

**IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH AT HYDERABAD**

W.P.No. 1571 of 2006

Between:

"DHIMSA" and another

Petitioners

and

Government of A.P. and others

Respondents

COUNTER AFFIDAVIT FILED ON BEHALF OF RESPONDENT No.6

I V.D.Rajagopal S/o. D.Narsimhulu aged 52 Years, Vice Chairman and Managing Director, A.P. Mineral Development Corporation Ltd., Hyderabad do hereby solemnly affirm and sincerely state as follows:

1. I am the Vice Chairman and Managing Director of the sixth Respondent Corporation as such well acquainted with the facts of the case.

2. At the outset it is respectfully submitted that the writ petition is not maintainable either in facts or in law. All the averments made in the Petitioners' affidavit are deemed to have been denied except otherwise specifically admitted herein.

3. In reply to paras 1 to 4 of the affidavit, it is submitted that the petitioners are put to strict proof of the same. This respondent is not aware of the bonafides of the petitioners in filing the present writ petition to declare the words "to an Undertaking owned or controlled by the State or Central Government or" in proviso to sub-section 5 of Section 11 of Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the Act) as unconstitutional. The respondent is put to strict proof of the same.

a) It is respectfully submitted that the writ petitioners did not make out a case to declare the part of the proviso under sub-section 5 of S.11 of the Act as unconstitutional. The writ petition is devoid of public interest. The present writ petition to declare only a part of the proviso under an Act as unconstitutional is not maintainable in law.

4. In reply to para 5 of the affidavit, it is respectfully submitted that Bauxite is basically an aluminous rock with hydrated aluminium oxide as the main constituent with varying proportions of iron oxide, silica and generally titania. It is an essential ore of aluminium metal which is one of the most important non-ferrous metals used in modern industry. It is also an essential ore for refractory and chemical industries. The country has abundant resources of bauxite which can meet both domestic and export demands.

a) The total reserves of bauxite in the country are placed at 3,076 million tonnes. India occupies 5th position in the world Bauxite map after Guinea, Australia, Venezuela and Vietnam. Out of this Orissa accounts for 1529 million tones and Andhra Pradesh accounts for 612 million tones and the State occupies second position in India. Major bauxite reserves are concentrated in the East Coast bauxite deposits of Orissa and Andhra Pradesh. These deposits are mostly of metallurgical grade and are amenable for extraction of alluminium metal.

b) The Government of AP vide G. O. Ms. No. 999, Ind. & Com., (Mines - I) Dept. dated 25/10/1975, have reserved the bauxite bearing areas in East Godavari 85 Visakhapatnam Districts, except those already leased out, for exploitation in the Public Sector. All these areas are falling under reserve forests and notified tribal areas. Transfer of these areas to non-tribals is prohibited as per A. P. State Land Transfer Regulations, 1959. The Hon'ble Supreme Court of India in AIR 1997 SC 3297 held that transfer of Lease in favour of Non-Tribals is not permissible. However, in the said Judgement, the Hon'ble Supreme Court, categorically held that APMDC being the instrumentality of the State can undertake mining operations in the Tribal Areas of A.P.

c) The APMDC being a State owned undertaking has applied for grant of Mining leases U/s 11(5) of M & M (D 85 R) Act, 1957 for 3 Bauxite deposits in Araku group with an estimated reserve of 54.47 million tonnes and for 22 Bauxite deposits in Chintapalli group with an estimated reserve of 515.97 million tonnes. Forest and Environmental clearances are pre requisites for grant of Mining leases. The Mining leases are yet to be granted to APMDC by the Government.

d) M/s. National Aluminium Company (NALCO) is a Government of India undertaking engaged in production of Alluminium in the country looking for areas of expansion of Alumina /Alluminium production. Government of A. P. has invited them to A.P.and they have evinced interests in the Jerrella group of deposits in Visakhapatnam District for establishing Allumina Alluminium industry. Discussions between Government of Andhra Pradesh and Government of India / NALCO are in progress. After finalization, the mining of bauxite and supplies thereon can be made by APMDC from Jerrella group of deposits to the NALCO's proposed Industry.

e) Meanwhile, the 7th respondent approached the GoAP with a proposal to set up refinery and smelter for manufacture of Alumina and Aluminium with a capital outlay of about Rs. 9,000 crores. Since there are surplus reserves after meeting the demand of NALCO and having satisfied with their rich experience in various sectors and capability to set up such a unit, the GoAP agreed to supply Bauxite for their proposed unit. Accordingly, the GoAP and 7th respondent signed an MoU on 01/07/2005.

f) As per the above-referred MoU, the APMDC shall have the Mining leases and Mine the Bauxite and supply to the 7th respondent for manufacturing Alluminium. was decided that such supplies shall be made from the deposits in Araku group (Galikonda, Rakthakonda 85 Chittamgondi) and Sapparla group consisting approximately 2,446 hectares and containing about 240 million tonnes of reserves. Thus, it is factually incorrect that the Government is pursuing leasing activity of

Bauxite reserves in favour of 7th respondent through 6th respondent. The MoU is only for supply of material for the Industry of 7th respondent and the 7th respondent is in no way connected with grant of Mining leases or the Mining activation. The excavation will be done by the 6th respondent and excavated Ore will be supplied to the 7th respondent at the price to be fixed by a Committee formed by the State Government as per condition III of the MOU. The 7th Respondent shall establish units of Refinery and Smelter outside scheduled areas as per MoU.

