

COMMITTEE ON PETITIONS

(FIFTEENTH LOK SABHA)

THIRTY-THIRD REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

January, 2014 / Magha, 1935 (Saka)

THIRTY-THIRD REPORT
COMMITTEE ON PETITIONS
(FIFTEENTH LOK SABHA)

MINISTRY OF ENVIRONMENT & FORESTS
AND
MINISTRY OF MINES

(Presented to Lok Sabha on)



LOK SABHA SECRETARIAT
NEW DELHI

January, 2014 / Magha, 1935 (Saka)

CPB NO. XXXIII

Price: Rs.....

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Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Fourteenth Edition) and printed by the General Manager, Government of India Press, Minto Road, New Delhi – 110 092

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COMPOSITION OF THE COMMITTEE ON PETITIONS

Shri Anant Gangaram Geete - Chairman

Members

- 2. Shri Khiladi Lal Bairwa**
- 3. Shri Arvind Kumar Chaudhary**
- 4. Shri Syed Shahnawaz Hussain**
- 5. Shri G.V.Harsha Kumar**
- 6. Shri Bhartruhari Mahtab**
- 7. Shri Vincent H. Pala**
- 8. Shri A. Sai Prathap**
- 9. Shri M.B. Rajesh**
- 10. Prof.(Dr.) Ram Shankar**
- 11. Shri Adhi Sankar**
- 12. Shri Rakesh Singh**
- 13. Shri Yashvir Singh**
- 14. Shri Adagooru Vishwanath**
- 15. Vacant**

SECRETARIAT

- | | |
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| 2. Smt. Sudesh Luthra | - Joint Secretary |
| 3. Shri Shiv Kumar | - Director |
| 4. Shri Aftab Alam | - Deputy Secretary |
| 5. Shri Harish Sethi | - Senior Executive Asstt |

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THIRTY-THIRD REPORT OF THE COMMITTEE ON PETITIONS

(FIFTEENTH LOK SABHA)

INTRODUCTION

I, the Chairman, Committee on Petitions, having been authorised by the Committee to present the Report on their behalf, present this Thirty-Third Report (Fifteenth Lok Sabha) of the Committee to the House on the representation from Shri Nishikant N. Bhojane regarding : Misinterpretation of Office Memorandum dated 18.5.2012 issued by the Ministry of Environment & Forests in regard to seeking prior Environmental Clearance for all mining projects with lease area of less than 5 Hectares.

2. The Committee considered and adopted the draft Thirty-Third Report at their sitting held on 22 January, 2014.

3. The observations / recommendations of the Committee on the above matters have been included in the Report.

NEW DELHI;

22 January, 2014
2 Magha, 1935 (Saka)

ANANT GANGARAM GEETE
Chairman,
Committee on Petitions

REPORT

REPRESENTATION RECEIVED FROM SHRI NISHIKANT N. BHOJANE REGARDING – MISINTERPRETATION OF OFFICE MEMORANDUM DATED 18 May, 2012 OF THE MINISTRY OF ENVIRONMENT & FORESTS IN REGARD TO SEEKING PRIOR ENVIRONMENTAL CLEARANCE FOR ALL MINING PROJECTS WITH LEASE AREA OF LESS THAN 5 HECTARES

.....

Shri Nishikant N. Bhojane submitted a representation to the Committee on Petitions on 12 December, 2012 regarding – Misinterpretation of Office Memorandum dated 18 May, 2012 – issued by the Ministry of Environment & Forests with regard to seeking prior environmental clearance for all the Mining Projects with lease area of less than 5 hectares.

2. Shri Bhojane, a representative of businessmen involved in the business of extraction / excavation of Minor Minerals in Ratnagiri Distt., in his representation *inter-alia* stated that they undertake extraction / excavation of Minor Minerals from their own land and lands owned by private individuals under a quarrying permit issued under the Bombay Minor Minerals Extraction Rules, 1955, for which, they pay royalty to the Maharashtra State under the said Rules. The quarrying permits are issued for a maximum period of 3 months and only to extraction / excavation of a large variety of Minor Minerals and are renewed as and when required. For the last 15 years, they adhered to all the conditions imposed under the quarrying permits and have duly paid the royalty as required under the said Rules. However, in the month of September, 2012, after the expiry of his permit, he again applied for permission under Chapter IV of the Rules for quarrying permit for extraction / excavation of soil/clay to the Tehsildar, Ratnagiri District which was refused to him by citing the reason that the prior environment clearance is required from the

Environment Department as per the judgment of the Hon'ble Apex Court in the case of Deepak Kumar Vs Haryana State and others. The Central Government issued an Office Memorandum dated 18 May, 2012 in order to ensure compliance of the Supreme Court Order and directed all mining projects with lease area of less than 5 hecs. to seek prior environment clearance from the respective State Environment Impact Assessment Authorities (SEIAAs) notified by the Ministry of Environment & Forests. Further, on 24 August, 2012, the Collector of Ratnagiri issued a letter to all the Sub Divisional Officers and the Tehsildars in the District of Ratnagiri, directing them to refrain from granting any quarrying permits before obtaining prior environmental clearance Certificate, although there was no such direction from the Central Government in the Office Memorandum dated 18 May, 2012.

