.2.2017 have been passed without jurisdiction as he does not have the power under the MCDR. These orders have been challenged in W.P.No.512, 513, 573, 574, 6299, 6300, 6301, 6679, 6680 of 2017.

34. Pursuant to the above said orders, the District Collector issued letter to Customs Commissioner not to export minerals except if the lessees produce a certificate from the District Collector himself. Accordingly the Customs Commissioner issued Public Notice No. 50/2016. This is utterly without jurisdiction and is illegal. First, Export of Minerals does not come under the purview of MMDR Act confirmed by the Ministry of Mines. Secondly, Under the Customs Act, there is no requirement to produce the No Objection Certificate for the Export of these Minerals. It is relevant to state here that this actions completely beyond the ambit of the District Collector. This Public Notice has been challenged in W.P.Nos. 571,572,510,511 and 9530 of 2017.

35. When matters stood thus, on 20.09.2016, the State Government took a different stand and submitted before the Court that the Bedi Report was indeed available. The State Government produced the said Report before the Hon'ble Court in a sealed cover. Such a stand was taken for the first time by the State Government. As on date, Mr. Bedi's Report has been made available only to the Learned Amicus and the Respondents herein have not been furnished with the Report. In fact, up until 20.9.2016, the State Government had informed the Court and these Respondents that the Bedi Report was not available and the same is not complete.

36. Thereafter, the matter has been adjourned several times. The Learned Amicus is learned to have privately corresponded with several of the government officials on various dates, and privately compiled data.

37. It is on the basis of such data that the Learned Amicus has filed the present Status Report in W.P. No. 1592/2016:

V. OBJECTIONS TO THE REPORT OF THE LEARNED AMICUS:

This paragraph may be subdivided into the following:-

V.1 Purpose for which learned Amicus was appointed to assist the Court

V.2 Scope of the present proceedings

V.3 Sources of data which form the basis of the learned Amicus Report

V.4 Errors in the learned Amicus Report

V.5 Omission of Dhaya Devadoss in Amicus Report

V.6 Correct position

V.1 PURPOSE FOR WHICH LEARNED AMICUS WAS APPOINTED TO ASSIST THE COURT

1. The above Writ Petition was first instituted by one Victor Rajamanickam, claiming to be acting in public interest. He filed the Writ Petition accusing the entire beach sand mining industry of doing illegal activities. However, he notably excluded one particular beach sand miner, Mr. Dhaya Devadoss and his entities (Indian Garnet Sand Company and Southern Enterprises).

2. These Respondents promptly filed a preliminary Counter Affidavit pointing out that even in the earlier PIL filed by Dhaya Devadoss himself, these Respondents had filed a Counter Affidavit as under:-

(Paragraph 3.2) *"It is no secret that the Petitioner is a mining baron, who has risen to the top, with the aid of political clout. Indeed, his business partner is the famous and great Mr. Dhanushkodi Athithan, Member of Parliament, Congress (I) Party. With a business partner of such prowess, there was no one who dared to stand in the Petitioner's way. It is only when the 12th Respondent started trying to break the Petitioner's hegemony and monopoly that the Petitioner began attacking this Respondent by the following strategies:-*

- i. False complaints to statutory authorities. This would be done through his henchmen and other bodies owned and controlled by him, such as:-*
 - a. V. Sundaram (alleged to be an IAS officer)*
 - b. Federation of Indian Placer Mineral Industries (founded and controlled by Petitioner)*
 - c. Ponniah Pillai (who has given himself the honorific title of "Thyagi")*
 - d. Southern Garnet (his own company)*
 - e. Sundardas*
 - f. Stephen*
- ii. So-called Public Interest Litigations and other such devices. This would be done under the garb of public interest, but the purpose is always the same, i.e., to ensnarl his competitors in a judicial trap.*
- iii. Press Releases to Media. Henchmen like Sundaram and another person called Victor Rajamanickam are dispatched by the Petitioner to talk to newspapers, and TV channels and speak ill of the Petitioner's competitors. Indeed, this strategy has been very brilliantly deployed by the Petitioner during the pendency of the above W.P."*

(Paragraph 59.ii)"A perusal of the mining plan of Southern Enterprises, one of the Petitioner's group entities, in respect of 13.71.5 hectares of Odai Peramboke at Sithallarai and

Thumbaram villages in Musiri Taluk proves that the prospecting operations were illicitly carried on without prospecting license under the MMDR Act. The mining lease itself was granted only after the submission of a mining plan dt. 11.3.02, yet, the entire mining plan is based on the prospecting operations carried out on or prior to 25.2.09 by one Dr. G. Victor Rajamanickam, allegedly professor of so called Ocean Science & Technology Cell, who is none other than the same person who has prepared the mining plan for Southern Enterprises and is also styling himself as a Director of Sairam Group of Institutions and has issued a letter dt. 1.8.2012 which is relied upon by the proposed impleading party as the basis for its allegations (para 9 of the affidavit). All these will prove the intimate relationship between the Petitioner, V. Sundaram and the aforesaid Dr. Victor Rajamanickam."

My Counter Affidavit in the above PIL goes on to state:-

5.4 It is also important to note that Mr. Victor Rajamanickam is the registered qualified RQP engaged by Mr. Dhaya Devadoss to prepare the mining plans for the mining leases of Mr. Dhaya Devadoss as set out in Rule 22 of the Minerals Concession Rules.

5.5 Mr. Victor Rajamanickam has represented by Mr. Dhaya Devadoss during the proceedings for obtainment of environmental clearances before the Ministry of Environmental Forests. Thus, the link between Mr. Dhaya Devadoss and Mr. Victor Rajamanickam cannot be denied. These crucial factors have been suppressed in the above Writ Petition.

5.6 Mr. Victor Rajamanickam, in this Writ Affidavit has described himself purely as a consultant in the field of Geology. He has not disclosed the fact that he himself is interested in a firm engaged in the business of mining. This is yet another crucial aspect which has been suppressed in the Writ Affidavit. Mr. Victor Rajamanickam's wife Mrs. Mallika Victor along with one Krishna Raj, one Chitra, Ajit Kumar and Arun Prasad had constituted a firm under the name and style of "RARE MINERALS" under a Partnership Deed dated 27.11.2004. This firm was carrying on business at No.87B, Devar Colony, Trichy.

This entity had applied for mining leases for the minerals Ilmenite, Zircon and Magnetite in Ratnagiri District of Maharashtra State as far back as 2006. Therefore, it is not open to Victor Rajamanickam to claim that he is purely a consultant and nothing more. He has engaged (of course through his wife) in the business of mining for the very same minerals which my concerns are engaged in.

Therefore, on these facts, I had sought the dismissal of the PIL, since it was not a PIL at all, but merely a ruse, and that Dhaya Devadoss was in reality and in fact, behind the scene, and shooting from the shoulders of his henchman, Victor Rajamanickam.

3. It was on a review of these allegations that this Hon'ble Court passed an order dated 28.1.2016, removing Victor Rajamanickam as Petitioner. However, having regard to the importance of the issue, the Court felt it should Suo motu inquire into the issue, and appointed an Amicus Curiae to assist it.
4. Therefore, this is not an Amicus Curiae who is appointed to take the place of an Accused who is unable to represent himself. It is an Amicus Curiae who is appointed to assist the Court.
5. **POSITION IN ENGLAND:** In *Allens v McAlpine* (reported in (1968) Vol. 2 QB pg. 229), the Hon'ble Lord Denning held, "I had always understood that the role of an *amicus curiae* was to help the court by expounding the law impartially, or if one of the parties were unrepresented, by advancing the legal arguments on his behalf."
6. **POSITION IN AUSTRALIA :** In *Minister of Justice v United Nations High Commission of Refugees* (reported in 83 ALR p. 79), it has been laid down as under:-

It is, at the same time, a jurisdiction which should be sparingly exercised. Clearly, the assistance to be given to an appellate court will be confined to legal arguments and supporting materials. It is not necessary to consider the circumstances in

which it would be appropriate for the High Court to appoint an amicus curiae. It is sufficient to say that, as was pointed out in United States Tobacco Company -v- Minister for Consumer Affairs and Others, the position of an amicus curiae is quite different from that of an intervener. It was said in that case that an amicus curiae, unlike an intervener, has no right of appeal and is not normally entitled to adduce any evidence.