g) As per the MoU the 7th respondent shall train local tribals for making use of them in Industry and a minimum of 0.5 percent of the revenue of the 7th respondent shall be spent on social infrastructure like health, training and welfare of tribals etc.

h) The APMDC has conducted "Grama Sabhas" in Bisupuram, Araku valley, Doravalasa, Nandi valasa, Peribandha and Sunkaramatta villages to create awareness. Number of villagers have attended the said Grama Sabhas and they have been well explained about the advantages of the Bauxite Mining by APMDC to the Local Community. About 135 tribals and 42 public representatives were taken to Damanjodi in Orissa State, where such mining is carried out by NALCO, to show the developments there. APMDC also decided to train 200 tribal youth. At present 129 tribal youth are under training at its mines. Balance will also be trained shortly. After training, these tribals will be provided employment in the proposed project.

i) The allegation of the petitioners that the decision of the Supreme Court of India is actively being circumvented disregarding the interest of the local tribals is absolutely false. This respondent as mentioned above has taken all steps get maximum to benefit to local tribals and has taken all steps for their economic empowerment.

5. In reply to para 6 of the affidavit, it is respectfully submitted that APMDC proposes to extract Bauxite ore initially from the three areas situated in Araku group and not from Jerrella area. These 3 deposits are away from villages and are located on top of the hills where there is no habitation. The Mining operations will not be taken up at a time in the entire area granted but only in a phased manner as per the requirement and as per approved Mining Plans. The mined areas will be declaimed and the same would be made more suitable for plantation and the plantation would be taken up by 7th respondent in a phased manner.

a) It may be relevant to mention that where the Bauxite-mineral is present, there will not be any tree growth on the flanks of the Hills. The plateau tops of Chittamgondi, Galikonda and Raktakonda are bald and do not support any vegetation worth mentioning as Forest. There is no endangered species of flora on these hills, according to the preliminary studies.

b) As mentioned in the previous Para the Forest and Environment clearances from Government of India are pre-requisites for grant of the Mining leases. Thus the Forest and Environment factors will be taken care by the Government of India's agencies and the APMDC shall have to follow their guidelines in this matter. As per the Forest Conservation Act, 1980, alternate land equal to the applied area for mining lease, approach roads, site services, dumping yard etc., (as required under Mines Act, 1952,) in RF towards Compensatory Afforestation, enumeration charges

towards tree growth in the applied and other required R.F. area, Afforestation charges in the land proposed under Compensatory Afforestation and the net present value of the RF area are required (proposed to be recommended) to be attended to by APMDC for grant of Mining leases. Similarly, with regard to environmental aspects, eco-friendly mining operations will have to be carried out without endangering environmental attributes. Sustainable development and mineral conservation are the concepts of mining. As per the stipulations laid down by Ministry of Environment & Forests, Government of India, the following environmental aspects also will be taken care of by APMDC.

c)

AIR AND NOISE POLLUTION CONTROL:

AIR ENVIRONMENT

A. Raktakonda/ Galikonda and Chittamgondi due to mining activity and hauling road at pit heads.

1. Collection of dust by localizing the generated dust at the source by selecting properly designed hoods/covers, suppression of flying dust by sprinkling water through injectors on dumping yards and haulage roads. The spraying of water and chemicals on haulage roads will be done so as to minimize dust generation from the surface.

2. All the slopes and surfaces of approach roads will be sprinkled, systematically through sprinklers, to suppress and limit the spread of flying dust.

3. Plantation of vegetation with broad leaves and varieties in rows with different heights on the edge of mines will be done to control the dust and for noise attenuation significantly.

4. Exhaust fumes of the mining machineries will be minimized by systematic maintenance schedules. Special care will be taken for regular tuning of the engines to check partial combustion and reduce Nox, CO and HC emissions into the atmosphere.

5. To minimize dust pollution at other sources, measures such as wet drilling at mine faces, adoption of hoods at transfer points, proper design of chutes, vulcanizing of conveyor belt joints, under-belt cleaning devices will be done. Monitoring of the SPM, NOx and SO2 will be carried out daily, at sources, to keep the pollution levels in check.

B. Ore conveyance system.

1. No emission apart from dust is expected from ropeway conveyor system.

2. The ore conveyance system will be covered to reduce the dust hazard along the route. The conveyance scheme of the system will be selected as to blend with the surrounding.

d) NOISE ENVIRONMENT

Since residential colonies and townships will be located away from the mining

premises and outside the forest limit, noise may not be a major human concern. However, abatement measures will be taken to minimize noise and Vibration levels and reduce pressure on other fauna. Dense belts of trees will be erected to act as acoustic barriers. A 50m wide belt of trees of different heights is especially useful to act as noise attenuation in the mining areas.

e) **WATER ENVIRONMENT**

1) As the preliminary exploration work carried out at the three deposits revealed, no permanent water table exists within the zone of mining operation, therefore the hydrographic system of the deposits comprise of atmospheric precipitation only. Keeping in view the large atmospheric precipitation in the region with an annual average rainfall of 1200 mm, care will be taken to prevent the surface water from entering into mining area for minimizing the water pollution. The entry of surface water into mine area will be prevented through garland drain and a set of drains to divert the rainwater

2) To reduce the high content of suspended material, it is planned to allow the mine water to settle in settling ponds, with 3 to 5 days detention time within the mining area, before draining out into natural drainage system or being utilized for various other uses within the mine complex. The settling ponds will be cleared once in a while and also before the start of the monsoon.