During the course of oral evidence held on 27 February, 2013, the Petitioner deposed before the Committee that there is revenue loss of thousand of crores of rupees to the State exchequers and a large number of people have been rendered unemployed as a result of the orders issued by the State Government. Further the rates of sand in the area have also been increased three fold.

The Petitioner further elaborated that after the delivery of the judgment of Hon'ble Supreme Court in Deepak Kumar Vs Haryana State and others, the Environment Department had issued various official letter to the Government Authorities. These Authorities had interpreted the judgment in their own way and they have refused to grant permission. The Apex Court had an established Guideline for the Minor Minerals and for the properties of lease and furthermore the Minor Minerals and lease were guided under the Mines and Minerals Act, 1957. But however, and the extraction carried out by the Petitioners are guided by different

Act. Moreover, as per the judgment of the Apex Court in Deepak Kumar's case, the Apex Court had suggested an amendment in 'The Mines and Minerals (Regulation & Development) Act, 1957'. However, the said amendment is yet to be effected. In Maharashtra, the excavation of Minor Minerals was regulated by the following Rules:-

- a) Maharashtra excavation of Minor Minerals (Vidharbha Region), 1966.
- b) Bombay excavation of Minor Minerals Rules (Western Maharashtra), 1955.
- c) Rules regarding excavation of Minor Minerals (Marathvada Region), 1954.

The Petitioner finally requested the Committee on Petitions that the Office Memorandum dated 18 May, 2012 issued by the Ministry of Environment & Forests and action taken by the Government of Maharashtra thereon is inappropriate which, in turn, renders the orders issued by the Government of Maharashtra vide letter dated 24 August, 2012 to all Sub-Division Officers and Tehsildars in Ratnagiri District as irrelevant and as such need to be quashed and set aside. Furthermore, he requested the Committee that an appropriate direction may also be issued to the concerned Authorities to issue temporary permission to the Petitioners and others for continuing their business without obtaining permission from environmental angle.

3. The Committee on Petitions took up the representation for examination under Direction 95 of the Directions by the Speaker. Accordingly, the representation was forwarded to the Ministries of Environment & Forests and Mines on 24 January, 2013 requesting them to furnish their comments on the issues raised in the representation.

4. In response thereto, the Ministry of Mines vide their OM No.16/10/2013.M-VI dated 18 February, 2013 submitted as follows:-

"Mines and Minerals (Development and Regulatory) Act, 1957 has empowered the Union to make rules and regulations of mines and development of minerals to the extent provided therein. It defines that "minerals" includes all minerals except mineral oils. Further, this Act defines 'mining lease' means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose and 'minor minerals' means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, any other minerals which the Central Government may, by Notification in the official gazette, declare to be a minor mineral.

Hon'ble Supreme Court vide Order dated 27th February, 2012 in case of Deepak Kumar etc. has directed that ***'leases of minor mineral including their renewal for an area of less than five hectares be granted by the States/UTs only after getting environmental clearance from the Ministry of Environment & Forests'***. The said Order has in detail appreciated the issues of minimum size of lease and period of lease/ granting of short term permits by dividing the mining area into small zones for circumventing the environmental norms and their huge environmental impact. The Hon'ble Supreme Court delivering the Judgment has specifically drawn attention to the issuing auction notices granting short term permits by way of auction of minor boulders, gravel, sand etc. of less than 5 hectares and has directed all the States, UTs, Ministry of Environment & Forests and Ministry of Mines to

give effect to the recommendations made by Ministry of Environment & Forests in its Report of March, 2010 and the model guidelines framed by the Ministry of Mines.

The rationale of the Order of Hon'ble Supreme Court dated 27th February, 2012 in case of Deepak Kumar etc is that grant of permits and grant of leases shall have same meaning in case of minor minerals for an area of less than five hectares and State/Union Territories will grant permits/lease only after getting environmental clearance from the Ministry of Environment & Forests."

5. On being asked by the Committee to furnish the details of Minor Minerals, the Ministry of Mines in their written submission stated that Section 3(a) of the Mines and Minerals (Development and Regulation) (MMDR) Act, 1957 defines minerals as: *"minerals" include all minerals except mineral oils. Further, Section 3(e) of the Mines and Minerals (Development and Regulation) Act, 1957 defines minor minerals as:*

"minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral.

