

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.16716 & 19641 of 2014

W.P.No.16716 of 2014:

Transworld Garnet India Pvt.Ltd.,
rep by its General Manager Stephen David
No.34/46, MGR Road, Kalakshetra Colony,
Besant Nagar
Chennai 600 090

.. Petitioner

-vs-

1. The State of Tamil Nadu
rep by the Secretary to Government
Industries Department
Fort St.George
Chennai
2. The Special Committee appointed
under G.O.Ms.No.158 rep by its Chairperson
Mr.Gagadeep Singh Bedi, IAS
Fort St.George
Chennai
3. Mr.Gagandeeep Singh Bedi, IAS
Revenue Secretary to Government
Fort St.George
Chennai
4. The District Collector
Tirunelveli District
5. The District Collector
Tuticorin District

6. D.Dhaya Devadas
 (R6 impleaded as per order dated 18.8.2014
 in M.P.No.5 of 2014 in W.P.No.16716 of 2014) .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records of the first respondent pertaining to the G.O.Ms.No.156, Industries dated 8.8.2013 and consequential G.O.Ms.No.173, Industries dated 17.9.2013 and quash the same.

For Petitioner :: Mr.Gopal Subramaniun
 Senior Counsel for
 Mr.Srinath Sridevan

For Respondents :: A.L.Somayaji
 Advocate General assisted by
 Mr.T.N.Rajagopalan
 Special Government Pleader for
 R1 to R5
 Mr.V.Selvaraj for R6

W.P.No.19641 of 2014:

V.V.Mineral
 a firm represented by Managing Partner
 Mr.S.Vaikundarajan
 Keeraikaranthattu
 Tisaiyanvilai
 Tirunelveli District .. Petitioner

-vs-

1. The State of Tamil Nadu
 represented by the Chief Secretary to Government
 Fort St. George
 Chennai
2. The Special Committee
 appointed under G.O.Ms.No.156 rep. by its
 Chairperson Mr. Gagandeep Singh Bedi I.A.S.
 Fort St. George
 Chennai

3. Mr.Gagandeep Singh Bedi I.A.S
Secretary to the Government
Revenue Department
Fort St. George
Chennai
4. The State of Tamil Nadu
represented by the Secretary to Government
Industries Department
Fort St.George
Chennai
5. Commissioner of Geology and Mining
Chepauk
Chennai
6. D.Dhaya Devadas
(R6 impleaded as per order dated 18.8.2014
in M.P.No.2 of 2014 in W.P.No.19641 of 2014) .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the second respondent to scrupulously, unbiasedly and fairly comply with the directions issued in the order dated 12.12.13 made in W.P.(MD).No.1233 of 2012 while conducting enquiry and before submitting any report in pursuance of G.O.Ms.156 (Industries) dated 8.8.13 and G.O.Ms.173 (Industries) dated 17.9.2013 issued by the second respondent herein and also forbearing the third respondent from heading the second respondent Committee in submitting such report.

For Petitioner	::	Mr.Gopal Subramaniun Senior Counsel for Mr.Srinath Sridevan
For Respondents	::	A.L.Somayaji Advocate General assisted by Mr.T.N.Rajagopalan Special Government Pleader for R1 to R5 Mr.V.Selvaraj for R6

ORDER

Two writ petitions have been filed. Writ Petition No.16716 of 2014 has been filed by M/s Transworld Garnet India Private Limited seeking issuance of a writ of certiorari, to call for the records in G.O.Ms.No.156, Industries dated 8.8.2013 and G.O.Ms.No.173, Industries dated 17.9.2013 issued by the Secretary to Government, Industries Department, the first respondent herein and to quash the same. Writ Petition No.19641 of 2014 has been filed by V.V.Mineral seeking issuance of a writ of mandamus, directing the Special Committee appointed under G.O.Ms.No.156 Industries dated 8.8.2013, the second respondent herein to scrupulously, unbiasedly and fairly comply with the directions issued in the order dated 12.12.13 made in W.P.(MD).No.1233 of 2012 while conducting enquiry and before submitting any report in pursuance of G.O.Ms.156 (Industries) dated 8.8.13 and G.O.Ms.173 (Industries) dated 17.9.2013 and also to forbear the third respondent from heading the second respondent-Committee in submitting such report.

2. Mr.Gopal Subramaniun, learned senior counsel appearing for the petitioners in both matters argued that under the scheme of Mines and Minerals (Development & Regulation) Act, 1957 (for short, "the MMDR Act") and the rules framed thereunder, any person desirous of mining beach sand mineral is required to apply to the State Government for mining lease, since the beach

sand mining contains certain first schedule major minerals, for which the State Government will, after processing the application, refer the same to the Central Government for prior approval under Sections 5 and 11 of the MMDR Act. Being so, in these cases, both the petitioners were duly granted mining leases by the State Government. Pursuant thereto, they have been carrying on their mining activities in terms of the mining leases, approved mining plan as per the provisions of the MMDR Act. During the course of carrying on their business, one of the long standing competitors of the petitioners, one Mr.D.Dhaya Devadas was proceeded by the State Government for doing illegal mining in his lease areas. To divert the attention, as a counter blast, he filed a false public interest litigation petition in W.P.(MD) No.1233 of 2012 throwing vain allegations against the petitioners. When the matter was pending for hearing, without any prior notice or enquiry, the Collector of Tuticorin on 6.8.2013 suddenly announced that he wanted to enquire into the mining activities in that area without any reference to the petitioners. In this regard, the State Government had issued G.O.Ms.No.156 dated 8.8.2013 constituting the second respondent- Special Committee headed by Mr.Gagandeep Singh Bedi, I.A.S., Secretary to Government, Revenue Department to inspect and verify in terms of Section 24 of the MMDR Act as to whether there is any illicit mining by six lessees in respect of the minerals viz., garnet, ilmenite and rutile in Thoothukudi District. Immediately after issuance of G.O.Ms.No.156 dated 8.8.2013, the first respondent again

proceeded to issue another G.O.Ms.No.173 dated 17.9.2013, in and by which the scope of the enquiry headed by the second respondent was extended to Tirunelveli, Tiruchirappalli, Kanyakumari and Madurai Districts also, however, the powers of the second respondent were confined to matters governed by Section 24 of the MMDR Act only. Immediately after the issuance of G.O.Ms.No.173 dated 17.9.2013, the petitioners stopped the mining operations.

3. Adding further, Mr.Gopal Subramaniun submitted that in the meantime, the Hon'ble Division Bench of this Court in its order dated 12.12.2013 gave liberty not only to the writ petitioner in W.P.(MD)No.1233 of 2012 (Mr.Dhaya Devadas), but also to all those who are wanting to implead themselves in the writ petition to submit their representations to Mr.Gangandeeep Singh Bedi, the Chairperson of the Committee along with the necessary documents, if any, within 15 days from the date of the order, making it clear that it was open to the private respondents, who were parties to the writ petition, to submit their representations to the Chairperson of the Committee. On receipt of such representations, the Committee concerned was directed to examine the issues by making necessary enquiries and investigations and if necessary by serving prior notices on the parties concerned and file the report before the State Government for necessary action as expeditiously as possible. Thereafter, the petitioners, who were private respondents therein, submitted their representations to the

Committee explaining in detail as to why they had not committed any illegal mining and how all the allegations made against them in the aforesaid W.P.(MD) No.1233 of 2012 were entirely unfounded and false. This apart, the Beach Mineral Producers Association also filed a writ petition. In the said writ petition, the Government filed a counter affidavit taking a strange stand that they have given personal hearing to Mr.Dhaya Devadas, the writ petitioner in W.P.(MD) No.1233 of 2012 alone. Since then, the petitioners in good faith were under the impression that the Committee would act as per the direction of the Hon'ble Division Bench by receiving representations from various miners. But having given personal hearing to Mr.Dhaya Devadas, surprisingly, they have not heard the petitioners. More interestingly, in another counter affidavit filed by the respondents in W.P.No.16716 of 2014 filed by Transworld Garment India Private Limited, the Government made a categorical and unequivocal assertion that the Committee would not be issuing any notice for any of its inspections under Section 24 of the MMDR Act and also further stated that the Committee would not undertake any further inspection or enquiry pursuant to the representation made by the petitioners/miners, which is not only against the principles of natural justice, but also against the directions of the Hon'ble Division Bench dated 12.12.2013 in W.P.(MD) No.1233 of 2012.

4. In this background, Mr.Gopal Subramaniun, learned senior counsel

further submitted that the Committee, the second respondent herein has clearly misconstrued the direction issued by this Hon'ble Court on 12.12.2013, for the reason that when four directions were given by this Court, namely,

- (a) to receive the representation from Mr.Dhaya Devadas, Mr.V.Sundaram and the private respondents;
- (b) after receipt of the representations, the Committee must make inspection and enquiry for the purpose of examining the issues raised in the representations;
- (c) at the time of making such inspection and enquiry, the Committee must serve notices on the parties concerned and
- (d) thereafter the Committee must file a report with the Government,

it was contended that till date, the Committee had complied with only the first direction, namely, by receiving representation from Mr.Dhaya Devadas and the private respondents alone and the other directions mentioned in (b), (c) and (d) have not been complied with, which are clearly illegal and amounting to depriving the petitioners the benefit of due process of law. The learned senior counsel further submitted that in pursuance of the direction issued by the Hon'ble Division Bench dated 12.12.2013 in W.P.(MD) No.1233 of 2012, the respondents have not conducted any enquiry, therefore, there has been a clear violation of the direction issued by this Court. A conjoint reading of Section 24, Section 24-A and Rule 50 would show that a notice is mandatorily required, but the respondents, relying upon anterior inspection that took place prior to the order dated 12.12.2013, cannot refuse to undertake one more inspection as

directed by the Hon'ble Division Bench. The learned senior counsel also emphatically submitted that the respondents cannot be allowed to say that Section 24 does not contemplate any notice. If that argument is accepted, the mandate of the Division Bench order cannot be fulfilled.

