

**Mines order**

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH  
AT HYDERABD  
(Special Original Jurisdiction)**

TUESDAY, THE TWENTIETH DAY OF JUNE  
TWO THOUSAND AND SIX

PRESENT  
**THE HON'BLE SHRI G. S. SINGHVI, THE CHIEF JUSTICE**  
And  
**THE HON'BLE SHRI JUSTICE G. V. SEETHAPATHY**

**AWRIT PETITION NO: 1571 OF 2006**

Between:

1. "DHIMSA" a society registered under A.P. Societies Registration Act 2001 (No. 938 of 2003), having its office at D. No. 9-22, Lochaliputtu Colony, near Degree College, Paredu, Visakhapatnam District, Rep by its President K. Krishna Rao
2. "SANTI" a voluntary social organization for the upliftment of Tribes People, (Regd. No. 76/85) Rampachodavaram, East Godavari District, Represented by its Director, Dr. P. Sivaramkrishna

..PETITIONERS

AND

1. Government of Andhra Pradesh, Rep by its Principal Secretary to Government, Industries and Commerce (Mines) Department, Secretariat, Hyderabad
2. Principal secretary to Government, Energy, Forest, Environment, Sciences & Technology, Department, Secretariat, Hyderabad
3. Principal Secretary to Government, Tribunal Welfare Department, Secretariat, Hyderabad
4. Union of India, Rep by its Secretary to Government, Department of Environment, Forests & Wildlife, Paryavaran Bhavan, C. G. O. Complex, Lodhi Road, New Delhi.
5. National Commission for Scheduled Tribes, 6<sup>th</sup> Floor, Lok Nayak Bhawan
6. A.P. Mineral Development Corporation Ltd. No. 8-3-945, II floor, Pancom Business Center, Ameerpet, Hyderabad-500 016 Rep by its Vice-chairman and Managing Director
7. M/s. Jindal South West Holdings Public Limited, Jindal Mansion, 5-A, Dr. G. Deshmukh Marg, Mumbai-400 026.

RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate Writ, Order or Direction, more particularly, one in the nature of Writ of Mandamus declaring the words "to an undertaking owned of controlled by the

State or Central Government or " in provide to sub-section 5 of section 11 of mines and Minerals (Regulation and Development) act. 1957 as unconstitutional and void and consequently declaring the action of the 1<sup>st</sup> Respondent in entering in to an agreement with the 7<sup>th</sup> Respondent in as extent of 2,446 hectares in Araku And Sapparla area of Visakhapatnam district as violative of articles 14,21 and V Schedule to the constitution of India and the laws made there under including the provisions of A.P. Scheduled Area Land Transfer Regulation, Section 11(5) of Mines & Minerals (Regulation & Development) Act, 1958 and Forest (conservation) Act, 1980.

Counsel for the Petitioners: SRI A. RAMALINGESWARA RAO.

Counsel for the Respondents No.1 to 3: GP FOR INDUSTRIES & COMMERCE.

Counsel for the Respondents No. 4 and 5: SHRI MR. S. RAJASEKHAR REDDY.

Counsel for the Respondent No. 6: GP FOR ENVIRONMENT.

Counsel for the Respondent No. 7: SRI. S. R. ASHOK.

**The Court made the following: ORDER**

**HON'BLE SHRI G. S. SINGHVI, THE CHIEF JUSTICE**  
**AND**  
**HON'BLE SHRI JUSTICE G. V. SEETHAPATHY**

**WRIT PETITION No. 1571 OF 2006**

Between

"DHIMSA", a society registered under  
A.P. Societies Registration act, 2001, Paderu,  
Visakhapatnam District  
Rep, by its President K. Krishna Rao & another

.....Petitioners

And

Government of Andhra Pradesh  
Rep, by its Principal Secretary,  
Industries and Commerce (Mines) Department,  
Hyderabad & others

...Respondents

**:: ORDER ::**

Counsel for Petitioners : Shri A. Ramalingeswara Rao

Counsel for Respondent Nos. 1 to 3 : Government Pleader for

Industries & Commerce

Counsel for Respondent Nos. 4 and 5 : Shri A. Raja Sekhar Reddy

Counsel for Respondent No. 6 : Government Pleader for Environment

Counsel for Respondent No. 7 : Shri S. R. Ashok

Per G. S. Singhvi, CJ

In this petition filed in public interest, the petitioners have prayed for declaring as unconstitutional the following expression appearing in proviso "to an undertaking owned or controlled by the State or Central Government or" to sub-section (5) of section 11 of Mines and Minerals (Regulation and Development) Act, 1957, they have further prayed for quashing the agreement entered in to between the State Government and respondent No. 7 for supply of Bauxite mineral through respondent No. 6 in an extent of 2,446 hectares in Araku and Sapparla area of Visakhapatnam District.

In the counter-affidavit filed by Shri K. Yadava Reddy, Deputy Secretary to Government, industries and Commerce Department, the factum of an agreement having been entered in to between the State Government and Respondent No. 7 has not been denied, but it has averred that mining lease would be granted to respondent No. 6 only after taking forest and environment clearances. In the affidavit filed by Ms. Jnaki R. Kondapi, Principal Secretary to government, Environment Forests Science and Technology Department, it has been averred the proposal submitted by Andhra Pradesh Mineral Development Corporation (respondent No. 6) under the Forest (Conservation) Act, 1980 (for short 'the act') for diversion of forest land for mining Bauxite in Anantagiri and Arakuvalley was rejected by the Government of India vide letter dated 03.05.2001. It has been further averred that fresh proposals submitted by respondent No. 6 have been forwarded to the Principal Secretary to Government, EFS&T Department vide PCCF Rc. No. 34162/2005-F1, dated 22.02.2006. According to Ms. Janaki R. Kondapi, the fresh proposals are pending consideration before the Central Government.