The Ministry of Mines also furnished a list of 24 Minor Minerals, as defined under Section 3(e) of MMDR Act, 1957 and further declared as such from time to time under the Act, as follows:-

1. Building stones
2. Gravel
3. Ordinary Clay
4. Ordinary sand other than used for prescribed purposes

(Mineral Concession Rules, 1960 :- Rule 70 : Sand not be treated as minor mineral when used for certain purposes – Sand shall not be treated as minor mineral when used for any of the following purposes :-

- (i) Purposes of refractory and manufacture of ceramic;
- (ii) Metallurgical purposes;
- (iii) optical purposes;
- (iv) purposes of stowing in coal mines;
- (v) for manufacture of silvicrete cement;
- (vi) for manufacture of sodium silicate;
- (vii) for manufacture of pottery and glass.)

5. Boulder

6. Shingle,

7. Chalcedony or impure quartz, pebbles used for ball mill purposes or filling of bore wells or for decorative purposes in buildings,

8. Limeshell,	}	when used in kilns for
9. Kankar,	}	manufacture of lime used
10. Limestone	}	as building material

11. Murrum,

12. Brick-earth

13. Fuller's earth

14. Bentonite

15. Road metal

16. Reh-matti

17. Slate and	}	When used for
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18. Shale	}	building material
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19. Marble

20. Stones used for making household utensils

21. Quartzite and sand stone, when used for purposes of building or for metal and house hold utensils

22. Salt petre

23. Granite

24. Ordinary earth

6. During the course of oral evidence held on the subject on 22 November, 2013, explaining the difference between Major Minerals, Minor Minerals and Mining Lease relating thereto, the representative of the Ministry of Mines deposed before the Committee that sand and other materials such as granite, laterite, gravel, etc., are all classified as Minor Minerals and the State Government has the full authority to make the rules relating to their Mining Leases. The Mineral Concession Rules, 1960 which the Union Government has framed, apply only to the Major Minerals. The Mines and Minerals (Development and Regulation) Act has two separate chapters spelling out the procedures in respect of land in which the minerals vest in the Government and land in which the minerals vest in persons other than Government. Similarly, under the Mineral Concession Rules, 1960, which apply to all Major Minerals all over the country, there are separate procedures laid down for cases where minerals are owned by the Government and where minerals are owned by the private parties. In the case of private parties also, an application for Mining Lease has to be made and the Mining Lease has to be granted. But, that will be in the form of an agreement between the owner of the mineral and the person who wants to take it on lease. Hence, there are different procedures, where the minerals under the land are owned by private parties and are owned by the Government.

7. On a query by the Committee, elaborating about role of Ministries of Environment & Forests and Mines for issuing of quarrying permits for excavation of Minor Minerals in Maharashtra and / or other States, the Ministry of Mines stated in their written submission that Mining concessions (Reconnaissance Permit, Prospecting License and Mining Lease) are granted by the State Governments. In respect of minerals mentioned in the first schedule to the MMDR Act, 1957, the mining concessions are given by the State Governments with the prior approval of the Central Government. Mining leases including quarrying lease/permits for minor minerals are granted by the State Governments.

8. The Ministry of Mines further stated that Mining leases including quarrying leases / permits for Minor Minerals are granted by State Governments only under the provisions of the MMDR Act, 1957 and the Rules made there under. Mining of minerals, at the Scales mentioned in the Notification, also require environment clearance from the Ministry of Environment and Forests under the provisions of the Environment (Protection) Act, 1986.

9. In this regard, the Ministry of Environment & Forests stated in their written submission that the activity of 'Mining of Minerals' requires prior environment clearance (EC) as per the provisions under the EIA Notification 2006 as amended from time to time. While mining leases for minor minerals are granted by the concerned State Governments, the mining activity can be undertaken only after the project proponent obtains EC from the Competent Authority.

10. On being specifically asked by the Committee to furnish the brief of the judgment of Hon'ble Supreme Court in case of Deepak Kumar Vs State of Haryana & others and its co-relation with excavation of Minor Minerals in Maharashtra, the

Ministries of Environment & Forests and Mines in their written submission stated as follows:-

"The Supreme Court has stated that the State of Haryana and various other States have not so far implemented the recommendations of the Ministry of Environment and Forest or the guidelines issued by the Ministry of Mines before issuing auction notices granting short term permits by way of auction of minor mineral boulders, gravel, sand etc. in the river beds and elsewhere of less than 5 hectares. The Supreme Court has directed the State Governments and Union Territories to frame necessary Rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of Ministry of Environment and Forest in its Report of March 2010 and model guidelines framed by the Ministry of Mines, Government of India. Section 15 of the MMDR Act, 1957 has provisions for the State Governments to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith. The Supreme Court has ordered, in the meanwhile, that *"leases of minor mineral including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from the Ministry of Environment and Forest."*

11. In this context, explaining the position further, the Ministry of Environment & Forests stated in their written submission that pursuant to aforesaid orders of the Supreme Court, Ministry of Environment & Forests vide OM dated 18 May, 2012 decided that all the mining projects of minor minerals including their renewal,

irrespective of the size of the lease, would henceforth require prior Environment Clearance and for projects with lease area of less than 5 hecs will be considered by the respective State Environment Impact Assessment Authorities, including that of State of Maharashtra.