7. These principles have always been applied in India as well. An Amicus Curiae is not entitled to don the garb of an adversary. He is not entitled to act as an inquisitor and go behind the parties' backs and collect materials adverse to them. He is to review the records available with the Hon'ble Court and to advise the Court on the basis thereof.

In *Sadhana Patra v Subrat Pradhan* (reported in AIR 2006 Ori p. 105), the Hon'ble Orissa High Court laid down that, "*From the discussions made in the judgment it appears that a legal practitioner appearing as an amicus curiae is a friend of the Court and the amicus curiae is not appointed as a private counsel by the parties to action or to represent them in a partisan manner and for their personal use and benefit and that they does not have a function of taking over conduct of a case for parties to litigation. Although the Court may hear the communications of an amicus curiae, it is within the discretion of the Court whether it will need the advice given and the amicus curiae has no right to complain if the Court refuses to accept his suggestions. The Law Lexicon edited by Justice Y.V. Chandrachud describes 'amicus curiae' as a friend of the Court. It says that an amicus curiae is one to volunteer or on invitation of the Court instructs the Court on a matter of law concerning which the latter is doubtful or mistaken, or informs him on facts, a knowledge of which is necessary for a proper disposition of the case. Amicus curiae is one not being retained in a case volunteers to express his views or make suggestions for information of the Court. Chambers 21st Century Dictionary describes 'amicus curiae' as a person not directly involved in a cause but who gives advice about it and otherwise means, friend of the Court.*

In view of what has been discussed above, there cannot be any doubt in mind that an amicus curiae appointed by the Judge, Family Court, under the proviso to Section 13 of the Act is only a friend of the Court and is required to assist the Court in matters of fact and law as and when required by the Court and cannot act as a lawyer/advocate engaged by a party to defend cases. In other words, an amicus curiae cannot do all such acts as usually done by an Advocate retained by a party in a judicial proceeding and his role is limited to rendering assistance to the Court in matters of facts and law whenever required by the Court.

10. In view of the above, I do not find any illegality in the order of the learned Judge, Family Court in refusing the prayer of the Amicus curiae appointed by the Court to cross-examine P.W. 1."

8. In fact, the United States of America recognizes real dangers posed by unregulated Amicus conduct. In *US v Michigan* (940 F.2d 143 (1991)), it has been held, "*There can be little doubt from the record of this appeal that the Knop class, in its role of "litigating amicus curiae", and exercising the authority of a named party / real party in interest, has virtually assumed effective control of the proceedings in derogation of the original parties to this controversy. The creation of this legal mutant characterized as "litigating amicus curiae," as demonstrated by the cascading acrimony among the participants to this litigation, if accorded precedential viability, will implicate and erode the future core stability of American adversary jurisprudence as we know it today."*

9. A reading of this Hon'ble Court's order would make it clear therefore that the learned Amicus had been appointed to assist the Court in ascertaining the applicable laws. The learned Amicus was not expected to take over the entire litigation, and rewrite the scope of the PIL. Unfortunately, this is what has been done.

V.2 SCOPE OF THE PRESENT PROCEEDINGS

1. It is to be recollected that the present PIL was preceded by W.P.No. 1233 of 2012. That was a PIL filed by Dhaya Devadoss in his own name. That PIL too was filed against State Government and Central Government and all the other beach sand miners.
2. The allegations made in W.P.No. 1233 of 2012 are as under:-

NATURE OF ALLEGATION	PARAGRAPH NUMBER IN WRIT AFFIDAVIT IN W.P.No. 1233 of 2012
1. Respondents are carrying on mining activity without necessary approvals under Mining Laws and Environmental Laws.	Paragraph 5, 6, and 7
2. These Respondents obtained mining leases in violation of law.	Paragraph 16
3. These Respondents carried out mining activity without MOEF permission. That Respondents have done mechanical mining, and have destroyed sand dunes.	Paragraph 18 and 22
4. These Respondents have violated the provisions of the Atomic Energy Act	Paragraph 28
5. These Respondents have illegally mined excess minerals and exported the same	Paragraphs 34 and 35
6. That there was a 2007 Show Cause Notice which was illegally closed.	Paragraphs 23, 24 and 25

3. During the pendency of the above W.P. 1233 of 2012, the State Government issued G.O.Ms.No. 156 Industries dt. 8.8.13 and G.O.Ms.No.173 Industries dt. 17.9.2013, ordering a Government-mandated probe into the allegations into illegal sand mining.
4. In this context, a Division Bench of this Hon'ble Court disposed W.P. (MD) No. 1233 of 2012, and certain other writ petitions, by a common order dt. 12.12.2013, wherein the Hon'ble Division Bench has issued certain specific directions in paragraphs 34 and 35 of its order with respect to the manner in which the State Government mandated Committee was to conduct its inquiries and investigations. The

relevant paragraphs of the order of the Hon'ble Division Bench are extracted hereunder:

"34. In such circumstances, in view of the fact that a committee of experts, under the chairmanship of Mr. Gagandeep Singh Bedi, Secretary, Revenue Department, has been constituted by 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 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 enquiries 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 open 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..."

5. This order has been confirmed by the Hon'ble Apex Court, vide order dated 14.9.2015 made in SLP (C) No. 6988 & 6989 of 2015.
6. Thus, it is clear that all of the allegations contained in the Writ Petition No. 1233 of 2012, as well as counter-allegations by the Respondents against Dhaya Devadoss were to be looked into by the said Committee. Thus, the scope and powers of this Committee got modified, from being a pure Government-mandated Committee having

inquiry powers under the G.O.s, to a committee exercising quasi-judicial powers, under the directives of the Hon'ble Division Bench. The scope of adjudication of this Committee was as laid down by the Hon'ble Division Bench. This included all of the allegations and counter allegations in W.P.No. 1233 of 2012.

7. It is a matter of record that the Chairman of the Committee (one Mr. G.S. Bedi) gave an opportunity of personal hearing to Mr. Dhaya Devadoss and gave nobody else any opportunity. It is also a matter of record that Mr G S Bedi had certain personal litigations against the 22nd Respondent herein. The Committee proceeded to inquire into the matter in a manner completely at variance with the directives of the Hon'ble Division Bench. It is in these circumstances that two Writ Petitions came to be filed, one challenging the validity of the ban on mining and transportation, under the two G.O.s and the second one, challenging the conduct and partiality of the Chairman of the Committee. This Hon'ble Court by order dt. 29.7.2015 made in W.P.No. 16716 of 2014 was pleased to allow both Writ Petitions.
8. Throughout the pendency of the Writ Petitions, the State Government steadfastly maintained that the reports had not been made ready. There were interim orders against the making of any report, all through the pendency of the Writ Petitions. Now, all of a sudden, the Bedi Committee is said to have submitted a Report. This has not been shared with any of the parties to this W.P. If the copy is shared, it can easily be demonstrated that the Report now being produced is a shabby fabrication. At any rate, the Report cannot be looked into, unless and until the Writ Appeals against those Writ Petitions are first decided.

9. As soon as W.P.No. 1233 of 2012 was decided, Mr. Dhaya Devadoss filed the present PIL. The allegations in the present PIL are as under:-

NATURE OF ALLEGATION	PARAGRAPH NUMBER IN WRIT AFFIDAVIT IN W.P.No. 1592 of 2015
1. Respondents are carrying on mining activity without necessary approvals under Mining Laws and Environmental Laws.	Paragraph 15, 16, and 17.
2. These Respondents obtained mining leases in violation of law.	Paragraphs 32, 33 and 34
3. These Respondents carried out mining activity without MOEF permission. That Respondents have done mechanical mining, and have destroyed sand dunes.	Paragraph 46, 54, 56
4. These Respondents have violated the provisions of the Atomic Energy Act	Paragraph 40, 41, 42, 44, 53, 55 and 56
5. These Respondents have illegally mined excess minerals and exported the same	Paragraphs 43
6. That there was a 2007 Show Cause Notice which was illegally closed.	Paragraphs 35, 38 and 45

10. Thus, barring one allegation about something which occurred after the filing of W.P.No. 1233 of 2012, every other line of W.P.No. 1592 of 2015, was a rehash of W.P.No. 1233 of 2012. Since the allegations in W.P.No. 1233 of 2012 had been relegated to the Committee, nothing survived for consideration in this W.P.