3) The leachates from ore dumps and waste dumps will be collected by ditches and treated through sedimentation process and used for spraying purposes.

4) As regards the effect of mining on aquifer conditions with probable reduction in the discharge of the perennial springs or even the elimination of some of the springs, it is worth citing the experiences of a similar Bauxite mine (Panchapatmali held by NALCO in Orissa), which is located 70 KM aerial distance from the study sites. It has shown a different tendency. The continuous monitoring of the rate of flow of water in the nearby, springs at Panchpatmali Bauxite mines showed improved discharge rate and also water free of any chemical pollution. This can be attributed to increased seepage of the surface water through the rocks and enhanced recharging capacity of the ground water reservoir on account of exposure of more porous and permeable surface, after mining, as compared to the original consolidated and relatively impervious lateritic capping that existed before removal of overburden and Bauxite in the area. As the geographical structure, topography, mining deposit formation and mining activity are similar to Panchpatmali mining area, similar results can be expected in this region too.

f) **LAND ENVIRONMENT**

The total land requirement for the project is 2446 Ha., located on hill tops in reserved forest area. Out of this only part of the area will be used for mining, but not the entire area, at a time. To keep the ecological balance, as far as possible undisturbed, the mining process will be phased and planned such that as the mining progresses, the remediation and afforestation programmes shall be followed simultaneously.

g) **MINE OVERBURDEN AND DRAINAGE.**

1) The bauxite deposits in the three plateaus are well exposed and for the first

eight years, it is expected that there will be no solid waste generation. The layer below bauxite capping, i.e. Khondalite, will not be touched upon. The piling of wastes/overburden is a temporary/ makeshift activity. The piling will be done on unmined area of bauxite deposit itself and the negligible overburden, if generated, will be transferred back to the mined-out area. A ring bund (toe wall) and drain all along dumps will be formed so that rain water is retained at the toe itself and is prevented from entering streams.

2) A minimum margin of set back of 15 m from plateau edge will be provided at places where steep slopes or scarps are encountered. This ground barrier at periphery will ensure the safety of mine workers and machinery. This also prevents the runoff of muddy water from the mines. This natural curtain helps in preserving the natural beauty of the region apart from minimising the possible dust storms in the mining area.

3) All existing drains arising from the plateaus will be temporarily diverted and three levels of check dams provided on them to arrest the travel of any silt. The overflows from tailing ponds will be so routed that they at least pass through one level of check dams. The diversion of the drain will be carried out in such a way that the vegetation in the watershed outside the mining area is not affected directly.

h) **RECLAMATION OF MINED LAND AND AFFORESTATION:**

1) The plateau tops of Chithamgondi, Galikonda and Raktakonda do not support any vegetation except for luxuriant growth of Phoenix Acaculis i.e., Eetha plants of small size of about 3 feet. Except for Chithamgondi mine site, at the other two mine sites the quantity of top soil is almost negligible. Irrespective of the quantity of top soil at all these mine sites, the top soil will be stockpiled separately and ahead of the mining faces by a combination of bulldozers, wheel loaders and dumpers. The top soil so removed will be again reclaimed and spread over the mined out areas backfilled by overburden to help future plantation.

2) The soil will be dozed and stockpiled in separate dumps of 6-7 m height. The limited height of the dump will facilitate in stock piling and reclaiming by excavators/front end loaders envisaged for this purpose.

3) Simultaneously after exploitation of ore, all hard laterite overburden/wastes will be dumped in the worked out area of the mine and covered by topsoils heaped for the purpose, in terraces. These terraces (with small benches) will provide access for revegetation as well as proper drainage and erosion control. The construction of diversion channels all along the roads and road side plantation will help in arresting runoff and prevent soil erosion.

4) For stabilization of back filled area and to check erosion, the back fill will be graded and compacted by compactors/dozers. This will reduce the porosity of the back filled area and reduce the possibility of slides due to excessive water content. The spreading of topsoil on compacted back fill will facilitate the vegetation which in turn controls acid water formation. Thus, the plateau, which is presently devoid of any vegetation, will after reclamation and afforestation become green with native species.

5) Suitable drainage system will be provided in the back filled area for collecting the excess rainwater. After clarification it will be drained into the existing streams.

i) **BIOLOGICAL ENVIRONMENT:**

1) To minimize the ecological imbalance due to mining activity, considerable afforestation will be taken up. The following areas have been selected for-dntensive afforestation.

- a) Back filled area over the plateaus of Raktakonda/Galikonda and Chithamgondi.
- b) Hill slopes.
- c) Bauxite transportation ropeway corridor.
- d) Along approach roads and
- e) Townships.

a) **Backfilled areas:**

The Mined out area will be backfilled so as to maintain the original shape of the terrain as far as practicable. Then suitable plantation will be carried out on flat and sloping areas. To arrest soil erosion, planting of shrubs and grass will be taken first; this will also stabilize the slopes.

b) **Hill slopes:**

The hill slopes of the area are comparatively thickly forested than the plateau and the surrounding plains. The vegetation on the slopes will be affected due to laying of conveyors and construction of roads. In addition, the plantation on the upper zone of the slope will be affected due to mining activities and construction of contour drains. To compensate these losses of vegetation, it is proposed to take up plantation of trees on the slopes of hill at suitable places.

