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**AN ORGANISATION FOR VENTILATING COMMON PROBLEMS OF THE PEOPLE**

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To:

Shri Narendra Singh Tomar,

Union Minister for Mines, Steel, Labour & Employment,

C Wing, Shastri Bhawan,

Dr. Rajendra Prasad Road,

New Delhi.

Subject: Adoption of Competitive Bidding for Grant/Renewal of Mining Leases

Reference: WP (C) 114/2014 Common Cause vs. Union of India & Ors.

Dear Shri Tomar,

I am addressing this letter on behalf of Common Cause, a public interest organization of long standing, in the context of a slew of authoritative reports of windfall gains being made by a privileged group of mining companies in Odisha, Karnataka, Goa, and other mineral-rich regions of the country. This undue enrichment of the mine owners has been enabled by the failure of the State to realize a fair value for the precious and finite natural resources extracted by them.

It may be recalled here that in the face of a public outcry over massive mining scandals in various parts of the country, the Government of India had set up the Justice M. B. Shah Commission of Inquiry for Illegal Mining of Iron Ore and Manganese in November 2010. The Commission was, *inter alia,* asked to inquire into the illegal mining, trade and transportation of iron ore and manganese ore, identify the deficiencies in the systems of management and regulation, and assess the financial losses caused to the Central and State Governments. The Commission submitted a series of exhaustive reports on the state of affairs in Goa, Odisha and Jharkhand to your Ministry.

The reports of the Commission have documented the plunder of the nation’s natural resources in flagrant violation of the laws relating to mining and environment protection and the fundamental rights of the local populations. The reports of the Commission also establish that the reckless extraction of mineral wealth was resulting in windfall gains to a select group of entities without commensurate benefits to the exchequer.

In its depositions before the Shah Commission, the Government of Odisha had pressed for systemic reforms in the regulatory framework for the exploitation of the mineral wealth. One of the key reforms suggested by the state government was that competitive bidding should be the general methodology for the grant of finite natural resources, since it was a transparent mechanism that will not only result in the selection of meritorious applicants, but will also ensure maximum gains to the state and the community. The Senior Counsel appearing on behalf of the State government had drawn the attention of the Commission to the letters addressed by you in this regard to Shri Pranab Mukherjee, the then Minister for Finance and Chairman of the Group of Ministers on New MMDR Bill on 06.01.2011 and to Shri Dinsha Patel, the then Minister of State for Mines (Independent Charge) on 23.02.2011. The State government’s suggestion for adoption of the system of competitive bidding for alienating finite natural resources is in conformity with the Constitutional and legal principles expounded by the Supreme Court. Recent judgments of the Apex Court leave no room for doubt that the only Constitutional method of allocation of mining leases of iron ore and other scarce and valuable natural resources would be by competitive auction/bidding.

Such a method would be fair *inter se* the applicants and would give all the eligible applicants a fair chance of success. Moreover, it would be fair *qua* the ordinary people and the interests of the revenue, and will ensure that the state and its people are adequately compensated for the alienation of precious natural resources in favour of private entities.

The Supreme Court has repeatedly held that natural resources are owned by the people and that the Government only acts as a trustee. As a trustee, it is the duty of the Government to recover the full value of the resource for the people. In the Meerut Development Authority case [(2009) 6 SCC 171], the Court held:

“It is well said that the struggle to get for the State the full value of its resources is particularly pronounced in the sale of State owned natural assets to the private sector. Whenever the Government or the authorities get less than the full value of the asset, the country is being cheated; there is a simple transfer of wealth from the citizens as a whole to whoever gets the assets `at a discount'.”

In the 2G case (CPIL & Ors vs UoI & Ors, (2012) 3 SCC 1), the Supreme Court has held:

“Natural resources belong to the people but the State legally owns them on behalf of its people… The State is empowered to distribute natural resources. However, as they constitute public property/national asset, while distributing natural resources, the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest. Like any other State action, constitutionalism must be reflected at every stage of the distribution of natural resources.”

The Supreme Court has further held:

“As natural resources are public goods, the doctrine of equality, which emerges from the concepts of justice and fairness, must guide the State in determining the actual mechanism for distribution of natural resources. In this regard, the doctrine of equality has two aspects: first, it regulates the rights and obligations of the State vis-a-vis its people and demands that the people be granted equitable access to natural resources and/or its products and that they are adequately compensated for the transfer of the resource to the private domain; and second, it regulates the rights and obligations of the State vis-a-vis private parties seeking to acquire/use the resource and demands that the procedure adopted for distribution is just, non-arbitrary and transparent and that it does not discriminate between similarly placed private parties.”

In the Presidential Reference on the issue of Alienation of Natural Resources (2012) 10 SCC 1, the Supreme Court has held that when:

“ … precious and scarce natural resources are alienated for commercial pursuits of profit maximizing private entrepreneurs, adoption of means other than those that are competitive and maximize revenue may be arbitrary and face the wrath of Article 14 of the Constitution.”

Thus, the only legally sustainable method for grant or renewal of leases is competitive auction/bidding for allocation or renewals of iron ore leases. The MMDR Act leaves the discretion of selection on the State Government, and nothing prevents the State from adopting the method of auction, if it so desires. If there is a better process for maximizing revenue to the State, it can certainly be followed. But the grant or renewal of leases on the old terms would be a travesty of justice.