In view of the stand taken by respondent No. 1 and respondent No. 2, it is clear that so-called agreement entered in to between respondent No. 7 and the State Government can not be implemented till the Central Government grants permission in terms of Section 2(2) of the Act and environment clearance is granted by the component authorities. Therefore, the Writ Petition is liable to be disposed of as premature ordered accordingly. However, it is made clear that the petitioners shall be free to file fresh petition as and when the Central Government grants permission in terms of Section 2(2) of the Act and environment clearance is given by the competent authorities.

While disposing of the Writ Petition in the manner indicated above, we make it clear that till the required permission is obtained by the State Government in terms of Section 2(2) of the Act as also environment clearance is granted by the competent

authority, the agreement entered in to between respondent No. 1 and respondent No. 7 shall not be implemented.

Sd/-C. V. Ramakrishna  
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

The Principal Secretary to Government, Government of Andhra Pradesh, Industries and Commerce (Mines) Department, Secretariat, Hyderabad

The Principal Secretary to Government, Energy, Forest, Environment, Sciences & Technology, Department, Secretariat, Hyderabad

The Principal Secretary to Government, Tribunal Welfare Department, Secretariat, Hyderabad

The Secretary to Government, Union of India, Department of Environment, Forests & Wildlife, Paryavaran Bhavan, C. G. O. Complex, Lodhi Road, New Delhi

The National Commission for Scheduled Tribes, 6<sup>th</sup> Floor, Lok Nayak Bhawan

The Vice-Chairman and Managing Director A.P. Mineral Development Corporation Ltd. No. 8-3-945, II Floor, Pancom Business Center, Ameerpet, Hyderabad-500 016

M/s. Jindal South West Holdings Public Limited, Jindal Mansion, 5-A, Dr. G. Deshmuk Marg, Mumbai- 400 026.

Two CCs to Government Pleader for Industries & Commerce, High Court Buildings, Hyderabad (OUT)

Two CCs to Government Pleader for Environment, High Court Buildings, Hyderabad (OUT)

One CC to SRI A. RAMALINGESWARA RAO, Advocate (OPUC)

Two CD copies

One CC to Sri A. Rajasekhar Reddy, Assistant Solicitor General of India

One CC to Sri S. R. Ashok, Advocate (OPUC)

MRC\*

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH  
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W.P.No. 1571 OF 2006

Between:

"DHIMSA", a society registered under  
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having its office at D. No. 9-22,  
Lochaliputtu colony, Near Degree College,  
Paderu, Visakhapatnam District  
represented by its Secretary, K. Krishna Rao  
and another

... PETITIONERS

AND

Government of Andhra Pradesh rep. by its  
Principal Secretary to Government,  
Industries and Commerce (Mines) Department,  
Secretariat, HYDERABAD  
And others

... RESPONDENTS

**REPLY AFFIDAVIT FILED ON BEHALF OF THE PETITIONERS**

I, Dr. P. Sivaramakrishna, son of late Venkatanarsaiah, Hindu, aged about 55 years, Director, 'SAKTI', a voluntary social organization, Rampachodavaram, presently resident of Hyderabad, do hereby solemnly and sincerely affirm and state as follows:

1. I am the Director of the 2nd Petitioner organization and as such I am well acquainted with the facts of the case. I am authorized to file this affidavit on behalf of 1st Petitioner organization also which is also working for the welfare of tribals in Paderu area covering 11 tribal Mandals and 5 sub-plan Mandals of Visakhapatnam district. I have read the counter affidavit filed on behalf of the 6<sup>th</sup> Respondent and deny all the averments which are not specifically admitted herein and the 6<sup>th</sup> Respondent is put to strict proof of the same. The reply affidavit filed to the counter affidavit of the 1<sup>st</sup> Respondent may be read as part of this affidavit as the counter affidavit of 6<sup>th</sup> Respondent also contains similar averments made in the counter affidavit of the 1<sup>st</sup> Respondent. However, in respect of certain paragraphs, where different averments are made, a reply is filed wherever it is needed.

2. It is submitted, that the provisions of Mines & Minerals (Regulation &

Development) Act, 1957 provide for existence of a mining plan duly approved by the Central Government for the development of Mineral deposits in the area concerned before the State Government grants the lease and the 6<sup>th</sup> Respondent have not produced the mining plan before this Hon'ble Court. The 6<sup>th</sup> Respondent stated in para 5 that the plantation in the mined area would be taken up by the 7<sup>th</sup> Respondent in a phased manner and it is not known when the 7<sup>th</sup> Respondent is not mining, how the 7<sup>th</sup> Respondent can undertake such responsibility. The 6<sup>th</sup> Respondent has also not disclosed the minutes of the meeting of its Board requesting the Government for permission to sell excavated Bauxite to the 7<sup>th</sup> Respondent. The 6<sup>th</sup> Respondent has no financial resource to undertake any rehabilitation package of the magnitude indicated in the counter and it clearly discloses that it is acting and lending its name for the benefit of 7<sup>th</sup> Respondent. Even the equipment needed for mining would be provided by the 7<sup>th</sup> Respondent as could be seen from para 11 of the contents of the agreement.

3. The 6<sup>th</sup> Respondent in para 15 of the counter affidavit justified its action in respect of M/s Orient Cements by listing out various measures taken by said company without explaining the legality of its action in seeking permission of the Government to allow M/s Orient Cement to carry on mining operations for their self consumption for production of cement in a scheduled area contravening the A.P. Scheduled Area Land Transfer Regulations. The alleged measures taken by the company cannot make its activity legal.