Both sides of the contour drain will be provided with two rows of shrubs. Adjacent to shrubs, rows of trees will be planned at about 1.5 m x 1.5 m interval. If necessary compensatory afforestation may be taken up in the adjacent plateaus and hill slopes outside the dense fold area.

c) **Bauxite transportation ropeway corridor:**

The ore will be transported by covered conveyor system and at that time the conveyor corridor width will be kept to a minimum to cause least deforestation. Afforestation will be planned to make up the losses due to deforestation, elsewhere by providing belt vegetation along the corridor, outside the forest area.

Wherever steep slopes are encountered, necessary steps will be taken to prevent land slides/soil erosion during cutting and filling operation.

d) **Along Approach Road:**

Compensatory plantation is proposed all along the approach road of 18 m

width on both sides. These plantation will be one time job with post plantation care for about 3 years. Apart from maintaining the ecological balance, these plantation will help in arresting soil erosion particularly in steep hill cut slopes.

e) **Townships:**

Townships to accommodate the people working in the project are out side the Forest area since the proposed plant is outside the forest area. Only in respect of mining activity, a limited area will be occupied for township. The habitations are far away from the proposed mining area.

j) **AFFORESTATION PROCEDURES:**

1) Plantation of trees, grasses, shrubs etc. are followed by adopting series of activities like soil preparation, soil amendments, selection of appropriate species etc. Survival and proper growth of the plantation depends mainly on post plantation care in planned and scientific manner.

2) The detailed plantation method like species selection (trees, shrubs, grasses and creepers) and their mode of planting, type of fertilizer to be used, period over which post plantation care has to be continued, will be assessed in consultation with experts from forest and Agricultural departments. Technical guidance from Indian Institute of Forestry, Dehradun will also be sought for the purpose.

k) **SOCIO-ECONOMIC ENVIRONMENT:**

The Mining activities have been observed to be instrumental in enhancing the living conditions and activeness of the local population in backward areas by providing additional opportunities for employment and bringing medical, educational and domestic communication facilities within their reach. The proposed bauxite mining activities provide these facilities to the local population.

l) **EMPLOYMENT AND BUSINESS PROMOTION:**

The proposed mining project shall generate employment for more than 1000 persons directly and for many more indirectly. The 6th respondent, already selected 200 tribal youth from the surrounding areas for training.

m) **EDUCATIONAL FACILITIES:**

The literacy rate in the area is very low. The Mining agency shall establish a school in the area centralized education for 200 nos of tribal youth with all facilities like sports, library etc.

n) **MEDICAL FACILITIES:**

Health facilities including mobile clinics will be provided.

o) **REHABILITATION AND WELFARE MEASURES:**

1) The most important aspect of the project is to earmark about Rs.300 crores for

rehabilitation of affected tribal population by charging to the project cost, for taking up the following measures :

- i) identification of affected families
- ii) allotment of alternate cultivable irrigated land.
- iii) Providing permanent houses,
- iv) Payment of cash compensation,
- v) Well planned public schools for imparting quality education for tribal children,
- vi) Other social infrastructural facilities like hospitals, mobile clinics, drinking water etc.,

2) The resettlement and rehabilitation plan approved by State Government in G. O. Ms. No68, Irrigation & CAD (Projects Wing-LA-IV-R & R) Dept., Dated 08-04-2005 will be carefully studied and updated and a comprehensive package will be evolved.

3) The surrounding villages will also be benefited from the project welfare measures as listed below:

1. Laying of roads connecting villages.
2. Provision of drinking water.
3. Provision of Post office, Bank, Community hall etc.
4. Provision of Co-operative stores, recreation clubs etc.
5. Provision of transportation and communication system.

P) EMP IMPLEMENTATION AND MONITORING SYSTEM:

1) A monitoring strategy will be evolved to ensure that all the environmental measures suggested are implemented and monitoring of environmental resources is carried out to provide an early warning of any undesirable changes or trends.

2) To meet the above objective, an environmental cell will be set up for the bauxite mines at Araku with the responsibility of implementation of EMP and post operation monitoring.

The function of the cell shall be

- (i) To oversee the environmental control measures to be implemented as per approved action plan.
- (ii) To keep watch on flow pattern streams/nallah/ rivers and keep vigil on the efficiency of water management system.
- (iii) To look for possible erosion, silting, dump and bench failures, supervision of sampling and analysis of water, air, soil and noise level.
- (iv) To follow effects of project activities on the standing floral pattern in the vicinity.
- (v) Prepare and execute afforestation schemes.
- (vi) To observe effects of blasting like development of cracks, generation of fly rocks,

etc.

(vii) To observe and record the phase-wise development in the areas of plantation including rate of growth, survival rate, etc.

(viii) To log all observations in a systematic manner and with reasonable despatch.

(ix) To keep analyses-results received from external agencies in proper sequential manner.

(x) To prepare progress reports, schedules and interact with HQ official/other agencies like APPCB, MOEF etc.

(xi) To check the general health of the workers at mining site.

(xii) To interact and liaise with State/Central Government departments.

(xiii) To submit periodical monitoring reports to MOEF/APPCB.

(xiv) To get consent orders from APPCB under Air (Prevention and control of pollution) Act, 1981 and Water (Prevention and control of pollution) Act, 1974.

q) ENVIRONMENTAL CELL

i) Manpower.

1) The EMC shall be an internal management wing. It shall be appropriately equipped with qualified/experienced manpower who could operate full-time on the implementation of the EMP and in liaison with the enforcement agencies.

