

CASE NO.:
Writ Petition (civil) 4677 of 1985

PETITIONER:
M.C. Mehta

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 18/03/2004

BENCH:
Y.K. Sabharwal & H.K. Sema.

JUDGMENT:
J U D G M E N T

INTERLOCUTORY APPLICATION NO.1785/01

IN

INTERLOCUTORY APPLICATION NO.22 AND

[With IA Nos.1806, 1815, 1817-1818, 1819, 1822, 1823, 1824, 1825, 1794 and 1795 in IA No.1785 in WP (C) No.4677/85, WP (C) No.410/2002, IA No.1832, 1835-1836, 1838 and 1839-1840 in IA No.1785 in IA No.22 in WP (C) No.4677/85, WP (C) No.661/2002, WP (C) No.428/2002, WP (C) No.624/2002 and Contempt Petition (C) No.568/2002 in WP (C) No.428/2002]

Y.K. Sabharwal, J.

The main question to be examined in these matters is whether the mining activity in area upto 5 kilometers from the Delhi-Haryana border on the Haryana side of the ridge and also in the Aravalli hills causes environment degradation and what directions are required to be issued. The background in which the question has come up for consideration may first be noticed.

The Haryana Pollution Control Board (HPCB) was directed by orders of this Court dated 20th November, 1995 to inspect and ascertain the impact of mining operation on the Badkal Lake and Surajkund - ecologically sensitive area falling within the State of Haryana. In the report that was submitted, it was stated that explosives are being used for rock blasting for the purpose of mining; unscientific mining operation was resulting in lying of overburden materials (topsoil and murum remain) haphazardly; and deep mining for extracting silica sand lumps is causing ecological disaster as these mines lie unreclaimed and abandoned. It was, inter alia, recommended that the Environmental Management Plan (EMP) should be prepared by mine lease holders for their mines and actual mining operation made operative after obtaining approval from the State Departments of Environment or HPCB; the EMP should be implemented following a time bound action plan; land reclamation and afforestation programmes shall also be included in the EMP and must be implemented strictly by the implementing authorities. The report recommended stoppage of mining activities within a radius of 5 kms. from Badkal Lake and Surajkund (tourist place). The Haryana Government, on the basis of the recommendations made in the report, stopped mining operations within the radius of 5 kms of Badkal Lake and Surajkund.

The mine operators raised objections to the recommendations of stoppage of mining operations. According to them, pollution, if any, that was generated by the mining activities cannot go beyond a distance of 1 km. and the stoppage was wholly unjustified. NEERI Report and earlier directions

By order dated April 12, 1996, the Court sought the expert opinion of National Environmental Engineering Research Institute (NEERI) on the point whether the mining operations in the said area are to be stopped in the interest of environmental protection, pollution control and tourism development and, if so, whether the limit should be 5 kms. or less. NEERI in its inspection report dated 20th April, 1996, inter alia, recommended that:

"6.1 Mining. (1) Detailed exploratory operations need to be undertaken to facilitate the estimation of reserves in the region, and for scientific management of mining operations.

(2) The mine lease-owners need to undertake the mining operations in series, i.e. mining activities must be completed to full potential in a block before moving to the next. This will help in reclamation of land in the block in which mining operations have been completed.

(3 to (9) ...

(10) The Environmental Management Plans (EMP) being formulated by the mine-owners should include land rejuvenation and afforestation programmes, and other measures necessary to protect the quality of the environment and human health. The mining operations should commence only after the approval of EMPs by a designated authority. A time-bound action plan needs to be initiated for the implementation of the measures delineated in the Environmental Management Plans.

(11) & (12) ...

(13) The question of lifting the ban on mining operations needs to be considered in conjunction with the implementation of stringent pollution control, land reclamation, green belt, and other Environmental Management measures so as to facilitate the availability of construction materials and employment opportunities for the workers along with the protection of environment and public health.

(14) It is considered necessary to prepare a Regional Environmental Management Plan for urgent implementation to enable eco-friendly regional development in the area."

On consideration of the reports, this Court came to the conclusion that the mining activities in the vicinity of tourist resorts are bound to cast serious impact on the local ecology. The mining brings extensive alteration in the natural land profile of the area. Mined pits and unattended dumps of overburdened left behind during the mining operations are the irreversible consequences of the mining operations and rock blasting, movement of heavy vehicles, movements and operations of mining equipment and machinery cause considerable pollution in the shape of noise and vibration. The ambient air in the mining area gets highly polluted by the dust generated by the blasting operations, vehicular movement, loading/unloading/transportation and the exhaust gases from equipment and machinery used in the mining operations. It was directed that in order to preserve environment and control pollution within the vicinity of two tourist resorts, it is necessary to stop mining activity within 2 kms. radius of the tourist resorts of Badkal Lake and Surajkund. The Court further directed the Director, HPCB to enforce all the recommendations of NEERI contained in para 6.1 of its report so far as the mining operations in the State of Haryana are concerned. Further, it was directed that failing to comply with the recommendations may result in the closure of the mining operations and that the mining leases within the area from 2 kms. to 5 kms. radius shall not be renewed without obtaining prior no objection

certificate from the HPCB as also from the Central Pollution Control Board (CPCB). Unless both the Boards grant no objection certificate, the mining leases in the said area shall not be renewed. (M.C. Mehta v. Union of India & Ors. [(1996) 8 SCC 462]).

Present Issues

The aspects to be examined include the compliance of the conditions imposed by the Pollution Boards while granting no objection certificate for mining and also compliance of various statutory provisions and notifications as also obtaining of the requisite clearances and permissions from the concerned authorities before starting the mining operations.

In matters under consideration, the areas of mining fall within the districts of Faridabad and Gurgaon in the Haryana State.

I.A. No.1785/01 has been filed by the Delhi Ridge Management Board praying that the Government of Haryana be directed to stop all mining activities and pumping of ground water in and from area upto 5 kms from Delhi-Haryana border in the Haryana side of the Ridge, inter alia, stating that in the larger interest of maintaining the ecological balance of the environment and protecting the Asola Bhatti Wildlife Sanctuary and the ridge located in Delhi and adjoining Haryana, it is necessary to stop mining. In the application, it has been averred that the Asola Bhatti Wildlife Sanctuary is located on the southern ridge which is one of the oldest mountain ranges of the world and represents the biogeographical outer layer of the Aravalli mountain range which is one of the most protected areas in the country. The sanctuary is significant as it is instrumental in protecting the green lung of National Capital of Delhi and acts as a carbon sink for the industrial and vehicular emissions of the country's capital which is witnessing rapid growth in its pollution level each year. The ridge, it is averred, is a potential shelter belt against advancing desertification and has been notified a wildlife sanctuary and reserve forest by the Government of National Capital Territory of Delhi. Regarding the mining activities, it is averred that for extraction of Badarpur (Silica sand), there is large scale mining activity on the Haryana side just adjacent to the wildlife sanctuary of the ridge which activities threaten the sanctuaries habitat and also pumping of large quantity of ground water from mining pits. It was also stated that the ground water level was being depleted as a result of the mining activity. Further, the query dust that comes out of mining pits is a serious health hazard for human population living nearby and also the wild animals inhabiting the sanctuary pointing out that the mining and extraction of ground water had been banned in National Capital Territory of Delhi and the ridge being protected as per the order of this Court, it is necessary, that the ridge on the Haryana side is also protected - that being the extension of the range and, therefore, mining, withdrawal of ground water and destruction of flora, etc. should also be restricted outside Delhi or at least upto 5 kms. from Delhi-Haryana border towards Haryana. On 6th May, 2002, this Court directed the Chief Secretary, Government of Haryana to stop, within 48 hours, all mining activities and pumping of ground water in and from an area upto 5kms. from Delhi-Haryana border in the Haryana side of the ridge and also in the Aravalli Hills. The question to be considered is whether the order shall be made absolute or vacated or modified.

Our examination of the issues is confined to the effect on ecology of the mining activity carried on within an area of 5 Kms. of Delhi-Haryana Border on Haryana side in areas falling within the district of Faridabad and Gurgaon and in Aravalli Hills within Gurgaon District. The question is whether the mining activity deserves to be absolutely banned or permitted on compliance of stringent conditions and by monitoring it to prevent the environmental pollution.

EPCA Visits

In terms of the order passed by this Court on 22nd July, 2002, Environmental Pollution Central Authority (EPCA) was directed to give a report with regard to environment in the area preferably after a personal visit to the area in question without any advance notice. It may be noted

that EPCA was constituted by the Government of India under notification dated 29th January, 1998 issued in exercise of power under Section 3(1) & (3) of the Environment (Protection) Act, 1986 (for short, 'the EP Act') Mr. Bhure Lal was appointed its Chairman. The EPCA was constituted with a view to protect and improve the quality of environment and preventing, controlling and abetting environmental pollution. EPCA has also the power to deal with environment issues pertaining to National Capital Region which may be referred to it by the Central Government. The EPCA has jurisdiction over the National Capital Region as defined in clause (f) of Section 2 of the National Capital Region Planning Board Act, 1985. The Districts of Gurgaon and Faridabad are part of the National Capital Region, under Section 2(f) read with the Schedule of the said Act. The Chairman of the CPCB is a convenor member of EPCA. EPCA made a surprise visit to the area to see the mining sites. The mining sites visited are located in the villages of Anangpur, Pali, Mohabatabad and Mangar, which fall within the notified area of 5 km radius from the Delhi border in the Faridabad district. EPCA also visited mining sites that are located outside the notified zone in Kot area, EPCA also held consultation with the officials of the Central Groundwater Board and obtained their opinion on this matter. On August 7, 2002, members of the EPCA visited the mining sites located within five km radius from Delhi border. The objectives of the visit, as per EPCA, were as follows :

1. Assessment of the level of compliance with the conditions laid down in the regulatory procedures like the No Objection Certificate (NOC) granted by authorities to the mine owners;
2. Evidence of land and habitat degradation in and around the mining sites;
3. Evidence of misuse and shortage of ground water in the area;
4. Assessment of the implication of such activities for the local ecology and drinking water sources in the area.

During the visit, prima facie, EPCA found evidence of clear violation of some of the key conditions of order of this court dated May 10, 1996.

EPCA Ist Report and Recommendations

The EPCA gave its report dated 9th August, 2002. It would be useful to reproduce the said report in extenso as under:

"Anangpur area and its vicinity : EPCA inspected the mining sites owned by Mohan Ram and Company as well as at least 5 other mining sites in this area, which EPCA is not clear who owns. At the time of visit there was no mining taking place. So EPCA members assessed level of compliance with some of the key conditions laid down in the NOCs. There was clear evidence of violation of the following conditions.

i. The excavated pits should be filled with fly ash or municipal solid waste in the bottom layers. The top soil should be used as a top layer while filling the pit. Land reclamation and tree plantation should be done in a planned manner over the reclaimed mine pits.

ii. The applicant shall not discharge any effluent or groundwater outside their lease premises and shall take appropriate measures for rainwater harvesting and reuse of water so as not to affect adversely the ground water table of the area. No mining operation shall be carried out in the water table area.

iii. The green belt proposed in the environment

management plan around the proposed mining lease area and along the road side shall be developed.

The most serious violation noticed by the EPCA was the continuation of mining even after reaching the ground water level which has been disallowed by the regulatory agencies. Photographs taken by EPCA, which show deep mining pits have turned into large lakes of ground water. In this mining lease area EPCA members saw extensive and deep water bodies. The water was blue, indicating that this was groundwater and not surface water runoff collected in the pits. Even more serious violation noticed was configuration of water pipes laid out to draw water out of the pits to throw them over hills and let the water flow out. This is a grave misuse of precious ground water in an area where ground water is the only source of water for the local population - both urban and rural.

EPCA members talked to local villagers who complained that water table in the area has gone down over a period of time and that the village is facing water shortage. While earlier ground water could be tracked at the depth of 30-35 ft. now deep bore wells have been dug to get drinking water, in addition, noise and dust pollution from the mining sites are a problem.

Goodwill mine in Pali village : EPCA found similar violation of conditions and evidence of mining sites reaching the level of ground water in deep pits and pipes fitted to drain out water here as well.

During the long drive to various mining sites, EPCA could not see any credible sign of green belt along the roads. Moreover, one important condition of NOCs is that "a safe distance should be maintained from the road to overburden dumps and the mine pits in accordance with the directions/notifications of the department of environment, Haryana and bureau of mines." But EPCA noticed mining sites very close to the roads and also very close to the ecologically sensitive area of Asola sanctuary near the Goodwill mines. Stone crushing sites in Pali : EPCA has inspected the stone crushing sites in the area. All sites had a lot of material and trucks being loaded. It is difficult to establish if these are the left over material from the past or were products from banned sites or from sites from outside the notified area. EPCA was informed that after the Hon'ble Supreme Court directive of May 2002, the stone crushers were not being operated, except between the hours of 5 am to 9 am. EPCA was, therefore, unable to verify the working conditions of these crushers. But it did not find any evidence of afforestation as stipulated by the NEERI directive or any evidence of dust minimizing equipment.

Mining around Mangar village : Again the same situation was found around Anangpur. The villagers interviewed here were caught between the devastation of the mines, desperate shortage of drinking water and the only livelihood option that these manual stone quarries provided.

Legal mining in Kot area : As mining is banned along the 5 km radius from the Delhi border, EPCA also visited some mines that are outside the notified area to ascertain the state of the environment. In this area, surface mining is being done and not deep mining. Therefore, as yet, the groundwater reserves are not being touched in this region. The entire area was like a giant dust field. We saw no evidence of any afforestation or even dust minimising efforts being undertaken in the areas that are being mined. We did see one tanker of water, which was sprinkling the roads, unable to stop the dust from swirling. EPCA could not see any protection for the workers from dust. As this area will clearly emerge as a major mining in the future, it is important that the mining area is properly demarcated and environment management plan implemented to enable scientific mining to minimize degradation of the environment.

Faridabad-Gurgaon road : EPCA saw mining alongside the road. Though the mines were closed because of the Hon'ble court directive, EPCA saw vast pits and mining activity in this area. This is the road for the proposed bypass from Delhi.

3. The present laws and regulations in the area

We have assessed the current applicable laws and regulations in the area, which govern land use and mining so as to understand what efforts have been made by different agencies to ensure compliance.

? In May 1992, parts of the Aravalli range were declared ecologically sensitive under the Environment (Protection) Act. Under this notification, certain activities - including all new mining operations, including renewals of mining leases - are restricted and permission has to be sought from the Ministry of Environment and Forests. This notification is valid for reserved forests in the districts of Gurgaon in Haryana and Alwar in Rajasthan.

? In August 1992, the Forest Department of Haryana had issued a notification under the Punjab Land Preservation Act 1900, banning the clearing and breaking up the land not under cultivation, quarrying of stone... in the Badkal area without prior permission of the forest department. This ban was for 30 years. Earlier it had already issued a similar notification for the Pali area for 25 years.