11. It was in this context that the order dt. 23.1.15 came to be passed. It was for this reason that the parties did not even file Counter Affidavits on any other allegations but only defended themselves on the Monazite issue and nothing more.

Paragraph 3.3 of these Respondents' Counter Affidavit reads:
 3.3 Anyhow, having regard to the specific order of this Hon'ble Court dated 23.1.15, I am confining myself to the allegations contained in the Affidavit pertaining to Monazite, and I am refraining from replying on the other allegations.
I reserve the right to file a Counter Affidavit on the other allegations also, should the scope of the enquiry be extended beyond the allegations as to Monazite.

12. There has been no order till date extending the scope of the enquiry in the PIL. It is true that the learned Amicus has been orally requesting and praying that the scope of the PIL be extended to other aspects also. However, this Hon'ble Court, having regard to the fact that the order in W.P.No. 1233/12 has been confirmed by the Hon'ble Supreme Court, has wisely refrained from granting the prayer of the learned Amicus. (Please see paragraph V.1.9 above).

13. Therefore, the scope of the PIL is with respect to whether there has been any unlawful inclusion of Monazite in the mining leases of any of the parties.

14. This assumes the greatest importance when one sees that the Report of the learned Amicus lists out the following as **Key Issues**, vide Paragraph 1.31 of the Report:-

- a. Mining in violation of Mining Plan / Lease
- b. Provision of excessive Transport permits
- c. Violation of Environmental Laws
- d. Inclusion of Monazite in existing mining leases
- e. Under-payment of royalty
- f. Continued mining after the issuance of G.O.Ms.No.158
- g. Usage of EOU / SEZ provisions
- h. Failure by Government agencies to properly monitor
- i. Political parties giving patronage to mining

15. Now, it would be seen that Items a, b, c, and e are directly covered by W.P.No. 1233 of 2012. The very same allegations were made in the earlier PIL. They are already covered by that Hon'ble Division Bench's order dt. 13.12.13, and confirmed by the Hon'ble Apex Court.

Item f is a matter which is covered by Writ Appeals Nos. 1168 and 1169 of 2015, where the validity of the said G.O.s has been called into question, the G.Os themselves having been partially struck down.

Item g though named as a key issue, does not culminate in any specific finding in the Report.

Items h and i are not with reference to any miner, but is a malady afflicting all parts of society.

Possibly for this reason, the learned Amicus himself realizes the problem, and in Paragraph I.62 and I.64 of his Report prays to extend the scope of the PIL to cover these other aspects also. These Respondents object to such extension in the strongest possible terms. These Respondents have never had a chance to defend themselves on these allegations, and have not been given a chance to file a Counter Affidavit on merits. They cannot be taken by surprise by such a request at the fag end of the litigation. At any rate, the above prayer of the Amicus is seen to be an attempt to reopen issues which were earlier sought to be raised by one V. Sundaram (IAS), in his Intervener Application in W.P.No. 1233 of 2012. All those very same allegations find a place in the present Report. This cannot be permitted. The expansion of scope as prayed for must be refused.

16. Thus, it is submitted that the learned Amicus' Report is (excepting on Item d above) ultra vires the very scope of the litigation. The learned Amicus was called upon to render assistance to the Hon'ble Court in deciding the lis at hand. It could never have been imagined that the Hon'ble Court was inviting the learned Amicus to act as an Ombudsman-cum-Inquisitor and bring before it all allegations based on his own private inquiries. At any rate, the parties to the lis had never thought this to be the case.

17. For this reason, it is humbly submitted that the Report of the learned Amicus cannot be looked into, insofar as it stretches beyond the very scope of PIL No. 1592 of 2015.

V.3 SOURCES OF DATA OF THE LEARNED AMICUS

1. The learned Amicus has prepared a Report with Annexures. However, in order to test the veracity of the Report it is important to first see the sources of data based on which the Amicus has compiled his report.

2. Ongoing through the Report it is seen that there is a recital of various matters up to Paragraph 1.54 of the Report. Thereafter, the learned Amicus speaks about the State Government Committee, and makes a very positive mention about the said Committee. Of course, the learned Amicus also notes that the said Committee had been found to be acting in violation of the Hon'ble Division Bench order in the Writ Petition No. 16716 of 2014, but adds that the Single Judge's order has been stayed on appeal.

3. At paragraph 1.58, the learned Amicus states, *"So even while this Court will have to eventually decide on the merits or otherwise of the legal challenges to the Constitution of the Special Team headed by Mr. Gagandeep Singh Bedi in the four Writ Appeals which have been clubbed along with this PIL, the evidence painkilling gathered about the state of mining in each of the mining leases can, at least, be used as a reference document to examine and verify data and information gathered independently from different official sources"*.

4. Unfortunately, the learned Amicus has fallen into error here. The learned Amicus failed to note the following:-

(a) The Special Team had been given a specific task by the Hon'ble Division Bench. The Hon'ble Division Bench had directed them to receive the

allegations and counter allegations from both parties within two weeks from the date of the judgment, and to thereafter cause inspections to be done.

(b) The Special Team violated that direction by not doing any inspections after the passing of the order. Instead, they relied on some inspections done, in private, before the order was passed that too behind the back of the petitioner and without issuing any notice or intimation to the lessee by violating the principles of natural justice.

(c) The learned Division Bench had to be obeyed. But the Special Team chose to disregard the directive. For this reason, the learned Single Judge set aside the actions of the Committee.

(d) The learned Single Judge also found the Chairman of the Committee to be guilty of personal bias.

In these circumstances, the question which arises is **Whether the measurements allegedly taken, and inspection allegedly made by the Special Team without following the Hon'ble Division Bench Order can form the basis for a valid report ?** The natural consequential question is **was the Learned Amicus correct in relying on some measurements?** These Respondents are sure that the learned Amicus would never have intended to affix a seal of legality on the actions of Mr. G.S. Bedi if in fact it is found by this Hon'ble Court that he had violated the directives of the Hon'ble Division Bench in W.P.No. 1233 of 2012.

5. Therefore, the first source of data for the learned Amicus' Report which is said to be the findings and inspection reports of Mr. G. S. Bedi, cannot be looked into, unless and until the Writ Appeals are first decided.

6. The next two sources of data stated by the learned Amicus vide Paragraph 1.68 of the Report are:-

a. Transport Permit details said to have been privately collected by the learned Amicus from the District Mines Office;

b. Annual Returns and related data (in some proforma of which we have no notice) said to have been privately collected by the learned Amicus from the office of the Indian Bureau of Mines.

The learned Amicus Report does not enclose those underlying documents, but only states that the Report is based on the data so obtained. Unless the underlying documents are provided, it is not possible for Respondents to effectively defend themselves. The Respondents are not even in a position to check whether the Amicus has relied on the correct documents, or the correct extracts from those documents. This is not a valid compliance with the principles of natural justice.

No private litigant can withhold important documents, and only show the conclusions to an opponent, and expect him to litigate thereon. An Amicus Curiae must hold himself to a higher standard of conduct than a private litigant, and not a lower standard.

7. The learned Amicus then lists three further sources of data in Paragraph 1.72 namely:-

a. Mining Surveillance Trigger: Which shows illegal storage of BSMs. This has shown only one instance of illegal storage. That pertains to the 15th Respondent. These Respondents have nothing to say about the 15th Respondent. If 15th Respondent was indeed doing illegal activities, he must bear the consequences.

b. District Level Committee Report dated 9.11.16 (hereinafter 'DLC1 Report')

c. District Level Committee Report dated 14.2.17 (hereinafter 'DLC2 Report')

8. Since the Mining Surveillance Trigger contains nothing against Respondents 8 and 22, these Respondents wish to submit that it operates as a clear proof of these Respondents' innocence. If they were doing illegal

storage, the Trigger would have picked it up. The absence of any adverse finding from the Trigger proves these Respondents' innocence.