2) The clearances will be given by the respective departments after fulfilling the provisions in the Acts.

6) It may be mentioned that in the neighboring State of Orissa, where the Bauxite Deposits extended in the northern side, M/s. NALCO, a Government of India undertaking is already carrying out mining operations since the Year 1986 commencing with 2.3 million tonnes and at present with a capacity of 4.8 million tonnes and planning further expansion to 6.3 million tonnes per annum by observing all the environmental, mining, wild life, ecology, etc., as per rules and regulations of the Acts of State 85 Central Governments as mentioned above. It is on the same lines, 6th respondent will undertake exploitation of Bauxite on its own in AP and ensure that the Eco-System and Environment are not disturbed by the Mining Activity protecting the Flora, Fauna and Wild Life if any. It would undertake mining as per the guidelines/stipulations as prescribed by the respective authorities.

7) It is submitted that mining is undertaken by only State undertaking i.e., M/s. A. P. Mineral Development Corporation Limited duly taking every precaution and care not to disturb tribal habitations. The conditions imposed by the Government of India for obtaining environmental clearance etc., will be strictly followed so as to comply with certain conditions including (a) payment of compensatory afforestation

charges (b) NPV (Net Present Value) (c) Providing substitute compensatory afforestation land etc.,

8) The ore excavated will be transported out of agency area by either underground pipeline or by conveyor belt system, so as to keep the environment clean without affecting the habitations. In addition to implementing environment management plan, re-habilitation of tribals, like well planned public schools for imparting quality education to tribal children, other social infrastructural facilities like hospitals, mobile clinics, housing, drinking water etc., will be provided to about 5000 tribal families on the lines of re-habilitation plan approved by Irrigation Department specific to the area. The entire expenditure, which is of the order of Rs. 300-500 crores, will be earmarked by M/s. A. P. Mineral Development Corporation Limited by charging the expenditure to the project. Welfare measures will be initiated for creation of employment, rural infrastructure in tribal areas.

9) Keeping the above objective in view, an MoU was entered into with M/s. Jindal South West Holdings Limited for lifting the Ore and conversion of the same into Alumina /Aluminium by starting (a) Refinery (b) Smelter (c) Captive Generation Plant and (d) other allied infrastructure at an estimated cost ranging from Rs.5000-14000 crores in three phases. It may be clearly seen that bringing in an investment to the tune of Rs.5000-14000 crores would create employment and bring prosperity to the area. The proposal of M/s. Jindal South West Holdings Limited has therefore been agreed for establishment of refinery, smelter and captive power plant outside the tribal area without having any adverse influence on the tribal population. Action of the state Government for entering into an MoU is purely an administrative decision to generate employment and prosperity in tribal area. Here it may also be mentioned that the MoU speaks of the conditions under which the ore is to be supplied and if for any reason, M/s. JSWH Limited does not lift the excavated ore, APMDC / State Government will have the discretion to select any other prospective buyer. Apart from the above, the price at which the ore is supplied is also regulated by a Committee of Secretaries /experts along with the stakeholders to be constituted by Government.

10) Thus, it is clearly seen that mining activity is purely undertaken by State Government through APMDC to protect the interest of tribals and MoU with Jindal is only for conversion of excavated mineral into value added product of Alumina / Aluminium outside the agency area with right of Government / APMDC to supply Ore to any other prospective buyer. In pursuance of the MoU, the APMDC Ltd., will further enter into separate Agreements not only with M/s. JSWH Limited but with other agencies as well, depending on the need and the services required.

11) The allegation that the birds and species and surviving mammals are threatened by virtue of the mining, which is yet to start, is misconceived and only apprehensive. It would not be out of place to mention that this respondent would take all necessary steps and all statutory permissions before starting any mining operation. The allegation that environmental loss would be there is made without there being any mining activity at all. The apprehensions of the writ petitioners are unfounded and imaginary.

12) In reply to para 7 of the affidavit it is respectfully submitted that The Tribal Advisory Council at its meeting held on 20-07-1995, after analyzing the views

of all the Political and official members, concluded that mining leases should not be given to non-tribals or private agencies. It was observed that either Government of Government Corporations alone should exploit the mineral deposits found in the scheduled areas. Thus, the amendment brought about by inserting sub-section 5 to section 11 of MMRD Act is in order, which was upheld by the Hon'ble Supreme Court in Samatha Judgement dt. 11-07-1997.

13) As mentioned in the pre paras the GoAP made its intention very clear that the Mining lease will be held by 6th respondent and Mining will be done by the 6th respondent only. As per the MoU the Bauxite Ore will be supplied to 7th respondent at a consideration. As already mentioned 6th respondent shall be granted with Mining leases only after Forest and Environmental clearances. The APMDC shall ensure Mining operations as per the guidelines prescribed by the respective departments.

14) The GoAP is insisting that the Mining leases should be held by APMDC for the effective management of Environmental issues and rehabilitation of tribal population. Accordingly, a provision is made to earmark 0.5 percent of the revenue, which may be Rs. 12 to Rs. 15 crores per annum for social infrastructure, training and welfare of the tribals. Further, 25 % out of the statutory payment of the royalty that may be around Rs. 3.5 crores per annum would be utilized for development of the tribals. Thus, the proposed mining of Bauxite would certainly accrue benefits to the local tribal population and for their development.