? In 1996, the Hon'ble Supreme Court banned all mining activity within 2 kms of the Badkal and Surajkund tourist resorts.

? In the same order, it ordered that mining leases within the area from 2 km to 5 km radius shall not be renewed without obtaining no-objection certificates from the Haryana Pollution Control Board as also the Central Pollution Control Board (CPCB). It stipulated that "unless both the boards grant no objection certificate, the mining leases in

the said area shall not be renewed".

? Mining in the 2-5 kms was allowed under condition that there would be strict adherence to the environment management plan laid down by the NEERI. It has to be noted here that the CPCB had in its report to the Hon'ble Court in 1996 stated that the "deep mining for silica is causing an ecological disaster". CPCB has recommended that mining activity "should be stopped within a radius of 5 kms from Badkal and Surajkund. The subsequent report of NEERI dated 20.4.1996, recommended green belt at 1 km radius all around the boundaries of the two lakes. On this basis, the Hon'ble Court directed that radius be extended to 2 kms for a green belt and to cushion the impacts of air and noise pollution.

? The Hon'ble Court in its order asked the agencies to ensure enforcement of the recommendations of NEERI. It directed that "failure to comply with the recommendations may result in the closure of the mining operations."

4. Compliance and enforcement : absent and missing

To discuss the future strategy for this area, it would be important to assess the track-record of the different agencies in ensuring that the previous orders and directives are enforced and complied with.

1. No mining within 2 kms of Badkal and Surajkund : Probably enforced. But difficult to assess as the area is hilly.

2. Mining within 2-5 kms should get permission from Haryana Pollution Control Board and CPCB. The CPCB has issued 2 NOCs, dated December 20, 2001 and May 6, 2002. No further record has been found of NOCs given for mining in this area. EPCA has not been able to find the NOCs granted by the Haryana Pollution Control Board. Compliance with the environmental management plans recommended by NEERI as directed by the Hon'ble Supreme Court.

S.

No.

Directive

Enforced or not

1.

200 mts wide green belt along Surajkund and Badkal

Shrubs and wild growth.

No real evidence of good afforestation.

2.

100 mts wide green belt outside mining lease boundary

Definitely not done. EPCA did not see afforestation, except for some recent plantation of dying and

dead trees in one or two places. The sign boards were more prominent than the trees they were supposed to show.

3.

100 mts open peripheral area around stone crusher zone with green belt

Not done

4.

Green belt on either side of the road between Surajkund and Badkal.

We saw large scale construction on this road - from schools to management colleges and housing colonies.

5.

Mining should commence only after the environmental management plan (EMP) is approved by a designated authority. There is no evidence of an environmental management plan being adhered to in this region. Adherence to the conditions of the No-objection Certificate granted by CPCB for mining

S.

No.

Directive

Enforced or not

1.

Mining to be done with approved mining plan

No evidence

2.

Excavated pit to be filled by fly ash or municipal solid waste in the bottom layers.

Overburden should be used in the middle layer. Top soil on top layer and afforestation.

EPCA saw no evidence that this recommendation had even been attempted to be followed. All abandoned mines were left open and degraded. The entire region was pockmarked with deep holes and overburdens.

3.

No discharge of effluent or groundwater outside lease premises. Must take measures for rain

water harvesting and reuse of water so as not to affect the groundwater table in the areas. No mining operations shall be carried out in the water table area.

Not done. Gross violation. See section on water for details.

4.

Ambient air quality standards to be complied with.

No evidence. Mine was closed.

5.

Noise level at the boundary shall conform with noise standards

No evidence. Mine was closed.

6.

Green belt around lease area and roadside

Not done.

7.

Clearance of groundwater board for the usage of the groundwater will be obtained, for the conservation of groundwater and to ascertain that there will be no impacts on the groundwater table of the area.

No evidence.

Groundwater board has not given any clearance that we could ascertain.

From the above, it is clear that little or nothing has been done to seriously comply with the directives of the Hon'ble Supreme Court as well as to enforce the regulations and conditions laid down by the authorities for environmental management of the mining areas.

5. Impact on groundwater reserves

It has been argued by the Government of Haryana in its IA no.1785 of 2001 that the expert committee constituted by it under the Chairmanship of the principal conservator of forests has submitted that there is a water divide between the two boundaries of the two states which prevents the flow of water from Delhi side to Haryana side. It has, therefore, argued that the mining on the Haryana side is not affecting the water balance in the Delhi side of the ridge.

It has further said that only in four pits the groundwater was pumped regularly and in two pits occasionally. Therefore, it has argued that little or no impact on groundwater reserves is possible.

5.1 Groundwater Board

EPCA requested the Central Ground Water Board (CGWB) for its opinion. The Board has based its recommendations on the data available with it as well as a field survey.

The key issues are :

1. On the issue of the ridge providing a water divide between the two states, the CGWB has maintained that while the surface water divide follows the Delhi-Haryana border, except in the catchment of Bhuria Nala, 'the surface water divide may not be the groundwater divide in the strict sense due to secondary porosity and also flat topped nature of the hills.' It also states that the Aravalli hills are highly fractured, jointed and weathered making the major recharge zone for the surrounding areas.

2. On the impact on the groundwater reserves due to mining, the Board has found that its observation wells have shown an increase in groundwater levels in Anangpur, Mangar, after the mining has been stopped in May. Therefore, in spite of monsoon failure and continued abstraction of water, the observation wells have noted increased water levels within just 2 months of the mining being closed.

The groundwater levels in a tube well monitored in Mewla Maharajpur during mid July and first week of August showed a rise of 0.18 metres, A higher rise - 0.71 to 0.78 metres was observed in the two tube wells near the Mangar mines and Pali mines in the two months since the mines were closed. This clearly points to the impact of mining on groundwater reserves.

This fact was also confirmed in the interviews done by EPCA at site.

3. CGWB also notes that contrary to what has been claimed, the mined water is not being pumped into abandoned pits to recharge the groundwater. Instead the groundwater pumped is discharged into the surrounding nalas, leading to "wastage" of groundwater. For instance, in the case of Anangpur mines, the water was pumped into the Bhuria Nala and in the case of Pali, the groundwater was discharged into a nala to the Badkal lake and from Manger mine towards Dhauj lake causing "enormous losses to groundwater resources of the area". The mined water is also full of silt, which reduces recharge as well.

4. Furthermore, CGWB notes that the large surface lakes in the mines are leading to huge losses of groundwater through evaporation.

5. The Central Ground Water Authority (CGWA) has notified these areas - South district of NCT Delhi, Faridabad, Ballabgarh Municipal Corporation area, Gurgaon town as water stressed areas and has put regulatory measures on ground water development in these areas.

Given all this, CGWB concludes that the "dewatering of mines in the Aravalli hills has affected groundwater regimes of the mine area as well as buffer zone resulting in the depletion of ground water resources."

5.2 Compliance with groundwater related regulations

The NOC given by the Central Pollution Control Board, includes an explicit condition regarding ground water :

That the mine owner will ensure that there is no discharge of effluent of ground water outside lease premises. They must take measures for rain water harvesting and reuse of water so as not to affect the groundwater table in the areas. Most importantly, it stipulates that no mining operations shall be carried out in the water table area.

This condition has been grossly violated. Even the Haryana government's affidavit in court accepts that pumping of ground water is taking place, though it attempts to soften the issue by arguing that it is only being done in a few cases. Under this condition, mining is not allowed in the water table area. EPCA saw deep and extensive pits of mines with vast water bodies. EPCA also saw evidence of pumps and pipes being used to drain out the ground water so that mining could continue. Therefore, the miners are mining for silica, but also in the process, mining and destroying the ground water reserves of the areas. In times of such water stress and desperation, this water mining is nothing less than a gross act of wastage of a key resource. This time the stress has been further aggravated by the failure of monsoon. Notices have been issued in the nearby housing colonies stating that fall in groundwater table due to lack of rains is responsible for water shortage in the area this season. This only indicates how important it is to conserve ground water in the region for long term sustainability of drinking water sources. Ground water is the only source of drinking water here."

On the basis of study and visit as well as the report of the Central Ground Water Board, EPCA made the following recommendations :

- "1. The ban on the mining activities and pumping of ground water in and from an area upto 5 kms. from the Delhi-Haryana border in the Haryana side of the ridge and also in the Aravalli Hill must be maintained.
2. Not only must further degradation be halted but, all efforts must be made to ensure that the local economy is rejuvenated, with the use of plantations and local water harvesting based opportunities. It is indeed sad to note the plight of people living in these hills who are caught between losing their water dependent livelihood and between losing their only desperate livelihood to break stones in the quarries. It is essential that the Government of Haryana seriously implements programmes to enhance the land based livelihood of people

? agriculture, animal care and forestry. Local people must not be thrown into making false choices, which may secure their present but will destroy their future. Already, all the villages visited by EPCA complained of dire and desperate shortages of drinking water. Women talked about long queues before taps to collect water. Clearly, water resources of the region are critical inputs to development and cannot be wasted and destroyed like this. The state government must come up with strategies to involve local communities in the future development of this region.

We have been given to understand that under the mining lease, 10 per cent of the royalty is to be given to local villagers. We have also understood that the turnover is of the mining operations in this area is substantial ? between Rs.50 lakhs to Rs. 1 crore a day were the gross estimates provided to us. However, we do not have any estimate of the money that has been given to villagers from this revenue. But there was little evidence in these poor and destitute villages that any effort had been made to share the proceeds with them.

3. The Central Ground Water Board must be consulted urgently about what should be done with the huge standing water in the area. This is a valuable national resource and the Board should be asked if the water is best conserved by covering it to stop evaporation or should it be used for recharge and storage with further water harvesting efforts.

4. The Ministry of Environment and Forests (MOEF) should be asked to extend the notification under the Environment (Protection) Act to the Faridabad part of the Aravalli and ridge as well. Currently, the notification is only for Gurgaon district. This notification declaring it an ecologically sensitive area will help to regulate the activities in this region.

5. It is not clear to us if adequate planning for water is being done in the large scale construction activities being undertaken in this area. This aspect is outside the purview of this report but needs to be examined carefully.

6. It must also be noted that Gurgaon-Faridabad road is being proposed as the major bypass for the city of Delhi. The Hon'ble Court will note its directives on the air pollution case in this regard. It has been said to the court in that matter that the Government of Haryana is intending to widen the road and bids have even been issued to this effect. Therefore, it is all the more important that the mining activity along the road must not be allowed. The 5 kms. ban from the border of Delhi will take care of this requirement.

7. EPCA would also recommend that the

mining area outside the 5 kms. area must be demarcated and regulated. In this context, EPCA would like to draw the attention of the court to the violations and gross disregard for regulations found in the present mines. It is not out of place to mention that these mines are owned by very powerful and highly placed individuals in the establishment. In a related case the High Court of Punjab and Haryana has directed on 20.4.2001 a CBI enquiry on the basis of a public interest litigation filed by a journalist. In its order the Hon'ble Court maintained that its examination has found evidence that illegal mining operations are going on in the area. The Hon'ble Court also noted the bias of the State Government to shield the offenders and has said that because there is prima facie evidence of the involvement of a 'person who holds the high position of the cabinet minister in the state', the enquiry should be done by CBI. This enquiry is still ongoing.

During the examination of the case, EPCA was told of other persons involved in the mining activity who are highly influential and part of the ruling political parties in the state and Centre.

In this respect, EPCA would recommend that tighter and constant monitoring of the area must be done by a Central Government agency. To increase accountability, EPCA would also recommend that the environment management plan (EMP) for the mining area as well as the conditions of the NOC should be made a public document. All other subsequent monitoring reports of this region must be available publicly, preferably on the website of the monitoring agency."

With the report, a note given by the Chairmen, Central Ground Water Board on impact of pumping of ground water from mines and ground water regime in mining area and its buffer zone in Aravalli hills of NCT Delhi, Faridabad and Gurgaon Districts of Haryana was also annexed. The said note reads as under :

Based on available data with Central Ground Water Board and a quick survey in and around mining area in Aravalli hills, following observations are made -

"1. The area under consideration forms part of Aravalli range from where mining of silica-sand and other construction material was being carried out. The mining of silica sand was mainly carried out below water table by dewatering the mines whereas mining for other construction material is carried out above water table. The major mining areas are Anangpur, Pali, Manger and Mohabbatabad.

2. The surface water divide in the area approximately follows Delhi-Haryana boarder except the catchment of Bhuria Nala flowing in Haryana State, which extends in Asola area of Delhi State also.

The formations in the Aravalli hills are highly fractured, jointed and weathered making it the major recharge zone for the surrounding areas. The surface water divide may not be ground water divide in strict sense due to secondary porosity and also flat-topped nature of the hills.

3. The pumping of ground water during mining of Silica sand affects ground water regime of surrounding area. During the field visit, it was reported by local people that during the dewatering of mines there was decline in ground water levels and reduction in discharge in surrounding wells whereas after stoppage of pumping the rise in water levels and increase in discharge has been reported. In few observation wells on down stream side of mines rise in ground water levels has been observed in Anangpur, Manger and villages after stoppage of abstraction of ground water from deep mines. The ground water levels in a tube well monitored in Mewla Maharajpur during mid July 2002 and first week of August 2002 were 24.39 and 24.57 m. below ground level respectively, showing a rise of 0.18 m. Ground water levels in tube well located at temple near Manger mine in second week of July 2002 and first week of August, 2002 were 51.70 and 49.99. m. below ground level respectively showing a rise of 0.71 m. Similarly, ground water level in a tube well at Indernagar in Delhi area near Pali mine in third week of June 2002 and first week of August 2002 were 59.68 and 58.90 m. below ground level respectively showing a rise of 0.78 m. The stoppage of dewatering of mines has resulted in rise of ground water levels in surrounding areas.

4. It has been observed that drainage pattern of the area has been modified due to haphazard mining and dumping of waste material which has bearing on natural path of ground water flow in the area.

5. It is claimed that abandoned pits act as recharge pits and in some cases the pumped ground water is put in these pits so there may not be substantial modification in the conditions of ground water regime. All the ground water pumped out from Anangpur mine has not been put into abandoned adjoining pits resulting in wastage of ground water by discharge into Bhuria Nala. Observation have indicated that Bhuria Nala which was ephemeral stream became a perennial stream during mining operations and now flow has stopped after closure of mining activity. Similarly, pumped out ground water from Pali mine was being discharged in a easterly flowing nala to Badkal Lane and from Manger mine in a south westerly flowing nala towards Dhauj lake causing enormous losses to ground water resources of the area. Further, the pumped out water

cannot be recharged effectively due to its high silt content. In silica sand mines the water table has been intersected and is presently exposed to the atmosphere causing huge losses to ground water through evaporation.

6. Studies conducted by Central Ground Water Board have revealed that water levels in Faridabad new town which falls in buffer zone of mine area have declined by 1.44 m/year. The decline of ground water level in the towns has been attributed to over development of ground water for domestic and industrial uses which is totally dependent on ground water. The pumping out of ground water for mining of silica sand in recharge zone might have aggravated the declining trend of ground water levels which otherwise would have contributed to the buffer zone.