12. Clarifying the applicability of Supreme Court judgment on State Government when they have the autonomy to frame Rules, the representative of the Ministry of Environment & Forests during the course of oral evidence held on 22 November, 2013 deposed before the Committee that it is not the State Government but the Government of India which Notifies the Mineral as minor mineral. The State Government has the power to only frame rules for these notified minor minerals but subject to some broad guidelines, because the Supreme Court felt that these rules are not taking care of sustainable mining including environment issues. In the case of minor minerals, the Supreme Court has said that for all minor mineral leases environment clearance is required, irrespective of the lease size.

13. Further, on being queried by the Committee as to whether quarrying permits are covered within the ambit of the judgment of Supreme Court delivered in the matter of Deepak Kumar Vs. State of Haryana & Others and also as to whether the **O.M. dated 18 May, 2012** properly captures the spirit of the judgment, the Secretary, Ministry of Environment & Forests referring to the judgment drew attention to Para 17 of judgment which inter-alia states as follows :-

"The State Government of Haryana and various other States have not so far implemented the above recommendations of the Ministry of Environment & Forests or the guidelines issued by the Ministry of Mines before issuing auction notices, granting short-term permits by way of auction of minor

minerals, boulders, gravel, sand, etc., in the riverbeds and elsewhere of less than five hectares."

He further mentioned that the operative portion has been captured in the judgment and the OM dated 18 May, 2012 is fully in consonance with the spirit of the Supreme Court Judgment not only in letter but also in spirit, in the sense that, the Environment Ministry is concerned with environmental impacts of various mining activities.

14. The Committee then asked them to furnish a brief note elucidating the recommendations of the Ministry of Environment & Forests required to be taken into consideration for framing Rules u/s 15 of MMDR Act, 1957 as per the above stated orders of the Supreme Court. The Ministry of Mines stated in their written submission that they have framed the draft 'Model Guidelines for Environmental Management of Mining of Minor Minerals' which have been circulated to all the important mineral producing States seeking their comments. Comments of the State Governments are awaited, based on which the Model Guidelines will be finalized. The 'Model Guidelines for Environmental Management of Mining of Minor Minerals' have been framed so as to give a general direction to State Governments in framing their minor mineral Rules. The gist of the guidelines is that it emphasises on issues relating to environment protection.

The issue of framing Rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith as mandated by Section 15 of the Mines and Minerals (Development and Regulation) (MMDR) Act, 1957 is being constantly monitored in the Central Coordination - cum -Empowered Committee (CCEC) which is a body to

coordinate actions on issues relating to, inter alia, mineral development and regulation in the country. The matter was reviewed in the last meeting of the CCEC held on 10th September, 2013 wherein it has been reported that the States of Rajasthan, Madhya Pradesh, Gujarat, and Goa have reported compliance by either framing their minor mineral rules or by amending their minor mineral rules keeping with the import of the judgment of the Hon'ble Supreme Court dated 27 February, 2012. Other State Governments have been requested to report compliance in this regard at the earliest.

15. In this regard, the Ministry of Environment & Forests in their written submission stated that they had constituted a Group under the Chairmanship of the then Secretary (E&F) to look into the environmental aspects associated with mining of minor minerals vide order dated 24 March, 2009. The Report of the Group was sent to all the States in June 2010 for incorporating in the Mineral Concessions Rules for mining of minor minerals u/s 15 of the MMDR Act, 1957, the recommendations contained in the Report which inter-alia include – minimum size of mine lease should be 5 hecs; minimum period of mine lease should be 5 years; mine plans should be made mandatory for minor minerals; for river bed mining, leases should be granted stretch-wise, depth may be restricted to 3 m / water level, whichever is less and safety zones should be worked out, etc. Subsequently, the Hon'ble Supreme Court vide order dated 27 February, 2012 in SLP (C) Nos.19628-19629 of 2009 titled Deepak Kumar etc. Vs State of Haryana & others., inter-alia directed the State Governments to take immediate steps to frame necessary rules u/s 15 of the MMDR Act, 1957, taking into consideration the recommendations of

aforesaid Ministry of Environment & Forests's Report and Model Guidelines framed by Ministry of Mines, Government of India.

16. The Ministry of Mines in their written submission submitted that they have written to the Ministry of Environment & Forests vide D.O. No. 16/83/2012-M.VI dated 29 November, 2012 recommending delegation of powers to grant environment clearance for mining projects with less than 5 hectares lease area involving 'ordinary earth', to the District Collector/District Magistrate of the concerned district.