15) In regard to the permission granted to M/s Orient Cement, it is submitted that APMDC ensured that M/s Orient Cement takes UD all environmental protection measures as the statutory/regulatory requirements resulting in reduction of environmental impact on air, water, land, global surroundings including waste management and its utilization, conserving natural resources.

a) The Orient Cement (Company) started its activity towards ISO 14001-environment management system in the year 1998 and it is the first cement company to get certified for ISO 14001. The Company has also been certified for OHSAS: 18001.

b) The Company has planted more than 50000 trees to improve ecological balance. The trees are developed giving a lustrous view and the area looks like an island of greenery in the heart of a hilly range. The company gave maximum thrust for conserving environment, which was recognized by leading organizations like FAPCCI, International Greenland Society which facilitated the company for its efforts in this field.

c) The company has undertaken community development since its inception like, providing permanent employment to about 500 villagers, mostly tribal from the nearby villages such as Devapur, Maddimada, Kasipet, Chintagudem, Malakapally, Dhamaraopet, Komatichenu etc. Preference is also being given to locals in providing employment. In case employees leave the service due to health problems, the company is providing employment to their dependants.

d) The company has laid pucca roads in and around Devapur village and spent large amounts on this account. The company also provided bus shelters at important

road junctions in Devapur and about 10 surrounding 10 villages.

e) The company has established High School in Devapur. Out of 1540 children of the school about 700 children are tribals who are not employees of the company. Many children of this rural belt who were illiterate earlier completed their education and got better job opportunities because of the availability of education at their door step. The company is spending about Rs 50 lakhs per annum for running the school. The company also constructed a full fledged building for a primary school at Peddaguda, which is a tribal village and also extended financial help for constructing a building for the High School sections in Government School of Devapur, a tribal village. The company also provided bus for free transport of students to go to schools and colleges at Manchiryal which is about 40 kms from Devapur. The Company has a scheme of scholarship for meritorious students in high school.

f) The company organized total literacy campaign and adopted Devapur Village and helped in total literacy work. The company has utilized the services of its officers for spreading literacy in the area. Considering the contribution, one of its officers was taken as member of the Executive body in the District Total Literacy Committee constituted by Government of A. P.

g) The company was instrumental to eradicate child labour in this area. The company has provided literacy reading room facility for the benefit of all local public and encourages art and cultural talent among the residents. The company encourages conducting tournaments at mandal level and contributing generously in conducting sports events in Kasipet and Devapur Villages.

h) The company takes care of community service and religious sentiment of the people. It contributed construction and renovation of the temples in about 5 villages and donates liberally for the local festivals.

i) The company employed 3 qualified medical doctors supported by para medical staff in its occupational health centres. Apart from attending to the clinical problem of the employees, it is also geared up to treat the cases of imminent heart attacks and cerebro vascular accidents in Devapur and surrounding hamlets like Rampur, Chintaguda etc are solely depending on the Company for their health problems. Health education conducted by the Company is reflected in the improvement of the age of marriage from 12 to 18 over a period of 15 years. Maternal and child health are organized systematically. There is no reported case of neonatal tetanus and no case of polio since 1986. There is health liaison between State Health Medical Service and Orient Health Services. Government of A.P recognizes the dispensary. as an extension of PHC at Kasipet. The company provides fully equipped Ambulance Services for bringing patients from the villages to the dispensary everyday and also for transporting serious patients from there to the Mancherial. The company has generously contributed for construction of operation theatres and out patient wards at PHC, Kasipet and construction of Govt. Ayurvedic Dispensary at Devapur. The company has organized camps, project eye care, family welfare camps, health camps in and around Devapur and surrounding villages.

j) The company was instrumental in bringing a branch of Andhra Bank at Devapur which disburses agricultural loans to the Residents of Devapur and

Maddivada and DWAKRA groups.

k) The company has taken interest in communication facilities and Post Office is established in the colony. Telephone facilities were not there earlier. Today about 1000 telephone connections are there in Devapur. For ensuring good law and order problem, the company took initiative and got a police station at Devapur.

l) The company has provided housing to the employees of the Bank, Post Office and telephone exchange. The company was instrumental in providing electricity to the nearby villages. It has donated 11 KVA to serve both Devapur and Maddivada village for supply of electricity.

m) The company is giving cement to the local people and its employees at concessional rates.

n) The company provided 2 sets of Dish Antenna in Devapur and Maddivada villages.

o) Television cables were provided by the Company at free of cost and contributed for the awareness and information available for the growth.

p) The company contributed to the State and Central Government by way of payment of royalty, excise duty, sales tax, income tax and other statutory taxes and duties. The company also pays house tax, NALA tax, and professional tax to the tune of about Rs 20 lakhs per annum to the panchayat which is a tribal village and other local bodies.

q) The company encourages local registered DWAKRA groups and their products are sold in the company cooperative stores. The company encourages the villagers to sell their agricultural produce in the colony. In order to encourage agricultural activity and for promoting irrigation facility the company has contributed 650 tonnes of cement for bunding Peddapur lake which has given impetus to agricultural activities in surrounding villages. For increasing the water table in and around surrounding villages, the company made a big pond for storing of 86,000 of cub. Mtrs of rain water. The company has dug about 100 water-harvesting points in the factory and colony for retaining the water table. During scarcity of water the company extended facility of water supply to the villages to meet their requirements.

r) The Company has been sharing its might for developing the community all around. The unit has been complimented with a number of awards by various organizations for its contribution in various fields like quality product with best environment protection effort, Workers welfare and harmonious industrial relations, workers welfare (including family planning) effort, environment protection, environment and best ecological implementation, energy conservation, rural development by industry, etc.

s) The company is integrating interest of the stake holders especially tribals into company's actions and is taking all necessary steps keeping in view the human rights, business ethics, environment policies of the Government, needs of the local community and work place issues.