4. It is submitted that the 6<sup>th</sup> Respondent has already started its activity as admitted by it in page 5 of the counter affidavit of conducting gram sabhas in certain villages to create awareness and taking some tribal and public representatives to Damanjodi in Orissa state to show the developments even before the grant of leases in its favour.

It is therefore prayed that the Hon'ble Court may be pleased to allow the above Writ Petition with costs and pass such other further orders as this Hon'ble Court may deem fit in the circumstances of the case.

DEPONENT

Solemnly affirmed and signed  
his name before me on this  
23rd March, 2006  
at Hyderabad.

Before me

Advocate, Hyderabad.

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH  
AT HYDERABAD

W.P.No. 1571 OF 2006

Between:

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represented by its Secretary, K. Krishna Rao  
and another

... PETITIONERS

AND

Government of Andhra Pradesh rep. by its  
Principal Secretary to Government,  
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1. I am the Director of the 2<sup>nd</sup> Petitioner organization and as such I am well acquainted with the facts of the case. I am authorized to file this affidavit on behalf of 1<sup>st</sup> petitioner organization also which is also working for the welfare of tribals in Paderu area covering 11 tribal Mandals and 5 sub-plan Mandals of Visakhapatnam district. I have read the counter affidavit filed on behalf of the 1<sup>st</sup> Respondent and deny all the averments which are not specifically admitted herein and the 1<sup>st</sup> Respondent is put to strict proof of the same.

2. At the out set I submit that the counter affidavit is bereft of details with regard to the project undertaken by the 7<sup>th</sup> Respondent and details of the decision making process involved in the Agreement dated 1.7.2005. It is not known how the government is involved in a matter relating to the contract between the 6<sup>th</sup> and 7<sup>th</sup>

Respondent and whether the Cabinet was taken into confidence before entering into such a policy decision is not clear from the counter affidavit of the 1st Respondent. I submit that when the Government already issued G.O.Ms.No.999, Industries & Commerce (Mines) Department, dated 25-10-1975 to excavate the minerals through public sector corporations and also issued G.O.Ms.No.187 dated 20-09-96 allotting the mining rights of valuable minerals including Bauxite to the 6<sup>th</sup> Respondent in order to enable to transfer its rights to an appropriate entrepreneur and collect fees or rentals on it as agreed to by the Government, the interference by the Government at the highest level with 7<sup>th</sup> Respondent without inviting any global tender is highly arbitrary and against public interest. The 1<sup>st</sup> Respondent has not filed even a single scrap of paper except swearing a vague affidavit in reply to the averments made in the affidavit filed in support of the Writ Petition. It is further submitted that a meeting was conducted on 2.7.2005 and the senior officers were directed to take up follow up action and complete the tasks allocated to them by 15.7.2005 as desired the Hon'ble Chief Minister directly under intimation to Secretary (Industries & Commerce Dept.)/ Principal Secretary (EFS & T)/ Special Chief Secretary, Revenue and even the details of the follow up action taken is not revealed in the counter affidavit filed. Thus the 1<sup>st</sup> Respondent appears to be deliberately suppressing the information to this Hon'ble court. This Hon'ble court may call for the entire record relating to the said project in order to properly appreciate the contentions raised by the petitioners.

3. Regarding averments in para 4 of the counter affidavit of the 4<sup>th</sup> Respondent, I submit that out of 612 million tones of bauxite reserves available in A.P., the Government is committed to supply 240 million tones of reserves to the 7<sup>th</sup> Respondent at an unspecified price. The commitment was made even before the tasks with a Government of India undertaking, M/s National Aluminum company are in progress. When the matter relating to amendment to Land Transfer Regulation came up for consideration before the Tribes Advisory Counsel way back on 15.9.1994, it was advisedly decided to wait for decade or so in view of the experience of tribal exploitation in Biladilla in Madhya Pradesh and non accrual of any benefit from Bhadrachalam Paper Mills in Khammam District and Devapur Cement Factory at Adilabad District. But the present Agreement was entered without going through the process of obtaining the views of the Tribal Advisory Council and weighing the benefits and losses to the tribals living in that area. It is submitted that the amendment to the Mines & Minerals (Regulation & Development) Act, 1957 was made with effect from 14-08-1991, whereas the judgment in Samata case was rendered on 11-07-1997 and the Hon'ble Supreme Court took note of the said amendment while rendering the judgement. But, the validity or otherwise of the above amendment did not come up for consideration in the said judgement. The 6<sup>th</sup> Respondent being a 'State' within the meaning of Article 12 of the Constitution of India is supposed to offer the excavated Bauxite to the highest bidder but not to the company of Government choice. The supply of material only to the 7<sup>th</sup> Respondent

by the 6<sup>th</sup> Respondent and a commitment for the same even before the leases was granted in its favour clearly shows the interest of the Government in favour of the 7<sup>th</sup> Respondent. The 6<sup>th</sup> Respondent is thus a conduit for the 7<sup>th</sup> Respondent to obtain the raw material for its proposed refinery and smelter for manufacture of Alumina and Aluminum. It is further submitted that the valuable Bauxite reserves are not only meant for the tribals living in those areas, but is a gift of nature given for the benefit of the people of Andhra Pradesh. The Respondent has not disclosed the benefit to the people from the sale of Bauxite mineral except an unregulated promise of spending 0.5% of the revenue on social infrastructure like health, training and welfare of tribals etc. The Government, being the trustee of people should not have frittered away the natural wealth at a single stroke for an unspecified price.