5. Turning to the allegation of bias, the learned senior counsel again contended that in spite of the direction given by the Hon'ble Division Bench on 12.12.2013, when the petitioners were expecting notices in accordance with Section 24 with regard to their mines, they were surprised to see that no notices whatsoever were issued. However, the second respondent was enquiring into the complaints given by a business rival in the course of the enquiry. It was at this stage the petitioners began to enquire the matter from a legal perspective and they were advised that the Government Order under which the second respondent was constituted is illegal and the second respondent is exceeding his jurisdiction under Sections 24 & 24-A of the MMDR Act read with Rule 50 of the Minor Concession Rules. Moreover, when the petitioners were cooperating with the enquiry under the bona fide impression that the enquiry was competent, subsequently, coming across the attitude of the second respondent in not issuing any notice to the petitioners, but giving personal hearing to the petitioners rival Mr.Dhayadevadas confirmed a doubt that the expert Committee is not only biased but also maliciously motivated against the petitioners and that reinforces

the petitioners fear that the second respondent is acting with discrimination, therefore, impleading him in his personal capacity, the present writ petitions have been filed on the allegation that the third respondent having had malice towards Mr.S.Vaigundarajan, Managing Director of Transworld Garnet India Private Limited, is acting with bias, because he was motivated by a complaint filed earlier by the Managing Director before the National Human Rights Commission against him.

6. Adding more allegation against the third respondent, the learned senior counsel submitted that it was the consistent case of the petitioners that the third respondent had passed several adverse orders against the Managing Director by rejecting the mining lease applications and gave an adverse report to the Commissioner of Geology & Mining, Chempauk, therefore, on many occasions, when the Chairperson of the Committee got annoyed with the petitioners, enraged by the complaint dated 13.5.97 given to the National Human Rights Commission registered in Case No.21/22/97/98, he had instructed the Revenue Divisional Officer, Nagercoil to seize the vehicle of the petitioner-V.V.Mineral for carrying two kilograms of sand, as a result, the petitioner was imposed with a fine of Rs.25,000/- by order dated 2.4.2003 bearing Roc.No.882/G/M/02. These chain of events would clearly show the vindictive attitude of the Chairperson of the Committee towards the petitioners that again gives a reasonable

apprehension of bias in the minds of the petitioners, therefore, in fitness of things, the third respondent either should be directed to recuse himself from the enquiry or an independent person without a partisan attitude like a retired High Court or Supreme Court Judge should be allowed to head the Committee so far as the petitioners' concerns are concerned, for which no one can have any objection to have a fair enquiry.

7. Mr. Gopal Subramaniam, learned senior counsel for the petitioners, referring to Sections 24 and 24-A of the MMDR Act, submitted that as per Section 24, when the second respondent has been directed to enquire into the complaint given by a business rival, the second respondent cannot go beyond the scope of Section 24, for the reason that any person authorised by the State Government or Central Government by general order may enter and inspect any mine; survey and take measurements in any such mine; weigh, measure or take measurements of the stocks of minerals lying at any mine; examine any person having the control of or connected with any mine. However, while the second respondent undertakes the inspection as per Section 24, cannot overlook the rights and liabilities of the holders of mining leases, for the reason that Rule 50 of the Mineral Concession Rules, before stopping the mining operation, obliges the State Government to give the parties opportunity to represent their views and thereafter with the approval of the Central Government alone can direct the

parties concerned not to undertake any mining operations in the area. When Section 24 of the MMDR Act is very clear that the State Government for the purpose of ascertaining the position of the working of any mine, any person authorised by the State Government may enter and inspect the petitioners mines, without following Rule 50, which obliges the State Government to give an opportunity to represent their views, cannot unilaterally stop the mining operations indefinitely for a long time in the guise of inspection affecting the livelihood of hundreds of persons, therefore, the action of the second respondent in stopping the mining operations endlessly in the guise of enquiry, causing unimaginable hardship to the employees and owners, is liable to be interfered with, as it is unknown and unsustainable in the eye of law. In any event, the learned senior counsel for the petitioners submitted that in terms of the proviso to Section 5(1) of the MMDR Act read with Rule 50 of the Mineral Concession Rules, when the petitioners are dealing with the minerals specified in clause-7 of the First Schedule viz., ilmenite, rutile, etc., the State Government, without giving the parties an opportunity to represent their views and without the approval of the Central Government, cannot issue the G.O.Ms.No.156 dated 8.8.2013 and G.O.Ms.No.173 dated 17.9.2013 directing the petitioners not to undertake any mining operations in the area to which the license or lease relates, for an indefinite period. He also submitted that in spite of the direction given by the Hon'ble Division Bench, the Chairperson of the Committee cannot

take a stand that since the enquiry was already over prior to the order passed by this Court, no more fresh enquiry can be given to the petitioners.

8. Coming to the non-compliance of the directions issued by the Hon'ble Division Bench in W.P.(MD) No.1233 of 2012 on 12.12.2013, Mr.Gopal Subramaniun, learned senior counsel further submitted that indisputably a clear direction has been given to the Committee of experts constituted by the State Government to examine, investigate and file a report after physical verification of the mining sites in question with liberty to the petitioner and the respondents therein/the petitioners herein to submit their representations to the Chairperson of the Committee along with necessary documents with one another direction to the Committee to examine the issue by making necessary enquiries and investigations and if necessary by serving proper notices on the parties concerned and thereafter to file a report before the State Government for necessary action. While so, the Chairperson of the second respondent-Committee by letter No.38582/LD7/2013-14 dated 29.4.2014, having chosen to send the representation received from Mr.Dhaya Devadas to the petitioner-V.V.Mineral with a request to furnish the para-war remarks on or before 25.5.2014, abruptly, after receiving a detailed representation from the said petitioner, the second respondent has chosen to give personal hearing only to the rival party Mr.D.Dhaya Devadas on 28.4.2014, whereas a similar opportunity of personal

hearing was not given to the petitioners. When it is an admitted case of the respondents that they have given personal hearing only to Mr.Dhaya Devadas, the rival party, whose repeated complaints made against the petitioners companies were rejected by the respondents on various occasions on the ground that the allegation of illegal mining was found to be false and when all the allegations were found to be untrue and motivated, the second respondent ought not to have refused the benefit of personal hearing to the petitioners to place their case. Such a partisan approach adopted by the second respondent giving personal hearing to the rival party and refusing personal hearing to the petitioners is highly unfair and unjustifiable, resultantly, that clearly shows that the Chairperson of the second respondent Committee is acting with mala fides/sinister design against the petitioners.

9. Continuing his arguments, the learned senior counsel submitted that when Mr.Gagandeep Singh Bedi, the Chairperson of the expert Committee constituted by the Government, indeed, is acting with bias, can be inferred from the fact that the petitioners have already filed a complaint on 13.5.97 before the National Human Rights Commission (Law Division), New Delhi making a specific allegation against Mr.Gagandeep Singh Bedi that he had attempted to demolish the fencing put up by the petitioners in their mining areas without lawful reason. Besides, the Chairperson of the Committee had passed several adverse orders

against the Managing Director of the petitioner-V.V.Mineral always rejecting the mining lease applications and turning down their just request, therefore, the likelihood of suspicion of bias lingering in the minds of the petitioners cannot be ruled out. In this context, taking support from the ratio of the Apex Court in the case of **Kihoto Hollohan v. Zachillhu and others, 1992 Supp (2) SCC 651**, wherein the Apex Court, to answer the question as to the disqualification of a member has to be seen whether such member has got adjudicatory disposition. Since the basic postulates of rule against bias are: nemo judex in causa sua - a Judge is disqualified from determining any case in which he may be, or may fairly be suspected to be biased and it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. Adding further, placing one more reliance on the judgment of the Apex Court in **A.K.Kraipak v. Union of India, (1969) 2 SCC 262**, the learned senior counsel submitted that the above principle appears to be the underlying principle to canvass the point that the Chairperson of the expert Committee should not be allowed to function as the head of the Committee.

10. Mr.Gopal Subramaniun pleading further has submitted that immediately after the order passed by the Hon'ble Division Bench on 12.12.2013 in W.P.(MD) No.1233 of 2012 permitting the petitioners to submit their representations to Mr.Gangandeeep Singh Bedi, the Chairperson of the Special

Committee within 15 days from the date of order along with necessary documents, the petitioners have submitted detailed representations dated 30.12.2013, bringing to the notice of the second respondent that they are honest mining companies acting within the corners of the law, that they have been carrying on beach mineral mining without any violations for the past 20 years, that even though the unscrupulous competitor Mr.Dhaya Devadas had made several allegations against them in the past 25 years along with various other unscrupulous complainants, all those allegations have been found to be false and rejected, confirming the fact that the petitioners have been carrying on the mining activities strictly in accordance with law at all times. In order to make these facts more clear and transparent, Mr.Gopal Subramaniun also brought to the notice of this Court a table enclosed in the typedset to show that many complaints given by (i) Mr.Dhaya Devadas, (ii) Mr.V.Sudaram, (iii) Federation of Indian Placer Mineral Industries, (iv) Mr.Dhanuskodi Athithan, M.P., (v) Mr.D.Stephen, (vi) Thyagi S.Ponniah Pillai and (vii) Bengal Bay Beach Moineral on various dates were found to be false, untrue and rejected by the various orders passed by the State Government. In support of his submissions, he also, drawing the notice to page 61 of the typedset, submitted R.P.Athithan, M.L.A., R.Dhanuskodi Athithan, M.P., M.Sundaradas, M.L.A., K.Ramamurthy, M.P. made complaints dated 25.7.91, 6.12.91, 3.7.91, 19.7.91, 31.10.91, 15.11.91, 3.12.91, 10.12.91, 6.9.91, 16.10.91 about the illegal operations, but the State

Government found all the complaints false and rejected them vide letter No.46779/MMD.2/90-14 dated 24.12.91. Again when the Federation of Indian Placer Mineral Industries and Bengal Bay Beach Mineral made one another allegation that V.V.Mineral was doing illegal mining by mining outside leasehold areas, the State Government had already passed an order dated 24.11.2004 rejecting the complaint holding that the allegation of illegal mining was found to be false and V.V.Mineral had all proper licenses and was not violating Atomic Energy Act or Rules nor violating MMDR Act or Rules. But once again Mr.Dhaya Devadas on 1.9.2003 made an allegation regarding violation of the provisions of MMDR Act. Again the said complaint was found to be motivated vide order passed in M1.94850/03 dated 20.10.2003. Mr.Dhaya Devadas repeatedly made another complaint alleging violation of the provisions of MMDR Act and the same was rejected on the ground that the complaint was motivated vide order in M1.52545/03 dated 16.10.2003. Again when Mr.Dhaya Devadas and Federation of Indian Placer Mineral Industries made a complaint on 22.6.2007, the High Power Committee headed by Department of Atomic Minerals, Department of Atomic Energy and Indian Bureau of Mines officials once again found the allegations to be untrue, on that basis, rejected the complaint. Similarly, all the repeated complaints made by Mr.Dhaya Devadas group for the last 20 years were rejected by the State Government. Therefore, the petitioners in their representation dated 30.12.2013, marking all the complaints and the result of

the same, sought the committee to furnish the copies of allegations made against the petitioners with copies of documents, if any, to submit their detailed replies.