16) The Tribal Advisory Council, after analyzing various aspects and views of its Members, held that the Govt. Corporation alone should exploit the mining deposits found in the Schedule areas. It cannot be gainsaid that the petitioners herein are more concerned about the well being of the tribals than the Tribal Advisory Council. The petitioners cannot pick and choose a portion of the Amendment made by the Govt. of A. P. inserting sub-section 5 to Section 11 of the Act and seek a declaration that the same is unconstitutional. It would not be out of place to mention that this protection, more particularly sub-section 5 of the S.I 1 of the Act is not inserted or made by any other State or the Union of India. The welfare measures borne in mind by the State of A. P. cannot be found fault with. Sub-Sec.5 of S.II of the Act should place an embargo on any sort of Mining Leases in the scheduled areas to any person, who is not a schedule tribe, and has been inserted only by the State of A. P. This laudable provision, more particularly Sub-Sec.5 of S.II of the Act, having been taken up by the State of A. P., cannot be found fault with by the Petitioners by making wild and irresponsible allegations.

17) It reply to Para 8 of the affidavit the contention that consent of National Commission for Schedule Tribes has to be obtained under Article 338 of the Constitution of India is incorrect. There is no such provision under Article 338 of the Constitution and the language of Article 338 cannot be stretched to require the Union or any State to obtain sanction of the National Commission for Schedule Tribes for establishment of any industry in the schedule areas. However it is submitted that National Commission will be consulted before undertaking the project.

18) It is respectfully submitted that the establishment of industry by the 7th respondent shall be out side the scheduled area. APMDC would exploit Bauxite cappings of the hills and supply material to the Industry.

19) A meeting was convened with tribal members by the Hon'ble Ministers for Mines & Geology, Commercial Taxes, Forests and Tribal Welfare on 19/12/2005 to explain the complete details of the proposed Bauxite Mining by the 6th respondent, the arrangement for supply of mineral to the 7th respondent and also the commitment of the Government towards development of tribals and the proposals in that direction. In the said meeting convened by the Hon'ble Ministers, all the apprehensions pertaining to this project were clarified.

20) The apprehensions of the Petitioners mentioned in this para of the affidavit about the contents of the project report, are premature and unfounded. This Respondent undertakes to take all necessary permissions before starting any mining activity in the tribal area.

21) In reply to Para 9 of the affidavit it is respectfully submitted that the proposed Mining Project of Bauxite is very huge warranting huge investment and technical know how and deployment of huge machinery and complying with various statutes etc., It would not be possible to take up project of such volume either by TRICOR or any other tribal society. Considering all these aspects, GoAP decided that mining of Bauxite should be entrusted to APMDC.

22) It is incorrect to say that no effort was made in respect of Bauxite for

sharing of the benefits in respect of proposed project. As already mentioned in the previous Para a provision is made earmarking a minimum of 0.5 percent of the revenue which may be Rs. 12 to Rs. 15 crores per annum for social infrastructure, training and welfare of the tribals. Further, 25 % out of the statutory payment of the royalty, which may be around Rs. 3.5 crores per annum, would be utilized for development of the tribals. Thus the proposed Mining of Bauxite would certainly accrue benefits to the local tribal population and for their development.

23) In reply to Para 10 of the affidavit, it is respectfully submitted that the Mining lease applications are under process and thorough study has to be taken up with regard to loss of lands, habitations etc., by Experts in the field and after the receipt of the detailed reports only, the rehabilitation package shall be announced.

a) In regard to allegation that the 6th Respondent abandoned the mines in Elakatta and Choulapally villages in 1974 after running it for 9 years and has not paid compensation and due to excavation of quartz mines more than 300 persons including 40 persons of lambada tribes died due to silicosis and silico-tuberculosis, it is submitted that the 6th Respondent mechanized its operations and conducted systematic and scientific mining taking all precautionary measures necessary under Mining and Mines Safety Regulations, such as providing helmets, respirators and other safety equipments. The Corporation closed down its operations in Elakatta in the year 1974 and in Choulapally in the year 1974-1975 and paid retrenchment compensation and the entire attendant benefits to the workers employed by the Corporation. The Corporation had transferred the mining lease absolutely in respect of Elakatta Mines and the processing unit to the Electro Thermics Private Limited in 1975. The Choulapally mines were closed and no mining operations were conducted by the Corporation from 1975 onwards. It is also submitted that no work person who worked with the Corporation was affected by silicosis. The said allegations are false and are denied.

b) It is also submitted that one organization under the name and style of Society for Awareness through Learning and Training (SALT) filed W. P. No.4090 of 1991 requesting the Hon'ble Court to direct the Director of Medical Services to take up the x-ray photo of all the workers who were in the service of the organization. Subsequently, the Director of Medical Services conducted camps and filed counter wherein it was mentioned, that "in the opinion of the medical profession, it is rather difficult to come to a conclusion on the basis of history and clinical examination without proper diagnosis. On the basis of clinical examination, the cases were of pharagitis and fever in some cases. At present there are no mining operations in existence since 1973-1974. After confirmation of cases, if any, are to be treated, the treatment will be provided by the specialists of District T. B. Centre, Mahaboobnagar where tests will be conducted and treatment will be given freely". The W. P. was dismissed by Hon'ble High Court on 03-04-2001.