4. Regarding the averments in para 5 of the counter affidavit of the 1<sup>st</sup> Respondent, it is submitted that though the Bauxite deposits are located on top of the hills and away from the villages, the approach to those deposits would be through the villages and thick forest. The 1<sup>st</sup> Respondent ought to have disclosed the mining plans merely because the mining would be taken up in a phased manner, it does not mean that there will not be any disturbance to the flora & fauna in the area. As already submitted in the affidavit filed in support of the Writ Petition, there are rare birds in the area and it is not correct to state that there are no endangered species. As per the report of the Andhra Pradesh Natural History Society, Visakhapatnam prepared in November 1987, in respect of Andhra Bauxite Project, they found 18 northern migrant bird species passing through the area, 12 of which are forest dwelling forms and probably depend on the Eastern Ghats as a habitat corridor for seasonal movement. It was also stated therein that the continued and accelerated clearing of forest, even in small bits, adds up to the threat to these birds and also to the few surviving mammals like Sambhar, Barking deer, etc. The Government should have come up with a factual report instead of denying the existence of flora in those areas without any basis. It is submitted that a thorough environmental plan will be prepared before undertaking any project and the counter affidavit is silent with regard to this aspect. I further submit that there is no mechanism envisaged in the Agreement for supervising and regulating, the various control measures indicated in c) to o) of the said paragraph except indicating that an environmental cell will be set up which will be an internal management wing of the company. It is not known why the Government hurried into an agreement without obtaining clearances from the respective departments by the Respondents 6 & 7.

5. Regarding the averments in paras 6 to 9 of the counter affidavit of the 1<sup>st</sup> Respondent, it is submitted that the experience of M/s NALCO in the State of Orissa cannot be applied to the Andhra Pradesh as the situation of forest is altogether different in the two States. The counter affidavit states on one hand that every precaution and care will be taken not to disturb tribal habitations while on the other

hand, rehabilitation of about 5000 tribal families would be taken up on the lines of rehabilitation plan approved by Irrigation Department specific to the area. It is not known whether rehabilitation takes place prior to the implementation of the project or after uprooting their families. The counter affidavit is silent with regard to the details of families that are likely to be affected by the project. The statement made in the counter affidavit that the entire expenditure of the order of Rs. 300 - 500 crores will be earmarked by 6<sup>th</sup> Respondent by charging the expenditure to the project when read together with the future pricing of the excavated material shows that there is no concrete rehabilitation measures before undertaking the excavation.

6. Regarding the averments in paras 10 to 12 of the counter affidavit of the 1<sup>st</sup> Respondent, it is submitted that the present Writ Petition was filed not to know the range of the investment of the 7<sup>th</sup> Respondent, but to point out the adverse affect of the project on the environment, tribal life and public interest and the counter affidavit is totally silent with regard to the firm benefits to the environment and tribal life. The loss to the environment and public life has not been addressed in the counter affidavit except assuring that steps would be taken to protect the environment, tribal culture and forest by the State with utmost caution and care. The 1<sup>st</sup> Respondent has not answered the loss of Rs. 1520.88 crores over a period of 50 years taking the density of the forest area to be as 0.6 (as per 1991 calculations).

7. Regarding the averments in para 13 of the counter affidavit of the 1<sup>st</sup> Respondent, it is submitted that the amendment to Section 11 of the Mines & Minerals (Regulation & Development) Act, 1957 was made with effect from 14-08-1991, much before the Tribal Advisory Council meeting dated 20-07-1995, and the judgment of the Hon'ble Supreme Court in Samata case on 11-07-1997 and hence the contention of the 1<sup>st</sup> Respondent that it was valid and sustainable has no force.

8. Regarding the averments in paras 14 and 15 of the counter affidavit of the 1<sup>st</sup> Respondent, it is submitted that the 1<sup>st</sup> Respondent has stated in para 8 that the rehabilitation would require an Agreement of Rs. 300 to 500 crores, whereas in para 15 it is stated a provision is made to earmark 0.5% of the revenue, which may be Rs. 12 to 15 crores per annum and these self contradictory statements create doubt in the minds of the public regarding the seriousness of the implementation of rehabilitation package and the capacity of the 6<sup>th</sup> Respondent to implement the same.

9. Regarding the averments in para 16 of the counter affidavit of the 1<sup>st</sup> Respondent, it is submitted that the example of M/s Orient Cements was shown in order to buttress the contention of the Petitioners and it is admitted by the 1<sup>st</sup> Respondent that there is violation of the judgement of the Hon'ble Supreme Court in Samata case. The 1<sup>st</sup> Respondent is not quite sure about its stand as could be seen from the averments made in the said para.

10. Regarding the averments in para 17 of the counter affidavit of the 1<sup>st</sup> Respondent, it is submitted that a perusal of the Article 338 would show the role of the 5<sup>th</sup> Respondent in advising on the planning process of socio-economic development of S.C.s & S.T.s. The regulations framed for conduct of the meetings of Tribal Advisory Council called 'Andhra Pradesh Tribes Advisory Council Rules, 1958' require the advise of the council on any matter pertaining to the welfare and advancement of the Scheduled Tribes in Andhra Pradesh.

11. Regarding the averments in paras 18 to 26 of the counter affidavit of the 1<sup>st</sup> Respondent, it is submitted that the 1<sup>st</sup> Respondent has not disclosed the minutes of the meeting held on 19-12-2005, and without disclosing the same no purpose would be served by stating that all the apprehensions were expressed by the members pertaining to this project were clarified when the entire issue is before the Hon'ble Court. It is submitted that the Principal Secretary, Tribal Welfare Department, would not have raised the point of allowing the tribals to do the mining operations without any feasibility in the meeting held on 22-04-2005 and the averments in para 20 of the counter affidavit is misleading. It is not known the necessity of the Government to enter into an agreement with the 7<sup>th</sup> Respondent hurriedly even before leases were granted in favour of 6<sup>th</sup> Respondent and before preparing a rehabilitation package. It is submitted that the Senior Officers of the concerned departments were requested to take up the follow up actions and complete the tasks by 15-07-2005, but the counter affidavit of the 1<sup>st</sup> Respondent which was sworn on 09-03-2006 is totally silent of the various steps taken pursuant to the agreement on 01-07-2005, meeting held in the chambers of the Hon'ble Chief Minister on 22-04-2005 and the meeting of the Ministers held on 02-07-2005. I apprehend that the 1st Respondent is not disclosing the facts and developments taken in respect of the Bauxite project before this Hon'ble Court. I respectfully submit that there is no mechanism for supervising the various promises made in the interest of the tribals and environment and the agreement of the Government entered on 01-07-2005 is not in public interest.