9. Now, coming to the DLC1 Report and the DLC2 Report, it is to be noted that both of the Reports were prepared in purported exercise of powers conferred under G.O.Ms.No. 179, Industries dated 27.7.15. Ex facie, it is submitted that said G.O. has neither been notified as required under Section 26(2) of the MMDR Act, nor has it been placed before the Legislative Assembly as required by Section 28(3) of the MMDR Act. Accordingly, the said orders viz DLC1 Report and DLC2 Report are de hors the provisions of the MMDR Act and is therefore void. The District Committee has no suo motu enquiry powers. This has been confirmed by Govt., of Tamilnadu vide letter No. 15161/MMD.1/2017-1 dated 16.2.18.

It is pertinent to point out here that, the 8th respondent vide its letter dated 10.10.2016 specifically requested the District Collector to inform on which he has to file reply and to inform the date of hearing. The said registered letter was received on 12.10.2016. But without informing the same, in an exparte meeting held on 16.11.2016, the District Collector created a report dt. 9.11.16 behind the back of the 8th Respondent.

W.P Nos. 514, 515, 577, 578, 6298, 6300 of 2017 are pending before this Hon'ble Court, challenging the vires of G.O.Ms.No. 179. If this challenge succeeds, DLC1 Report and DLC2 Report will stand erased. Therefore, the learned Amicus Report cannot be looked into, unless and until the said challenge is first ruled upon.

10. Even on the specific facts of these Respondents, they have challenged the correctness of the findings of the DLC1 Report and DLC2 Report, by way of statutory revision before the Central Government (under Section 30 of the Act) and those revisions are pending. The State Government has been

taking adjournments and opposing any hearing of the revision on the ground that the above PIL is pending and some appeals are pending against the same order before this Court. It is submitted that unless and until the factual correctness of DLC1 Report and DLC2 Report is gone into by the Central Government in revision, none of the findings therein can be relied upon. These findings have not attained finality and therefore learned Amicus could not have placed reliance on them.

11. In Paragraph 1.73 the learned Amicus once again has heaped praise on the Bedi Report. This has been dealt with supra.

12. In Paragraph 1.74 the learned Amicus states that the Surveillance Trigger is the only automated way to detect illegal mining. This Surveillance Trigger has shown illegal mining by 15th Respondent, but nothing against these Respondents. Therefore, they are to be exonerated.

13. In Paragraph 1.75, the learned Amicus has referred to DLC1 Report and DLC2 Report. These have been dealt with supra.

14. Thus, to sum up there are five (5) sources of data for the entire Amicus Report:-

(a) **Bedi Report:** Validity of inspections undertaken without following Division Bench order is questionable. In the light of Hon'ble Single Judge judgment, the Report itself cannot be looked into, unless and until the Appeals are decided. At any rate, the copy of the Bedi Report has never been given to the parties allegedly affected thereby. It cannot be relied upon, without furnishing copies. Lastly, the Bedi Report was compiled ex parte. It cannot be relied on by anyone, unless it is first put to the parties affected thereby.

(b) **Privately obtained documents:** Documents privately obtained by learned Amicus from District Mines Office and from Indian Bureau of Mines

cannot be relied upon, unless copies of the underlying documents are furnished.

(c) **Surveillance Trigger:** The Trigger exonerates Respondents 8 and 22 fully.

(d) **DLC1 Report:** The G.O. creating the District Level Committee itself is in challenge. That apart the findings of the DLC1 Report have been challenged on facts and law before the appellate authority, viz Central Government, and the matter is sub judice. The findings of the DLC1 Report have not attained finality, and cannot be relied upon. Lastly, the DLC1 Report was prepared in violation of principles of natural justice. It cannot be looked into.

(e) **DLC2 Report** : Ditto.

15. Therefore, it is seen that nothing remains to support the Report of the learned Amicus, and therefore, the Report can, if at all, be looked into only after the hearing of the Writ Appeals, as also the challenges to G.O.Ms.No. 179 and also to DLC1 Report and DLC2 Report.

V.4 ERRORS IN THE LEARNED AMICUS REPORT

1. In the preceding Paragraph V.3 we have dealt with errors in the method of data collection by the learned Amicus.

2. The analysis by the learned Amicus of the legal framework surrounding the mining of BSMs is also erroneous in several places. That apart, there are serious errors in analyzing certain historical data.

3. It is submitted that these Respondents have been subjected to various reports at different points of time for over 25 years. There have been various Reports which have exonerated these Respondents and have dispelled the allegations of illegal mining. The following table would show the list of Enquiry Reports which passed in favour of these Respondents

S.No	Name in which petition sent	Complaint letter dated	Report and Result
1	1.R.P.Athithan, M.L.A 2.R.Dhanuskodi Athithan, M.P. 3.M.Sundaradas, M.L.A. 4.K.Ramamurthy, M.P.	25.7.91, 6.12.91, 3.7.91, 19.7.91, 31.10.91, 15.11.91, 3.12.91, 10.12.91, 6.9.91, 16.10.91	Letter No. 46779/MMD.2/90-14 dated 24.12.91 Complaint found to be false and rejected.
2	1.Federation of Indian Placer Mineral Industries and Bengal Bay Beach Mineral 2.Dhanuskodi Athithan, Ex.M.P 3.Bellarmin, M.P. 4.Dhanuskodi Athithan and twenty Member of Parliament petition dt. 25.8.04 5.S.Sankaralingam 6.Bellarmin and seven other Member of Parliaments	9.8.2000, 3.9.2003, 29.7.04, 16.8.04, 25.8.04, 9.9.04, 30.9.04 etc.,	17585/MMA1/03-9 dated 24.11.2004 Complaint is found to be motivated.
3	Kumaresan	7.11.01	Roc.No.12713/01 dt. 20.5.2002 Complaint found to be untrue.
4	Dhaya Devadoss complaint Ir	1.9.03	M1.94850/03 dt. 20.10.03 Complaint found to be motivated.
5	Dhayadevadas, Federation of Indian Placer Mineral Industries	Year 2003	M1.52545/03 dt. 16.10.03 Complaint found to be motivated.
6	Sangaralingam	Year 2005	M1/52545/03 dt. 14.7.2005 Complaint rejected.
7	Dhaya Devadoss, Federation of Indian Placer Mineral Industries	22.06.07	Joint inspectionreport dated 24.06.2009 to 27.06.2009 Allegations found to be false.
8	1.D.Emi Durairaj	30.6.09 & 8.7.09	M2/35788/09 dt. 22.2.2010

	2.Federation of Indian Placer Mineral 3.S.Sanmugasundaram, Radhapuram vattara Vivasigal sangam	13.6.09 17.5.09	Complaint found to be motivated.
9	1.Neithal People Movement 2.District Environment Protection People Movement 3.President, Enayam Region, St.,Lenammal Church	30.09.09	D.O.Lr.No.70/G&M /2000 dt. 14.07.10 Complaint rejected.
10	Federation of Indian Placer Mineral Industries	Year 2009	AD,Thoothukudi and Kanyakumari Roc.G.M.1/139/2009 dt. 10.08.2009 Complaint found to be motivated.
11	D.Asirvatham Chellaih, Alangulam	9.10.10, 11.10.10	Collector Lr.No Rc.No.M2/73404/2010 dt. 19.11.10, and CGM Office Lr.No. 11688/MM7/2010 dt. 20.12.12 Complaint rejected.
12	Dhaya Devadoss, Federation of Indian Placer Mineral Industries	30.03.2010	Roc.No. M2/13969/2010 dt. 21.03.2011 Complaint found to be motivated.
13	D.Devaraj, Murugankurichi, Tirunelveli	13.07.2010	CollectorLr No. M2/48562/2010 dt. 29.11.2010 and CGM letter No. 10704/MM7/2010 dt. 10.01.2011 Allegations found to be untrue.
14	Dhaya Devadoss, Federation of Indian Placer Mineral Industries	9.8.2010	M2/77848/2010 dt. 4.2.2011 Complaint found to be motivated.
15	C.Kasirajan, Perur	4.9.10	Collector Lr.No. M2/61854/2010 dt. 20.9.2010 and CGM Letter No. 10121/MM7/2010 dated 20.12.2010 Allegations found to be untrue.