7. Central Ground Water Authority has notified South district of NCT Delhi and Faridabad and Ballabhgarh Municipal Corporation area and Gurgaon town and adjoining industrial area in August 2000, October 1998 and December 2000 respectively mainly on consideration of over development of ground water resources resulting in substantial decline in ground water levels. Regulatory measures on ground water development have been imposed in these areas.

8. Therefore, it is observed that dewatering of mines in Aravalli hills has affected ground water regime of the mine area as well as buffer zone resulting in depletion of ground water resources."

When the aforesaid report came up for consideration, some of the mine owners submitted that their mines had not been inspected by Bhure Lal Committee. Particulars of the mines that were stated to have not been inspected were filed on 23rd September, 2002. Bhure Lal Committee was requested to carry out the inspection of the said areas/mines. The Committee was also permitted to associate such other organizations or persons as it may deem fit and proper for the purpose of inspection.

EPCA 2nd Report and Recommendations

In terms of the aforesaid order, 26 mines were inspected and report dated 21st October, 2002 was submitted. The observations made as a request of inspection in regard to each mine are as follows :

"The numbers indicated in parenthesis are serial number of mines given in the list of mines furnished by Kailash Vasudev, senior advocate to the Hon'ble Supreme Court that was forwarded to EPCA.

1. (no.9)
Name of Mine/Area : New Anangpur Silica Sand
Mines M/s S.P. Sethi,
Location : Village New Anangpur, Distt. Faridabad.
Total Area of Land on lease/Actual area under mining activity : 186.52 hec.
Mineral Extracted : Silica Sand Mines
Status of Mining : Above groundwater level
Whether groundwater is extracted : No.
Status of environmental clearances : No clearance given. No environmental management plan.
This mine is located very close to the Delhi border

(in close proximity to the Asola sanctuary). EPCA members were shown two pits, which were not being worked currently. There was no groundwater exploitation seen in these pits. Only brown stagnant rain water was seen. But what was very clear was that this mining lease was adjoining the boundary of Delhi. Only recent plantation of sapling was noticed along the path.

2. (13)

Name of Mine/Area: Anangpur Silica Sand Mines
M/s. Mohan Ram and Co.

Location : Village Anangpur, Distt. Faridabad.

Total Area of Land on lease/Actual area under mining activity : 175.00 Hec.

Mineral Extracted: Silica Sand Mines.

Status of Mining : Below groundwater level

Whether ground water is extracted : Yes

Status of environmental clearances : NOC granted by state pollution control board for renewal of lease in 1999. No environmental management plan.

This mine has large pits where sand and silica was being extracted. This was a working mine and had large amount of water in the two pits. EPCA members also saw a pipe, which was currently unused, meant for pumping out the water from the pits. The pits were at least 100-150 feet deep and the groundwater had been clearly exploited for some time. Large amount of overburden were also seen in the area.

3. (12)

Name of Mine/Area: Anangpur Silica sand mines,
M/s. S.P. Sethi, Anangpur.

Location: Village Anangpur Distt. Faridabad.

Total Area of Land on lease/Actual area under mining activity: 489.34 hec.

Mineral Extracted : Silica sand, China clay, ordinary sand, stone road material (RM) and masonry stone (MS)

Status of Mining : Below groundwater table

Whether ground water is extracted : Yes.

Status of environmental clearances: No clearance given. No environmental management plan.

The mining pit here has turned into a huge groundwater lake, Groundwater is fully exposed. Extensive overburden could be seen near the pits. It was very evident that no major efforts were made to create plantation in the area. Some new and young saplings could be seen along side the paths leading to the pits. Clearly these were planted very recently.

4. (8)

Name of Mine/Area: Anangpur Silica sand mines,
M/s. Rajdhani Minerals Corporation.

Location: Village Anangpur Distt. Faridabad.

Total Area of Land on lease/Actual area under mining activity: 188.47 hec.

Mineral Extracted : Silica sand, China clay, ordinary sand, stone RM and MS

Status: seen one closed pit. Did not see any water.

Status of environmental clearances: NOC granted by State Pollution Control Board.

5. (7)

Name of Mine/Area: Mewla maharajpur Silica

sand mines, M/s K.C. Ahuja & Co.

Location: Village Mewla Maharajpur Distt.. Faridabad.

Total Area of Land on lease/Actual area under mining activity: 162.905 hec.

Mineral Extracted : Silica sand, China clay, ordinary sand, stone road material (RM) and masonry stone (MS)

Status : surface mining from the rocks

Whether ground water is extracted : No.

Status of environmental clearances: No clearance given. No environmental management plan.

One pit seen, Mostly stone being quarried. Some water seen. No evidence of tree plantation seen in the area. But mine pits are adjoining road.

6. (19)

Name of Mine/Area: M/s. Ramkrishna Purni Devi..

Location: Village Badkal Distt. Faridabad.

Total Area of Land on lease/Actual area under mining activity: 369.4 hec.

(Of this 121 hec. Falls within 2 km of Badkal Tourist Complex where mining has been banned)

Mineral Extracted : Silica sand, ordinary sand, road metal, masonry stone and minor mineral

Status: mining above groundwater table

Whether ground water is extracted : No.

Status of environmental clearances: No clearance given. No environmental management plan.

EPCA members saw one pit located next to the border of Delhi. The mining area is hard rock and the pit was being worked for stone. The mining site was at the boundary of Delhi and the Asola sanctuary was seen at a close distance. This mine is also adjoining the road.

7. (2)

Name of Mine/Area: Mohan Ram & Co. Proprietor Kartar Singh.

Location: Village Pali Distt. Faridabad.

Mineral extracted : Ordinary stone, road metal, masonry stone

Under litigation in High Court of Delhi.

8. (11)

Name of Mine/Area: Pali Silica Sand Mines, M/s Goodwill Mineral Corporation.

Location: Village Pali, Distt. Faridabad.

Total Area of Land on lease/Actual area under mining activity: 50.5 hec.

Mineral Extracted : Silica sand, China clay, sand

Status of Mining : Below water table.

Whether ground water is extracted : Yes.

Status of environmental clearances: NOC granted by State Pollution Control Board in 1999 for renewal of lease. Asked to comply with conditions laid down by CPCB as well. No environmental management plan as yet.

A deep pit with extensive water body. Pipes pumps and generators could be seen at the site. Water is extracted from the pit. Very little plantation could be seen at the site. The pit is contiguous to other mines in the area and the extent of groundwater being exploited is massive and the expanse is vast. Some trees have been planted along the roadside. This mine is adjoining the main Delhi bypass of Faridabad-Gurgaon, which is being tendered for a four-lane highway.

9. (17)
Name of Mine/Area: M/s. Sheeshpal Singh
Location: Village Pali, Distt. Faridabad.
Total Area of Land on lease/Actual area under mining activity: 127.95 hec.
Mineral Extracted : Silica, China clay, sand, quartzite
Status: Below groundwater table.
Whether ground water is extracted : Yes.
Status of environmental clearances: No clearance given. No environmental management plan.
Large lake of ground water could be seen at the site. The lake apparently covers a few contiguous mining pits. No efforts to create plantation in the area except a few young saplings which seemed to have been planted very recently. Huge overburden could be seen near the pits. This mine is adjoining the main Delhi bypass of Faridabad-Gurgaon, which is being tendered for a four lane highway.

10. (20)
Name of Mine/Area: M/s. Ram Chandar
Location: Village Gothra, Mohatabad, Distt. Faridabad.
Total Area of Land on lease/Actual area under mining activity: 296 hec.
Mineral Extracted : Silica sand, ordinary sand, road metal and masonry stone.
Status: Below groundwater table
Whether ground water is extracted : Yes.
Status of environmental clearances: No clearance given. No environmental management plan.
Deep mining pits with large water bodies could be seen. The mine is also contiguous to the other mines so the amount of water that is being exploited is massive and uncontrolled. Huge amounts of overburden were also seen in the area. In this mine some efforts have been made to create plantations and the trees, unlike those seen in other areas, were more mature. This mine is adjoining the main bypass of Faridabad-Gurgaon, which is being tendered for a four-lane highway.

11. (22)
Name of Mine/Area: M/s. Maruti Minerals.
Location: Plot No.1 Village Manger, Distt. Faridabad.
Total Area of Land on lease/Actual area under mining activity: 63.225 hec.
Mineral Extracted : Silica sand, China clay, ordinary sand, road metal and masonry stone.
Status: above groundwater.
Whether ground water is extracted :No .
Status of environmental clearances: clearance given. No environmental management plan.
Observed surface stone mining. No water seen.
New lease and so the mines have not reached ground water levels as yet. But mine ear Delhi bypass of Faridabad-Gurgaon road.

12A. (1)
Name of Mine/Area: M/s. Seven Mines and Minerals Pvt. Ltd.
Location: Plot No.6, Village Manger, Distt. Faridabad.
Total Area of Land on lease/Actual area under

mining activity: 59.3875 hec.
Mineral Extracted : Ordinary sand, road metal and masonry stone.

Status: Above groundwater table
Whether ground water is extracted : No.
Status of environmental clearances: Clearance given. No environmental management plan.
Observed surface stone mining. No water seen.
New lease and so the mines have not reached groundwater levels as yet. But mine near Delhi bypass of Faridabad-Gurgaon Road.

12B.

Name of Mine/Area: M/s. Seven Mines & Minerals Pvt. Ltd.

Location: Plot No.8, Village Manger, Distt. Faridabad.

Total Area of Land on lease/Actual area under mining activity: 63.75 hec.

Mineral Extracted : Ordinary sand, road metal and masonry stone.

Status: Above groundwater table
Whether ground water is extracted : No.
Status of environmental clearances: Clearance given. No environmental management plan.
Observed surface stone mining. No water seen.
New lease and so the mines have not reached groundwater levels as yet. But mine near Delhi bypass of Faridabad-Gurgaon road.

13. (25)

Name of Mine/Area: M/s. Ashok Minerals industry
Location: Plot No.7, Village Manger, Distt. Faridabad.

Total Area of Land on lease/Actual area under mining activity: 67.00 hec.

Status: Above groundwater table
Whether ground water is extracted : No.
Status of environmental clearances: No clearance given. No environmental management plan.
Observed surface stone mining. No water seen.
New lease and so the mines have not reached groundwater levels as yet. But mine is on the Delhi bypass of Faridabad-Gurgaon road.

14. (23)

Name of Mine/Area: M/s. Jaikrishan Impex Pvt. Ltd.

Location: Plot No.2 & 3, Village Manger, Distt. Faridabad.

Total Area of Land on lease/Actual area under mining activity: 44.785 hec and 56.4375 hec.

Mineral Extracted : Stone mining

Status: Below groundwater table
Whether ground water is extracted : Yes.
Status of environmental clearances: No clearance given. No environmental management plan.
Was shown one pit with small water collection. But at a distance seen another pit with large amount of groundwater collected. This mine is being worked and clearly water must have been pumped from the mine. Deep pits seen. But mine is near Delhi bypass of Faridabad-Gurgaon road.

15. (10)

Name of Mine/Area: M/s. Faridabad Gurgaon Minerals.

Location: Plot No.5 Village Manger, Distt. Faridabad.

Total Area of Land on lease/Actual area under mining activity: 33.0375 hec.
Mineral Extracted : Ordinary sand, road metal and masonry stone
Status: Below groundwater table
Whether ground water is extracted : Yes.
Status of environmental clearances: No clearance given. No environmental management plan.
Exposed groundwater could be seen. This mine was also been worked. Deep pits seen in this mine.

16. (24)

Name of Mine/Area: M/s. Patram Mines and Minerals Pvt. Ltd.

Location: Plot No.11, Village Manger, Distt. Faridabad.

Total Area of Land on lease/Actual area under mining activity: 126.75 hec.

Mineral Extracted : Silica sand and stone

Status: Above groundwater table.

Whether ground water is extracted : No.

Status of environmental clearances: No clearance given. No environmental management plan.

Stone quarry. No water seen. Some efforts have been made to create plantation.

17. (18)

Name of Mine/Area: M/s. Sheeshpal Singh

Location: Village Pali, Distt. Faridabad.

Total Area of Land on lease/Actual area under mining activity: 44.48 hec.

Mineral Extracted : Solica/Ord. Sand & stone, road metal and masonry stone

Status: Above groundwater table

Whether ground water is extracted : No.

Status of environmental clearances: No clearance given. No environmental management plan.

Recent lease. Mining activity had recently started.

New pit seen and as yet only stone was being quarried.

18. (4)

Name of Mine/Area: Pali Silica Sand Mines, M/s. S.P. Sethi.

Location: Village Pali, Distt. Faridabad.

Total Area of Land on lease/Actual area under mining activity: 82.20 hec.

Mineral Extracted : Silica/Ord. Sand, china clay stone (road metal and masonry)

Status: Below groundwater table

Whether ground water is extracted : Yes.

Status of environmental clearances: NOC given by State Pollution Control Board in 1999 for renewal of lease. No environmental management plan.

Pit with little water seen. Being worked. Large amount of overburden was seen close to mine. 1 hec of plantation created near mine.

19. (3)

Name of Mine/Area: Pali Silica Sand Mines, M/s. P.K. Sethi

Location: Pali, Distt. Faridabad.

Total Area of Land on lease/Actual area under mining activity: 162 hec.

Mineral Extracted : Sand china clay, stone (road and masonry)

Status: Above groundwater table

Whether ground water is extracted : No.
Status of environmental clearances: No clearance given. No environmental management plan.
Pit with no water seen. Being worked. Large amount of overburden was seen close to mine.

20. (5)

Name of Mine/Area: Pali Silica Sand Mines, M/s. Lucky Minerals

Location: Village Pali, Distt. Faridabad.

Total Area of Land on lease/Actual area under mining activity: 261.36 hec.

Mineral Extracted : Sand, china clay stone (road metal and masonry)

Status: Above groundwater table

Whether ground water is extracted : No.

Status of environmental clearances: No clearance given. No environmental management plan.

Pit with no water seen. Being worked. Large amount of overburden was seen close to mine.

Nominal plantation seen. But area with lessee is very large over - 261 ha - and no idea if other mines in the area have reached water levels.

21. (6)

Name of Mine/Area: Mohabatabad Silica sand mines, M/s. P.K. Sethi

Location: Village Mohtabad, Distt. Faridabad.

Total Area of Land on lease/Actual area under mining activity: 399.59 hec.

Mineral Extracted : Sand, china clay, stone (road metal and masonry)

Status: Above groundwater table

Whether ground water is extracted : No.

Status of environmental clearances: No clearance given. No environmental management plan.

Shown pit where stone is being quarried. But area with lessee is very large over - almost 400 hec. - and no idea if other mines in the area have reached water level as yet.

22. (14)

Name of Mine/Area: M/s. Tejvir Singh and Co.

Location: Village Bandhwari, Distt. Gurgaon.