It is therefore prayed that the Hon'ble Court may be pleased to allow the above Writ Petition with costs and pass such other further orders as this Hon'ble Court may deem fit in the circumstances of the case.

DEPONENT

Solemnly affirmed and signed  
his name before me on this  
23rd March, 2006  
at Hyderabad.

Before me

Advocate, Hyderabad.

**IN THE HIGHCOURT OF JUDICATURE : ANDHRA PRADESH AT  
HYDERABAD**

W.P. No. 1571 of 2006

Between

"DHIMSA" a Society registered under  
A.P. Societies Registration Act, .00!  
And Another

...Petitioners

-AND-

Government of A.P. rep. by its Prl. Secretary  
to Govt, Industries & Commerce (Mines)  
D partment, Secretariat, Hyderabad  
A id Others

...Respondents

**COUNTER AFFIDAVIT FILED BY RESPONDENT NO. 4**

I, Smti. Sobhana Kamala Sudarsana Rao, W/o. Dr. S. Sudarsana Rao, age 46 years, Occupation - Indian Forest Service, R/o. Bangalore, do hereby state on oath as follows:

1. That I am working as Deputy Conservator of Forests (Central) in the office of Respondent No.4, as such I am well acquainted with the facts of the case and I am authorised to file this affidavit on behalf of Respondent No.4

2. That I have read the contents of the affidavit filed by the petitioner in the above writ petition and deny all the averments made therein, except that those which are specifically admitted by me herein after.

3. In reply to para 5, it is submitted that prior approval of the Central Government under Section 2 of Forest (Conservation) Act, 1980, is mandatory for diversion of forestland for non-forest purposes. It is also submitted that no proposal for diversion of 305.808 ha. forest land in favour of A.P. Mineral Development Corporation Limited, i.e. the 6<sup>th</sup> respondent in respect of the area in question, has been received by this respondent so far. As and when the proposal is received by this respondent, the same will be considered as per the provisions of Forest (Conservation) Act, 1980 and directions issued by Hon'ble Supreme Court from time to time in the similar case and accordingly, the decision will be taken on the merits/demerits of the proposal made available by the State Government. The other, allegation made by the petitioner is denied.

4. For the reasons stated above, the petitioner is not entitled for any relief sought for and the writ petition is liable to be dismissed.

It is, therefore, prayed that this Hon'ble Court may be pleased to dismiss the writ

petition with costs.

Sworn and signed before me on  
13th Day of March 2006 in  
my presence.

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

W.P.NO. 1571/2006

BETWEEN:

Dhimsa and another

...PETITIONERS

AND

Government of A.P. and others

...RESPONDENTS

**COUNTER AFFIDAVIT FILED ON BEHALF OF THE  
RESPONDENT NO. 7**

I., P. Vachaspathi, S/o. Late Sri P.V.H. Rao, aged 50 years, r/o. Visakhapatnam,  
Andhra Pradesh, having temporarily come down to Hyderabad, do hereby  
solemnly affirm and sincerely state on oath as follows:

1. I am the General Manager and the authorised signatory of the 7<sup>th</sup> respondent herein, as such I am well acquainted with the facts of the case and do hereby swear to the contents of this affidavit.
2. I have gone through the contents of the affidavit filed in support of the writ petition and deny all the allegations made therein, except to the extent of those averments, which are specifically admitted to hereunder. I humbly submit that the affidavit does not disclose any case either on facts or on law and no case has been made out before this Honorable court.
3. Adverting to the averments made in paragraph No. 1 to 3 of the affidavit, filed in support of the writ petition, the said averments relate to the petitioners and the petitioners are put to strict proof of the same.
4. Adverting to the averments made in paragraph No. 4 of the affidavit, filed in support of the writ petition, the petitioner is put to strict proof of the allegations. I further submit that the peculiarity of bauxite is that because of its chemical composition, no vegetation will grow over the area in which the bauxite is present except for growth of Phoenix Acaculis (Amla).
5. Adverting to the averments made in paragraph No. 5 of the affidavit, filed in support of the writ petition, the said allegations is incorrect and the petitioner is bringing in issues and facts which are not relevant in the present case. The proposal of Nalco for lease over the Jerrella area has nothing to do with the present writ petition. The area for which M/s. Nalco is trying to obtain lease is separate and distinct from the area in which 6<sup>th</sup> respondent will carry out the mining operation. The allegation that the government is utilising the 6<sup>th</sup> respondent in order to

circumvent the decision of the Honourable Supreme Court of India and to entrust the land to 7<sup>th</sup> respondent is false. The 6<sup>th</sup> respondent wished to exploit the bauxite reserves in these areas and requires a ready-made market for the bauxite. In these circumstances, the 7<sup>th</sup> respondent came up with a proposal to set up a refinery and a Smelter for manufacture of Alumina & Aluminium respectively outside the scheduled areas with a capital outlay of Rs.9000 Crores. Accordingly, the 7<sup>th</sup> respondent and Government of A.P. signed an MOU on 01.07.2005. By this, the 6<sup>th</sup> respondent is assured of a committed long-term purchaser for its bauxite. It would also be pertinent to mention here that the 6<sup>th</sup> respondent is essentially in the business of mining and any bauxite extracted by it would have to be sold to one party or the other.