16	Federation of Indian Placer Mineral Industries	13.09.2010	Collector Lr. No. M2/2171/2011 dt. 21.03.2011 and CGM Lr. No. 10447/MM7/2010 dt. 25.12.10 Complaint found to be motivated.
17	Dhaya Devadoss, Federation of Indian Placer Mineral Industries	9.8.2010	CGM Rc.No. 11927/MM7/2010 dt. 11.8.2011 Complaint found to be motivated.
18	D. Dhaya Devadoss	25.10.2010	CGM letter No. 11411/MM7/2010 dt. 16.11.2010 Complaint found to be motivated.
19	Dhaya Devadoss, Federation of Indian Placer Mineral Industries	4.12.10, 20.12.10	M2/77848/2010 dated 26.4.2011 Complaint found to be motivated.
20	Dhaya Devadoss, Federation of Indian Placer Mineral Industries	6.5.10, 22.5.10, 26.5.10, 13.9.10, 25.10.10, 30.10.10, 10.11.10, 8.12.10, 20.12.10 and 21.2.11	Rc.No.M2/45283/2011 dt. 6.9.2011 Complaint found to be motivated.
21	Dhaya Devadoss, Federation of Indian Placer Mineral Industries	6.5.10, 22.5.10, 26.5.10, 13.9.10, 25.10.10, 30.10.10, 10.11.10, 8.12.10, 20.12.10 and 21.2.11	Letter No. 7810/MMD2/2011-1 dated 23.07.2013 Complaint found to be motivated.
22	Dhaya Devadoss, Federation of Indian Placer Mineral Industries	6.5.10, 22.5.10, 26.5.10, 13.9.10, 25.10.10, 30.10.10, 10.11.10, 8.12.10, 20.12.10 and 21.2.11	Rc.No. 5343/MM7/2011 dt. 29.10.12 Complaint found to be motivated.
23	Saravanakumar, Navalady	Year 2012	e.f.vz;. M2/36661/2012 dated 27.12.2012 Allegations found to be untrue.
24	J. Anton, Kuthankuzhi	Year 2013	e.f.vz;. M2/17288/2013 dt. 8.7.2013 Allegations found to be untrue.

25	Sundaram, IAS	Year 2013	No. 656(1)/2013 /Mds dt. 8.5.13 Allegations found to be untrue.
26	Media stories planted by Dhaya Devadoss	2015	Allegations found to be untrue.

4. From the above said Enquiry Reports, the Learned Amicus in Paragraphs 3.3 to 3.19 have extracted eight such Reports which were favourable to these Respondents. It is submitted all these Reports were passed by the Government Officials after inspecting the sites and also after giving due opportunity to these Respondents to meet the allegations of the Complainants. It is pertinent to state here that none of these Reports have been challenged by the complainants before this Hon'ble Court and therefore have become final. The learned Amicus for reasons best known to him simply brushed aside those reports as being simple "parawise remarks".

5. The correctness of the said Reports has never been challenged. The learned Amicus cannot sit in appeal over those Reports. The role of the Amicus Curiae is to present all the data to the Court in an impartial manner. The role of the Amicus is not choose one side, and then to Marshall all the data to suit that particular side.

6. The learned Amicus then goes on to rely on the 'Report' dated 6.8.13 issued by the District Collector of Tuticorin.

7 Report of District Collector, Tuticorin:

7.1 It is submitted that this inspections for the purposes of this Report was done without the giving notice and was done without presence of the Lessees. Moreover, no enquiries were conducted before preparation of this Report. It is these Respondents' case that the said Report was a concocted one under the instructions of Mr. Dhaya Devadoss, business rival of these Respondents. Even a copy of this Report would disclose that it does not

make a definitive finding but only invites reference to certain villagers' complaints and draws inferences therefrom.

7.2 From the responses received by these Respondents under RTI Act is clear that on 3-8-13, the District Collector created an enquiry Proceedings, but backdated the same to "29-7-13", wherein he purported to constitute a Committee to look into the quarrying activities of all persons having mines in the Tuticorin District.

7.3 The following persons have Mining Leases in the District.

- (i) V.V. Mineral
- (ii) Beach Mineral Company
- (iii) Transworld Garnet India (P) Ltd.
- (iv) India Garnet Sand Company (owned by Dhaya Devadoss)

7.4 Proceedings were first drawn up by District Collector, Mr. Ashish Kumar's subordinates, to inquire into Mining Leases of all the above mentioned four persons, but Mr. Ashish Kumar, struck out the name of Indian Garnet Sand Company, so as to favour Dhaya Devadoss, and modified the Proceedings to read as though it is an inquiry into the mines of VV Mineral alone.

7.5 This Proceedings of Mr. Ashish Kumar, which bears the date "29-7-13" (but actually written subsequently) purports to constitute two teams to inspect my Mining Lease sites. The teams are:-

A. To inspect Sy. No. 1018/4 etc.

- i. District Revenue Officer
- ii. Assistant Collector (Training)
- iii. Revenue Divisional Officer, Kovilpatti
- iv. Special Deputy Collector (Special Schemes)
- v. District Environmental Engineer, TNPCB, Tuticorin
- vi. Tahsildar, Vilathikulam

- vii. Inspector of Police
- viii. Revenue Inspector
- ix. Village Administrative Officer
- x. Surveyors

B. To inspect Sy. No. 62 etc.

- i. Special Deputy Collector (Stamps)
- ii. Assistant Director (Mines)
- iii. District Backward Classes Welfare Officer
- iv. Assistant Collector (Training)
- v. District Superintendent of Police
- vi. Tahsildar (SIPCOT)
- vii. Revenue Inspector
- viii. Village Administrative Officer
- ix. Surveyors

7.6 These Respondents wish to state here that Mr. Ashish Kumar had deliberately handpicked the above two committees, so as to ensure that they are composed of compliant officials, who would not question his illegal actions. For instance, for an enquiry into the Mining Leases, there is absolutely no relevance or connection for Tahsildar (SIPCOT) or District Backward Classes Welfare Officer, or even the Special Deputy Collector (Special Schemes). According to the MMDR Act, for entry and inspections, powers should be expressly delegated by way of a notification in the Official Gazette. No such powers have been delegated in this instant case.

7.7 This group was assembled with specific instruction that the Collector, Mr. Ashish Kumar, would prepare a report holding V.V.Mineral to be guilty of illegal mining, and all these officers simply have to sign the dotted line.

7.8 Mr. Ashish Kumar's proceedings which bear the date "29-7-13", were issued to the above hand-picked Committee persons only on 4-8-13.

7.9 Of these persons, it is seen that, DRO, Assistant Collector (Training), District Environmental Engineer, AD (Mines), District Backward Classes Welfare Officer and Tahsildar (SIPCOT), received this (by hand) on 5-8-13. That day, i.e., 5-8-13 was a local holiday, being PANIMAYAMATHA FESTIVAL DAY. Hence, they went to Mr. Ashish Kumar's official residence, and received it.

7.10 The Special Deputy Collector (SSI), and Tahsildar Vilathikulam received this Proceedings only on 6-8-13.

7.11 The Proceedings bearing the dated "29-7-13" required the Committees to submit their Report by 14-8-13.

7.12 Several of the Committee Members received this Collector's Proceedings only on 6-8-13. It is reasonable to assume that they would have received this at 10 am, as soon as they entered the office.

7.13 Yet Mr. Ashish Kumar on the morning of 6-8-13 at 8.00 o' Clock, said that he had completed an inspection through the above two Committees, on 6/8/13, and that the two Committees had submitted a report to him, finding V.V.Mineral guilty of illegal mining. He also released a so-called Joint Inspection Report which showed illegal mining by us. All of this was at 8.00 pm o' clock. He then went to the media and defamed us, causing Crores of rupees of loss to Respondents' business. He gave a TV interview saying the same thing and also went on Facebook publishing these false charges.