Total Area of Land on lease/Actual area under mining activity: 91.20 hec.

Mineral Extracted : Silica Sand, Ord. Sand, china clay, quartz & stone mine.

Status: Above groundwater table

Whether ground water is extracted : No.

Status of environmental clearances: Clearance given. No environmental management plan.

Stone quarry. Very recent lease granted and clearance has only been done in April 2002.

Large seemingly abandoned, pits seen on road.

Labourer colony near on road near mine and a number of trucks seen on this road carrying material. No plantation seen.

23. (15)

Name of Mine/Area: Mr. Ashok Gupta

Location: Village Balola, Distt. Gurgaon.

Total Area of Land on lease/Actual area under mining activity: 19.15 hec.

Mineral Extracted : Silica Sand and china clay.

Status: Above groundwater table

Whether ground water is extracted : No.

Status of environmental clearances: Clearance given. No environmental management plan.

Stone quarry Recent lease and clearance of January 2002. No plantation seen. The mine is on the main Delhi bypass - Gurgaon-Faridabad road, which is being developed as a four-lane bypass.

24. (16)

Name of Mine/Area: Mr. Ashok Gupta

Location: Plot No.3, Village Behrampur, Distt. Gurgaon.

Total Area of Land on lease/Actual area under mining activity: 94.05 hec.

Mineral Extracted : Silica sand quartzites.

Status: Above groundwater table

Whether ground water is extracted : No.

Status of environmental clearances: No clearance given. No environmental management plan.

Stone quarry. Recent lease. No plantation seen.

But near village. As this mine is near the five km radius, other mines with crushers and blasting seen at close distance.

(11B - 22)

Name of Mine/Area: M/s. Maruti Minerals

Location: Village Haidpur, Distt. Gurgaon.

Total Area of Land on lease/Actual area under mining activity: 18.125 hec.

Mineral Extracted : Stone

Status: Above groundwater table

Whether ground water is extracted : No.

Status of environmental clearances: No clearance given. No environmental management plan.

Stone quarry. No plantation seen. Near habitation of Gurgaon town.

25. (21)

Name of Mine/Area: Mr. Karan Singh

Location: Village Nathpur, Distt. Gurgaon.

Total Area of Land on lease/Actual area under mining activity: 5.996 hec.

Mineral Extracted : Silica Sand .

Status: Above groundwater level (surface mining)

Whether ground water is extracted : No.

Status of environmental clearances: No Clearance given. No environmental management plan.

Stone quarry. No plantation seen. Mine on main Delhi-Gurgaon road at the border of Delhi. Mine lease recently awarded at the edge of the DLF residential colony. Allegations that illegal mining is being done at the Delhi side of this mine. Next to the protected area of Delhi forest.

In respect of the ground water regime the report states that :

"The key issue to examine is the impact of mining on the ground water regime in the region. It is evident from the inspection done by EPCA that ground water reserves are being exploited and destroyed, it must be stressed that it is not a matter of individual mines reaching ground water levels or not, the issue to examine is the water regime of the entire area."

The report further states that "during its inspection to the mines, Kartar Singh Badana, Minister of Cooperatives in the State and also a mine owner told EPCA members that the impact of ground water abstraction is minimal. He maintained that the miners were harvesting the water and not allowing it to flow to the Yamuna, where it would be lost to

the State. A perusal of the reports of the ground water regime shows that this contention cannot be upheld."

It is also stated in the report that "the geology and geomorphology of the area comprises oldest exposed lithology with upland units. The rock type is mainly quartzite and these rise 150-200 metres above ground level in the quartzite's the ground water aquifers occur in the weathered zones and interspaces within interconnected joints and fractures. According to the CGWB, the unconfined aquifer is about 50 metres thick. But between the 50-110 metre below ground level (bgi) a thick clay layer ranging in thickness from 25-60 metres separates the top unconfined aquifer from the confined aquifer.

The mines inspected by EPCA were below 150 feet (45 metres) and on checking it was found that most mines were further operating at 20-100 feet (6-30 metres) below water levels. This means that the mines are abstracting water from the confined aquifer. As annual rainfall mostly replenishes the unconfined or top aquifer levels, the mining activity is destroying a non-renewable resource. EPCA saw deep and extensive pits of mines with vast waterbodies ? stretching at times to a kilometer and more. EPCA also saw evidence of pumps and pipes being used to drain out the ground water so that mining could continue. Therefore, the miners are mining for silica, but also in the process mining and destroying the ground water reserves of the areas.

The NOC given by the Central Pollution Control Board includes an explicit condition regarding ground water :

"That the mine owner will ensure that there is no discharge of effluent or ground water outside lease premises. They must take measures for rain water harvesting and reuse of water so as not to affect the ground water table in the areas. Most importantly, it stipulates that there should be no mining operations shall be carried out in the water table area."

The report of the Central Ground Water Board states very categorically that the ground water table is already at a critical stage in Faridabad. It states, 'The stage of ground water development of Faridabad block is 89.02 percent in dark category and no further abstraction of ground water should be carried out to avoid any adverse environment impact on ground water regimes. Thus no additional tube wells are advisable to be constructed for community water supply scheme even though they may not affect the storage in Badkhal lake.' The report further states that 'The domestic water supply to Faridabad town has to be catered and there are no surface water source which can be tapped.' EPCA further observes that most of the mining is happening inside the municipal area of Faridabad. In fact, Department of Mines and Geology states in the letter dated October 12, 2002, 'it is submitted that the mineral rights of the mines vests with the State Government....The surface rights of villages Badkhal, Pali, Gothra, Mohabtabad, Anangpur, Mewla Maharajpur are with municipal corporation, Faridabad, and Manager revenue estate are with gram panchayat.' Sensitivity of this region is further accentuated by its close proximity to the reserved forests of Asola sanctuary located at the border of Delhi and Haryana and other ecologically sensitive areas like Surajkund and Badkhal lake.

Even in Gurgaon, the CGWB report indicates that the ground water scenario is grim. According to CGWB, the 'ground water development of Guirgaon block is 124 per cent, indicating that the entire block in which Gurgaon town is situated is over exploited.' The ground water levels are also falling dangerously according to the report of CGWB which recommends strict regulatory measures for ground water use.

The EPCA, while reaffirming the recommendations that had been made in its earlier report dated 9th August, 2002, made the following recommendations :

"The overall assessment of the environmental impact of the mining activities in the area

especially its implication for ground water level in the region reaffirms EPCA's assessment presented in its earlier report. EPCA upholds its earlier recommendations made vide the report submitted to the Hon'ble Supreme Court on August 9, 2002.

EPCA is concerned that if mining is allowed to continue in this area, it will have serious implications for the groundwater reserve which is the only source of drinking water in the area. EPCA has also noticed uncontrolled construction activities that will expand urban habitation considerably in future. Unless immediate measures are taken to conserve and augment water resources in the area acute survival crisis is expected. Interviews with local villagers in the vicinity of mines confirm that water shortage is already a serious problem in the region. The extent of degradation in and around mines is the evidence of failure to enforce basic rules for ecological safeguards. Recent attempts at planting trees are cosmetic. Exposed ground water lakes observed in mining sites only reconfirms the worst fears. If mining could not be stopped in so many pits even after reaching groundwater level there is no guarantee that even some of those mines still at the surface level will abide by the stipulated norms when they reach the water table."

Submissions for Confirming or varying Order dated 6th May, 2002 Having regard to the ground realities as reflected in the aforesaid reports, should the order passed on 6th May, 2002 be varied is the question? The continuance of the order has been strenuously objected to by the mining lease holders and also by the Government of Haryana. Various applications have been filed seeking vacation of the order and in support thereof, submissions have been made mainly by Mr. Shanti Bhushan, Dr. Rajeev Dhawan, Mr. Kapil Sibbal, Mr. K.B. Rohtagi and Mr. Dhruv Mehta representing the lease holders and Mr. Mukul Rohtagi, learned Additional Solicitor General representing the Government of Haryana. We have also heard Mr. Raju Ramachandran and Mr. Altaf Ahmad, learned Additional Solicitor Generals for the Ministry of Environment and Forest, Government of India, Mr. C.S. Vaidyanathan and Mr. Kaushik (in support of IA No.1825/2002 filed by the villagers). Mr. Ranjit Kumar, learned Amicus and Mr. M.C. Mehta, Advocate/petitioner-in-person and Mr. Kailash Vasudeva for Government of Delhi have made submissions in support of closure of mining activity and for making the order dated 6th May, 2002 absolute by prohibiting all mining activities and pumping of ground water in and from an area upto 5 kms. from Delhi-Haryana Border in the Haryana side of the Ridge and also in the Aravalli Hills.

Notifications Regarding Mining on Aravalli Hills

The notification dated 7th May, 1992 issued by the Ministry of Environment and Forest, Government of India under Section 3(2)(v) of the EP Act read with Rule 5 of the Rules made under the said Act has considerable bearing on the aspect of mining in Aravalli Hills. The notification, inter alia, bans all new mining operations including renewals of mining leases and sets out the procedure for taking prior permission before undertaking such an activity. The notification, in so far as material for the present purposes, reads :

"S.O.319(E) - Whereas a Notification under Section 3(1) and Section 3(2) (v) of the Environment (Protection) Act, 1986 (29 of 1986) inviting objections against restricting certain activities in specified area of Aravalli Range which

are causing Environmental Degradation in the Region was published in the Gazette of India Part II-Section 3 sub-section (ii) vide S.O. 25 (E) dated 9th January 1992;

And whereas all objections received have been duly considered by the Central Government;

Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2), of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with rule 5 of the Environment (Protection) Rules, 1986 the Central Government hereby prohibits the carrying on the following process and operations, except with its prior permission, in the areas specified in the Table appended to this Notification :

- (i)
- (ii) (a) All new mining operations including renewals of mining leases
- (b) Existing mining leases in sanctuaries/national Park and areas covered under Project Tiger and/or
- (c) Mining is being done without permission of the competent authority
- (iii) Cutting of trees;
- (iv) Construction of any clusters of dwelling units, farmhouses, sheds, community centers, information centers and any other activity connected with such construction (including roads a part of any infrastructure relating thereto);
- (v)

2. Any person who desires to undertake any of the above mentioned processes or operations in the said areas, shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi, in the attached application form (annexure) specifying, inter alia, details of the area and proposed process or operation. He shall also furnish an Environment Impact Statement and an Environmental Management Plan along with the application and such other information as may be required by the Central Government for considering the application.

(3) The Central Government in the Ministry of Environment and Forests shall, having regard to the guidelines issued by it from time to time for giving effect to the provisions of the said Act, grant permission within a period of three months from the date of receipt of the application or where further information has been asked for from the applicant, within a period of three months from the date of the receipt of such information, or refuse permission within the said time on the basis of the impact of the proposed process or operation on the environment in the said area.

4. For seeking permission under this Notification, an application in the prescribed form (see Annexure), duly filled in, may be submitted to the Secretary, ministry of Environment and Forests, Paryavaran Bhavan, CGO Complex, Lodi Road, New Delhi.

XXX XXXX

XXXX

3.(b)(ii) Erodability classification of the proposed land.

5.(a) Water balance at site surface and ground

water availability and demand.

XXX

XXXX

XXXX

12.(a) Environmental Impact Assessment Report:

(b) Environmental Management Plan : prepared as per Guidelines of MEF issued from time to time.

(c) Detailed Feasibility Report.

(d) Proposal for diversion of forest land under Forest (Conservation) Act, 1980 including benefit cost analysis.

13. Recommendations of the State Pollution Control Board and/or the State Department of Environment and Forests."

The aforesaid notification, restricting mining activities in Aravalli range is relevant for mining operation in Gurgaon district wherein part of Aravalli hills range exist.

The powers vested in the Central Government in terms of the aforesaid notification dated 7th May, 1992 were delegated to the State Governments concerned, namely, Rajasthan and Haryana by issue of notification dated November 29, 1999 by the Central Government, Ministry of Environment and Forest. The said notification reads thus :

MINISTRY OF ENVIRONMENT AND FORESTS

NOTIFICATION

New Delhi, the 29th November, 1999

S.O.1189(E).-In exercise of the powers conferred by section 23 of the Environment (Protection) Act, 1986 (29 of 1986), (hereinafter referred to as the said Act), read with sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby delegates the powers conferred on it to take measures for protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution, to be exercised also by the State Governments as notified in the Notification of the Government of India in the Ministry of Environment and Forests S.O. NO.319(E) dated 7th May, 1992 subject to certain conditions which are as follows :

(i) the State Governments concerned, namely, Haryana and Rajasthan shall constitute an Expert Committee for each state as per the composition given in the Schedule-I annexed to this Notification;

(ii) each State Government shall also constitute a Monitoring Committee, under the chairmanship of the District Collector concerned (Gurgaon in Haryana and Alwar in Rajasthan) as given in the Schedule-II annexed to this Notification which shall inter alia monitor the compliance of the conditions stipulated while according environmental clearance by such State Governments and report to such State Government about the violations, if any, and the action taken thereon;

(iii) The District Collectors of Gurgaon in Haryana and Alwar in Rajasthan shall be authorised by the respective State Governments to take necessary action under section 5 of the said Act in respect of cases where the project proponents fail to implement the conditions.

2. The State Government concerned shall

initiate steps to prepare a Master Plan for the development of the area covered by the Notification S.O. 319(E) dated 7th May, 1992 integrating environmental concerns and keeping in view the future land use of the area. This Master Plan shall be prepared by the concerned state agency, approved by the competent authority and finally published within two years from the date of issue of this Notification, in accordance with the procedure laid down in the Town and Country Planning Act or any other similar Act of the respective State Government. The State Government concerned shall implement the Master Plan forthwith after its final publication.

3. Any person desirous of undertaking any of the activities mentioned in the Notification No.319(E) dated 7th May, 1992 shall submit an application to the Secretary, Department of Environment of the Government of Haryana/Rajasthan, as the case may be. The applicant shall also furnish environment impact statement and an environment management plan and such other information as may be prescribed by such State Governments. The application after due scrutiny shall be placed before the Expert Committee for its recommendations. Based on the recommendations of the Expert Committee, the Department of Environment in the State Government concerned shall take a final decision and convey the same to the applicant within three months from the date of receipt of application or when further information has been asked for from the applicant within three months from the date of receipt of such information.

4. The Ministry of Environment and Forests retains appellate power against rejection of any proposal and the National Environmental Appellate Authority constituted under the National Environment Appellate Authority Act, 1997 (22 of 1997) shall continue as an Appellate Authority against approval."