By ensuring the establishment of a refinery and smelter within the State, it can be seen that the state would get an industrial investment of about Rs. 9000 crores apart from the consequential and attendant benefits of generation of employment for the locals and increased revenues for the state which can again be used for the benefit of the people. As per the MOD, the 7<sup>th</sup> respondent shall spend 0.5% of the revenue on social infrastructure like health, education, training and welfare of the tribals. The petitioners are seeking to twist the facts and make out, as if the 6<sup>th</sup> respondent is a small time organization, which is being used as a device to undertake activities which are prohibited.

6. Adverting to the averments made in paragraph No. 6 of the affidavit, filed in support of the writ petition, the said averments relate to the proposed mining activities of the 6<sup>th</sup> respondent. The petitioner is put to strict proof of the allegations made therein. However, the allegation that there would be large-scale disturbances of birds species and destruction of trees in the various areas is incorrect. The bauxite ore would be transported to the refinery by way of railway wagons and pipe conveyor or slurry pipeline. There is already an existing railway line and the bauxite ore would be transported on that existing railway line. Further, the petitioner is referring to the Jerrella mines which according to the petitioner is being given to Nalco. It is not clear as to how the details relating to the Jerrella mines are relevant for the present case. The Jerrella area mentioned by the petitioner is at a distance of 10 to 15 Kms from the Sapparla area. The allegation of the petitioner that there would be large-scale destruction of trees would not be correct. The forest department had conducted an enumeration of trees in the Araku area in 1998. This enumeration would clearly show that the loss of trees would be to the extent of Rs. 23 lakhs at 1998 value. The activity of the seventh respondent would not, in any manner affect the forest area, inasmuch as, the land identified for the project of the seventh respondent is situated outside the forest lands. There are no water bodies in the proposed mining area and the claim of the petitioner that water bodies would be affected is incorrect. The allegation by the petitioner that various birds and animals in the area would be affected is misplaced. In any event, this issue would be gone into by the concerned official agencies before appropriate environmental clearances are given.

7. Adverting to the averments made in paragraph No. 7 of the affidavit, filed in support of the writ petition, this respondent is not aware whether the tribal advisory council was consulted before issue of G.O.Ms.No. 264 dated 7.8.1991. However, it would be pertinent to mention that the Government of Andhra Pradesh had already issued G.O.Ms.No. 999 dated 25.10.1975 reserving the bauxite bearing areas in Visakhapatnam and East Godavari District in favour of public sector undertakings.

Further, the Honourable Supreme Court of India, in its judgement reported in AIR 1997 SC page 3297, in the case of Samatha Vs. State of A.P. had considered the issue of whether "person" as defined under Section 3(1) of the A.P. Scheduled Areas Land Transfer Regulation, would include both natural persons as well as juristic persons and had held that Government would also be a person within the meaning of the Act and prohibited the transfer of land by the government to any other person. However, the Honourable Supreme Court of India had, in paragraph 117 of the judgement, held that transfer of government land in favour of its instrumentalities, in the eye of law, is not a transfer but one of entrustment of its property for public purpose. In view of this proposition of law laid down by the Honourable Supreme Court of India, the notification issued by the government under G.O.Ms.No. 264 dated 7.8.1991 is only a notification making explicit what is already implicit in the law. However, in view of the judgement of the Honourable Supreme Court of India, in the aforesaid case, the Government of Andhra Pradesh would be well within its purview to transfer/entrust the land for mining purpose to the 6<sup>th</sup> respondent. The Honourable Supreme Court of India has, in its judgement, constructively approved the impugned G.O. and nothing survives in the present writ petition.

8. Adverting to the averments made in paragraph No. 8 of the affidavit, filed in support of the writ petition, 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.

9. Adverting to the averments made in paragraph No. 9 of the affidavit, filed in support of the writ petition, it is submitted that the said averments do not make out any case requiring the government to make any efforts as claimed by the petitioner.

10. Adverting to the averments made in paragraph No. 10 of the affidavit, filed in support of the writ petition, the allegations relate to the 6<sup>th</sup> respondent and the petitioner is put to strict proof of the same. The 7<sup>th</sup> respondent has always undertaken establishment of health delivery systems and educational institutions in and around the areas in which its units are located as a measure of corporate social responsibility. The establishment of the refinery and smelter by the 7<sup>th</sup> respondent in the state of A.P. and outside the schedule areas would result in a massive investment of Rs. 9000 crores directly on the refinery and smelter. Once the unit is running, the availability of aluminium in large quantities would result in the establishment of downstream units. All these would clearly result in generation of large-scale employment both direct and indirect and increased revenues for the state.

As submitted above, the 7<sup>th</sup> respondent unit would be set up outside the schedule areas and would in no manner affect any of the provisions of law which are being raised by the petitioner in the writ petition. The respondent herein has absolutely no role to play in the matter of mining nor does it propose to undertake the same in any eventuality. The agreement entered into by the 6<sup>th</sup> Respondent with the 7<sup>th</sup> Respondent does not provide for any such contingency. The 7<sup>th</sup> Respondent would only be buying the mineral excavated by 6<sup>th</sup> Respondent, for being utilized in the industry proposed to be set up by this respondent. However, in the eventuality of 6<sup>th</sup>

Respondent requisitioning any infrastructure, 7<sup>th</sup> Respondent would be willing to supply infrastructure for consideration., subject to its resources and availability. The industrial practice all over the world is to site the smelters and refineries as close to the bauxite ore as possible. The establishment of the Alumina refinery by the 7<sup>th</sup> respondent is on this basis alone.