Support for the above direction – which policies on mining of natural resources should take – is to be found in the 2014 Lok Sabha Election Manifesto of the Bharatiya Janata Party. The manifesto explicitly states:

“We will implement auction of precious resources through efficient mechanisms, including e-auction.”

The statement is made in the backdrop of undesirable mining activity which is summed up in the manifesto as follows:

“In recent years, it has been noticed that country's tangible and intangible resources have been looted with impunity. The adverse result is being felt on two sides: Firstly, the proceeds of the resources have not gone to the public exchequer. Secondly, because of this culture of usurping, the same resources are not available for public purposes. The management of natural resources is marred with either is appropriation or misallocation. This has to be set right.”

The unequivocal stand of the Government of Odisha for the adoption of competitive bidding was fully endorsed by the Shah Commission. The Commission had specifically recommended that considering the present interpretation of law, and factors such as increase in mining activity, rising demand for minerals and increase in the number of entrepreneurs entering the Mining business, it is necessary that lease hold rights for mining should be granted by public auction. This would increase the income of the State government and would lead to total transparency and reduce corruption. Regrettably, the Action Taken Report submitted by the previous government disingenuously linked the implementation of this recommendation to the passage of the Draft MMDR Bill, 2011, which provided for allocation of mining lease and prospecting licence on the basis of competitive bidding in areas where mineralization was known to the State Government. The Bill was referred to the Standing Committee on Coal and Steel and lapsed with the dissolution of the 15th Lok Sabha.

The fact of the matter is that the adoption of competitive bidding does not call for any amendment in the Mines and Minerals (Development and Regulation) Act, 1957. In the context of allocation of coal blocks for captive mining, the Law Ministry had categorically opined that the system of auctions can be introduced by way of administrative instructions without amending the said Act. In fact, the Government of Karnataka is at this moment preparing to auction 51 C-category iron ore mines to end users. This action is being taken pursuant to the directions given by the Supreme Court in the Samaj Parivartan Samudaya Case to re-allot the cancelled mining leases through a transparent mechanism.

The writ petition under reference was filed by Common Cause in the Supreme Court of India in February 2014 against the backdrop of rampant illegal mining in the State of Odisha as highlighted in the reports of the Court-appointed Central Empowered Committee and the Justice J. B. Shah Commission of Inquiry. The petition *inter alia* sought a direction that all fresh mining leases and renewal of leases shall be granted only by public auction or competitive bidding in order to ensure transparency and revenue for the State, as has been recommended by the Justice Shah Commission and the Government of Odisha.

The Supreme Court has been pleased to issue comprehensive interim directions in regard to the regulation of the mining operations in the state of Odisha on 16.05.2014. We are advised by our counsel, Shri Prashant Bhushan, that the interim directions only prescribe a time frame for the disposal of the pending renewal applications; the terms on which the renewal is to be granted are to be set by the State government in accordance with the Constitutional principles expounded by the Supreme Court. In all cases, the consideration to be paid by the lessee needs to be determined objectively through a process of competitive bidding. Even in the case of first renewal, where the lessee has a right of renewal for a period not exceeding 20 years under Section 8(2) of the MMDR Act, there is no requirement that the renewal should be made on the old terms. The consideration to be charged needs to be discovered by the auction route and the incumbent given the preferential right to match it.

In view of the foregoing, I would urge you to advise all the state governments concerned to adopt the system of competitive bidding/auctions for determination of the consideration to be charged for grant/renewal of mining leases. I would also request that your Ministry may extend full support to the Government of Odisha in executing the Apex Court’s interim directions in the said petition in accordance with Constitutional principles through a process that guarantees maximum revenue to the State.

I shall be grateful for a line in confirmation.

With best regards,

Yours faithfully,

Kamal Kant Jaswal

Director

cc

Shri Naveen Patnaik,

Chief Minister, Government of Odisha.

Shri Anup K. Pujari,

Secretary to the Govt. of India,

Ministry of Mines.

Extract from BJP Manifesto : Lok Sabha Elections, 2014

**Natural & National Resources** - Use When Required, Protect Where Necessary

Indian belief has been best encapsulated in Gandhiji's words that “there is enough for everyone's need - but not for everyone's greed.” Need is not the issue. Greed is.

A country's progress depends upon its resources and how they are harnessed and protected. Those in power have to realize they are just trustees of the resources of the nation. The resources are neither meant for them nor for their masters. If we bring this basic shift in thinking of the Government, which Mahatma Gandhi also advocated, all problems will be resolved.

In recent years, it has been noticed that country's tangible and intangible resources have been looted with impunity. The adverse result is being felt on two sides: Firstly, the proceeds of the resources have not gone to the public exchequer. Secondly, because of this culture of usurping, the same resources are not available for public purposes. The management of natural resources is marred with either misappropriation or misallocation. This has to be set right.

- We will set in place national policies on critical natural resources like coal, minerals, spectrum, etc. - spelling out in black and white how much should be utilized at what time and pace; how this should be strategically phased out to ensure sustainability; who should be allotted what responsibility of extraction and at what cost.

- State Governments will be taken into confidence for harnessing of these resources.

- We will implement auction of precious resources through efficient mechanisms including e-auction.