c) Further it is submitted, that 99 persons have filed applications before the Assistant Commissioner, Workmen Compensation, Mahaboobnagar District in the years 1992 & 1994 for payment of compensation in the range of Rs 20,000 to 24,000/- per person. The Corporation filed counters in all the above applications. These applications were dismissed for default on 21-07-1996.

d) Another W. P. No.23814 of 1995 was taken up by the Hon'ble High Court on the basis of news item in the Economic Times dt 18-10-1995 with the caption "A. P. Quartz Mines issuing death warrants to workers" and it was prayed to equip with goggles, boots, respirators to the workers as per mines manual. The Corporation has filed the counter and on hearing, the Hon'ble Court dismissed the W. P. on 24-04-1997.

e) Further National Human Rights Commission has forwarded clippings of newspaper "The Statesman" regarding the problem of mine workers to the Government for a report on the subject. The NHRC, on perusal and scrutiny of the report, directed that every workman working in factories in which health hazard of silicosis occurs to take appropriate steps and report compliance within 3 months. In compliance with the above report, it was informed that the Corporation is not operating any quartz mines now and further informed that in the event the Corporation undertakes mining operations in quartz mines, it shall take appropriate steps for good health of workmen.

f) Another W. P. No. 19181 of 1997 was taken up on the basis of telegram from Smt. Vijaya, Secretary, Labour Liberation Front praying the Hon'ble High Court to direct the Government to compensate suitably to all the labourers who are suffering from dangerous disease due to their work in the Corporation for breaking limestone without being provided any safety measures. The Corporation fled its counter. The Hon'ble High Court dismissed the W. P. on 17-11-1997 with the observation that on perusal of the entire material on record "we are of the view that the relief sought in the W. P. cannot be granted".

g) Thus the allegation that 300 persons including 40% of lambada tribes died due to silicosis and silico tuberculosis for having worked with the 6th Respondent Corporation in their quartz mine in Mahaboobnagar District is incorrect. After closure and transfer of the mines, the Corporation has paid retrenchment compensation to the workers. No worker who worked with the Corporation at that time complained of any disease. The Corporation has taken all the precautions under mining and mines safety regulations.

h) The averment of the petitioner that the proposals for development of the tribals on account of the proposed Mining of Bauxite would be limited to only statements and would not result in any benefit is only imaginary, premature and baseless. It is submitted that after establishing the cement unit by M/s. Orient Cement in Devapur, a Tribal Village, the development that took place in that and the surrounding 10 Villages as mentioned in prepares is a living example of all round development. Similar is the case with NALCO in Orissa. The Government as well as this respondent is committed in letter and spirit for creation of social infrastructure and development of the tribals. The Government has entrusted the Mining job of Bauxite to APMDC only to ensure effective management of Environmental issues and rehabilitation of tribal population. It is incorrect on the part of the petitioner to create obstacles to the project based on apprehensions, which would certainly affect the development of the tribals.

24) The apprehensions of the Petitioners are unfounded and blown out of proportion. The allegation that this Respondent should not be allowed to be awarded

with the proposed action without ensuring necessary safeguards, is made in an irresponsible manner. The Respondent, a 'State' under Art. 12 of the Constitution of India, will adhere to all statutory responsibilities and also take-up the welfare measures for the over-all development of the tribals and the tribal areas before starting any mining activity. The writ petition is pre-mature.

25) In reply to Para 11 of the affidavit it is respectfully submitted that the contention of the petitioner is not correct, as the MoU is an agreement between 1st and 7th respondent wherein the excavated mineral is to be purchased by 7th respondent. In this connection it is to be stated that the APMDC has applied for Mining Leases in the 3 areas wherein the permission for grant has to be given by the Government after getting clearances from Forest, Environmental departments and IBM of Government of India. Without getting approval of Mining Leases, no work can be commenced in these areas. As such, only after grant of leases and execution, the APMDC has to conduct the Mining Operations by following the rules & regulations and follow the commitments as stipulated by the Government. APMDC, a State Government undertaking is a rightful authority to carryout mining operations in Schedule areas as per the Judgment of Supreme Court dated 11/07/1997. The MoU between 1st and 7th respondents will commence only after the grant of Mining Leases to APMDC and after execution and extraction of the mineral only, the supply of material will be made to the 7th respondent. Unless industrialization takes place, there is no scope to solve the large-scale unemployment and unrest in the youth in India and the same should be encouraged. Several Acts brought out by the Government to protect the environment and the projects will be adhered to and Mining activity will be undertaken only after all

26) The allegation that this Respondent is going ahead with the activities affecting the interests of the tribals is absolutely false. The Mining Lease in favour of this Respondent is not yet granted. This Respondent would start mining activities only after getting all statutory permissions. The prayer sought for granting of Interim Stay of further proceedings is premature and untenable.

27) It is respectfully submitted that the writ petition is devoid of merits and is premature. The writ petition is filed on mere apprehensions even before any Mining lease is granted in favour of this Respondent.

Therefore it is prayed that this Hon'ble Court may be pleased to dismiss the writ petition in the interests of Justice and pass such other further order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the Case.

Solemnly affirmed and signed in
my presence at Hyderabad
this the day of March,2006.
Advocate