17. On being questioned by the Committee as to whether the Environment Clearance was not mandatory prior to 30 September, 2012 for the purpose of issue of quarrying permit for excavation of Minor Minerals, the Ministry of Environment & Forests in their written submission stated as under :-

"As per Environment Impact Assessment Notification, 2006, list of projects of activities as given in schedule require prior environment clearance from the Ministry of Environment & Forests for matters falling under category 'A' and at State level for matters falling under category 'B'. The activity of 'Mining of Minerals' is included in the schedule of this Notification. As per the schedule ≥ 50 hecs of mining lease area falls under category 'A' and < 50 hecs and ≥ 5 hecs of mining lease area falls under purview of 'B' category. It may be noted that Environment Clearance for mining lease area of less than 5 hecs was exempted under EIA Notification, 2006. However, the Supreme Court vide judgment dated 27 February, 2012 in Deepak Kumar's case ordered that leases of minor mineral including their renewal for an area of less than 5 hecs be granted by the States / UTs only after getting Environment Clearance from the Ministry of Environment & Forests."

18. The representative of the Ministry of Mines during the course of oral evidence held on 22 November, 2013 submitted before the Committee that keeping in view the point that the issue of denotification of Minor Minerals from the Section 3(e) of the MMDR Act, 1957 is being taken before the Hon'ble Supreme Court for the last almost forty years, they had taken up matter for an advice with Ministry of Law & Justice / Attorney General for denotification of minerals such as brick earth, ordinary sand, laterites, etc. from the list of Minor Minerals. And after the denotification proposed, these Minerals will fall outside the purview of the State Rules and will come within the ambit of MMDR Act, 1980 and Minerals Concession Rules, 1960 and therefore, the possibility of doing so was ruled out. The representative of the Ministry of Mines during the course of oral evidence further stated that the issue of taking out these Minor Minerals from the list was taken up by them with the Ministry of Law & Justice but it could not become possible and these Minerals can not be taken out from the list. When the Committee took up the matter with the Legislative Department, Ministry of Law & Justice, they apprised the Committee that the matter is of policy and pertains to the Ministry of Mines.

19. The Ministry of Environment & Forests in a written submission informed the Committee that as regards imposition of the Moratorium in Ratnagiri and Sindhudurg districts, the same was imposed by the Ministry of Environment & Forests on 16 August, 2010 on ecological and environment considerations. The Ministry of Environment & Forests has since received the Report of Western Ghats Ecology Expert Panel. Thereafter, the Ministry of Environment & Forests had constituted a High Level Working Group on 17.8.2012 to inter-alia examine the Western Ghats Ecology Expert Panel Report in a holistic manner keeping in view the comments of

various stakeholders. This High Level Working Group chaired by Dr. Kasturirangan would submit their Report by 31 March, 2013.

20. The Committee then enquired about the recommendations made in the Report of the High Level Working Group and action taken thereon. The Ministry of Environment & Forests in their written submission stated as follows :-

"The Ministry of Environment & Forests had constituted a High Level Working Group (HLWG) under the Chairmanship of Dr. K. Kasturirangan, Member (Science), Planning Commission vide Office Order dated 17 August, 2012 in order to study and make recommendations on how to protect, preserve and nurture the rich biodiversity and environmental integrity of the Western Ghats and suggest steps and the way forward to prevent further degradation of the fragile ecology of the Western Ghats. The HLWG submitted its Report to the Ministry of Environment & Forests on 15 April, 2013 and it was thereafter put in public domain by hosting on the Ministry of Environment & Forests website, and also disseminated to all stakeholders including the six Western Ghat States for feedback and comments. All stakeholders were also invited to offer their views on the HLWG Report."

The Ministry has accepted the HLWG Report 'in principle' subject to the following :-

- (i) The definition of the extent of the Western Ghats as demarcated by the HLWG is accepted.
- (ii) The Ecologically Sensitive Area (ESA) as identified and delineated by the HLWG in Western Ghats is accepted.

- (iii) The HLWG has identified approximately 37% of the Western Ghats as ecologically sensitive. The identified ESA covers about 60,000 sq. km. of natural landscape of Western Ghats and represents a continuous band of natural vegetation extending over a horizontal distance of 1,500 km. The ESA is spread across six States of Western Ghats region viz. Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu. The ESA also includes Protected Areas and World Heritage Sites of Western Ghats.
- (iv) The recommendations of the HLWG to completely ban mining, quarrying and sand mining as also thermal power plants and Red category of industries in the ESA are also accepted.
- (v) Hydro Power being a relatively clean source of energy has been recommended to be allowed in the ESA by the HLWG subject to stringent conditions. This recommendation is accepted by the Ministry.
- (vi) Wind energy is permitted in the ESA subject to applicable regulations.
- (vii) New building and construction project of over 20,000 sq. m., township and area development projects as well as other projects / activities recommended to be banned by the HLWG will be banned in the ESA. However, projects already under consideration of the respective State level SEIAAs and SEACs of the concerned States and EACs of Ministry of Environment & Forests on the date of issue of draft Notification will be considered under the then existing regulations.