7.14 At the time of the TV interview, Facebook page and Press Conference by Ashish Kumar, the inspection was still underway. Respondents were cooperating with the officers. There was no possible way in which Mr. Ashish Kumar could have obtained a Joint Inspection Report, when the inspection

was still going on at our site. The inspection got over only at 8.00 pm o' clock.

7.15 Information which Respondents had subsequently obtained under RTI Act reveals the following astonishing facts.

- (i) The DRO did not conduct any personal enquiry, not gave any Report
- (ii) AD Mines did not conduct any personal enquiry nor gave any Report.
- (iii) The Tahsildar did not conduct any personal enquiry nor gave any Report.
- (iv) Special Deputy Collector (SSI) did not conduct any personal enquiry nor gave any Report.
- (v) DEE, TNPCB, was doing the site inspection all day long on 6-8-13, and never ever went to the Collector's Office on 6-8-13, whether to submit any report or otherwise.
- (vi) The Collector summoned all the Officers to his residence on 5-8-13, although it was a holiday.
- (vii) The only basis on which Mr. Ashish Kumar makes a claim that V.V. Mineral is doing illegal mining is that Villagers said so. But the Villagers' Petitions dated 1-7-13 make no reference to VV Minerals doing any illegal mining.
- (viii) The distance from Collector's Office to Vaippar and Vembar is 40 Kms, and the whole trip (allowing for a minimum of 1 hour for inspection and 1 hour for report writing) would take 12 hours. This effectively means that no honest Collector could ever have submitted a true Inspection Report to the media at 9.00 pm 'o' Clock, as Ashish Kumar did.

7.16 Therefore, absolutely no credibility can be attached to the Report dt. 6.8.13 issued by the District Collector of Tuticorin. These Respondents state that no enquiry was conducted with any of the village people by any of the inspection officers. This has been confirmed by information obtained under the RTI Act.

So the story of the District Collector that the local enquiry revealed illegal mining, is a false one. The District Collector has given very detailed quantity calculations which are unsupported by any data.

V.5 Omission of Dhaya Devadoss in Amicus Report

A somewhat unfortunate omission in the Amicus Report is any manner of finding with respect to Mr. Dhaya Devadoss.

In the initial portions of the Report, the learned Amicus has spoken at length about the rivalry between these Respondents and Mr. Devadoss.

Since these Respondents were always hopeful that the learned Amicus would adopt an even approach to all persons they kept waiting and hoping that the learned Amicus would seek data against all miners on an even keel. Unfortunately, this does not appear to have been the case.

The learned Amicus has not sought for any data from any person, or authority, with respect to the mining lease of Mr. Dhaya Devadoss. This is a person who has been found guilty of illegal mining by the State Government.

It is reiterated that the role of an Amicus is to present all facts, whether favourable or unfavourable to any party, to the Court, impartially. The role of the Amicus is not to give prominence to facts unfavourable to one miner, and to withhold facts unfavourable to another.

It is these Respondents duty to state for the record, that learned Amicus Curiae held vakalat for Mr. V. Sundaram (alleged to be an IAS Officer) and filed an application for impleadment in WP

No.1233/2012,wherein he supported Mr. Dhaya Devadoss, and also took a strong stand against these Respondents.

V.6 Correct position

The extant legal framework involved in beach sand mining (insofar as it is relevant for the present PIL) is covered by the following:-

- (1) Mines and Minerals (Development and Regulation) Act, 1957
- (2) Mineral Concession Rules, 1960
- (3) Mineral Conservation and Development Rules, 1980
- (4) Atomic Energy Act, 1962
- (5) Atomic Energy (Handling of Prescribed Substances) Rules, 1964
- (6) Atomic Energy (Radiation Protection) Rules, 2002
- (7) Policy on Mining of Beach Sand Minerals, 1998
- (8) Central Government Notification dt. 20.12.2006
- (9) G.O.Ms.No.488, Industries, dt. 12.8.1998
- (10) Government Letter No.131 Industries dt. 13.6.2000
- (11) Government Letter No.155 Industries dt.31.7.2003
- (12) Government Letter No. 3362, Industries dt. 10.7.2003
- (13) Nagar Committee Report, 2011

Based on the above, the process involved in beach sand mining can be summed up as under:-

1. A Mining Lease Application is to be submitted by the proposed lessee to the State Government under Section 4 of the MMDR Act, read with Rule 22(1) of the MCR.
2. Once the Mining Lease Application is approved by the State Government authorities, it will be forwarded to Central Government under Section 5(1) of the Act for prior approval.

3. Once the Central Government grants in-principle approval, the State Government will inform the lessee about their decision to grant mining lease and issue 'precise area' letter under Rule 22(4) of the MCR.
4. On receipt of the 'Precise Area' letter, the applicant must prepare a mining plan under Rule 22(5) of the MCR, containing a 'tentative' scheme of mining, setting out the quantities that the lessee proposes to mine over the life of the lease, and also for the next five years.
5. The mining plan should be approved by Govt., of India, Indian Bureau of Mines and Atomic Minerals Directorate, under Rule 22BB(1) and Rule 22BB(7) of the MCR.
6. Thereafter the State Government grants the lease.
7. Prior to 1998, leases were granted for Garnet only with NOC from DAE.
8. After notification of the Policy on Beach Sand Minerals during 1998, mining lease for prescribed substances were also granted. (Ilmenite, Rutile, Zircon were prescribed substances at that time).The lessee was required to obtain a 'Handling License' from DAE under the Atomic Energy (Handling of Prescribed Substances) Rules, for mining of the beach sand minerals. However, on and from 1.1.2007, that requirement has been abolished, vide Central Government Notification dt. 20.12.2006.
9. On and after 1.1.2007, the only requirement is for the lessee to obtain a Safety License from the Atomic Energy Regulatory Board under the Atomic Energy (Radiation Protection) Rules.
10. Rules 9, 10, 11, and 12 of the MCDR require the proposed lessee to undertake scientific and sustainable production of mineral, over the lifetime of the lease. Therefore, the proposed lessee will provide a tentative estimate of the proposed extraction of the mineral. However, a perusal of these Rules, would make it clear that these can only apply

to *in situ* minerals, and not to replenishable minerals. Beach Sand Minerals are replenishable minerals, and are replaced back by the action of tide and wind [See Nagar Committee Report]. These Mining Plans are approved by the Indian Bureau of Mines.

11. Once the mining plan is approved, the production is required to be as per the Scheme of Mining (as per Rules 9, 10, 11, 12 and 13 of the MCDR).

12. The unique and peculiar nature of these minerals is such that the lessees make especial mention of the replenishable character of these minerals, in their Mining Plans. Indeed, in the Mining Plan of V.V. Mineral, there is a separate mention of In Situ Reserves, and Replenishable Reserves. Thereafter while providing the development and production programme for five years, the Mining Plan first provides production figures, indicating the recoverable reserve arising out of the In Situ Reserves. The Mining Plan then goes out to say, *“Depending upon the market fluctuations, and quantum of replenishable reserves, the production figures are likely to get changed”*. Therefore, there is an express right reserved for upward revision of mineral production figures. This has been approved by Govt., of India, Indian Bureau of Mines and AMD.

13. Therefore, lessees of beach sand minerals keep scooping the minerals that accumulate in the top layer of the beach sand, and transporting them to the processing plants for further action. According to MCR it is the duty of the lessee to keep correct and accurate account for the quantity. This has been fulfilled by this Respondent. The miners pay royalty on ad hoc basis on this sand, and obtain transport permits for moving the sand from the beach to the processing plant. Under Section 9 of the MMDR Act, only minerals suffer royalty, and not the

raw sand. Therefore, the royalty paid, is only an ad hoc amount for the purpose of obtaining the transport permit. Once the raw sand is processed in the processing plant, there is a clear measurement of the minerals which emerge.