In these circumstances, it is prayed that this Honourable court may be pleased to dismiss the writ petition with costs.

Solemnly affirmed and signed  
On this the day of March, 2006  
At Hyderabad before me:

#### VERIFICATION

I, I. P. Vachaspathi, S/o. Late Sri P.V.H. Rao, aged 50 years, r/o. Visakhapatnam, Andhra Pradesh, having temporarily come down to Hyderabad, do hereby declare that the facts stated above in paragraphs 1 to 6, 9 and 10 are true and correct to the best of my knowledge and the contents of the paragraphs No. 7 and 8 are believed to be true and correct based on the legal advice of our counsel. Hence, verified on this the Day of February, 2006 at Hyderabad.

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.1

I, K. Yadava Reddy S/o. K. Narsi Reddy aged 58 Years, working as Deputy Secretary to Government, Industries and Commerce Department, A.P. Secretariat, Hyderabad do hereby solemnly affirm and sincerely state as follows

1. I am the Deputy Secretary to Government, Industries and Commerce Department, A.P. Secretariat, Hyderabad and am well acquainted with the facts of the case and authorized to file this counter on behalf of the 1<sup>st</sup> Respondent herein.

2. At the outset it is respectfully submitted that the writ petition is not maintainable either on facts or in law. All the averments made in the Petitioners' affidavits 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 bona fides of the petitioners in filing the present writ petition and relief sought by the Petitioner is totally untenable. It is submitted that the Writ Petition is liable to be dismissed in limine.

a) It is respectfully submitted that the writ petitioners did not make out a case to declare that part of the proviso to sub-section 5 of Section 11 of the Act which is under challenge as unconstitutional.

(b) It is true that bauxite bearing area in EG and Visakhapatnam district except those already leased out are reserved for exploitation in the public sector vide Notification issued in GO Ms.No. 999, Ind. & Com. Dt. 25-10-1975.

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 the 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 tones. India occupies 5<sup>th</sup> 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 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 & Visakhapatnam Districts, except those already leased out, for exploitation in the Public Sector. All these areas are falling under reserve forests as well as notified tribal areas. Transfer of these areas to non-tribals is prohibited as per A.P. State Land Transfer Regulations, 1959. In a judgment reported in AIR 1997 SC 3297, the Hon'ble Supreme Court dealt in detail with V Schedule to the Constitution with specific reference to para-5 of Schedule V and also the effect of Land Transfer Regulations relating to Schedule Areas in the State of Andhra Pradesh. However, in the said Judgment, it is categorically mentioned that APMDC being an instrumentality of the State can undertake mining operations in the Scheduled 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&R)Act, 1957 for 3 Bauxite deposits in Araku group with an estimated reserve of 54.47 million tons 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. State Government has invited them to A. P. and they have evinced interest 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 and extraction of bauxite will be undertaken by APMDC for supplying the same to NALCO's proposed industry.

e) Meanwhile, the 7<sup>th</sup> respondent approached the State Government 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 this demand of NALCO and having satisfied that they have experience in various sectors and capability to set up such a unit, the State Government agreed to supply Bauxite for their proposed unit. Accordingly, the State Government and 7<sup>th</sup> respondent signed an MOD on 01/07/2005.

f) As per the Moll, the APMDC shall have the Mining leases and Mine the Bauxite and supply to the Industry of 7<sup>th</sup> respondent. It was decided that such supplies shall be made from the deposits in Araku group (Galikonda, Raktakonda & Chittamgondi) and Sapparla group consisting approximately of 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 7<sup>th</sup> respondent through 6<sup>th</sup> respondent. The MoU is only for supply of material for the Industry of 7<sup>th</sup> respondent and the 7<sup>th</sup> respondent is in no way connected with grant of Mining leases or the Mining activities. The excavated Ore will be supplied to the 7<sup>th</sup> respondent at the price fixed by a Committee formed by the State Government. The

7<sup>th</sup> Respondent shall establish Refinery and Smelter Units outside scheduled areas as per MoU.

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

h) The allegation of the petitioners that the decision of the Supreme Court of India in SAMATHA case is actively being circumvented disregarding the interests of the local tribals is absolutely incorrect and denied. This respondent as mentioned above is taking all steps to get maximum benefit to local tribals and has taken all steps for their economic empowerment. It is further submitted that there is no violation of dicta laid down by the Apex Court in SAMATA Case. This respondent is fully conscious of its Constitutional or statutory obligations and will comply with the same scrupulously.

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 reclaimed and the same would be made more suitable for plantation and the plantation would be taken up 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 except 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 are no endangered specie of flora on these hills.