11. Continuing his arguments, Mr.Gopal Subramanium emphatically submitted that for the first time, Mr.Gagandeep Singh Bedi, the Chairperson of the Committee vide letter No.38582/LD7/2013-04 dated 29.4.2014 sent the representation received from Mr.Dhaya Devadas, President, Federation of Indian Placer Mineral Industries asking V.V.Mineral to furnish parawar remarks to the Government on or before 25.5.2014. Subsequently, when the second respondent Committee asked Mr.Dhaya Devadas to come for personal hearing on 12.2.2014 through their letter dated 5.2.2014, the said Mr.Dhaya Devadas requested for postponement of the hearing. Graciously accepting the request of the said Mr.Dhaya Devadas, the Committee asked him to appear before the Secretary to Government, Revenue Department on 25.3.2014 by another letter dated 13.2.2014. Once again the personal hearing was fixed on 28.4.2014 at his convenience. On the said date Mr.Dhaya Devadas appeared and raised number of allegations against V.V.Mineral and Beach Mineral. Having given personal hearing to Mr.Dhaya Devadas on various dates repeatedly adjourning the matter from 12.2.2014 to 25.3.2014 to his convenience and finally again adjourning the personal hearing to 28.4.2014, ironically the respondents have not even issued

any notice inviting the petitioners for personal hearing. Again forcibly contending that the refusal of the Committee to give personal hearing to the petitioners and to give personal hearing only to their rival Mr.Dhaya Devadas has been the cause for suspicion in the mind of the petitioners against the arbitrary act of the Committee, learned senior counsel justified the petitioners entertaining an apprehension of bias against the Chairperson of the Committee lately that he would not fairly consider the grievance of the petitioners. When the petitioners in their representation requested the Committee to examine these 25 reports and see if there is any prima facie case for further enquiry against the petitioners, it is incumbent upon the Committee to consider all the contents of the previous proceedings and examine whether there is any fresh ground at all to initiate further action against the petitioners. Ironically, the Committee, without considering the request of the petitioners in the representation, after giving repeated personal hearing to the petitioners rival Mr.Dhaya Devadas, flatly refused to extend the personal hearing, rejecting the request of the petitioners openly informing the petitioners that no hearing would be given to them. Such an arbitrary refusal of the Committee to hear the petitioners is writ large on the face of the Committee that the Committee is not going to look into all the 25 orders passed by the Government repeatedly rejecting the false complaints given by Mr.Dhaya Devadas and other rival groups as motivated, therefore, it is imminently necessary for this Court to change the Chairperson of the second

respondent Committee, the learned senior counsel pleaded.

12. Detailed counter affidavits have been filed by the respondents 1 to 5. Mr.A.L.Somayaji, learned Advocate General appearing for the respondents heavily contended that the writ petitions filed by the petitioners are not maintainable, for the reason that when the Committee was constituted to inspect the illegal mining in Thoothukudi District, the petitioners need not worry for inspections, if they are doing the mining in terms of the conditions mentioned in the lease deeds without breaching the provisions of law. Secondly, when both the petitioners have accepted the Committee in their representations dated 23.8.2013 & 19.5.2014 respectively, they cannot have any objection or allegation of bias against the Committee or against any of the members in the Committee, for the strong reason that the special Committee is headed by not only the Secretary to Government, Revenue Department, but also by four more core members apart from 24 other team members i.e., one senior District Revenue Officer, one Additional Chief Environmental Engineer, Tamil Nadu Pollution Control Board, one Joint Director of Survey, one Joint Director of Geology and Mining. Further, six sub teams were formed in respect of each of the six leased areas and with the supervision of the core team, each such team consisted of officers in the cadre of Deputy Collector, Deputy Director/Assistant Director of Geology and Mining, Assistant Director of Survey Department and Divisional

Engineer/Environmental Engineer of the Tamil Nadu Pollution Control Board. To put it clear, the learned Advocate General submitted that the special team consisted of 29 officials assisted by another 18 survey officials of the then Thoothukudi District and another 36 local officials. Thus, at least 83 officials of various departments are involved for district field inspection, therefore, it is not as if the Chairperson of the Committee alone is going to decide against the petitioners. Hence the unfounded allegation of bias has to be rejected and ignored, since there should be a reasonable apprehension and not a mere ipse dixit.

13. Continuing to refute the allegations of the petitioners, the learned Advocate General further submitted that the writ petitions have been filed as an after thought after the Committee, leading a special team as per the orders of the Government in G.O.Ms.No.156, Industries (MMD) dated 8.8.2013 and G.O.Ms.No.173, Industries (MMD-I) dated 17.9.2013, has completed the inspection of mining leases in three districts viz., Thoothukudi, Tirunelveli and Nagercoil and the same is at a premature stage. Inasmuch as when the petitioners themselves have come forward to give various representations to the Chairperson of the Committee, who is the head of the Special Team, during the inspection of Thoothukudi mining leases and that the writ petitioners having given their representations in writing to the Chairperson of the Committee

consequent to the order passed by this Court in W.P.No.5549 of 2005 dated 12.12.2013, in all these stages, the petitioners never doubted or questioned the procedure of the enquiry. That apart, the petitioners never raised the issue and no prejudice against the Chairperson of the Committee at any stage was made. Only all of a sudden, now the petitioners, as an after thought, based on imaginary presumptions, have started to raise doubts about the procedure and neutrality of the Chairperson of the Committee which are totally unfounded, for, the Committee has not conducted the inspection on a solo basis, but as a team of responsible officials of Revenue, Geology & Mining, Environment & Forest and Survey departments. The learned Advocate General further submitted that the team consisted of over 40 officials in Thoothukudi District, another 120 officials in Tirunelveli district and 30 officials in Kanyakumari district, therefore, going by the volume of work, when the responsible officers are working as a team, no prejudice can be alleged against a single individual. Again, replying to the allegation of bias levelled by the petitioners against the Chairperson of the Committee, he contended that when one of the petitioners herein submitted a representation before the special team headed by the second respondent on 13.12.2013, as per the direction given by this Court on 12.12.2013, the representation of the petitioner was given to Mr.Dhaya Devadas, similarly the representation of Mr.Dhaya Devadas was given to the petitioner for further reply. Thereafter, the petitioners also have given their further representations to the

Committee and the same are under consideration by the special team. Thus, when all along representations have been given to the second respondent addressing the Chairperson of the special team as a senior officer, all of a sudden, the petitioners should not be allowed to make any allegation, therefore, they should be estopped from raising the present averments. For all these reasons, the learned Advocate General urged this Court to dismiss the writ petitions.

14. Adding further, responding to the argument on Section 24 of the MMDR Act, Mr.A.L.Somayaji, learned Advocate General has further submitted that there are no provisions for issue of notice to the person concerned accompanying all the lessees, because it was open for the petitioners to represent before the special team without any fear. Ultimately it was submitted on the allegation of bias by the learned Advocate General that the enquiry is done as a team and not by any individual. When the Chairperson of the Committee is conducting inspection along with the members of various departments as mentioned above including the Revenue department, Mines and Minerals department, Pollution Control department, the false fear expressed by the petitioners is not only unfounded, ludicrous and absurd that a senior officer in the rank of Revenue Secretary to Government would submit a wrong report in such a manner as alleged. With regard to non issuance of notice prior to the

surprise inspection, taking support from the order of the Hon'ble Division Bench of this Court in W.P.(MD) No.1233 of 2012 dated 12.12.2013, the learned Advocate General submitted that when this Court has already settled the issue holding clearly that there is no question of violation of the principles of natural justice nor denial of reasonable opportunity to the petitioners for not putting them on prior notice before conducting the surprise inspection, since the authorities being empowered to enquire into any query by virtue of the power under Section 24(1) of the Central Act to find out the illicit mining, the petitioners cannot insist that they should be put on prior notice before conducting the surprise inspection, since no purpose would be served if notice is issued prior to surprise inspection. Concluding his arguments, the learned Advocate General further submitted that when the petitioners have filed the review application against the order passed by the Division Bench dated 12.12.2013 in W.P.(MD) No.1233 of 2012, for the reasons best known to them, the plea of bias was not even raised, more so, they have withdrawn the review application accepting the order passed by the Hon'ble Division Bench, therefore, both the writ petitions deserve to be dismissed.

15. Mr.A.L.Somayaji, learned Advocate General, continuing his arguments, submitted that the Special Committee is conducting the enquiry in accordance with the order of the Hon'ble Division Bench, therefore, the allegation of bias

made by the petitioners against the head of the Special Committee that in his earlier capacities of Sub Collector, Cheranmahadevi and District Collector, Kanyakumari had passed some adverse orders against the petitioners are irrelevant to these cases. As an Administrator, the Chairperson of the Committee is always expected to take a comprehensive view, therefore, his discharge of duties as the then District Collector and passing some orders against the petitioners should not be construed to be of prejudiced mind nor has any reference or link to the present enquiry. Moreover, as the then Collector of Kanyakumari District, illicit sand lorries and trucks were seized by the revenue officials then and there and that cannot be mixed up with the respondent's Chairmanship to head the Special Committee. Adding further the learned Advocate General submitted that on previous occasion, when the petitioners had made a representation dated 30.12.2013, they have respectfully addressed the Committee as august Committee. Having accepted the Committee by making representation, belatedly raising objections appears to be a calculated move on the part of the petitioners. This is only for the sole object of delaying the finalization of enquiry, therefore, the petitioners apprehension that the Committee will be biased against them has to be rejected as an after-thought, since they have already waived such right in view of their representation submitted before the Committee accepting the Committee to inspect their mines. In support of his submissions, he has also relied upon the judgment of the Apex

Court in the case of **P.D.Dinakaran (1) v. Judges Inquiry Committee and others, (2011) 8 SCC 380.**

16. Mr.V.Selvaraj, learned counsel appearing for the sixth respondent, at the outset, submitted that he is neither supporting the official respondents nor the petitioners. The short counter affidavits filed by the sixth respondent averred that the Committee headed by the third respondent is constituted to prevent the Division Bench from ordering an impartial enquiry. It has been further stated that the sixth respondent was framed falsely by the District Collector, Trichy and others to please the Managing Director of the petitioner company and to defeat his writ petition. However, without going to the merits of the matter, he contended that as against the order passed by this Court in W.P.(MD) No.1233 of 2012 dated 12.12.2013 dismissing his writ petition, refusing to give direction to the officials to initiate appropriate action on the alleged illegal mining activities sought to be carried out by other lessees, has filed a special leave petition before the Supreme Court and the same is now pending. Pleading further, Mr.V.Selvaraj, learned counsel for the sixth respondent vehemently contended that the constitution of the Committee by the State Government headed by Mr.Gagandeep Singh Bedi, Secretary to Government, Revenue Department to enquire into the illegal mining is made with an oblique motive and no purpose is going to be served. Continuing his arguments, he submitted that the manner in

which the present enquiry has been ordered by the State Government is nothing but a farce and going to be an eye-wash. Contending further, he submitted that aggrieved by the order passed by the Hon'ble Division Bench in W.P.(MD) No.1233 of 2012 dated 12.12.2013 directing the Committee of experts under the Chairmanship of Mr.Gagandeep Singh Bedi, Secretary to Government, Revenue Department constituted by the State Government to examine, investigate and to file a report after physical verification of the mining sites in question by making necessary enquiries and investigation and if necessary by serving proper notices on the parties concerned, a special leave petition has been filed, therefore, till the final result in the special leave petition, the direction given by the Hon'ble Division Bench need not be gone into for giving effect thereof.