Schedule I and II of the notification sets out the composition of the Expert Committee and of the Monitoring Committee. Some controversy and confusion in respect of constitution of committees insofar as it relates to appointment of an expert from non-government organization, was brought to our notice but the delegation in favour of State Governments having been withdrawn now, it is not necessary to examine this aspect. The Central Government, in terms of notification dated 28th February, 2003, has withdrawn the delegation in favour of State Governments. Notification of 27th January, 1994 Regarding Environment Impact Assessment (EIA)

Another notification which is of considerable importance on aspect of mining is dated 27th January, 1994, as amended on 4th May, 1994. The notification has been issued by Ministry of Environment and Forest, Government of India, in exercise of powers conferred by sub-section (1) and clause (5) of sub-section (2) of Section 3 of the EP Act read with clause (d) of sub-rule (3) of Rule 6 of the EP Rules stipulating that expansion or modernization of any activity (if the pollution load is to exceed the existing one) or a new project listed in Schedule I of the notification shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure specified in the notification. The issue in these matters is about the interpretation of the

notification, its applicability also to mining leases granted earlier to the issue of the notification i.e. at the time of the renewal of such mining lease. The notification dated 27th January, 1994, to the extent material for the present purpose, reads as under :

"S.O.60(E) Whereas a notification under clause (a) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 inviting objections from the public within sixty days from the date of publication of the said notification, against the intention of the Central Government to impose restrictions and prohibitions on the expansion and modernization of any activity or new projects being undertaken in any part of India unless environmental clearance has been accorded by the Central Government or the State Government in accordance with the procedure specified in that notification was published as S.O. No.80(E) dated 28th January, 1993:

And whereas all objections received have been duly considered;

Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby directs that on and from the date of publication of this notification in the Official Gazette expansion or modernization of any activity (if pollution load is to exceed the existing one) or a new project listed in Schedule I of this notification shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure hereinafter specified in this notification.

2. Requirements and procedure for seeking environmental clearance of projects:

1.(a) Any person who desires to undertake any new project or the expansion or modernization of any existing industry or project listed in Schedule I shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.

The application shall be made in the proforma specified in Schedule II of this notification and shall be accompanied by a project report which shall, inter alia, include an Environmental Impact Assessment Report/Environment Management Plan prepared in accordance with the guidelines issued by the Central Government in the Ministry of Environment and Forests from time to time.

(b) Cases rejected due to submission of insufficient or inadequate data and plans may be reviewed as and when submitted with complete data and plans. Submission of incomplete data or plans for the second time would itself be a sufficient reason for the Impact Assessment Agency to reject the case summarily.

II. In case of the following site specific projects:

(a) mining;
(b) to (d) ...

(e) prospecting and exploration of major minerals in areas above 500 ha.,

The project authorities will intimate the location of the project site to the Central Government in the Ministry of Environment and Forests while initiating any investigation and surveys. The Central Government in the Ministry of Environment and Forests will convey a decision regarding suitability or otherwise of the proposed site within a maximum period of thirty days. The said site clearance shall be granted for a sanctioned capacity and shall be valid for a period of five years for commencing the construction, operation or mining.

III.(a) The reports submitted with the application shall be evaluated and assessed by the Impact Assessment Agency, and if deemed necessary it may consult a Committee of Experts, having a composition as specified in Schedule-III of this Notification. The Impact Assessment Agency (IAA) would be the Union Ministry of Environment and Forests. The Committee of Experts mentioned above shall be constituted by the IAA or such other body under the Central Government authorised by the IAA in this regard.

(b) The said Committee of Experts shall have full right of entry and inspection of the site or, as the case may be, factory premises at any time prior to, during or after the commencement of the operations relating to the project.

(c) The Impact Assessment Agency shall prepare a set of recommendations based on technical assessment of documents and data, furnished by the project authorities, supplemented by data collected during visits to sites or factories, if undertaken, and interaction with affected population and environmental groups, if necessary.

Summary of the reports, the recommendation and the conditions, subject to which environmental clearance is given, shall be made available subject to the public interest to the concerned parties or environmental groups on request.

Comments of the public may be solicited, if so decided by Impact Assessment Agency, within thirty days of receipt of proposal, in public hearings arranged for the purpose after giving thirty days notice of such hearings in at least two newspapers.

Public shall be provided access, subject to the public interest, to the summary of the reports/Environmental Management Plans at the Headquarters of the Impact Assessment Agency.

The assessment shall be completed within a period of ninety days from receipt of the requisite documents and data from the project authorities and completion of public hearing where required, and decision conveyed within thirty days thereafter.

The clearance granted shall be valid for a period of five years for commencement of the construction or operation.

No construction work preliminary or otherwise, relating to the setting up of the project may be undertaken till the environmental and/or site clearance is obtained.

IV. In order to enable the Impact Assessment Agency to monitor effectively the implementation of the recommendations and conditions subject to which the environmental clearance has been given the project authorities concerned shall submit a half-yearly report to the Impact Assessment Agency. Subject to the public interest, the Impact Assessment Agency, shall make compliance reports publicly available.

V. If no comments from the Impact Assessment Agency are received within the time limit, the project would be deemed to have been approved as proposed by project authorities.

3. Nothing contained in this Notification shall apply to :

(a) any item falling under entry nos.3, 18 and 20 of the Schedule I to be located or proposed to be located in the areas covered by the Notifications S.O. No.102(E) dated 1st February, 1989; S.O. 114(E) dated 20th February, 1991, S.O. No.416(E) dated 20th June, 1991 and S.O. No.319(E) dated 7th May, 1992.

(b) any item falling under entry Nos.1, 2, 3, 4, 5, 7, 9, 10, 12, 13, 14, 16, 17, 19, 21, 25 and 27 of Schedule-I if the investment is less than Rs.50 crores.

(c) any item reserved for Small Scale Industrial sector with investments less than Rs.1 crore.

4. Concealing factual data or submission of false, misleading data/reports, decisions or recommendations would lead to the project being rejected. Approval, if granted earlier on the basis of false data would also be to be revoked.

Misleading and wrong information will cover the following :

- False information;
- False data.
- Engineered reports.
- Concealing of factual data.
- False recommendations of decisions.

SCHEDULE-I

(See paras 1 and 2)

LIST OF PROJECTS REQUIRING ENVIRONMENTAL CLEARANCE FROM THE CENTRAL GOVERNMENT.

1. Nuclear Power and related projects such as Heavy Water Plants, nuclear fuel complex, rare earths.

2 to 19 ...

20. Mining projects (major minerals) with leases more than 5 hectares.

21 to 29 ...

XXX XXXX XXXX

SCHEDULE III

(See sub-para III(a) of Para 2)

COMPOSITION OF THE EXPERT COMMITTEES
FOR ENVIRONMENTAL IMPACT ASSESSMENT

1. The Committee will consist of experts in the following disciplines :

- (i) Eco-System Management
- (ii) Air/Water Pollution Control
- (iii) Water Resource Management
- (iv) Flora/Fauna Conservation and Management
- (v) Land Use Planning
- (vi) Social Sciences/Rehabilitation
- (vii) Project Appraisal
- (viii) Ecology
- (ix) Environmental Health
- (x) Subject Area Specialists.
- (xi) Representatives of NGOs/Persons Concerned With Environmental Issues.

2. The Chairman will be an outstanding and experienced ecologist or environmentalist or technical professional with wide managerial experience.

3. The representative of IAA will act as Member-Secretary

4. Chairman and members will serve in their individual capacities except those specifically nominated as representatives.

5. The membership of a Committee shall not exceed 15.

EXPLANATORY NOTE REGARDING THE
IMPACT ASSESSMENT NOTIFICATION DATED
27TH JANUARY, 1994

1 to 3. ...

4. Public Hearing

Public hearings could be called for in case of projects involving large displacement or having severe environmental ramifications.

5 to 7. ...

8. Exemption for projects already initiated
For projects listed in Schedule-I to the notification in respect of which the required land has been acquired and all relevant clearances of the State Government including NOC from the respective State Pollution Control Boards have been obtained before 27th January, 1994, a project proponent will not be required to seek environmental clearance from the IAA. However, those units who have not as yet commenced production will inform the IAA."

Reference may also be made to a notification issued by the Haryana Government on November 28, 2001 with a view to enforce the recommendations of NEERI contained in para 6.1 of its report so far as mining operations in the State of Haryana are concerned. In terms of the notification, the Designated Authority and the Monitoring Committee were directed to impose the conditions mentioned in the notification while according environmental clearance. This notification, it seems, was issued in the purported attempt to comply with the directions of this Court as contained in the order dated 10th May, 1996 as reported in M.C. Mehta's case (supra).

We may also refer to the circular dated May 14, 2002 issued by the Ministry of Environment and Forest noticing that in the past several units had come up in violation of the notification dated 27th January, 1994 and a

view had been taken earlier that such units are permitted to apply for environment clearance by 31st March, 1999. For period of five years, there was no circular or notification granting any time to apply for EIA under notification dated 27th January, 1994. The period to apply for environment clearance was extended upto 30th June, 2001 which deadline was extended upto 31st March, 2003, stating that it was to give opportunity to defaulting units to avail of the last and final opportunity to obtain ex post facto environment clearance. The notification dated 27th January, 1994 is applicable also to construction activity. It seems that this circular was issued to give opportunity to those who had undertaken constructions after issue of notification without compliance of stipulations therein. We are, however, not concerned in these matters with the construction which may have come up in breach of the notification. It does not appear that MOEF intended to legalise the commencement or continuance of mining activity without compliance of stipulations of the notification. In any case, a statutory notification cannot be notified by issue of circular. Further, if MOEF intended to apply this circular also to mining activity commenced and continued in violation of this notification, it would also show total non-sensitivity of MOEF to the principles of sustainable development and the object behind the issue of notification. The circular has no applicability to the mining activity.

Central Empowered Committee (CEC) - Its Suggestions

The notification dated 27th January, 1994 is mandatory. The compliance of the notification before commencement of any mining operation is essential and cannot be dispensed with. The MOEF has not so far conducted Environment Impact Assessment in respect of any of the mining lease under the notification dated 27th January, 1994. Before the order dated 6th May, 2002 was passed, the lease holders had not made any application before the Ministry for grant of EIA. The applications were filed during the pendency of these matters under the order of this Court. The EIA applications of the lease holders are lying with CEC. CEC was constituted in terms of notification dated 17th September, 2002, issued by the Government of India, Ministry of Environment and Forest in exercise of power conferred by Section 3(3) of the EP Act for the purposes of monitoring and ensuring compliance of the order of this Court covering the subject matter of forest and wildlife and related issues arising out of the said order and one of the functions of the Committee in terms of the notification is to monitor the implementation of the orders of this Court and place reports of non-compliance before the Court including in respect of encroachment and removals, working plans, compensatory afforestation, plantations and other conservation issues. In the order dated 31st October, 2002, this Court has observed that no mining activity can be carried out without remedial measures taking place and for this purpose, it is necessary that environment impact assessment is done and the applications dealt with before any mining activity can be permitted. It was also observed that the application of lease holders for environmental clearance can be disposed of them of within a period to be specified by this Court. In terms of order dated 25th November, 2002, the Central Empowered Committee was asked to file its suggestions in regard to the time for considering the applications for grant of EIA. The CEC had received large number of voluminous Environment Impact Assessment plans only in the last few days which are being examined further stating that the process of examination and formulation of suggestions is likely to take some more time. On 24th January, 2003, the CEC was granted time to file its report upto 8th February, 2003. CEC has filed three reports, the last having been filed on 7th February, 2003.

In an interim report dated 22nd June, 2003 CEC stated that the complete information had not been supplied to it by the State of Haryana. The report states that as per the information provided by the Haryana State, in Faridabad district there are 21 sanctioned major mineral mines with the varying size from 44.48 hectare to 516.518 hectare. In Gurgaon districts 54 mining leases have been sanctioned varying in size from 5.96 hectare to 802.322 hectare. All the mines of major minerals were operating in Faridabad district without obtaining statutory environmental

clearance under the EP Act. It also noticed that in respect of the Aravalli Hills range being an acknowledged as eco friendly area under the Aravalli notification, clearances were being granted on the basis of examination of an expert group without any public hearing or participation of NGOs or the affected people. As already noticed, the delegation in favour of the State has been now withdrawn. The report further observes that most of the mines are operating in violation of approved plans. Instead of doing section wise mining (bench mining) the mining operations are carried on unscientifically with the sole aim to make maximum profits which has resulted in number of fatal accidents involving labourers, hazards to the adjoining population, indiscriminate scattering of the over burden, wasteful manner of mining with complete disregard to mineral conservation aspect, rendering reclamation of mined area impossible. Further it points out that several mining leases have been granted in areas where plantations were undertaken with the financial assistance provided by international donor agencies. Mining activities are permitted in a manner which is destroying the ground water table and also the deep aquifers thereby causing irreparable damage to the critical ground water reserves. There is no effective mechanism to ensure compliance of various conditions stipulated while granting statutory approvals. No deterrent action was taken against mines even in those cases where during monitoring serious violations and non compliance of conditions were found. The CEC has made the following suggestions :

- "I) For major mineral mines above 5 hectare in Faridabad district, mining activity may be allowed to be undertaken only after the required environmental clearances are accorded by the Ministry of Environment and Forest (MOEF);
- ii) the powers delegated to the State Government by notification dated 27.1.1997 to grant environmental clearances in respect of areas of Gurgaon district falling within Aravalli notification dated 7.5.1992 requires to be reconsidered as the presumptions on the basis of which powers were delegated to the State Government have been found to be incorrect;
- iii) mining activity may be allowed in respect of areas notified under Section 4 and 5 of the PLP Act, which for the purpose of FC Act are 'forest' even as per the State Government records, only after obtaining prior approval under the said Act from the MOEF;
- iv) all mining leases granted in respect of areas where plantations have been raised under the financial assistance received from any international donor agencies may be cancelled forthwith. The concerned authorities may be prohibited from allowing any mining operations, allowing renewals or grants of fresh leases in such areas;
- v) mining activity may be allowed only as per the approved Mining Plans. Mines which are found to be operating at variance with the approved Mining Plans may be made liable for cancellation of lease and payment of exemplary compensation;
- vi) in view of rampant and indiscriminate mining, which was being done, a high level monitoring committee may be constituted comprising representatives of the State Government, MOEF, Indian Bureau of Mines, Director General of Mine Safety and

reputed NGOs. This Committee may be empowered to monitor the implementation of the conditions imposed while approving Mining Plans, grants of environmental clearances and other approvals/clearances. Whenever any violation is detected, the Committee should have the powers to direct closure of the defaulting mines and also to impose fines commensurate with the seriousness of the violation;

vii) in addition to the above (vi), the Officials of the State Government, Indian Bureau of Mines, MOEF, Director General of Mine Safety may independently monitor, at least once in three months, to ensure compliance of all statutory conditions;

viii) the State Government may identify and notify officials, who would ensure enforcement of the directions given by the Monitoring Committee and or the above mentioned officials;

ix) no mining activity may be allowed without obtaining 'No Objection Certificate' from the Central Groundwater Board to ensure that the water table and the underground aquifers are not adversely affected;

x) before allowing resumption of mining activity in any approved mining lease, the status of compliance of the conditions of the approved Mining Plans, approved Environmental Management Plans, environmental clearances and other statutory conditions/clearances may be ascertained. Suitable and adequate compensation/penalty for non-compliance of stipulations may be recovered, otherwise such stipulations would remain only on paper;

xi) in respect of forest area, including areas notified under Section 4 and 5, net present value of the land leased out for mining may be recovered as per the Hon'ble Supreme Court order dated 30.10.2002 in I.A. No.566 in Writ Petition (Civil) No.202/95 (forest matter);

xii) a suitable system of securing adequate bank guarantee, bank deposit or other personal guarantee from the mine owner may be worked out to ensure compliance of all statutory and other conditions;

xiii) after considering the annual approved rate of mining and mineral deposits in the area, optimum size of the mines may be determined in respect of approved mines to ensure optimum utilization of the mineral resources;

xiv) presently, the over burden is not stacked as per approved Mining Plan, which makes it practically impossible to carry out any reclamation work. The over burden dumping may be allowed only at identified sites within the mining lease area as per approved Mining Plans;

xv) for the purpose of afforestation, the funds may be recovered from the mine owners

and deposited with the forest department for undertaking afforestation in a planned manner;

xvi) the identification of the consultants for preparation of the EIA's should be done by the regulating agency instead of by the mine owners to ensure good and credible reports. It is important that payment to the consultants should also be routed through the regulating agency and not directly by the mine owners."