14. Based on the mineral production statistics, the State Government quantifies the royalty, and reconciles the same with the ad hoc royalty paid, the final royalty statement is prepared. In this case, V.V.Mineral has always paid royalty in excess of the legal requirement, and is therefore in a position where refunds are due.

15. Subsequently Govt., of India notified MCR and introduced Rule 64C etc., Accordingly, even any mineral is produced from the waste or reject, it can also sold on payment of royalty and the sub grade mineral also used for recovering minerals. Hence the prior administrative instructions on transport permits (vide Letter No. 131) stood superceded. This has been reported by the Commissioner of Geology and Mining to Govt., vide Letter No. 155, which communicated this to all the District Collectors.

16. Having regard to the manner in which the learned Amicus went about the task of compiling the data, the Respondents 8 and 22 thought it best to independently compile the data on the basis of their own filings. They have accordingly prepared a Table as under. All of the data set out below can be compared by the State Government with their own data.

17. The first chart shows the ML wise comparison of production, based on the Environmental Clearances:-

S.No	EIA Clearance No and Reserve per Hect	G.O. / Proceedings No	Per year Production as per EIA						Total Heavy Mineral
			ROM	Garnet	Ilmenite	Rutile	Silimanite	Zircon	
1&2	F.No.10(6)/2004 - 1A III dated 10 March 2005 & No.11 - 17/2006 - IA III dated 15 April 2006 Extent :336.54.3 ha Reserve/ha : Insitu : 60,000 metric tons/ha Replenishable reserve : 90,000 metric tons/ha/yr	185/19.07.94	365397.85	54809.68	127889.25	3653.98	3653.98	7307.96	197315
		114/05.05.95	24981.90	3747.28	8743.66	249.82	249.82	499.64	13490
		7885/MM3/99 dt.16.02.01	45248.33	6787.25	15836.92	452.48	452.48	904.97	24434
		4640/MM3/99 dt.16.02.01	48157.87	7223.68	16855.26	481.58	481.58	963.16	26005
		6391/MM7/2000 dt.05.06.2002	24781.24	3717.19	8673.43	247.81	247.81	495.62	13382
		6392/MM7/2000 dt 05.06.2002	50164.45	7524.67	17557.56	501.64	501.64	1003.29	27089
		6389/MM7/2000 dt.05.06.2002	22975.32	3446.30	8041.36	229.75	229.75	459.51	12407
		4638/MM3/99 dt.09.03.2001	33911.17	5086.68	11868.91	339.11	339.11	678.22	18312
		6393/MM7/2000 dt.17.03.04	50164.45	7524.67	17557.56	501.64	501.64	1003.29	27089
		1507/MM7/2001 dt.17.03.04	41084.68	6162.70	14379.64	410.85	410.85	821.69	22186
		9999/MM7/2002 dt. 23.08.04	37974.49	5696.17	13291.07	379.74	379.74	759.49	20506
17107/MM7/2001 dt.20.10.05	9631.57	1444.74	3371.05	96.32	96.32	192.63	5201		

		17107/MM7/2001 dt. 19.01.2010	40131.56	6019.73	14046.05	401.32	401.32	802.63	21671
		7495/MM7/2005 dt.20.10.05	11587.99	1738.20	4055.80	115.88	115.88	231.76	6258
		G.O (Ms)No. 123 dt. 12.08.11	1218564.72	182784.71	426497.65	12185.65	12185.65	24371.29	658025
		1506/MM7/2001 dt. 20.10.05	30249.16	4537.37	10587.21	302.49	302.49	604.98	16335
		831/MM7/2001 dt.20.10.05	20366.77	3055.02	7128.37	203.67	203.67	407.34	10998
3	No.11-56/2005-IA III dated 3 April 2006 Extent :371.16.0 ha Reserve /ha Insitu : 60,000 metric tons/ha Replenishable reserve : 90,000 metric tons/ha/yr	2747/MM7/2004 dt.18.04.06	60162.74	9024.41	21056.96	601.63	601.63	1203.25	32488
4	F.No.J-17011/44/98- IA III dated 12 November 2003 Extent : 16.84.9 ha Reserve /ha Insitu : 80,000 metric tons/ha Replensishable reserve: 90,000 metric tons/ha/yr	4200/MM7/2000 dt.21.01.2004	219716.29	32957.44	76900.70	2197.16	2197.16	4394.33	118647
		4198/MM7/2000 dt.21.01.2004	158466.37	23769.96	55463.23	1584.66	1584.66	3169.33	85572
		17351/MM7/2000 dt.21.01.2004	219288.97	32893.34	76751.14	2192.89	2192.89	4385.78	118416
		18325/MM7/2000 dt.31.01.2006	49854.59	7478.19	17449.11	498.55	498.55	997.09	26921

5	N.11-57/2005 - IA. III dated 21 March 2006 Extent : 30.14.60 ha Reserve /ha Insitu : 80,000 metric tons/ha Replenishable reserve : 90,000 metric tons/ha/yr	18933/MM7/2002 dt.31.01.2006	56193.20	8428.98	19667.62	561.93	561.93	1123.86	30344
	Total		2839056	425858	993669	28391	28391	56781	1533090

18. The second chart shows the ML wise comparison of production, based on the Mining Plan:-

S.No	EIA Clearance No and Reserve per Hect	G.O. / Proceedings No	Production as per MP						Total Heavy Minerals
			ROM	Garnet	Ilmenite	Rutile	Zircon	Silimanite	
1&2	F.No.10(6)/2004 - 1A III dated 10 March 2005 & No.11 - 17/2006 - IA III dated 15 April 2006 Extent :336.54.3 ha Reserve/ha : Insitu : 60,000 metric tons/ha Replenishable reserve	185/19.07.94	147000	58800	17640	1470	2205	3675	83790
		114/05.05.95	19056	7622	2287	191	286	476	10862
		7885/MM3/99 dt.16.02.01	88524	26557	21246	885	443	443	49573
		4640/MM3/99 dt.16.02.01	115776	34733	27786	1158	579	579	64835
		6391/MM7/2000 dt.05.06.2002	26520	14007	12006	400	0	0	26413

: 90,000 metric tons/ha/yr	6392/MM7/2000 dt. 05.06.2002	38544	15418	4625	385	0	0	20428
	6389/MM7/2000 dt.05.06.2002	19932	7973	2392	199	0	0	10564
	4638/MM3/99 dt.09.03.2001	35600	10680	8544	356	178	178	19936
	6393/MM7/2000 dt.17.03.04	47250	11812	5670	472	0	0	17954
	1507/MM7/2001 dt.17.03.04	54000	10800	16200	540	0	0	27540
	9999/MM7/2002 dt. 23.08.04	40000	8000	12000	400	0	0	20400
	17107/MM7/2001 dt.20.10.05	45300	13590	11325	453	680	1133	27180
	17107/MM7/2001 dt. 19.01.2010	8640	2592	1555	86	130	216	4579
	7495/MM7/2005 dt.20.10.05	53775	16132	13444	538	807	1344	32265
	G.O (Ms)No. 123 dt. 12.08.11	103404	16545	33089	1034	0	0	50668
	1506/MM7/2001 dt. 20.10.05	138675	41603	0	0	0	0	41603
	831/MM7/2001 dt.20.10.05	96600	28980	24150	966	1449	2415	57960

3	No.11-56/2005-IA III dated 3 April 2006 Extent :371.16.0 ha Reserve /ha Insitu : 60,000 metric tons/ha Replenishable reserve : 90,000 metric tons/ha/yr	2747/MM7/2004 dt.18.04.06	183000	58560	29280	1830	2745	4575	96990
4	F.No.J-17011/44/98- IA III dated 12 November 2003 Extent : 16.84.9 ha Reserve /ha Insitu : 80,000 metric tons/ha Replenishable reserve: 90,000 metric tons/ha/yr	4200/MM7/2000 dt.21.01.2004	61670	4313	25264	616	0	0	30193
		4198/MM7/2000 dt.21.01.2004	44700	2682	18774	447	447	894	23244
		17351/MM7/2000 dt.21.01.2004	43080	8616	12063	430	646	1077	22832
		18325/MM7/2000 dt.31.01.2006	32580	3258	0	0	0	0	3258
5	N.11-57/2005 - IA. III dated 21 March 2006 Extent : 30.14.60 ha Reserve /ha Insitu : 80,000 metric tons/ha Replenishable reserve : 90,000 metric tons/ha/yr	18933/MM7/2002 dt.31.01.2006	110580	11058	0	0	0	0	11058
Total			1554206	414331	299340	12856	10593	17005	754125