- (viii) Project / activities which are not specifically prohibited under ESA shall be scrutinized and assessed for cumulative impacts and development needs, before granting environment clearance.
- (ix) The Forest Rights Act shall be observed in letter and spirit. The consent of the Gram Sabha for projects in ESA will be mandatory as recommended by the HLWG.

The boundary of the ESA as also the regulatory regime would be fine tuned after the draft Notification to the effect is placed in the public domain for comments / views of stakeholders including State Governments of the region.

The HLWG has noted that a substantial portion of the Sindhudurg and Ratnagiri Districts where Moratorium has been imposed falls outside the definition of Western Ghats as identified by the HLWG. The HLWG has recommended the lifting of Moratorium in Ratnagiri and Sindhudurg Districts subject to certain stipulations.

As a follow up to the 'in principle' acceptance of the HLWG report by the Ministry, relevant steps would be initiated to operationalise the recommendations of the HLWG. A draft Notification declaring the identified region of the Western Ghats as an ESA along the lines accepted by the Ministry would be issued and put up on the website of the Ministry for inputs of stakeholders.

A High Level Committee of the Ministry of Environment & Forests will be set up to monitor the implementation of the recommendations of the HLWG in a time bound manner.

The Ministry have examined the recommendations given by the HLWG on the Moratorium for consideration of projects from the district of Ratnagiri and Sindhudurg and has lifted the Moratorium from area falling outside the Western Ghats except for Dodamarg Taluka vide OM No. J.21011/58/2010-IA-I dated 17 October, 2013.

21. Then the Committee categorically desired to know the factual position in regard to Moratorium imposed i.e. to completely ban mining, quarrying and sand mining as also thermal power plants and Red category of industries in the Ecologically Sensitive Area, by the Ministry of Environment & Forests on 16 August, 2010 on ecological and environmental consideration in Ratnagiri and Sindhudurg districts and extension of Moratorium upto 31 December, 2012 vide Ministry of Environment & Forests OM dated 25 July, 2012. The Ministry of Environment & Forests in their written submission stated as follows :-

"As regards imposition of Moratorium in Ratnagiri and Sindhudurg districts, the same was imposed by Ministry of Environment & Forests on 16 August, 2010 on ecological and environment considerations. Ministry of Environment & Forests has since received the Report of Western Ghats ecology Expert Panel. Thereafter, Ministry of Environment & Forests has constituted a High Level Working Group on 17 August, 2012 to inter-alia examine the Western Ghats Ecology Experts Panel Report in a holistic manner keeping in view the comments of various stakeholders. This group is yet to submit its recommendations to Ministry of Environment & Forests. The Moratorium in these districts has been extended upto 31 March, 2013."

22. The Committee then sought to know the specific reasons to ban the Mining Projects in Sindhudurg and Ratnagiri Districts of Maharashtra. The Secretary, Ministry of Environment & Forests during their oral evidence held on 27 February, 2013 submitted before the Committee that being ecologically sensitive Districts, Moratorium on mining was imposed in these Districts in August, 2010. Moreover, an Expert Working Group constituted by the Government under the Chairmanship of Dr. Kasturirangan, Member, Planning Commission is examining a Study Report already prepared on the Western Ghat ecology by Prof. Madhav Gadgil. It was further clarified before the Committee that the Moratorium imposed got extended from time to time and it has now been extended upto March, 2013. Accordingly, the matter will be reviewed within the next one and a half month.

23. However, on being specifically questioned by the Committee on the issue of imposition of Moratorium, the representative of the Ministry of Environment & Forests apprised the Committee during the oral evidence held on 22 November, 2013 and further clarified the position as obtaining at that point in time in regard thereto by submitting that the Ministry of Environment & Forests vide their OM dated 17 October, 2013 stated that the Government have, however, lifted the Moratorium from some Talukas of Ratnagiri and Sindhudurg except from the Talukas of (i) Khed; (ii) Chiplun; (iii) Sangameshwar; (iv) Lanja; (v) Rajapur; (vi) Kankavli; (vii) Sawantwadi; (viii) Dodamarg; (ix) Deogad; (x) Vaibhavwadi; and (xi) Kudal in Ratnagiri District and Sindhudurg District. Further, in the Tehsil of Doda Marg also, which is outside Western Ghats, this Moratorium is still continuing because Awas Foundation has filed a case in Mumbai High Court to keep this in Ecological Sensitive Area (ESA). The remaining 60,000 kms (37%) area of the Western Ghats

having dense forest, bio-diversity needs to be preserved. In this Area as per draft Notification, some activities will be prohibited and some regulated. The work related to the boundary of this ESA of Western Ghats will be worked out in consultation with the concerned States only thereafter, the decision to lift ban from the remaining area of Western Ghats will be taken. The draft Notification has been sent to the Ministry of Law for vetting and the same will be issued next week. Thereafter, within next 60 days all the individual stake holders and State Governments can give their view point. The draft Notification will be issued and finalized only after consulting all the stake holders, i.e. six States.