The report of CEC dated 7th February, 2003 mentions that the State Government, despite letters, had not made available to the Committee the following information :

- i) mine wise details of stipulated conditions, which have been fulfilled and those which have not been fulfilled
- ii) details of five major mineral mines in Faridabad and Gurgaon Districts which have fulfilled all the conditions stated in the approved mining plans, environmental and other clearances;
- iii) details of the mines where mining activity has been undertaken without obtaining requisite environmental clearance.

In the absence of the information as aforesaid the CEC gave its suggestions on the basis of information available to it which are as under:

- i) the ban on mining activity may continue up to 2 km from Surajkund and Badkal Lakes, as per the Hon'ble Court's order dated 10.5.1996;

(ii) each of the existing mines may be physically inspected by Inspection Team(s) comprising officials of the State Government, Indian Bureau of Mines, Director General of Mines Safety and the Ministry of Environment and Forest to report the specific conditions which have not been fulfilled/violated especially in respect of :

- a. sectionwise (benchwise) mining to be done as per approved mining plan;
- b. storage of top soil as per approved mining plan;
- c. dumping of over-burden in identified area as per the approval mining plan;
- d. plantations as per Environmental Management Plan;
- e. observance of mines safety Rules and Regulations;
- f. damage to the plantations raised under externally aided projects (foreign funding);
- g. damage if any to the water table/underground aquifers; and
- h. compliance of environmental clearance stipulations;

The Inspection Team(s) may submit the reports to the State Government and the Ministry of Environment & Forest (MOEF) with copies to the Central Empowered Committee (CEC) for their comments and for carrying out verification, if found necessary.

- (iii) suitable penalties for non-compliance/violation of various conditions, as found by the above Inspection Team(s) or by the CEC may be imposed. Norms for quantifying the penalties for violation of various conditions may be formulated by the State Government with the concurrence of the CEC. No mine may be allowed to resume mining activity without first paying the penalty imposed on it.
- (iv) mining activity may completely be prohibited in area where plantations have been undertaken with the foreign assistance/funding (externally aided projects). Mining leases already granted/approved in all such areas may be cancelled;
- (v) yearwise requirement of funds for implementation of various conditions under which mining has been approved may be computed for each mine. To ensure compliance of these conditions, adequate safeguards by way of bank guarantee, mortgage of immovable assets, pledge of movable assets, personnel guarantee of the lessee or others (supported by adequate assets) may be put in place;
- (vi) MOEF may examine the Environment Impact Assessment Report/Environment Management Plan of individual major mineral mines and proposals for approval under the FC Act, if the mining lease is in 'forest' as per the Hon'ble Supreme Courts order dated 12.12.1996 in Writ Petition (C) No.206/95, and take decision(s) thereon, including regarding measures for protecting the water table and underground aquifers, in a time bound manner; and
- (vii) regular inspection of the mines may be undertaken by the identified officials of the State Government, Indian Bureau of Mines and Director General of Mines Safety. Mines which are found to have violated the conditions may be made liable to pay stiff penalties including closure of the mines."

Some mining leases were granted prior to notification dated 27th January, 1994 and some after the issue of that notification. Even in respect of the leases granted prior to 27th January, 1994, the renewal of most of the leases has come up after issue of notification. Some of the leases are for extraction of major mineral, some for extraction of minor mineral and some for extraction of both major and minor mineral. In respect of none of the leases, before commencement of mining activity, EIA was obtained from the MOEF. In respect of mining in Aravalli Hills in Gurgaon, the relevant notifications dated 7th May, 1992, 29th November, 1999 and 28th January, 2003 have been noticed earlier. Under the notification dated 7th May, 1992, no permission was granted by the MOEF though some applications were pending before it when power was delegated to the State Government. Permissions were granted by the State Government after the powers were delegated to it. The delegation in favour of the State has since been withdrawn.

Legal Parameters

The natural sources of air, water and soil cannot be utilized if the utilization results in irreversible damage to environments. There has been accelerated degradation of environment primarily on account of lack of

effective enforcement of environmental laws and non-compliance of the statutory norms. This Court has repeatedly said that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right to of enjoyment of pollution-free water and air for full enjoyment of life. (See Subhash Kumar v. State of Bihar [AIR 1991 SC 420]).

Further, by 42nd Constitutional Amendment, Article 48-A was inserted in the Constitution in Part IV stipulating that the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Article 51A, inter alia, provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures. Article 47 which provides that it shall be the duty of the State to raise the level of nutrition and the standard of living and to improve public health is also relevant in this connection. The most vital necessities, namely, air, water and soil, having regard to right of life under Article 21 cannot be permitted to be misused and polluted so as to reduce the quality of life of others. Having regard to the right of the community at large it is permissible to encourage the participation of Amicus Curiae, the appointment of experts and the appointments of monitoring committees. The approach of the Court has to be liberal towards ensuring social justice and protection of human rights. In M.C. Mehta v. Union of India [(1987) 4 SCC 463], this Court held that life, public health and ecology has priority over unemployment and loss of revenue. The definition of 'sustainable development' which Brundtland gave more than 3 decades back still holds good. The phrase covers the development that meets the needs of the present without compromising the ability of the future generation to meet their own needs. In Narmada Bachao Andolan v. Union of India & Ors. [(2000) 10 SCC 664], this Court observed that sustainable development means the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's" test. [See Chairman Barton : The Status of the Precautionary Principle in Australia : (Vol. 22) (1998) (Harv. Env'tt. Law Review, p. 509 at p.549-A) as in AP Pollution Control Board vs. Prof. M.V. Nayudur (Retd) & Ors. [(1999) 2 SCC 718].

The mining operation is hazardous in nature. It impairs ecology and people's right of natural resources. The entire process of setting up and functioning of mining operation require utmost good faith and honesty on the part of the intending entrepreneur. For carrying on any mining activity close to township which has tendency to degrade environment and are likely to effect air, water and soil and impair the quality of life of inhabitants of the area, there would be greater responsibility on the part of the entrepreneur. The fullest disclosures including the potential for increased burdens on the environment consequent upon possible increase in the quantum and degree of pollution, has to be made at the outset so that public and all those concerned including authorities may decide whether the permission can at all be granted for carrying on mining activity. The regulatory authorities have to act with utmost care in ensuring compliance of safeguards, norms and standards to be observed by such entrepreneurs. When questioned, the regulatory authorities have to show that the said authorities acted in the manner enjoined upon them. Where the regulatory authorities, either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to environment, natural resources and peoples' life, health and property, the principles of accountability for restoration and compensation have to be applied.

The development and the protection of environments are not enemies. If without degrading the environment or minimising adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, the development has to go on because one cannot lose sight of the need for development of industries, irrigation resources and power projects etc. including the need to improve employment opportunities and the generation of revenue. A balance has

to be struck. We may note that to stall fast the depletion of forest, series of orders have been passed by this Court in T.N. Godavarman's case regulating the felling of trees in all the forests in the country. Principle 15 of Rio Conference of 1992 relating to the applicability of precautionary principle which stipulates that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for proposing effective measures to prevent environmental degradation is also required to be kept in view. In such matters, many a times, the option to be adopted is not very easy or in a straight jacket. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment.

Bearing in mind the aforesaid principles, we have to consider the main question: should the mining activity in areas in question be banned altogether or permitted and, if so, conditions to be provided therefor? The reports and suggestions of NEERI, EPCA and CEC have already been extensively noted. The effect of mining activity in area upto 5 km. from Delhi-Haryana border on Haryana side of the ridge and also in the Aravalli Hills is to be seen in light of these reports and another report dealt later. One of the aspect stated in these reports is about carrying on of mining activity in close proximity to the residential area and/or main roads carrying traffic.

Mines and Minerals (Regulation and Development) Act and Rules thereunder

The grant of mining lease is governed by the Mines and Minerals (Regulation and Development) Act, 1957 (for short, 'the MMRD Act) which was enacted to provide for the development and regulation of mines and minerals under the control of the Union. Section 13 is the rule making power of the Central Government. The Central Government is empowered to make rules to provide for the manner in which rehabilitation of flora and other vegetation, such as trees, shrubs and the like destroyed by reason of any mining operation shall be made in the same area or in any other area selected by the Central Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the mining lease. Section 18, inter alia, casts a duty upon the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by mining operations and for such purposes, the Central Government may, by notification in the official gazette, make such rules as it thinks fit.

The Mineral Concession Rules, 1960 have been framed by the Central Government in exercise of the powers conferred by Section 13 of the MMRD Act. Chapter IV of these Rules relate to grant of mining leases in respect of land in which the minerals vest in the Government. Rule 22(4), inter alia, provides that on receipt of the communication from the State Government of the precise areas to be granted for mining purpose, the applicant shall submit a mining plan, within the period stipulated in the Rules, to the Central Government for its approval. The applicant, on approval of the mining plan by the Central Government, shall submit the same to the State Government to grant mining lease over that area. Rule 4A, inter alia, provides that notwithstanding anything contained in Sub-rule(4), the State Government shall be competent to approve mining plan of open cost mines (mines other than underground mines) in respect of now metallic or industrial minerals, named therein, one of it being Silica sand. The mining plan, as provided in sub-rule (5) of Rule 22, shall, inter alia, incorporate the mineral reserves of the area and the plan of area showing, inter alia, water courses, limit of reserves and other forest areas and density of trees, if any, assessment of impact of mining activity on forest, land surface and environment including air and water pollution;

details of the scheme of restoration of the area by afforestation, land reclamation, use of pollution control devices and such other measures as may be directed by the Central Government or the State Government from time to time. A tentative scheme of mining and annual programme and plan for excavation from year to year for five years is also required to be incorporated in the mining plan. Rule 22(5) was inserted in the Rules by notification dated 27th September, 1994 to which certain amendments were made in terms of notification dated 17th January, 2000 also inserting by same notification Rule 22(4A). Sub-rule(4) to Rule 22 ad been earlier inserted by notification dated 27th September, 1994.

The grant of permission for mining and approving mining plan and the scheme by the Ministry of Mines, Government of India by itself does not mean that mining operation can commence. It cannot be accepted that by approving Mining Plan and Scheme by Ministry of Mines, Central Government is deemed to have approved mining and it can commence forthwith on such approval. Section 13 of the MMRD Act and the Rules made in exercise of powers under the said section, deal, inter alia, with the aspect of grant of mining of lease and not commencement of mining operations. Rules made under Section 18, however, deal with commencement of mining operations and steps required to be taken for protection of environment by preventing or controlling any pollution which may be caused by mining operation. A mining lease holder is also required to comply with other statutory provisions such as Environment (protection) Act, 1986, Air (Prevention and control of Pollution) Act, 1981, The Water (Prevention and Control of Pollution) Act, 1974, Forest (Conservation) Act, 1980. Mere approval of the mining plan by Government of India, Ministry of Mines would not absolve the lease holder from complying with the other provisions.

Rules 31 to 41 contained in Chapter V of the Mineral Conservation and Development Rules, 1988 framed under Section 18 of the MMRD Act deal with the measures required to be taken by the lessee for the protection of environment from any adverse effect of mining or irreversible consequences thereof. These Rules, inter alia, provide that every holder of a mining lease shall take all possible precautions for the protection of environment and control of pollution while conducting mining operations in the area; shall, wherever top soil exists and is to be excavated for mining operations, remove it separately and utilize for restoration or rehabilitation of the land which is no longer required for mining operations. The holder is also required to take steps so that the overburden, waste rock, rejects and fines generated during prospecting and mining operations or tailings, slimes and fines produced during sizing, salting and beneficiation or metallurgical operations shall be stored in separate dumps which shall be properly secured to prevent escape of material therefrom in harmful quantities which may cause degradation of environment. Wherever possible, the waste rock, overburden etc. shall be back-filled into the mines excavation with a view to restoring the land for its original use as far as possible and wherever it is not feasible during mining operation, the waste dumps shall be suitably terraced and stabilized through vegetation or otherwise. It is also required that the phased restoration, reclamation and rehabilitation of lands affected by mining operation shall be undertaken which work shall be completed before the conclusion of mining operations and the abandonment of mine. Air pollution due to fines, dust and smoke or gaseous emissions during mining operations and related activities shall be controlled and kept within 'permissible limits' specified under various environmental laws of the country including the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 by the holder of mining lease. Further, noise arising out of such operations shall be abated or controlled by the lessee at the source so as to keep it within the permissible limit. The mining operations shall be carried out in such a manner so as to cause least damage to the flora of the area and nearby areas. Every holder of mining lease shall take immediate measures for planting in the same area or any other area as selected by the authorized officer and not less than twice the number of trees destroyed by reason of any mining operation and look after them during the subsistence of the licence/lease and restore, to the extent possible, other flora destroyed by

mining operations.

The aforesaid measures are not required to remain only on paper but strictly complied for the protection of environment and control of pollution as a result and consequence of mining operations.

National Forest Policy

In respect of mining in the forest area, we may also refer to the National Forest Policy, 1988 issued by Ministry of Environment and Forest, Government of India which, inter alia, notices that over the years, forests in the country have suffered serious depletion. One of the reason of it is inadequacy of protection measure and diversion of forest land to non-forest uses. Without ensuring compensatory afforestation and essential environmental safeguards; and the tendency to look upon forests as revenue earning resource. The basic objectives of the policy, inter alia, are maintenance of environment stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the forests of the country and checking the soil erosion and water conservation and increasing substantially the forest/tree cover through massive afforestation and social forestry programmes. It provides that the National goal should be to have a minimum of 1/3rd of the total land area of the country under forest or tree cover. In the hills and in mountains regions, the aim should be to maintain 2/3rd of the area under such cover in order to prevent erosion and land degradation and to ensure the stability of the fragile eco-system. It also provides that a massive need based and time bound programme of afforestation and tree planting, with particular emphasis on fuel wood and fodder development, on all degraded and denuded lands in the country, whether forest or non-forest land, is a national imperative.