19. The third and final chart shows the ML wise comparison of production, based on the Transport Permits, with a master comparison of each, showing the capacity as per Mining Plan, as the base (as per Judgment of Hon'ble Supreme Court in Common Cause):-

S.No	EIA Clearance No and Reserve per Hect	G.O. / Proceedings No	Permit per year (Average of 2000-01 to 2013-14)						Total Heavy Mineral	Difference of EIA	Difference of MP
			ROM	Garnet	Ilmenite	Rutile	Zircon	Silimanite			
1&2	F.No.10(6)/2004 - 1A III dated 10 March 2005 & No.11 - 17/2006 - IA III dated 15 April 2006 Extent :336.54.3 ha Reserve/ha : Insitu : 60,000 metric tons/ha Replenishable reserve : 90,000 metric tons/ha/yr	185/19.07.94	86714	23642	23625	1000	0	0	48267	149048	35523
		114/05.05.95	24785	7892	6916	0	0	0	14808	1318	-3946
		7885/MM3/99 dt.16.02.01	36153	7038	13846	666	375	375	22300	2134	27273
		4640/MM3/99 dt.16.02.01	35000	7307	13100	500	375	750	22032	3973	42803
		6391/MM7/2000 dt.05.06.2002	19666	4611	6644	0	0	0	11255	2127	15158
		6392/MM7/2000 dt 05.06.2002	42777	8444	13722	500	875	1125	24666	2423	-4238
		6389/MM7/2000 dt.05.06.2002	16700	3722	5222	500	0	0	9444	2963	1120
		4638/MM3/99 dt.09.03.2001	42769	8692	15115	1000	250	250	25307	6995	-5371

		6393/MM7/2000 dt.17.03.04	28000	5833	8833	0	0	0	14666	12423	3288
		1507/MM7/2001 dt.17.03.04	45811	8305	14888	562	0	0	23755	1569	3785
		9999/MM7/2002 dt. 23.08.04	33333	5444	12166	500	0	0	18110	2396	2290
		17107/MM7/2001 dt.20.10.05	14666	6250	1000	0	0	0	7250	2049	19930
		17107/MM7/2001 dt. 19.01.2010	22500	6000	5000	250	250	250	11750	9921	-7171
		7495/MM7/2005 dt.20.10.05	17750	7450	0	0	0	0	7450	1192	24815
		G.O (Ms)No. 123 dt. 12.08.11	90000	17666	26000	2000	0	0	45666	612359	5002
		1506/MM7/2001 dt. 20.10.05	11142	5071	0	0	0	0	5071	11264	36532
		831/MM7/2001 dt.20.10.05	21250	8625	0	0	0	0	8625	2373	49335
3	No.11-56/2005-IA III dated 3 April 2006 Extent :371.16.0 ha Reserve /ha Insitu : 60,000 metric tons/ha Replenishable reserve : 90,000 metric tons/ha/yr	2747/MM7/2004 dt.18.04.06	81750	10714	36285	900	0	0	47899	15411	49091
4	F.No.J-17011/44/98- IA III dated 12 November 2003 Extent : 16.84.9 ha	4200/MM7/2000 dt.21.01.2004	22000	8083	7650	0	0	0	15733	102914	14460
		4198/MM7/2000 dt.21.01.2004	22800	8833	7775	0	0	0	16608	68964	6636

	Reserve /ha Insitu : 80,000 metric tons/ha	17351/MM7/2000 dt.21.01.2004	25650	8416	7818	0	0	0	16234	102182	6598
	Replensishable reserve: 90,000 metric tons/ha/yr	18325/MMM7/2000 dt.31.01.2006	3000	0	0	0	0	0	0	26921	3258
5	N.11-57/2005 - IA. III dated 21 March 2006 Extent : 30.14.60 ha Reserve /ha Insitu : 80,000 metric tons/ha Replenishable reserve : 90,000 metric tons/ha/yr	18933/MM7/2002 dt.31.01.2006	10666	3500	0	0	0	0	3500	26844	7558
	Total		754882	181538	225605	8378	2125	2750	420396	1112694	333729

SHORT NOTE ON THE ABOVE TABLES:

20. These Respondents have checked their EIA Clearance as well as their Mining Plans. They have then taken the total average production approved in the EIA and the approved mining plan as well as the actual permit obtained quantity.
21. These Respondents submit that neither the learned Amicus, nor the District Level Committee, nor Mr. G. S. Bedi either asked for such a comparison from these Respondents, nor undertook the same.
22. If this Hon'ble Court goes through the above tables, it would be seen that in only four cases alone, there is a quantity difference showing extraction more than the approved Mining Plan. If one takes the EIA Clearance as the base, even those four cases do not show a quantity difference.
23. As stated supra, all of the approved Mining Plans contain specific reference to the replenishable deposit.
24. To ensure fullest transparency, and to enable cross-verification by the Hon'ble Court, the above table contains the EIA Clearance Number and the relevant G.O. Numbers, showing the per year production, as noted in the EIA Clearance, and also as shown in the Mining Plan.
25. Total permit quantity is divided by the relevant year and average is arrived at.
26. Lastly, it may be noted that these Respondents have relevant endorsement in the approved mining plan for the quantity variations.
27. Thus, it will be seen that there are minor variations in just five leases, and all other leases the mining has been undertaken within the permitted limits.

28. It is this aspect that Respondents were unable to present to the DLC because the enquiry was done in a slipshod manner. The District Level Committee did not ask the Respondents to show cause against any specific charges. The Committee simply issued a notice asking the Respondents if they have anything to say about the Taluk Level Committee Report, and called upon them to be present at the hearing on 10.8.2016. Naturally, the Respondents only concern was how a suo motu appeal was being taken by the District Level Committee, and nothing more. The Respondents asked the District Level Committee to inform the hearing date to give reply, but no hearing date was intimated. Instead, the District Level Committee simply went ahead and gave the final order on illegal stocking of minerals, which was never the show cause notice. Even on royalty, the DLC2 Report was utterly illegal with the District Collector exercising unheard of powers to reopen 15 year old royalty accounts, without giving any opportunity to the affected parties.

29. As stated above, the quantities tally with environmental clearance and mining plan. Respondents have no control over the naturally deposited replenishable mineral wealth. Therefore, there is small variation in respect of five mining leases. This small variation too is only in respect of replenishable deposits. Unless it is collected, it will be washed back into the sea and will become a waste and a national loss. Even in those five mining leases where there is slight overshoot, it is submitted that the subsequent Schemes of Mining have been submitted and approved, thereby ratifying the mineral extracted.

30. Lastly it is submitted that it is impossible to make any estimate of the reserves. It is for this reason that a specific caveat is made in the

Mining Plan to say, "*Depending upon the market fluctuations, and quantum of replenishable reserves, the production figures are likely to get changed.*". This Mining Plan (with this caveat) has been approved. Hence, it is submitted that even for those five Mining Leases, there is no excess extraction at all. Even if one were to take a very rigid interpretation of the Mining Plan, excess extraction of mineral will not be viewed so seriously in the case of a replenishable mineral, since the mineral keeps getting washed back as and when it is extracted.

VI. PRAYER

It is therefore prayed that this Hon'ble Court be pleased to reject the findings given by the learned Amicus which are based on the Bedi Report, the DLC1 Report, the DLC2 Report, or on any other material which has been collected privately, or not shared with the Party Respondents.

It is prayed that this Hon'ble Court be pleased to adjudicate this W.P. strictly within the parameters of the order dt. 23.1.15, and dismiss the same, and thus render justice.

Dated at Chennai, the ___ day of April 2018.

COUNSEL FOR 8TH AND 22ND RESPONDENTS