17. Heard the learned counsel for the parties.

18. Accepting the applications made by both the petitioners for granting mining leases under the Mines and Mineral (Development and Regulation) Act, 1957 and the Mineral Concession Rules, 1960 for the mining and winning of beach sand minerals in various coastal areas in Tamil Nadu, the State Government have granted few mining leases. Pursuant thereto, both of them have been carrying on their mining activities. While so, one of the competitors of the petitioners Mr.Dhaya Devadas, the sixth respondent herein filed a public

interest litigation petition in W.P.(MD) No.1233 of 2012 on the file of High Court of Judicature at Madurai making allegations against the petitioners that they have been granted leases for mining major minerals and after obtaining mining leases, the petitioners were carrying on illegal mining operations contrary to the terms and conditions prescribed under the leases granted in their favour and that the authorities concerned also have not taken appropriate action against them as per the relevant provisions applicable to such mining activities. In the meanwhile, the first respondent, accepting the recommendations of the Commissioner of Geology and Mining to inspect the mining in all the leased areas of garnet, ilmenite and rutile minerals in Thoothukudi district and to undertake inspection of the mining areas to find out the illegal mining and till the completion of the inspection by the special team, to stop the mining operations in respect of the leases to facilitate the inspections, issued G.O.Ms.No.156, Industries (MMD.1) Department dated 8.8.2013 constituting a special team headed by Mr.Gagandeep Singh Bedi, I.A.S., Secretary, Revenue Department to inspect and verify in terms of Section 24 of MMDR Act whether there is illicit mining with regard to six lessees of minerals-garnet, ilmenite and rutile in Thoothukudi district with a direction to the Assistant Director (Mines), Thoothukudi to stop the issuance of transport permits to the six lessees till the inspections have been completed.

19. Thereafter, notices were issued on 16.8.2013 to various owners of the mines covered in the six leases. In response to the said notice, Transworld Garnet submitted their detailed reply on 23.8.2013 to the Secretary to Government, Revenue Department stating that they are dealing with placer minerals which are deposited by constant wave action on the shore line from the onshore sea bed and the same is transported towards inland by wind action, hence, considering the nature of formation and occurrence which is sandy in nature, only simple method of scooping is being adopted, therefore, there is no need to make any pit. Besides, the question of formation of pits would arise only in the case of mineral deposits which were not replenishable nature. Since by wave and wind action, the materials are getting deposited, the formation of pits is unnecessary in the leasehold areas. The said reply also mentioned that since the mines are soft, no blasting or use of explosives is required. Likewise, no heavy earth moving machinery is deployed. It was further stated that the removal of the mineral sands cannot be termed 'mining' in the strict sense of the term, for, they are scrapped by using spades manually and transported by head loads to the nearby loading platform and consequently the area so scrapped is replenished 100% within the same day or during the pre-monsoon or monsoon periods. Thereafter, one another G.O.Ms.No.173, Industries (MMD.1) Department dated 17.9.2013 was issued by the Government directing the special team headed by Mr.Gagandeep Singh Bedi to inspect and verify in terms of

Section 24 of the MMDR Act whether there is any illicit mining of major minerals like garnet, ilmenite and rutile etc., in leases granted to private parties in Tirunelveli, Tiruchirappalli, Kanniyakumari and Madurai districts with a further direction to complete the inspections and submit the report to the Government expeditiously.

20. When the matter stood as above, W.P.(MD) No.1233 of 2012 filed by the sixth respondent was disposed of by the Hon'ble Division Bench by order dated 12.12.2013 giving the following directions:-

"34. In such circumstances, in view of the fact that a committee of experts, under the Chairmanship of Mr.Gagandeep Singh Bedi, Secretary, Revenue Department, has been constituted by the State Government to examine, investigate and to file a report, after physical verification of the mining sites in question, we find it appropriate to permit the petitioner in the writ petitions, including those who are wanting to implead themselves in the writ petitions, to submit their representations to Mr.Gagandeep Singh Bedi, the Chairman of the Committee, along with the necessary documents, if any, within fifteen days from today. It is also made clear that it would also be open to the private respondents, who are parties herein, to submit their representation to the Chairman of the Committee,

within the time specified above. On receipt of such representations, the Committee concerned shall examine the issues, by making necessary enquiries and investigation, and if necessary, by serving appropriate notices on the parties concerned and file a report before the State Government, for necessary action, as expeditiously as possible.

35. In such circumstances, in view of the fact that the parties concerned have been given the liberty to place all the relevant materials before the committee of experts, constituted by the State Government, we are not inclined to make any observations, with regard to the validity and correctness of the claims and the counter claims made by the parties before this Court. It would be left to the Committee concerned to check and to verify such claims, if necessary, by providing an opportunity of hearing to the parties concerned and to file its report before the State Government, as directed by this Court, by this order. On receipt of such report it is for the State Government to take appropriate steps and to pass necessary orders, as it finds fit and necessary, in accordance with law. As it is an admitted fact that subsequent proceedings had been issued pursuant to the impugned show cause notices issued by the respondent concerned, the writ petitions in W.P.Nos.14399 and 14400 of 2011 have become

infructuous. As such, they are dismissed, as infructuous. In such circumstances, as no further orders are necessary, the writ petitions in W.P.No.5549 of 2007 and W.P.No.1233 of 2012 and the impleading petitions filed therein stand closed."

21. A careful reading of the above directions issued by the Hon'ble Division Bench shows that the following four directions were given, which are as under:-

- (a) to receive the representation from Mr.Dhaya Devadas, Mr.V.Sundaram and the private respondents;
- (b) after receipt of the representations, the Committee must make inspection and enquiry for the purpose of examining the issues raised in the representations;
- (c) at the time of making such inspection and enquiry, the Committee must serve notices on the parties concerned and
- (d) thereafter the Committee must file a report with the Government.

Pursuant to the above four directions, when liberty was given to the petitioners to make representations to the Special Committee, the petitioners made representations dated 30.12.2013 setting forth their case that they are carrying on the beach mineral mining in strict compliance of the terms and conditions of the lease and within the provisions of the MMDR Act and the Rules framed therein. In the said representations, the petitioners have mentioned that the following rival parties made various false allegations motivated with ulterior

purpose and the State Government, after considering the complaint dated 25.7.91 given by R.P.Athithan, M.L.A., and another complaint given by R.Dhanuskodi Athithan, M.P., dated 6.12.91, 3.7.91 and several other complaints given by M.Sundaradas, M.L.A., dated 19.7.91 31.10.91, 15.11.91 have been found to be false and rejected all of them in Letter No.46779/MMD.2/90-14 dated 24.12.91. Again the complaint given by Dhanuskodi Athithan, Ex.M.P., dated 9.8.2000, 16.8.2004, 25.8.2004 were also rejected by order dated 24.11.2004 in Letter No.17585/MMA1/03-9, making it clear that the allegations of illegal mining were found to be false and that V.V.Mineral had all proper licences and was not violating the Atomic Energy Act. In this regard, it is relevant to extract the relevant portion of the self-explanatory representation given by the petitioner-V.V.Mineral in the table as detailed below:-

Sl. No.	Name in which petition sent	Complaint letter dated	Nature of allegations	Report and Result
1	1.R.P.Athithan, M.L.A. 2.R.Dhanuskodi Athithan,M.P. 3.M.Sundaradas, M.L.A. 4.K.Ramamurthy, M.P.	25.7.91, 6.12.91, 3.7.91, 19.7.91, 31.10.91, 15.11.91, 3.12.91, 10.12.91, 6.9.91, 16.10.91	<u>ALLEGATIONS:</u> VVM has acquired Mining Leases by illegal transfers	Letter No.46779/MMD.2/90-14 dated 24.12.91 <u>Order of State Government</u> Complaint found to be false and rejected.

2	1.Federation of Indian Placer Mineral Industries and Bengal Bay Beach Mineral 2.Dhanuskodi Athithan, Ex.M.P. 3.Bellamin, M.P. 4.Dhanuskodi Athithan and twenty others 5.S.Sankaralingam 6.Bellamin and seven others	9.8.2000, 3.9.2003, 29.7.2004, 16.8.2004, 25.8.2004, 9.9.2004, 30.9.2004 etc.,	<u>ALLEGATIONS</u> 1.VVM is doing illegal mining, by mining outside leasehold areas. 2. VVM does not have proper licences to operate its factories. 3. VVM does not have license from DAE 4.VVM is violating Atomic Energy Act	<u>Order of State Government</u> 17585/MMA.1/03-9 dated 24.11.2004 Allegation of illegal mining was found to be false. VVM had all proper licenses, and was not violating Atomic Energy Act. "the report....of the officers deputed for the special purpose do not establish any violation of Atomic Energy Act or rules and MMDR Act or rules etc. by VVM as alleged in the petition". Complaint rejected.
3	Kumaresan	7.11.01	<u>ALLEGATION</u> VVM is violating provisions of MMDR Act	Roc.No.12713/01 dt. 20.5.2002. Complaint found to be untrue.
4	Dhayadevadas	1.9.03	<u>ALLEGATION</u> VVM is violating provisions of MMDR Act	M1.94850/03 dt. 20.10.03 Complaint found to be motivated.
5	Dhayadevadas	2003	<u>ALLEGATION</u> VVM is violating provisions of MMDR Act	M1.52545/3 dt. 16.10.03 Complaint found to be motivated.
6	Sangaralingam	2005	<u>ALLEGATION</u> VVM is violating provisions of MMDR Act	M1/52545/03 dt. 14.07.05 Complaint rejected.