Mining in Forest Area

The question of permitting mining in the area where large scale of afforestation with foreign funding has taken place is required to be examined keeping in view the National Forest Policy which also provides that forest land or land with tree cover should not be treated merely as a resource readily available to be utilized for various projects and programmes but as a national asset which requires to be properly safeguarded for providing sustained benefits to the entire community. Diversion of forest land for any non-forest purpose should be subject to the most careful examinations by specialists from the standpoint of social and environmental costs and benefits. The mining and industrial development should be consistent with the needs for conservation of trees in forest. It provides that no mining should be granted to any party, private or public, without a proper mine management plan appraised from the environmental angle and enforced by adequate machinery.

Our attention was drawn by learned counsel appearing for lease-holders to the part of national policy which provides that beneficiaries who are allowed mining and quarrying in forest land and in land covered by trees should be required to repair and re-vegetate the area in accordance with established forestry practices to submit that the policy itself contemplates mining operations in the forest area. For present, we are not suggesting a complete ban of mining operations on forest land so long as it is possible to undertake the said operation on the sustainable development principles and after obtaining due approvals under various statutory provisions including Section 2 of the Forest (Conservation) Act, 1980. At the same time, we are unable to appreciate the commencement and continuation of mining over areas on which crores of the foreign funds have been spent for afforestation and plantation. Further, it is also not possible to accept the contention urged on behalf of the lease holders that only that part of such leased land where allegedly damage has been caused to plantation as a result of mining operations, be excluded from mining and not the entire area of the lease. For example, if the mining area is 5 hectare and damages as a result of mining is to plantation in an area of 1 hectare, it is not practicable or reasonable to exclude only that 1 hectare and permit the mining operation on the rest of the mining area. Reference can also be usefully made to the part of the State of Forest Report, 1999 issued by Forest Survey of India in relation to Haryana. It, inter alia, provides that large scale plantations were carried out under

Aravalli project since 1992. The document claims increase of the forest cover in the State as a result of plantation under the Aravalli project. It, inter alia, mentions that forest cover increase in Gurgaon and Faridabad is mainly due to plantation raised under the Aravalli project which was started in early 1990s. In these matters, neither the State nor the leaseholders can be permitted to turn round and now take a stand that the areas covered under the Aravalli project is not forest. The National Forestry Action Programme of December 2000 issued by the Ministry of Environment and Forest, Government giving project profile also makes detailed reference to the institution building and integrated national resource development in the Aravalli region, Haryana under the project implementing agency of Forest Department, Government of Haryana. The project profile, inter alia, states that the Central to such a policy is rehabilitation of common lands to meet the needs of the rural poor and to reduce soil and water erosion and the proposed programme was envisaged to bring the benefit of integrated development of the Aravalli eco-system to the whole community, particularly, to the poorer sections. The project, it is stated, has been implemented in Aravalli hills situated in the five districts of Haryana including Gurgaon. One of the expected outcome of the project is the reduced soil erosion and improved water regime in the rehabilitated area will be drastically reduce and run-off leading to recharge of constantly depleting ground water resources. It records that Haryana Forest Department has implemented a project on the eco-restoration of common lands in the Aravalli hills, from June 1990 to October 1999. The project is being funded by Delegation of European Communities. The total cost was 28.8 million ECU in which external assistance was to the extent of 23.2 million EUC.

Aravallis Hill Range

The Aravallis, most distinctive and ancient mountain chain of peninsular India, mark the site of one of the oldest geological formations in the world. Heavily eroded and with exposed outcrops of the slate rock and granite, it has summits reaching 4950 feet above sea level. Due to its geological location, the Aravalli range harbours a mix of Saharan, Ethiopian, Peninsular, oriental and even Malayan elements of flora and fauna. In the early part of this century, the Aravallis were well wooded. There were dense forests with waterfalls and one could encounter a large number of wild animals. Today, the changes in the environment at Aravalli are severe. Though one finds a number of tree species in the hills, timber quality trees have almost disappeared. Despite the increase of population resulting in increase of demand from the forest, It cannot be questioned nor has been questioned that to save the ecology of the Aravalli mountain, the laws have to be strictly implemented. The notification dated 7th May, 1992 was passed with a view to strictly implement the measures to protect the ecology of the Aravalli range. The notification was followed more in its breach.

In the aforesaid background, any mining activity on the area under plantation under Aravalli project cannot be permitted. The grant of leases for mining operation over such an area would be wholly arbitrary, unreasonable and illogical.

Report of CMPDI on Aravalli

The Central Mine Planning & Design Institute Limited (CMPDI) on being asked by the Central Pollution Control Board to conduct a study of environmental problems of Aravalli hills and preparation of action plan for restoration of environmental quality in Gurgaon district, after extensive examination, has submitted to CPCB its final report in July 2003. CMPDI is a subsidiary of Coal India Limited (Government of India Enterprise). The report in respect of Aravalli range in Gurgaon district has been prepared by CMPDI with the following objectives :

1. To prepare status report of the pollution problems in the Aravalli Hills.
2. To prepare environmental management plan to abate various environmental problems
3. To prepare action plan for restoration of environmental quality.

The environmental problems in the Aravalli Range in Gurgaon district have been identified and remedial measures including the pollution control guidelines and action plan for various stakeholders have been suggested by CMPDI. It has been noticed that in large scale mining projects what is still required is a proposal on district level as to what will be mined, how it will be mined and with what method and many such areas of environmental concern which had not been adequately addressed keeping in view the environmental degradation of the Aravalli Hills. It has also been noticed that the Aravalli notification restricts process and operations under certain categories of the land in district. Though the records of such lands are available at every village level map, there is no record available in the district level in respect of these areas to undertake realistic appraisal and effective monitoring of mining and other projects at the macro level on such lands. While noticing that, notification dated 29th November, 1999, inter alia, made provision for preparing a master plan integrating the environmental concerns and the future land use of the area, but the master plan prepared on 28th August, 2002 does not, inter alia, address the issue of natural resource assessment and water Resource status; the areas near crushing zone and active mining zone remain a matter of concern and concerted efforts have not been given to the quality of roads and the dust suppression measures to maintain the air quality within safe limits. The guidelines of operation in an eco-friendly manner have been issued by the State Government but the compliance is only partial, inasmuch as wind breaking walls are not proper, pollution control devices are not operating and the green belt around the crushing zones are not maintained. Identification of mines in the district is difficult. There does not seem to be mechanism to upgrade the mining technologies and methodologies to minimize the impact due to mining in the eco-sensitive zones in the district. There is no identified land where overburden could be temporarily dumped prior to being utilized for void filling and for other purposes. There does not seem to adequate awareness among the people in respect of the environmental problems. In some parts of the district, the ground water potential is already in the dark category. Lack of water conservation measures and rainwater harvesting may ultimately lead to water scarcity in the near future.

Having identified the environmental problems, various actions have been recommended by CMPDI for the eco restoration in the Aravalli Range in Gurgaon district. It has been, inter alia, recommended that it is imperative on the part of the State Government to improve inter-departmental co-ordination among various Government departments to achieve the common objective, i.e., ecological restoration of Aravalli Hills in the district. The master plan should indicate the proposed eco-restoration plan to compensate the environmental degradation by the proposed activities in the master plan. Rehabilitation programmes for the abandoned mines areas either to convert these to water reservoirs and eco-parks or reclamation by filling by rural waste, urban waste or fly ash. The master plan should be detailed to show the areas where overburden could be dumped, areas where waste material could be stocked, areas where plantation could be carried out, etc.etc. The planning should, inter alia, include environmental impact and concerns of activities of one sector on the other sectors in the district, e.g., afforestation should be planned not only with a view to increase vegetation on the hills but also to be supplement for fuel, fodder etc. in the district. All efforts should be made to preserve the ground water resources. Water shed management and rainwater harvesting to be implemented in the Aravalli hills regions on war footing. In the areas where mining deeper than the ground water table of the area is to be carried out, adequate provision of pollution control and conservation of water resources should be made. There should be frequent inspections of the mining operations to ensure that these are in line with the requirement for sustainable development. The inspections may be carried out at an interval of three months. There should be continual source of revenue from the mining operations to the fund, recommended to be created, for the eco-restoration of the Aravalli hills. The minimum period of lease should be for 15-20 years. This will induce the mine operators to take environmental protection measures more

seriously. The State Pollution Control Board shall undertake regular monitoring to check compliance and to assess the ambient air quality, water quality and other environmental protection measures. The Ministry of Environment and Forest should take initiative to appoint a Central Agency to monitor the eco-restoration efforts and to provide technical support to the implementing organizations. The renewal of mining lease and granting new leases should be effected after examining the environmental protection measures taken by the lessee. Requisite data should be displayed on the internet to arouse awareness in public and for further usage. Stringent action should be taken for water conservation. The Forest Department may even carry out the afforestation on behalf of mine operators. Expenses should, however, be borne by the mine operators. The afforestation shall be carried out keeping in view, inter alia, the consideration of checking the soil erosion. The mine lessee should implement the environmental management plan and mining plan approved by the concerned authority. In future, efforts in respect of search for sustainable development should broadly take into consideration resource potential in the region, the demand of the products and the supply options. Though the demand for the niche products existing in the Aravalli range which is one of the oldest mountain ranges in India will continue to grow, the supply options need to be given a closer look due to eco-sensitivity of the region. The environmental cost needs to be internalized in the cost of the product and there is need to limit the supply options. Noticing that the Aravalli range prevents the desert from spreading into Indo-Gangetic plains, it has been suggested that all future planning should not only concentrate to meet the ever growing demand of the products but due consideration should also be given to protect the chain. All the developmental activities should, therefore, be planned in a coherent manner and there should be integrated approach for sustainable development.

CMPDI has noticed that in the Aravalli Hills, a large number of activities, operations of stone crushers and deforestation besides other activities are causing environmental degradation. These mines are usually located in the clusters in remote mineral rich districts/areas where living standards is lower and understanding of people towards environmental impact is also poor. In the past, the mine operators took no note of environmental damage. In fact, they were not even conscious about it. The attitude of mining community is to ignore the environmental concerns. In majority of the cases, the environmental concerns are ignored for making quick profits. The small mines (less than 5 hectares) and the mining of minor minerals which are no doubt small individually but have damaging characteristics when in clusters, e.g. the mines of granite, marble, slates, quartzite etc. (falling under minor minerals) are no less damaging than the others, especially when the processing is taken into consideration. The mining activities results in disturbance of land surface, altering drainage pattern and land use, besides the pollution problems, which may lead to the environmental problems of air, water and noise pollution and solid waste pollution.

It has been suggested that the short term and long term action plan for the restoration of environmental quality of the area shall be prepared separately. The action plan shall be prepared in such a way that it should be a guiding tool also in the hands of the state pollution control boards and Government agencies for enforcement of the environmental laws for the restoration of environmental quality of the area. Monitoring programme shall include frequency of monitoring for air quality, water quality, ground water, solid wastes, noise level etc.

In respect of water resources, it has been, inter alia, suggested that in order to draw water resource management plan, it is essential to assess the water quality of the various components of the hydrologic cycle, i.e., stream, ground water, surface water etc. It has been pointed out that since the surface water potential is not promising in the district, there is increased dependence on the ground water for meeting the agricultural, domestic and industrial requirement resulting in depletion of ground water resources in the district. It has been suggested that utmost care is required for further development of ground water in the areas where the

recharge of the ground water is low.

Dealing with the flora and fauna, it has been pointed out that the earliest account shows that at one time the Aravalli hills were well covered with dhauk (*Anogeissus pendula*). Now, except in few places, viz., the Jhir Forest in Firozpur Jhirka (dedicated to Mahadeo Temple) and near Bhondsi recently regenerated with dhauk, the Aravallis are by and large, bereft of vegetation in the district.

It has been noticed that in order to take stock of the environmental problems, CPCB and CMPDI team made several visits to Aravalli hills and held discussion with the mine operators, State officials and local people. There are number of mining projects etc. which are already existing and there is also tremendous potential to further increase the industrial and the other development activities. The environmental impact due to mining projects on air quality, water quality, noise level, overburden etc. have been noticed and it has been pointed out that the opening of new projects will further affect some of the environmental attributes.

The report notices that the environmental degradation has taken place due to mining activities. The existing crusher units are also not functioning on the environmental sound systems. The situation warrants closer look on various components of the systems affecting the environmental attributes in the area, devising pragmatic approaches to facilitate eco-restoration of the Aravalli hills and offering broad framework to the industrial units to function under environmentally sustainable framework. The suggestions also include the enactment of rules for grant of mine leases to levy a separate charge for dump removal, ecological restoration in the area, the technology to be used for mining operations and post mining land use and mine decommissioning. As far as environmental protection in the Aravalli hills is concerned, planning and provisions must start from the stage of grant of mine lease and what all it should include have been set out. It has been, inter alia, suggested that the environmental framework shall include the framework for environmental clearance such as depth of cutting, area of plantation and the type of plantation, which are attributes related to closure planning as also framework for monitoring and for forestry besides air quality, land use pattern etc. In nutshell, it has been suggested that it is imperative on the part of the mine operators to carry out the mine operations in such a fashion that it has least impact on the ecology of the area. The pollution prevention guidelines have been suggested in para 7.1.1.2.

Having regard to the detailed study, the recommendations and action plan has been dealt with in Chapter VIII of the report, inter alia, suggesting that concerted efforts from various departments are needed.

The report states that though the environmental upgradation measures need to be taken more seriously by the mine and other industrial operators, there is need on the part of the State Government to immediately start these measures in the areas where degradation has already taken place. The other recommendations have already been broadly noticed.

No one has raised any objection to the recommendations contained in the report of CMPDI. We accept the recommendations in principle.

Modification of Order dated 6th May, 2002 Regarding Mining in Aravalli

Now, the question is should mining activities in the Aravalli range in Gurgaon district be permitted to restart and, to that extent, the order dated 6th May, 2002 be modified, meanwhile directing implementation of recommendations in the report of CMPDI and earlier referred reports. The other option is to first constitute a monitoring committee directing it to individually examine and inspect mines from environmental angle in the light of the said recommendations and file a report in this Court in respect of individual mines with its recommendations for restart or otherwise as also recommendation, if any, for the payment by the mine operators and/or by State Government towards environmental fund having regard to the precautionary principles and polluter pays principle and on consideration of that report, to decide the aspect of modification of the order dated 6th May, 2002, partially or entirely. We are of the view that the second option is

more appropriate. We are conscious of observations in CMPDI that measures for protecting the environment can be undertaken without stopping mine operations and also the suggestions of MOEF to permit mining subject to the mine lease holders undertaking to comply with such conditions which remain to be complied, but, having regard to the enormous degradation of the environment, in our view, the safer and the proper course is to first constitute a Monitoring Committee, get a report from it and only thereafter consider, on individual mine to mine basis, lifting of ban imposed in terms of order dated 6th May, 2002. Before concluding this aspect, we may note that assuming there was any ambiguity about the applicability of order dated 6th May, 2002 to mining in Aravalli Range, it is clarified that the said order would be applicable to all the mines in Aravalli hill range in Gurgaon district.