24. The Committee desired the Ministry of Mines to offer their specific comments on the statement as mentioned in the representation before the Committee that the excavation of the minor minerals such as soil and clay would not come in the purview of the judgment passed by the Hon'ble Supreme Court and the quarrying lease is not included in the definition of the mining lease Under Section 3(c) of the Sct (Mines and Minerals Development Regulation) Act, 1957, In their written submission, the Ministry of Mines stated as follows :-

"As per Section 3 (c) of the MMDR Act, 1957 'mining lease' is defined as follows :

(c) "mining lease" means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose;

Similarly as per section 3 (d) of the MMDR Act, 1957 'mining operations' are defined as follows:

(d) "mining operations" means any operations undertaken for the purpose of winning any mineral;

Thus, any activity undertaken for the purpose of minning of any mineral would be construed as mining operation; further, 'mining lease' means a lease

granted for the purpose of undertaking mining operations. Thus a quarrying lease comes within ambit of the definition of 'mining lease'."

25. When sought a specific clarification as to whether a person extracting some minerals from his own land of < 5 hec after seeking permission from the Tehsildars or the Authorities concerned under 1968 Act and the Rules of 1955, will also come under the purview of the Mines and Minerals Act, 1957 or not, the Ministry of Mines in their written submission stated as follows :-

Section 4 (1) of the MMDR Act, 1957 states as follows:

"4. (1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made there under."

Even if the land belongs to the person, it is mandatory for the person to obtain the requisite 'mining lease' or 'permit' or 'licence' or 'quarrying lease' etc for extraction of minerals in terms of the MMDR Act, 1957 and the Rules framed there-under."

26. The Committee then specifically sought the opinion of Ministry of Law & Justice in regard to the removal of Minerals like sand, soil, stone etc., which are being used as they are and do not require any processing before using them, from the list of Minor Minerals. The representative of the Ministry of Law & Justice informed the Committee that, in the Mines and Minerals (Development and Regulation) Bill, 2011, which is presently pending in Lok Sabha, the expression 'major minerals' has been defined as the minerals specified in the First Schedule whereas the expression 'minor minerals' has been defined as the minerals other than the major minerals.

Observations / Recommendations

27. The Petitioner in his representation has claimed that the Judgment of Supreme Court in the matter of Deepak Kumar Vs. State of Haryana & Others, directing all mining project with lease area of less than 5 hectares to seek prior environmental clearance from the respective State Environment Impact Assessment Authorities notified by the Ministry of Environment & Forests following the procedure prescribed under the environmental Notification, 2006 includes only mining lease / quarrying lease and is not applicable on quarrying permit for minor minerals, has been misinterpreted by the State Authorities and the Collector who has issued letters to SDO and Tehsildars in the State of Maharashtra stating that permission of the Ministry of Environment & Forests has to be taken for every mining minerals. According to the Petitioner, the activities performed / undertaken by him and others engaged in similar profession do not come under the purview of Major or Minor Minerals because they only extract gravel, stones, clay and litrate which are required for construction, from their own lands. They are also not taking any property on lease from the Government for the purpose. Moreover, by offering quarrying lease by the State Government, the ecological balance in the area is also not being affected in any way. The Petitioner has further claimed that they do not come under the purview of Mines & Minerals Act, 1957 because they have been granted permission under 1968 Act and the Rules of 1955.

28. The Committee note from the submission of Petitioner that there is estimated revenue loss of thousand of crores of rupees to the exchequer of the State Government of Maharashtra and a large number of people from that place have been rendered unemployed as a result of letter issued by the Collector Raigad in the matter. The rates of sand, in the meanwhile, which was being excavated have also been increased three fold.

29. The Committee further note that the Central Government under Section 3(e) of MMDR Act, 1957 have notified Building stones ; Gravel ; Ordinary Clay ; and Ordinary sand other than used for prescribed purposes – in the list of 24 Minor Minerals. The Committee also note that minerals have been classified into major or minor based on their end use rather than level of production, level of mechanization, export and import, etc.

30. The Committee have been given to understand that sand and other materials such as granite, laterite, gravel, etc., are all classified as Minor Minerals and the State Government has the full authority to make the Rules relating to their Mining Leases. The Committee observe that the Mines and Minerals (Development and Regulation) Act, 1957 has two separate chapters dealing with procedures – in respect of minerals owned by the Government and by people other than Government. Similarly, under the Mineral Concession Rules, 1960, which apply to all Major Minerals across the country, there are separate procedures laid down for cases where minerals are owned by the Government and where minerals are owned by the private parties. Nevertheless, in the case of private parties also an application for Mining Lease has to be made and the Mining Lease has to be granted which will be in

the form of an agreement between the owner of the mineral and the person who wants to take it on lease.