7	Dhayadevadas Federation of Indian Placer Mineral Industries	22.06.07	<p><u>ALLEGATIONS</u></p> <p>1.VVM has violated Atomic Energy Act and falsely obtained handling licence.</p> <p>2.VVM has violated MMDR Act by mining minerals without a proper licence.</p> <p>3. VVM has illegally mined minerals from non-lease areas.</p> <p>4. Various other allegations.</p>	<p>Joint Inspection Report dt. 24.6.2009 to 27.06.2009. Report bearing Letter No.FIPM/ADMN/1. 10/190/2007-2008 dt. 22.6.2007</p> <p><u>Order of High Power Committee comprising of AMD, DAE and IBM officials</u></p> <p>1. There is no violation of AE Act Complaint regarding handling licenses is wrong. Expert Committee of AERB has inspected the works and found no violations.</p> <p>2. Allegation of violating MMDR Act is incorrect.</p> <p>3. "the mining lease areas in Tirunelveli and Tuticorin districts have been previous inspected by the teams and SCNs were issued to VVM. The reply furnished by the lessee company has been analysed and recorded and no such illicit mining as alleged by the petitioner has been noticed."</p> <p>4. All allegations</p>
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8	<p>1.D.Emi Durairaj</p> <p>2. Federation of Indian Placer Mineral</p> <p>3.S.Sanmugasund aram, Radhapuram Vattara Vivasayigal Sangam</p>	<p>30.6.09 and 8.7.09</p> <p>13.6.09</p> <p>17.5.09</p>	<p><u>ALLEGATION</u></p> <p>1. VVM is mining outside the leasehold areas.</p> <p>2. Transport permits are issued disproportionate to reserves.</p> <p>3. Heavy machineries are used.</p> <p>4. VVM acquired land by fraudulent means.</p>	<p>M2/35788/09 dt. 22.2.2010 and report submitted on 10.5.10.</p> <p><u>Order of IBM, State Government and DAE</u></p> <p>1."At present, the lessees are carrying out mining operations only in the mining leasehold areas based on the valid mining leases. The present inspection of mines by the team reveals that there is no violation of conditions in the operation of mining in the leasehold areas and there is no trace of illicit mining in the adjacent areas of the mining leasehold areas."</p> <p>2."Transport permits are also being issued only after physical verification of the mined quantity of mineral stacked in the leasehold areas and on payment of advance royalty for the quantity of raw sand to be transported. As regards ilmenite, transport permits</p>
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9	1. Neithal People Movement 2. District Environment Protection People Movement 3. President, Enayam region	30.09.09	<u>ALLEGATION</u> Fisherman's catch is being reduced by the sand mining activities.	D.O.Lr.No.70/G&M/2000 dt. 14.7.10 Complaint rejected.
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10	Federation of Indian Placer Mineral Industries	2009	<p><u>ALLEGATION</u></p> <p>1.VVM is mining outside the leasehold areas.</p> <p>2.Transport permits are issued disproportionate to reserves.</p> <p>3.Heavy machineries are used.</p> <p>4.VVM acquired land by fraudulent means.</p>	<p>AD,Thoothukudi and Kanyakumari Roc.GM1/139/2009 dt. 10.8.2009 and report submitted on 10.5.10.</p> <p><u>Order of IBM, State Government and DAE</u></p> <p>1."At present, the lessees are carrying out mining operations only in the mining leasehold areas based on the valid mining leases. The present inspection of mines by the team reveals that there is no violation of conditions in the operation of mining in the leasehold areas and there is no trace of illicit mining in the adjacent areas of the mining leasehold areas."</p> <p>2."Transport permits are also being issued only after physical verification of the mined quantity of mineral stacked in the leasehold areas and on payment of advance royalty for the quantity of raw sand to be transported as</p>
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11	D.Asirvatham Chelliah, Alangulam	9.10.10, 11.10.10	<u>ALLEGATION</u> Sand mining activities are affecting the local areas	Collector Lr.No.Rc.No.M2/73 404/2010 dt. 19.11.10 & CGM office Lr.No.11688/MM7/ 2010 dt. 20.12.12. Complaint rejected.
12	Dhayadevadas Federation of Indian Placer Mineral Industries	30.3.10	<u>ALLEGATION</u> VVM is indulging in illegal mining, since there are discrepancies between the quantities of stocks as per transport permit and the quantities of stocks as per royalty details	Roc.No.M2/13969/ 2010 dt. 21.3.11. <u>Order of District Collector</u> Transport permits were issued only on physical verification of mined stock and on the collection of advance royalty. All the leasehold area contained replenishable mineral deposits. Therefore, the allegations of illegal mining, are not correct. The complaint has been preferred by the petitioner only out of business motive. Complaint rejected.
13	D.Devaraj, Murugankurichi, Tirunelveli	13.7.2010		Collector Lr.No.M2/48562/20 10 dt. 29.11.2010 and CGM Lr.No.10704/MM7/ 2010 dt. 10.1.2011. Allegations found to be untrue.

14	Dhayadevas Federation of Indian Placer Mineral Industries	9.8.2010	<u>ALLEGATION</u> VVM is indulging in illegal mining with respect to valuable atomic minerals	M2/77848/2010 dt. 4.2.2011 <u>Findings of Collector</u> "the allegations are based only on inter-rivalry of business groups involved in mining and trading of garnet and other prescribed substances. Inspection was conducted by IBM officials, atomic minerals, Directorate for Exploration, DAE and officials of Geology and Mining with the help of police officials. The inspection teams inspected all leasehold areas and found there is no illicit mining activity carried out by VVM. Complaint rejected.
15	C.Kasirajan Penur	4.9.10		Collector Lr.No.M2/61854/2010 dt. 20.9.2010 and CGM Lr.No.10121/MM7/2010 dt. 20.12.2010. Allegations found to be untrue.

16	Federation of Indian Placer Industries	13.9.10	<p><u>ALLEGATION</u> There is illegal mining, since large quantity of minerals is seen to be extracted under the transport permits</p>	<p>Collector Lr.No.M2/2171/2011 dt. 21.3.2011 & CGM Lr.No.10447/MM7/2010 dt. 25.12.10. <u>Order of District Collector</u> There is no illegal mining. The mineral is found in replenishable deposits. The report of the Nagar Committee distinguishes between minerals found in replenishable place of deposits, against minerals found in in-situ rock strata. The allegations of illegal mining are false. The complaint is borne out of enmity. Complaint rejected.</p>
17	Dhayadevadas Federation of Indian Placer Mineral Industries	9.8.10	<p><u>ALLEGATION</u> Repeating all the earlier allegations, and saying that the earlier reports of the State Government are not correct.</p>	<p>CGM Rc.No.11927/MM7/2010 dt.11.8.2011 <u>Order of CGM</u> The earlier proceedings are all in order. Complaint found to be motivated.</p>

18	D.Dhayadevadas	25.10.10	<u>ALLEGATION</u> Repeating all the earlier allegations, and saying that the earlier reports of the State Government are not correct.	CGM Lr.No.11411/MM7/2010 dt.16.11.2010 <u>Order of CGM</u> The earlier proceedings are all in order. Complaint found to be motivated.
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19	Dhayadevadas Federation of Indian Placer Industries	4.12.10, 20.12.10	<p><u>ALLEGATION</u></p> <p>1.VVM is indulging in mining in non-lease areas.</p> <p>2.VVM is violating provisions of MMDR Act</p>	<p>M2/77848/2010 dt.26.4.2011.</p> <p><u>Findings of District Collector, Tirunelveli</u></p> <p>1.Allegation of illegal mining outside the leasehold area is false.</p> <p>2. The District Collector emphasized that leasehold areas of the 12th respondent had been jointly inspected by a team of officials from the Commissioner of Geology & Mining, the Directorate of Environment and Forests, and subsequently by the officials of the Department of Atomic Energy, the Indian Bureau of Mines and the revenue department. It was also noted that no violations of the rules or illicit mining had been observed at the time of joint inspection of the 12th respondent's leasehold areas.</p> <p>3. The District Collector also noted</p>
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20	Dhayadevadas Federation of Indian Placer Industries	6.5.10, 22.5.10, 26.5.10, 13.9.10, 25.10.10, 30.10.10, 10.11.10, 8.12.10, 20.12.10 & 21.2.11	<u>ALLEGATIONS</u> 1.VVM indulging in mining in non-lease areas. 2.VVM is violating provisions of MMDR Act	Rc.No.M2/45283/2011 dt.6.9.2011. <u>Findings of District Collector, Tirunelveli</u> 1.Allegation of mining in "nonlease" area is untrue. 2.No violations of MMDR Act or MC Rules. 3.Dhayadevadas is repeatedly making petitions against VVM out of business rivalry. Government need not inquire into such petitions. Complaint rejected.
21	Dhayadevadas Federation of Indian Placer Industries	6.5.10, 22.5.10, 26.5.10, 13.9.10, 25.10.10, 30.10.10, 10.11.10, 8.12.10, 20.12.10 & 21.2.11	<u>ALLEGATIONS</u> Repeating all the earlier allegations, and saying that the earlier reports of the State Government are not correct.	Lr.No.7810/MMD2/2011-1 dt.23.7.2013. Complaint found to be motivated.
22	Dhayadevadas Federation of Indian Placer Industries	6.5.10, 22.5.10, 26.5.10, 13.9.10, 25.10.10, 30.10.10, 10.11.10, 8.12.10, 20.12.10 & 21.2.11	<u>ALLEGATIONS</u> Repeating all the earlier allegations, and saying that the earlier reports of the State Government are not correct.	Rc.No.5343/MM7/2011 dt.29.10.12. Complaint found to be motivated.