Applicability of notification dated 27th January, 1994

The notification has been reproduced in the earlier part of the judgment. It, inter alia, applies to mining projects (major minerals) with leases of more than 5 hectares. It can neither be disputed nor has been disputed that the notification is mandatory. It, inter alia, provides that on and from the date of its publication in official Gazette expansion or modernization of any activity (if pollution load is to exceed the existing one) or a new project listed in Schedule A of this notification shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure specified therein. The contention urged on behalf of the lease-holders is that the leases in question do not relate to expansion or modernization of any activity as postulated by the notification. Further, it is contended, that the notification applies to 'a new project' which means that it will apply to mining lease granted after issue of notification. It has been strenuously contended that the renewal of existing mining lease is neither 'an expansion' nor 'modernization' nor is it a 'new project' and, therefore, the notification will have no applicability at the time of consideration of the renewal of the lease. Reliance has been placed on a decision of this Court in Narmada's case (supra) holding that the notification is clearly prospective and, inter alia, prohibits the undertaking of a new project listed in Schedule I without prior environmental clearance from the Central Government. The contention urged was that since in Narmada's case, where construction had commenced nearly 8 years prior to the notification, same very notification was not held applicable. On the same analogy, it cannot have any applicability to the leases granted prior to the issue of notification.

No doubt, the notification is prospective but the question here is whether it would be applicable when the aspect of renewal comes up for consideration after the issue of the notification. In Narmada's case, it was not held that this notification will not apply at the stage of renewal. The observations made in para 129 of the said decision and relied upon by learned counsel for the lease holders have no relevance to determine the applicability of the notification at the stage of renewal. In Narmada's case, the environmental clearance had been granted in the year 1987 and this Court noticing that when it was granted by the Prime Minister, whatever studies were available were taken into consideration, it was known that the construction of the dam would result in submergence and the consequent effect which the reservoir will have on the ecology of the surrounding areas and various studies relating to environmental impact had been taken into consideration and that there was no obligation to obtain the statutory clearance under 1994 notification.

In the present case, regarding the manner of grant of no objection certificate from environmental angle for proposed mining activity, by way of illustration, we may refer to the order dated 18th January, 1999 issued by Haryana State Pollution Control Board whereby no objection certificate for renewal of lease was granted stipulating that the applicant Som Prakash Sethi in respect of mining activity at village Anangpur, district Faridabad shall also seeking environmental clearance of its mining project in compliance with this notification without even mentioning any time limit for it and admittedly till date that had not been done. None bothered to find out whether conditions in the order has been complied or not. Further the

letter dated 25th January, 2003, sent to Principal Secretary of Central Empowered Committee by Director Mines and Ecology, Haryana shows how the State Government has been circumventing the legal requirements and permitting mining. In that letter, it has been stated that pending approval of the environmental plan, the mining lessees undertook the mining operation of the minor mineral on issue of short term permit, in cases where the fresh mining leases were granted and in case of renewal of mining leases, the mining activities were going on. This is despite conditions in the judgment dated 10th May, 1996 by this Court that the Director Mining and Ecology Haryana would be responsible for mining in the State of Haryana.

Be that as it may and reverting to legal position, in *Ambica Quarry Works v. State of Gujarat & Ors.* [(1987) 1 SCC 213], though a case under Forest (Conservation) Act, 1980 rejecting the contention that approval at the stage of renewal was not necessary and also the plea that since the leaseholders had invested sum of money in mining operation, it was the duty of the authorities to renew the lease, it was held that having regard to the awareness that deforestation and ecological imbalances as a result of deforestation have become social menaces and the same should be prevented and that the concept that power coupled with the duty enjoined upon the respondents to renew the lease stood eroded by the mandate of the FC Act. It was held that The primary duty was to the community and that duty took precedence. In such cases, the obligation to the society must predominate over the obligation to the individuals. It would be apposite to reproduce what was said by Justice Mukherjee (as he then was) in paras 14 and 15 which read thus :

"14. Here the case of the appellants is that they have invested large sums of money in mining operations. Therefore, it was the duty of the authorities that the power of granting permission should have been so exercised that the appellants had the full benefits of their investments. It was emphasized that none of the appellants had committed any breach of the terms of grant nor were there any other factors disentitling them to such renewal. While there was power to grant renewal and in these cases there were clauses permitting renewals, it might have cast a duty to grant such renewal in the facts and circumstances of the cases specially in view of the investments made by the appellants in the areas covered by the quarrying leases, but renewals cannot be claimed as a matter of right for the following reasons.

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

In *Rural Litigation and Entitlement Kendra v. State of U.P.* [1989 Supp.(1) SCC 504], agreeing with views expressed in *Ambica Quarry Workers*, it was held that the FC Act applies to renewals as well

and even if there was a provision for renewal in the lease agreement on exercise of lessee's option, the requirement of the Act had to be satisfied before such renewal could be granted. In *State of M.P. & Ors. v. Krishnadas Tikaram* [1995 Supp.(1) SCC 587], these two decisions were relied upon and it was held that even the renewal of lease cannot be granted without the prior concurrence of the Central Government. It is settled law that the grant of renewal is a fresh grant and must be consistent with law.

We are unable to accept the contention that the notification dated 27th January, 1994 would not apply to leases which come up for consideration for renewal after issue of the notification. The notification mandates that the mining operation shall not be undertaken in any part of India unless environmental clearance by the Central Government has been accorded. The clearance under the notification is valid for a period of five years. In none of the leases the requirement of notification was complied with either at the stage of initial grant of the mining lease or at the stage of renewal. Some of the leases were fresh leases granted after issue of the notification. Some were cases of renewal. No mining operation can commence without obtaining environmental impact assessment in terms of the notification.

The Applicability of Forest (Conservation) Act, 1980 to areas treated as forest by State Forest Department

The provisions of the Act provide for the conservations of forest and for matters connected therewith or ancillary or incidental thereto. Any forest land or portion thereof cannot be used for any non-forest purposes or assigned by way of leases or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by the Government, except with the prior approval of the Central Government. Mining activity within forest area cannot be permitted in contravention of the provisions of the Act. The Act makes the contravention of any of the provisions of Section 2 as an offence punishable in the manner provided in the Act.

The controversy is in respect of certain leases where area under the lease is covered under notification issued under Section 4 and/or 5 of the Punjab Land Preservation Act, 1900. The question is whether such area is 'forest' of any kind.

Under Section 3 of the aforesaid Act, whenever it appears to the State Government that it is desirable to provide for the conservation of sub-soil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion, such Government may by notification make a direction accordingly. Under Section 4(b), the State Government has power to regulate, restrict or prohibit the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the notification under section 3. Section 5(b) in respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area notified under section 3, the State Government may, by special order, temporarily regulate, restrict or prohibit the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the notification under section 3. In respect of some mining areas notifications have been issued under Section 4 and in respect of some notifications have been issued both under Sections 4 and 5. The submission is that invoking of Sections 3, 4 and 5 is only to conserve sub-soil water and prevention of the area from erosion of land and is not to create any forest. It has been pointed out that in cases where the notifications have been issued, only felling of trees had been prohibited and not quarrying of stone.

It cannot be disputed that the State Forest Department has been treating and showing the aforesaid areas as 'forest'. The contention urged on behalf of the State Government is that it was on account of erroneous view point of Forest Department. In fact and law, such area is not 'forest'

and mining is not prohibited and, therefore the question of seeking permission under Section 2 of the FC Act does not arise.

In the instant case, it is not necessary to decide the legal effect of issue of the notification under Section 4 and/or 5 of the Act. Not only in their record the area has been shown as forest but the affidavits have been filed in this Court stating the area to be 'forest'. In T.N. Godavarman Thirumulkpad v. Union of India & Ors. [(1997) 2 SCC 267], this Court held that the term 'forest' is to be understood in the dictionary sense and also that any area regarded as a forest in Government record irrespective of ownership would be a forest. The State of Haryana, besides having filed affidavits in the forest matters treating such areas as forest for the purposes of the FC Act has been seeking prior approval from the Central Government for diversion of such land for non-forestry purpose.

Reference in this connection may also be made to the affidavit dated 8th December, 1996 filed by Banarsi Das, Principal Chief Conservator of Forest, Chandigarh, Haryana in Civil Writ No.171 of 1996 Environmental Awareness Forum v. State of Jammu & Kashmir and Ors. Our attention has also been drawn to letter dated 26th November, 2002 addressed by Divisional Forest Officer, Faridabad to Mining Officer, Faridabad forwarding to him a list of blocked forest areas of Faridabad district and requesting him to ensure that the said forest areas are not affected by any mining operations as also to a letter dated 17th September, 2001 sent by Principal Chief Conservator of Forest, Haryana (Panchkula) to Director of Environment, Haryana stating therein that no mining activity can be permitted in the area. On the facts and circumstances of the case, we cannot permit the State Government to take a complete summersault in these proceedings and contend that the earlier stand that the area is 'forest' was under some erroneous impressions. In the present case, for the purposes of the FC Act, these areas shall be treated as forest and for use of it for non-forestry purpose, it would be necessary to comply with the provisions of the FC Act.

We may also note that assuming that there was any confusion or erroneous impression, it ought to have been first sorted out at appropriate level and where affidavits had been filed in this Court, clarifications/orders sought before issue of the mining lease in respect of such area.

Impact of Mining on Ground Water

Where during mining water level is touched, the Monitoring Committee shall carve out that area and it was agreed on behalf of the leaseholders that they would co-operate and not undertake any mining in such an area.

Non-payment of royalty to the villagers

A controversy has been raised about non-payment of royalty by the leaseholders to villagers on whose behalf it was contended that the order dated 6th May, 2002 prohibiting mining should not be varied till the leaseholders discharge their liability to pay royalty to the villagers. On the other hand, mine leaseholders dispute the claim put-forth on behalf of the villagers and it has been submitted that no amount is payable by them and the villagers can make their claim, if any, from the State Government. The dispute of this nature cannot be properly adjudicated in these proceedings. We leave it open to be adjudicated before appropriate forum in accordance with law.

Leases in respect of minor mineral

Though notification dated 27th January, 1994 is not applicable to minor minerals, but having regard to what we have discussed above in regard to degradation of environment and the required standard about the risk of harm to the environment or to human health to be decided in public interest according to 'reasonable person's test', and the report of CMPDI, we direct the Monitoring Committee to examine the leases granted for extraction of minor mineral in light thereof and file its report. The Committee would, however, bear in mind that the notification dated 27th January, 1994 as such is not applicable to these leases.

Mining in Faridabad District

Having examined the matter, we are of the view that though the study conducted by CMPDI relates to mining activity in Aravalli Hills in Gurgaon district, in public interest the general safeguards and suggestions

in that report deserve to be implemented in respect of mining in Faridabad district as well.

We have already extracted the recommendations of NEERI, as also violations noticed in the reports submitted by EPCA and the suggestions of EPCA, CEC and CMPDI. The Monitoring Committee shall inspect the leases in question in Faridabad District as well in the light of these recommendations and file its report containing suggestions on recommencement or otherwise of the mining activity therein.

It may be reiterated that if, despite stringent conditions, the degradation of environment continues and reaches a stage of no return, this Court may have to consider, at a later date, the closure of mining activity in areas where there is such a risk.

As earlier noticed as well, it would not be expedient to lift the ban on mining imposed in terms of the order of this Court dated 6th May, 2002 before ensuring implementation of suggestions of CMPDI and other recommendations of experts (NEERI, EPCA and CEC). The safer course is to consider this question, on individual basis after receipt of report of the Monitoring Committee.

Environment Impact assessment applications

During the course of hearing environment assessment applications in terms of notification dated 27th January, 1994 have been filed by some of the leaseholders. In case, those applications are presently with Central Empowered Committee, the same shall be forthwith forwarded by CEC to MOEF. The adverse effect, if any, and extent thereof on human health and ecology shall be examined while deciding impact of these activities. There is also the desirability of transparency in such matter. The MOEF is directed to consider the said applications within a period of 10 weeks.

Monitoring Committee

With a view to monitor the overall eco-restoration efforts in the Aravalli Hills and to provide technical support to the implementing organizations and also to monitor implementation of recommendations contained in reports referred herein, it is necessary to constitute a Monitoring Committee. The heads of the following departments would be members of the Monitoring Committee :

1. Regional Officer of State Pollution Control Board.
2. Forest Department
3. District Administration
4. Department of Mining & Geology
5. Irrigation Department
6. Regional Officer of CGWB
7. Agriculture Department
8. District Industry Department.
9. Chairman - CPCB.

Besides above, MOEF is directed to appoint an officer from Central Ground Water Board to be a member of the Monitoring Committee. The following persons as representatives of public shall also be members of the said Committee :

1. Prof. Dilip Biswas,
Ex Chairman, CPCB.
2. Mr. Valmiki Thapar,
3. Mr. Bhure Lal.

The MOEF would act as a nodal agency of the Monitoring Committee. The Secretary of MOEF is directed to appoint an officer not below the rank of a Joint Secretary in the Ministry for the said purpose. The Monitoring Committee is directed to inspect the mines in question and file a report within a period of three months, inter alia, containing suggestions for recommencement of mining in individual cases. All concerned individuals and departments are directed to render full co-operation to the Monitoring Committee.

Conclusions

1. The order dated 6th May, 2002 as clarified hereinbefore cannot be vacated or varied before consideration of the report of the Monitoring Committee constituted by this judgment.
2. The notification of environment assessment clearance dated 27th

January, 1994 is applicable also when renewal of mining lease is considered after issue of the notification.

3. On the facts of the case, the mining activity on areas covered under Section 4 and/or 5 of Punjab Land Preservation Act, 1900 cannot be undertaken without approval under the Forest (Conservation) Act, 1980.

4. No mining activity can be carried out on area over which plantation has been undertaken under Aravalli project by utilization of foreign funds.

5. The mining activity can be permitted only on the basis of sustainable development and on compliance of stringent conditions.

6. The Aravalli hill range has to be protected at any cost. In case despite stringent condition, there is an adverse irreversible effect on the ecology in the Aravalli hill range area, at a later date, the total stoppage of mining activity in the area may have to be considered.

For similar reasons such step may have to be considered in respect of mining in Faridabad District as well.

7. MOEF is directed to prepare a short term and long term action plan for the restoration of environmental quality of Aravalli hills in Gurgaon district having regard to what is stated in final report of CMPDI within four months.

8. Violation of any of the conditions would entail the risk of cancellation of mining lease. The mining activity shall continue only on strict compliance of the stipulated conditions.

The matters are directed to be listed after reopening of courts after summer vacation on receipt of the report from the Monitoring Committee.