31. From the foregoing, the Committee are of the opinion that the activities performed / undertaken by the Petitioners i.e. to only extract gravel, stones, clay and laterite from their own land which are required for construction. They are also not taking any property on lease from the Government for the purpose. The Committee further note with concern that there is a revenue loss of crores of Rupees to the exchequer of the State Government of Maharashtra which is increasing day by day, number of people from that place have been rendered unemployed and the rates of sand have also been increased three fold. From the situation as obtaining in the State of Maharashtra, the Committee are inclined to conclude that the circumstances on the ground level may not be better in the other States of the country as well.

32. The Committee note from the position explained by the representative of the Ministries of Environment & Forests and Mines that the issue of denotification of Minerals such as brick earth, ordinary sand, laterites, etc. from the list of Minor Minerals which are less environmentally hazardous and also do not require any further processing and also in view of the fact that these are meant for the bulk use of general public was being taken up by the Ministry of Mines with the Ministry of Law & Justice. However, it could not become possible due to some legal issues. During the course of examination, when the matter was taken up with the Legislative Department of the Ministry of Law & Justice, the Committee have been apprised that it is a matter of policy and pertains to the Ministry of Mines. In view of this, the Committee

recommend that Ministry of Mines in consultation with the Ministry of Law & Justice may make concerted efforts for denotification / taking out the said Minerals from the list of Minor Minerals.

33. Accordingly, the Committee would urge that the Ministry of Mines should urgently consider bringing an amendment to the MMDR Act, 1957 – in consultation with the Ministries of Environment & Forests and Law & Justice so as to remove the `Minor Minerals' like building stones, gravel, ordinary clay, ordinary sand other than the sand used for prescribed purposes, etc. as defined under Section 3(e) of MMDR Act, 1957, which are being used as it is and do not require any procedure before using it, from the list of `Minor Minerals' so that they are treated as Non-Minerals. This would provide much needed relief not only to persons engaged in the activities of extracting these materials but also to their end users i.e., the common people keeping in view the long pending demand of general public from across the country in regard thereto.

34. The Committee have also been apprised that imposition of Moratorium in Ratnagiri and Sindhudurg districts was imposed by Ministry of Environment & Forests on 16 August, 2010 on the ecological and environment considerations. Ministry of Environment & Forests has since received the Report of Western Ghats ecology Expert Panel and thereafter a High Level Working Group was constituted on 17 August, 2012 to examine the Experts Panel Report in a holistic manner keeping in view the comments of various stakeholders. The Committee further note that the Moratorium in these districts was extended upto 31 March, 2013 and the Expert Working Group

constituted by the Government under the Chairmanship of Dr. Kasturirangan, Member, Planning Commission has already given its Report to the Ministry of Environment & Forests in the matter. The Committee desire that necessary steps may be initiated to operationalise the recommendations of HLWG on priority basis in a time bound manner.

35. The Committee note from the submissions made by the Ministry of Environment & Forests before them that in October, 2013, the Moratorium from all the Talukas in Ratnagiri and Sindhudurg District of Maharashtra except for the Talukas of Khed, Chiplun, Sangameshwar, Lanja, and Rajapur of Ratnagiri District and Talukas of Kankavli, Sawantwadi, Dodamarg, Deogad, Vaibhavwadi and Kudal of Sindhudurg District has been lifted. In the Tehsil of Doda Marg also which is outside the Western Ghats, this Moratorium is still continuing because the Awas Foundation has filed case in Mumbai High Court to keep this area in the Ecological Sensitive Area (ESA). The Committee would, however, recommend that the Ministry of Environment & Forests should also explore the possibilities of lifting the Moratorium in the remaining Talukas of Ratnagiri and Sindhudurg districts as well at the earliest.

36. The Committee note that HLWG has identified approximately 37% of the Western Ghats as the Ecologically Sensitive Area – which covers about 60,000 sq. km. of natural landscape of the Western Ghats and represents a continuous band of natural vegetation extending over a horizontal distance of 1,500 km. The ESA is spread across six States of the Western Ghats Region viz. Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu – which also includes Protected Areas and World Heritage Sites of the Western Ghats. The

work related to the boundary of this ESA of the Western Ghats will be worked out in consultation with the concerned States. Only thereafter, the decision to lift ban from the remaining area of the Western Ghats will be taken. The Committee have been apprised that the draft Notification will be issued and finalized only after consulting all the stakeholders, i.e. six States starting from Gujarat. The Committee desire that modalities may be worked out on a priority basis to lift the Moratorium from remaining areas of Ratnagiri and Sindhudurg districts. The Committee therefore, urge the Ministry of Environment & Forests to take steps to issue the Notification in a time bound manner.

37. The Committee would like to be apprised of the conclusive action taken in the matter within 3 months of presentation of this Report to Lok Sabha.

NEW DELHI

**22 January, 2014
2 Magha, 1935 (Saka)**

**Anant Gangaram Geete
Chairman
Committee on Petitions**