23	Saravanakumar, Navalady	Year 2012		Na.Ka.M2/36661/2 012 dt.27.12.2012. Allegations found to be untrue.
24	J.Anton, Kuthankuzhi	Year 2013		Na.Ka.M2/17288/2 013/MDS dt.8.5.13. Allegations found to be untrue.
25	Sundaram, IAS	Jan, 2013	<u>ALLEGATIONS</u> 1.VVM is carrying on illegal mining. 2.VVM is exporting radio active monozile without license. 3. VVM is mining thorium without license.	Na.Ka.No.656(1)/ 2013/Mds dt. 8.5.13. <u>Order of</u> <u>Committee</u> <u>comprising of</u> <u>Central</u> <u>Government and</u> <u>State Government</u> <u>officials</u> 1. The allegations are all untrue. 2.VVM is not found to be exporting any radio active minerals. 3. VVM is not found to be violating AE Act. Complaint rejected.

21A. In the light of the above background, let me analyse a few questions to answer the lis.

I. Whether prior notice is required before inspection of the mines?

22. Before going to the issues, while considering the core question as to whether the expert Committee headed by Mr.Gagandeep Singh Bedi, I.A.S.,

Secretary, Revenue Department without notice to the parties can inspect the mines and verify in terms of Section 24 of MMDR Act, to find out illicit mining of major minerals like garnet, ilmenite and rutile in the leases granted to private parties in Tirunelveli, Tiruchirappalli, Kanyakumari and Madurai districts, it has been the consistent stand of Mr.Gopal Subramaniun, learned senior counsel for the petitioners that before the enquiry committee commenced its enquiry, the petitioners were expecting notices in accordance with Section 24 with respect to specific allegations to their mines, all of a sudden, without there being any notice, the second respondent started to enquire into the complaints given by a business rival, by undertaking physical verification into the mining areas of the petitioners, which is absolutely beyond the scope of Section 24 of the MMDR Act, for, the respondents have no power to undertake any enquiry without issuing prior notice.

23. On the other hand, Mr.A.L.Somayaji, learned Advocate General heavily contended that Section 24 of the MMDR Act does not contemplate issue of notice to the parties concerned, therefore, when there is no provision for issue of notice to the person concerned, no notice of enquiry was issued before undertaking the inspection.

24. In this context, to find out an answer, it is necessary to extract

Section 24 of the MMDR Act as follows:-

“24. Power of entry and inspection.—(1) For the purpose of ascertaining the position of the working, actual or prospective, of any mine or abandoned mine or for any other purpose connected with this Act or the rules made thereunder, any person authorized by the Central Government or a State Government in this behalf, by general order, may-(a) enter and inspect any mine;

(b) survey and take measurements in any such mine;

(c) weigh, measure or take measurements of the stocks of minerals lying at any mine;

(d) examine any document, book, register, or record in the possession or power of any person having the control of, or connected with, any mine and place marks of identification thereon, and take extracts from or make copies of such document, book, register or record;

(e) order the production of any such document, book, register, record, as is referred to in clause (d); and

(f) examine any person having the control of, or connected with, any mine.

(2) Every person authorized by the Central Government or a State Government under sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860), and every person to whom an order or summons is issued by virtue of the powers conferred

by clause (e) or clause (f) of that sub-section shall be legally bound to comply with such order of summons, as the case may be.”

25. A careful reading of the above sub-section (1) of section 24 clearly shows that in order to ascertain the position of the working of any mine, any person authorized by the Central Government or the State Government in this behalf by general order may enter and inspect any mine, to examine any person having the control or connected with any mine, weigh, measure or take measurement of the stocks of the minerals lying in any mine. Sub-section (2) also says that any person to whom an order or summons is issued by virtue of the powers conferred by clause (e) or clause (f) of that sub-section shall be legally bound to comply with such order of summons, as the case may be. In a similar circumstance, the Hon'ble First Bench of this Court in W.P.No.1015 of 2011 etc., dated 26.3.2012 (P.Mariadoss v. The District Collector, Kancheepuram District and others), while examining a similar issue whether denial of notice under Section 24(1) would violate the principles of natural justice, has held that the owner of the mine cannot insist that it should be put on prior notice before conducting the surprise inspection, for the reason that no purpose would be served if notice was issued prior to surprise inspection, when there has been an allegation that illicit mining is being carried on. The relevant portion of the order reads as under:-

"21. The petitioners contended that no notice was given to them prior to inspection. We fail to understand as to what purpose would be served if notice is issued prior to a surprise inspection, when there has been an allegation that illicit mining is being carried on. The authorities being empowered to enter into the quarry by virtue of the power under Section 24(1) of the Central Act, the petitioners cannot insist that they should be put on prior notice before conducting the surprise inspection as in these cases. Therefore, this is not a case of denial of reasonable opportunity to the petitioners, but it is seen that the petitioner has been given show cause notice and thereafter on his request, the copy of the inspection report was also furnished and even in the impugned order as well as in the counter affidavit, there is a specific averment that the inspection was carried out in the presence of the lessee/employee. Therefore, we do not agree with the contentions raised by the learned counsel for the petitioner that there has been violation of principles of natural justice. Therefore, we find no justification for the petitioners to by-pass the appellate remedy. More so, when the issue involves serious disputed questions of fact which cannot be adjudicated in a writ petition. The allegation against the petitioners is that they exceeded their boundary limit and carried out illicit mining in Government Poramboke land. This aspect is

essentially a pure question of fact and this Court cannot, based on affidavits, decide whether the petitioners crossed the boundary line and did mining operations beyond the demarcated leasehold area. This is all the more a reason that the petitioner should file an appeal.”

The above observation of the Court holding that the non-issuance of prior notice under Section 24(1) before undertaking surprise inspection would not violate the principles of natural justice, will clearly apply to these cases, therefore, this Court finds no force in the contention made by the learned senior counsel for the petitioners that there has been violation of the principles of natural justice for non issuance of prior notice before undertaking inspection into the mines of the petitioners.

II. Whether opportunity of hearing to the parties to represent their views before closure of mining operation is a sine qua non?

26. Coming to the second contention whether the State Government has got the power to issue an order, while constituting general enquiry, indefinitely suspending or banning the mining operations, Mr.Gopal Subramaniun argued that as per Sections 24 and 24-A of the MMDR Act read with Rule 50 of the Mineral Concession Rules, the second respondent cannot overlook the rights and liabilities of holders of mining leases conferred under Section 24-A, before

stopping mining operation, more particularly, when Rule 50 of the Mineral Concession Rules obliges the State Government to give the parties an opportunity to represent their views and thereafter with the approval of the Central Government can direct the parties concerned not to undertake any mining operation in the area. Hence, it is relevant to extract Section 24-A of the MMDR Act and Rule 50 of the Mineral Concession Rules as follows:-

“S.24-A. Rights and liabilities of a holder of reconnaissance permit, prospecting license or mining lease.---(1) On the issue of a reconnaissance permit, prospecting license or mining lease, under this Act and the rules made thereunder, it shall be lawful for the holder of such permit, license or lease, his agents or his servants or workmen to enter the lands over which such permit, lease or license had been granted at all times during its currency and carry out all such reconnaissance prospecting or mining operations as may be prescribed:

Provided that no person shall enter into any building or upon an enclosed Court or garden attached to a dwelling house except with the consent of the occupier thereof without previously giving such occupier at least seven days notice in writing of his intention to do so.

(2) The holder of a reconnaissance permit, prospecting license or mining lease referred to in sub-section (1) shall be liable to pay compensation in

such manner as may be prescribed to the occupier of the surface of the land granted under such permit, license or lease for any loss or damage which is likely to arise or has arisen from or in consequence of the reconnaissance mining to prospecting operations.

(3) The amount of compensation payable under subsection (2) shall be determined by the State Government in the manner prescribed.

R.50. Prohibition of working of mines.—If the State Government has reason to believe that the grant or transfer of a prospecting license or a mining lease or of any right, title or interest in such license or lease is in contravention of any of the provisions of this Chapter, the State Government may, after giving the parties an opportunity to represent their views and with the approval of the Central Government, direct the parties concerned not to undertake any prospecting or mining operations in the area to which the license or lease relates.” (emphasis supplied)

It is also relevant to extract Section 5 of the MMDR Act and the First Schedule, which read as follows:-

5.Restrictions on the grant of prospecting licences or mining leases.

(1) A State Government shall not grant a [reconnaissance permit, prospecting licence or mining

lease] to any person unless such person –

(a) is an Indian national, or a company as defined in sub-section (1) of Section 3 of the Companies Act, 1956; and

(b) satisfies such conditions as may be prescribed:

Provided that in respect of any mineral specified in the First Schedule, no [reconnaissance permit, prospecting licence or mining lease] shall be granted except with the previous approval of the Central Government.

THE FIRST SCHEDULE

[See section 4(3), 5(1), 7(2) and 8(2)]

SPECIFIED MINERALS

PART A. Hydro Carbons Energy Minerals

1. Coal and Lignite.

PART B. Atomic Minerals

1. Beryl and other beryllium-bearing minerals.

2. Lithium-bearing minerals.

3. Minerals of the "rare earths" group containing Uranium and Thorium.

4. Niobium-bearing minerals.

5. Phosphorites and other phosphatic ores containing Uranium.

6. Pitchblende and other Uranium ores.

7. 1[Titanium bearing minerals and ores (ilmenite, rutile and leucoxene)].

8. Tantalum-bearing minerals.

9. Uraniferous allanite, monazite and other thorium minerals.
10. Uranium bearing tailings left over from ores after extraction of copper and gold, ilmenite and other titanium ores.
11. Zirconium bearing minerals and ores including zircon."

27. A conjoint reading of both Section 24-A of the Act and Rule 50 of the Mineral Concession Rules indicates that if the State Government has reason to believe that the prospecting mining lease is in contravention of any of the provisions of the Chapter, the State Government may after giving the parties an opportunity to represent their views and with the approval of the Central Government, direct the parties concerned not to undertake any prospecting or mining operations in the area. (emphasis supplied) Again from a conjoint reading of the proviso to Section 5(1) and Section 13 of the MMDR Act, it is clear that the State Government cannot grant a mining lease in respect of the minerals specified in the First Schedule without the prior approval of the Central Government, therefore, both the Act and Rules framed thereunder do not confer on the State Government the stoppage of mining or suspension of mining without prior approval of the Central Government. Further, as per Rule 50, no document has been produced before me to say that the State Government have obtained prior permission from the Central Government to stop the mining. In

the present case, as rightly contended by the learned senior counsel for the petitioners, when the petitioners have obtained the mining leases in respect of the minerals specified in the First Schedule viz., ilmenite, rutile, etc., the State Government cannot unilaterally direct the petitioners to stop the mining operations by issuance of Government Orders in G.O.Ms.No.156 dated 8.8.2013 and G.O.Ms.No.173 dated 17.9.2013 respectively.

III. Whether the grant of personal hearing to one party to the lis and denial of the same to the opposite party is discriminatory and violative of the principles of natural justice?

28. Learned senior counsel for the petitioners has emphatically submitted that when the various allegations made by Mr.Dhayadevadas group and other persons have been repeatedly found to be false, motivated and rejected finally by various orders of the officials, there will be no justification for anyone to take a different view and, to bring all these facts before the Committee, when the petitioners sought for personal hearing, as per the direction given by the Hon'ble Division Bench in the order dated 12.12.2013, the Special Committee headed by Mr.Gagandeep Singh Bedi, Secretary to Government, Revenue Department, having sent a letter dated 5.2.14 to Mr.Dhayadevadas, who is the rival of the petitioners to come for personal hearing on 12.12.2014, the sixth respondent Mr.Dhayadevadas requested for postponement of the hearing, since he had to

explain in detail and produce number of documents. Accepting his request, the Committee directed the sixth respondent to appear before the Secretary to Government, Revenue Department on 25.4.2014 for personal hearing by another letter dated 13.2.2014. Once again the enquiry was fixed on 28.4.2014. In the said enquiry, the sixth respondent appeared and was heard. This has been admitted by the respondents in paragraph 16 of the counter affidavit filed in W.P.No.19641 of 2014, which is extracted as under:-

“16. It is submitted that as already mentioned in paragraph 11 above one Thiru Dhaya Devadas who also obtained leases from the Government submitted his representations to the Head of the Special Team constituted in G.O.(Ms.)No.156, Industries (MMD1) Department dated 8.8.2013 and G.O.(Ms.)No.173, Industries (MMD1) Department dated 17.9.2013 on 24.12.2013. The said representations along with annexure is running into hundreds of pages. It was scrutinized in detail and thereafter, he was asked to come for personal hearing on 12.02.2014 through a letter dated 5.2.2014. However, that individual requested for a postponement in the hearing since he stated that he had to explain in detail a number of documents that were also filed before the Hon'ble High Court of Madras and that he had to attend another hearing before the Commissioner of Income Tax on 12.2.2014. Consequent to his request, he was directed to appear before the Secretary to

Government, Revenue Department on 25.03.2014 for personal hearing through a letter dispatched on 13.2.2014. However, since the Secretary, Revenue Department had to attend a meeting in New Delhi on 25.3.2014 pertaining to the receipt of funds for the Government of Tamil Nadu for the disaster relief and since the code of conduct for General Election was in vogue and it was considered that holding the enquiry at that juncture close to the polls when some political parties had opined their views on the Beach Mining issue, the petitioner was asked to appear before the Secretary to Government, Revenue Department on 28.4.2014 (i.e.after the polls). The petitioner appeared on the due date and was heard. Subsequently, his petition which raised a number of allegations against M/s V.V.Minerals, Tisayanvilai (the present writ petitioner) and Beach Mineral company who are amongst the lessees of mining companies was sent to the above stated companies for their remarks to be submitted by 25.5.2014 as directed by the Hon'ble High Court in the order dated 12.12.2013."

29. When the respondents 1 to 5 have clearly admitted that they have given personal hearing to the petitioners rival Mr.Dhayadevadas on 28.4.2014, they have arbitrarily refused to extend the same benefit of personal hearing to the petitioners alone. Such an approach and attitude of the respondents will not

pass the test of reasonableness under Article 14 of the Constitution of India. Moreover, when the Hon'ble Division Bench in the above said order dated 12.12.2013 directed the Committee to check and verify the claims and counter claims and if necessary by providing an opportunity of hearing to the parties concerned and to file its report before the State Government, this Court not only finds any justification on the refusal of the respondents to extend the benefit of personal hearing to the petitioners as given to their rival party, but also finds no good reason to ignore the direction given by the Hon'ble Division Bench, as it is settled legal position that all authorities civil, criminal and judicial in the territory of each State shall act in the aid of the State High Court. While so, in the light of the direction given by the Hon'ble Division Bench, when the respondents had chosen to give personal hearing to the petitioners rival party, but arbitrarily refusing and denying the same benefit to the petitioners, in my view, certainly supports the apprehension of bias that they will not be having a fair deal at the hands of the Committee.

30. Indisputably, in the present cases, after the order was passed by the Hon'ble Division Bench on 12.12.2013, the respondents have not given personal hearing to the petitioners. Indeed, paragraph 10 of the rejoinder counter affidavit (instead of additional counter affidavit, filed by the respondents 2 & 3, the Special Committee and Mr.Gangandeep Singh Bedi, clearly supports the case

of the petitioners stating that in the course of inspections of Thoothukudi district on 19.8.2013, Mr.S.Vaikundarajan of V.V.Mineral and Transworld Garnet India Private Limited was personally heard, therefore, no more personal hearing can be given to the petitioners, since both Transworld Garnet and V.V.Mineral were represented by Mr.S.Vaikundarajan. When the inspections were conducted in both the mines owned by the petitioners, there is no justification on the part of the respondents to contend that a single notice issued to Mr.S.Vaikundarajan representing both companies would be sufficient. Even if it is construed that they have issued a notice to Mr.S.Vaikundarajan for the personal hearing on 19.8.2013, admittedly, that was prior to the order passed by the Hon'ble Division Bench on 12.12.2013. That indicates that the direction given by the Division Bench has not been complied with.

31. In this context, it is more useful to refer to the judgment of the Apex Court in the famous case of **State of Bihar v. Lal Krishna Advani and others, (2003) 8 SCC 361**, wherein the Apex Court, while emphasizing the importance of issuance of notice to a person who is likely to be suffered by the enquiry, has held that the issuance of notice is a sine qua non. It is therefore relevant to extract paragraph-6 of the judgment as follows:-

“6. The High Court, while referring to a decision Reported in AIR 1967 SC p. 122, The State of Jammu and Kashmir & Ors. vs. Bakshi Gulam Mohammad &

Anr., observed that an authority who takes a decision, which may have civil consequences and affects right of a person, the principle of natural justice would at once come into play. Reputation of an individual is an important part of one's life. The High Court then quoted a passage from a decision of this Court reported in AIR 1989 SC p.714 Smt. Kiran Bedi and Jinder Singh vs. Committee of Inquiry & Anr., which passage contains the observations from an American decision in D.F. Marion v. Minnie Davis, 55, American LR 171, reads as follows:

"The right to enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property."

Some decisions, to which our attention has been drawn by Shri Harish N. Salve, learned senior counsel appearing for the respondent No. 1, may be referred 1983 (1) SCC p. 124, Board of Trustees of the Port of Bombay vs. Dilipkumar Raghavendranath Nadkarni & Ors., wherein it was observed that right to reputation is a facet of right to life of a citizen under Article 21 of the Constitution. He has also referred to the International Covenant on Civil and Political Rights,

1965 (ICCPR), recognizing right to have opinions and the right of freedom of expression subject to the right of reputation of others. The Covenant provides :

"1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary;

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals."

It is thus amply clear that one is entitled to have and preserve, one's reputation and one also has a right to protect it. In case any authority, in discharge of its duties fastened upon it under the law, traverses into the realm of personal reputation adversely affecting him, must provide a chance to him to have his say in the matter. In such circumstances right of an

individual to have the safeguard of principles of natural justice before being adversely commented upon by a Commission of Inquiry is statutorily recognised and violation of the same will have to bear the scrutiny of judicial review. A reference may be made to [1984] A.C. 808, Peter Thomas Mahon vs Air New Zealand Ltd. & Ors."

IV. Whether the Chairperson of the Committee is likely to be biased against the petitioners?

32. Coming to the issue as to whether Mr.Gagandeep Singh Bedi, the Chairperson of the Special Committee constituted by the State Government is acting with bias against the petitioners, in the affidavit filed by the petitioners, it has been mentioned that Mr.Gagandeep Singh Bedi, when he was Sub-Collector of Cheranmahadevi in the year 1996, foisted false cases against the petitioners and the petitioner also filed a case against the Chairperson before the National Human Rights Commission on 13.5.97 in Case No.21/22/97/98 making wild allegations against Mr.Gagandeep Singh Bedi alleging that when the petitioner was granted 20 years of lease in G.O.Ms.No.185 dated 8.6.94 by the Industries Department, granting mining leases in the same area, Mr.Gagandeep Singh Bedi attempted to remove the fences, on this basis, he sought for appointment of Commission to collect sufficient documents. Again when the mining lease application was made by the petitioner-V.V.Mineral in respect of 3.50 hectares of

land in S.Nos.176/2, 176/3, 177/3, 178/3 of Midalam village, Vilavancode Taluk on 7.12.2002, Mr.Gagandeep Singh Bedi, while acting as District Collector of Kanyakumari district, had issued adverse report to the Commissioner of Geology and Mining, Chennai, the fifth respondent herein in proceedings ROC No.586/G&M/01 dated 7.12.2002 stating that if mining lease would be granted to the area applied for, there was a possibility to take rare mineral in the adjoining coastal poramboke area also, as a result, there would be a law and order problem. On receipt of the said adverse report sent by Mr.Gagandeep Singh Bedi, the fifth respondent overruling the objections of the third respondent, in his proceedings in Rc.No.18930/MM7/02 dated 26.12.02 granted mining lease. Enraged by the report given by the fifth respondent overlooking his objection, it has been stated that Mr.Bedi has sent a letter bearing D.O.Letter No.76/G&M//2001 dated 4.1.2003 objecting the grant of mining lease on the ground that there was no Hill Area Conservation Authority clearance. In yet another incident, the record shows that Mr.Bedi, while serving as District Collector of Kanyakumari District, had instructed the revenue officials at Nagercoil to seize the vehicle of V.V.Mineral for carrying three kilograms of sand, as a result, the seizure order was issued by the Tahsildar of Agastheeswaram in Na.Ka.No.B1/21248/2002 dated 21.10.2002. Consequently the petitioner suffered a fine of Rs.25,000/- vide R.O.C.No.882/G&M/2002 dated 2.4.2003. Taking these documents and proceedings as the basis to prove their cases that

the third respondent motivated by various complaints given by the petitioner right from National Human Rights Commission, it was pleaded that he would be acting with bias against them.

33. In this regard, it is more pertinent to refer to the ratio laid down by a Constitution Bench of the Apex Court in the famous case of **Hihoto Hollohan v. Zachillhu and others, 1992 Supp(2) SCC 651**, wherein the Apex Court, while striking down the entire Tenth Schedule of the Constitution as unconstitutional and violative of the basic feature of the Constitution has determined what is the real test to determine the suspicion of bias in the following words:-

“181. The Speaker being an authority within the House and his tenure being dependent on the will of the majority therein, likelihood of suspicion of bias could not be ruled out. The question as to disqualification of a member has adjudicatory disposition and, therefore, requires the decision to be rendered in consonance with the scheme for adjudication of disputes. Rule of law has in it firmly entrenched, natural justice, of which, Rule against Bias is a necessary concomitant; and basic postulates of Rule against Bias are; Nemo Judex In Causa Sua - 'A Judge is disqualified from determining any case in which he may be, or may fairly be suspected to be, biased'; and 'it is of fundamental importance that justice should not only

be done, but should manifestly and undoubtedly be seen to be done'. This appears to be the underlying principle adopted by the framers of the Constitution in not designating the Speaker as the authority to decide election disputes and questions as to disqualification of members under Arts.103, 192 and 329 and opting for an independent authority outside the House. The framers of the Constitution had in this manner kept the office of the Speaker away from this controversy. There is nothing unusual in this scheme if we bear in mind that the final authority for removal of a Judge of the Supreme Court and High Court is outside the judiciary in the Parliament under Article 124(4). On the same principle the authority to decide the question of disqualification of a member of Legislature is outside the House as envisaged by Articles 103 and 192."

34. The above ruling clearly shows that if a member in the committee has adjudicatory disposition, such a person as a Judge is disqualified from determining any case in which he may be or fairly be suspected to be 'biased', for the foremost reason that it is of fundamental reason that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

35. Prior to the above judgment, the Apex Court, while deciding the

question of 'bias', has held that the conduct of the parties also must be taken into consideration, in **A.K.Kraipak v. Union of India, (1969) 2 SCC 262**. In the said case, while considering the inclusion of the Acting Inspector General of Forest as a member of the Selection Board being improper, as he was one of the persons to be considered for selection, the Apex Court has held that it is against all canons of justice to make a man judge in his own cause. Even if he did not participate in the deliberations of the Committee when his name was considered, the fact that he was a member of the Selection Board must have had its own impact on the decision of the selection board, particularly when he participated in the deliberations when the names of his rivals were considered and was a party to the preparation of the list of candidates in order of preference. In this context, it was further held that at every stage of his participation in the deliberations of the Board there was a conflict between his interest and duty and it could not be believed that he could have been impartial, as the real question is not whether he was biased, for it is difficult to prove the state of mind of a person. There must be a reasonable likelihood of bias and a mere suspicion of bias is not sufficient. In deciding the quantum of bias human probabilities and ordinary course of conduct must be taken into consideration. In this context, the observations of the Apex Court read thus:-

“15. It is unfortunate that Naqishbund was appointed as one of the members of the selection board. It is true that ordinarily the Chief Conservator of Forests in

a State should be considered as the most appropriate person to be in the selection board. He must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All India Service is entitled to great weight. But then under the circumstances it was improper to have included Naqishbund as a member of the selection board. He was one of the persons to be considered for selection. It is against all canons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the selection board must have had its own impact on the decision of the selection board. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore, what we have to see is whether there is reasonable ground for believing that he was likely to have been biased.

We agree with the learned Attorney-General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. It was in the interest of Naqishbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of selected candidates.”

36. Applying the above ratio to the cases on hand, both the complaint given by the petitioner-V.V.Mineral before the National Human Rights Commission, New Delhi and the granting of personal hearing to Mr.Dhayadevadas after accommodating his request for adjournment and refusing personal hearing to the petitioners in spite of the order of Division Bench, in my considered view, constitute a reasonable likelihood of bias for holding that the Chairman of the Committee is likely to be biased. This being the underlying principle adopted by various Courts, applying the same yardstick, in the cases on hand, Mr.Gagandeep Singh Bedi, Chairperson of the Committee is likely to be biased against the petitioners, for the following reasons,

- (a) that having given personal hearing to the petitioners opposite party, Mr.Dhayadevadas, on 28.4.2014, after the judgment of this Court in W.P. (MD)No.1233 of 2012 dated 12.12.2013, has arbitrarily refused to extend

the same benefit of personal hearing to the petitioners;

(b) that since the petitioner-V.V.Mineral has given a complaint before the National Human Rights Commission in Case No.21/22/97/98 against the second respondent, there is every possibility for him to get motivated against the petitioners;

(c) that even though the Hon'ble Division Bench in its order dated 12.12.2013 directed the Expert Committee to provide an opportunity of hearing to the parties concerned and to file its report before the State Government, the said Committee arbitrarily has taken a stand that he has already conducted the inspection on 19.8.2013 in anticipation of the order passed by the Hon'ble Division Bench dated 12.12.2013.

37. Moreover, in this context, it is pertinent to refer to the judgment of the Apex Court in the case of **P.D.Dinakaran (1) v. Judges Inquiry Committee and others, (2011) 8 SCC 380** and the relevant portion thereof, is as follows:-

"41. In this case, we are concerned with the application of first of the two principles of natural justice recognized by the traditional English Law, i.e., *Nemo debet esse iudex in propria causa*. This principle consists of the rule against bias or interest and is based on three maxims: (i) No man shall be a judge in his own cause; (ii) Justice should not only be done, but manifestly and undoubtedly be seen to be done; and

(iii) Judges, like Caesar's wife should be above suspicion. The first requirement of natural justice is that the Judge should be impartial and neutral and must be free from bias. He is supposed to be indifferent to the parties to the controversy. He cannot act as Judge of a cause in which he himself has some interest either pecuniary or otherwise as it affords the strongest proof against neutrality. He must be in a position to act judicially and to decide the matter objectively. A Judge must be of sterner stuff. His mental equipoise must always remain firm and undetected. He should not allow his personal prejudice to go into the decision-making. The object is not merely that the scales be held even; it is also that they may not appear to be inclined. If the Judge is subject to bias in favour of or against either party to the dispute or is in a position that a bias can be assumed, he is disqualified to act as a Judge, and the proceedings will be vitiated. This rule applies to the judicial and administrative authorities required to act judicially or quasi-judicially.

62. In India, the Courts have, by and large, applied the 'real likelihood test' for deciding whether a particular decision of the judicial or quasi judicial body is vitiated due to bias. In *Manak Lal v. Dr. Prem Chand Singhvi* (supra), it was observed: (AIR p.429, para 4)

"5.....every member of a tribunal that (sits to) try issues in judicial or quasi-judicial proceedings

must be able to act judicially; and the essence of judicial decisions and judicial administration is that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.”

Therefore, in the light of the above reasons, if the Chairperson of the expert Committee is allowed to examine the petitioners' case, I am of the considered view that the enquiry and inspection of the mining area would not be fair and proper.

38. In the petitioners' case, from the date of issuing the aforementioned two Government Orders, the mining operations are completely stopped for about two years. That clearly shows that the respondents have stopped the mining operations, which are running contrary to Rule 50 for two reasons. Firstly, no opportunity was given to the petitioners to represent their views not to undertake mining operations. Secondly, the State Government after giving an opportunity to the parties to represent their views, have to get the approval of

the Central Government to direct the parties concerned not to undertake mining operations. These two conditions mentioned in Rule 50 have not been complied with.

39. In view of the above facts and circumstances, this Court can safely hold that the petitioners have rightly invoked the rule of 'bias' on the ground that Mr.Gagandeep Singh Bedi, the Chairperson of the Expert Committee is biased and prejudiced against them and as such, he could not have been the Chairperson of the Special Committee. This apart, in view of the claim made by the petitioners, inter alia, that the Chairperson of the Committee is biased and the counter claim made by Mr.Dayadevadas that the constitution of the Committee would be an eye wash, in the fitness of things and in the interest of all parties concerned, Mr.Justice V.K.Sharma, a former Judge of this High Court is hereby appointed as the Chairperson of the Special Committee insofar as it enquires into the case of the petitioners' leasehold areas alone, in a fair manner. In the light of the above, the impugned G.O.Ms.No.156 dated 8.8.2013 and G.O.Ms.No.173 dated 17.9.2013 are set aside to the extent of the petitioners leasehold areas.

40. As highlighted above, to make things clear, these two impugned Government Orders are held to be valid in so far as all other quarries (except

that of the petitioners) engaged in mining operations are concerned, with regard to conducting surprise inspection and filing of reports on completion of such inspection as per Section 24 of the MMDR Act. Wherever the expert Committee has undertaken the inspection and on completion of the surprise inspection submitted the reports with regard to other quarries, they are legally valid and as such, the same cannot be disturbed. Only in regard to the petitioners' quarries, since the Chairman of the Committee is biased, the Government Orders are set aside, and a former Judge of this Court viz., Hon'ble Mr. Justice V.K.Sharma (R), is appointed to undertake the task and to submit Report. The new Committee headed by Mr.Justice V.K.Sharma will proceed in accordance with the direction given by the Hon'ble Division Bench in W.P.(MD) No.1233 of 2012 dated 12.12.2013 and also as per the provisions of the Act and Rules, after giving all reasonable opportunities including the personal hearing to the petitioners, the sixth respondent and other affected persons, if any. The said exercise shall be done within a period of three months from the date of such appointment and thereafter, the Committee will submit its report to the State Government with regard to the inspection of the petitioners mines. On receipt of the report, the State Government will consider the same within a further period of three months thereafter. Needless to mention that the State Government shall provide all the facilities including office with sufficient officers from various Departments and staff to assist the Committee and it is for the learned Judge to fix his

remuneration.

41. With the above observations and directions, both the writ petitions are disposed of accordingly. Consequently, M.P.Nos.1 to 4 of 2014 are closed. No costs.

Index : yes

29..07.2015

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To

1. The Chief Secretary to Government
Fort St. George
Chennai 600 009
2. The Chairperson of Special Committee/
Secretary to the Government
Revenue Department
Fort St. George
Chennai 600 009
3. The Secretary to Government
Industries Department
Fort St.George
Chennai 600 009

4. The Commissioner of Geology and Mining
Chepauk
Chennai 600 005
5. The District Collector
Tirunelveli District
6. The District Collector
Tuticorin District

76

T.RAJA, J.

SS

order in

W.P.Nos.16716 & 19641 of 2014

29.07.2015