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 Reserve Forest towards Compensatory Afforestation, enumeration charges towards tree growth in the applied and other required Reserve Forest area, Afforestation charges in the land proposed under Compensatory Afforestation and the Net Present Value (NPV) of the Reserve Forest 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 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 Chithamgondi 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 yard 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 machinery's 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 comprises 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) 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 Panchapatmali 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 over burden and Bauxite in the area. As the geographical structure, topography, mining deposit formation and mining activity are similar to Panchapatmali 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, ie. 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 rainwater 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 scrafs 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 plateau 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. Except for Chithamgondi mine site, at the other two mine sites the quantity of topsoil 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 topsoil 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 a separate dump 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 roadside 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 intensive 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 possible 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 only be 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 can 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 more indirectly. The 6<sup>th</sup> 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.NoGS, 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 dispatch.
- (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 liaising 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 1986 (with initial capacity of 2.3 million tons) and at present with a capacity of 4.8 million tons and planning further expansion to 6.3 million tons per annum by observing all the environmental, mining, wild life, ecology, etc., as per rules and regulations of the Acts of State & Central Governments as mentioned above. It is on the same lines, 6<sup>th</sup> 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-habitation 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) It is submitted that as re-habilitation of tribals on a high scale is involved, Mining Lease is therefore specifically decided to be given in the name of M/s. A. P. Mineral Development Corporation limited for tackling all the issues directly by the State Government. The excavated Ore needs to be sold and converted into Alumina / Aluminium by Refinery and Smelter without which the Ore does not result in value addition and employment.
- 10) 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. An investment of that magnitude would result in creation of employment and bringing properties to the area, the proposal of M/s. Jindal South West Holdings Limited has been agreed for establishment of refinery, smelter and captive power plant outside the tribal area without having any adverse influence on the tribal population, while at the same time help the tribals. Action of the state Government for entering into an MoU is purely an administrative decision to generate employment and prosperity in tribal area. It may also be mentioned here 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.
- 11) 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.
- 12) The allegation that the flora and fauna will be threatened by virtue of the mining which is only at conceptual stage is misconceived and apprehensive. It would not be out of place to mention that this respondent will take all necessary steps to rehabilitate the tribals and others and all statutory permissions before starting any mining operation. Every step requires to be taken to protect the environment, tribal culture and forests will be taken by the State with utmost caution and care. The apprehensions of the writ petitioners are unfounded and premature.
- 13) In reply to para 7 of the affidavit it is respectfully submitted that the Tribal Advisory Council at its meeting held 20.07.1995, after analyzing the views of all the political members and official members, concluded that mining leases should not be given to non-tribals or private agencies. It was observed that either Government or 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 Mines & Minerals (D&R) Act, 1957 is in tune with the decision of the Hon'ble Supreme Court in Samatha Judgement Dated 11.07.1997. Accordingly the amendment is valid and sustainable.
- 14) As mentioned in the paras supra the State Government made its intention very clear that the Mining lease will be held by 6<sup>th</sup> respondent alone and Mining will be done by the 6<sup>th</sup> respondent only. As per the MoU the Bauxite Ore will be supplied to 7<sup>th</sup> respondent at a consideration. As already mentioned 6<sup>th</sup> respondent shall be granted with Mining leases only after taking Forest and environmental clearances. The APMDC shall ensure Mining operations as per the guidelines prescribed by the respective departments.
- 15) The State Government 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 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 help their development.

16. It is submitted that the petitioner contends that the spirit of amendment is being defeated by the role played by the Governmental Corporations and for the said purpose it has given an example that the Government have issued G.O.Ms.No.222, dated 18.3.2000 permitting the 6th respondent to allow M/s. Orient Cements to carry on mining operations for their self-consumption for production of cement. The said contention is totally misconceived and is liable to be rejected. It is submitted that though the petitioner made allegation against M/s. Orient Cements in the context of the G.O. above referred, it was not made a party and accordingly the said allegation is liable to be rejected in limine for non-joinder of the necessary party. It is further submitted that M/s. Orient Cements was transferred to the 6<sup>th</sup> respondent on 15.3.2000. Thereupon the Government permitted the 6th respondent to allow M/s. Orient Cements to carry on mining operations for their self-consumption for production of cement on the basis of lease standing in the name of the 6<sup>th</sup> respondent vide G.O.Ms.No.222, dated 18.3.2000. However, the Government is contemplated to review G.O.Ms.No.222, dated 18.3.2000 so as to enable the 6th respondent alone to extract the mineral and supply the same to the purchasers.

17. In reply to para.8 it is submitted that Article 338 provides for constitution of National Commission for Scheduled Castes and Article 338-A provides for constitution of National Commission for scheduled tribes. A fair reading of these two Articles makes it clear that it is intended to protect the interests of S.Cs and S.Ts in the manner provided thereunder. However, none of these Articles stipulate consent from the National Commission for Scheduled Tribes before initiating any process for establishment of industries in Scheduled Area. As a matter of fact there is no industry set up by the 7<sup>th</sup> respondent in the scheduled area and the question of consent as alleged by the Petitioner does not arise. It is submitted that purpose of Articles 338 and 338A is not referable at all to the scheduled areas as the same is governed under V Schedule of the Constitution of India. It is however submitted that this respondent will consult the National Commission before granting lease/undertaking the mining activity.

18. A meeting was convened with the Legislators representing tribal areas by the Hon'ble Ministers for Mines & Geology, Commercial Taxes, Forests and Tribal Welfare on 19/12/2005 and explained the complete details of the proposed Bauxite Mining by the 6<sup>th</sup> respondent, the arrangement for supply of material 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 expressed by the members pertaining to this project were clarified.

19) 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 precessions before permitting mining activity by the 6<sup>th</sup> respondent in the tribal area.

20) In reply to para.9, the contention of the Petitioner that the Government have issued G.O.Ms.No.98, dated 13.10.99 issuing guidelines for constitution of Tribal Mining Cooperative Societies and G.O.Ms.No.24, dated 11.3.2002 for entrusting prospecting of semi precious stones and creation of small hydro power projects to such societies. It is further contended that similar steps in so far as mining of bauxite have not been taken. It is submitted that mining of bauxite involves huge financial investment, deployment of heavy machinery and also technical knows how. It is totally unwise and impracticable to burden

these societies with huge financial burden. The State Government is keen in taking steps to involve the Tribal Mining Cooperative Societies wherever it is feasible and viable.

21) It is incorrect to say that no effort was made in respect of Bauxite for sharing of the benefits 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.

22) In reply to Para 10 of the affidavit, it is respectfully submitted that The Mining lease applications are under process and a thorough study has to be taken 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. It is submitted that a proper rehabilitation package would be announced at the time of grant of lease in favour of the 6th respondent and also required care would be taken to protect the interests of scheduled tribes in scheduled areas. So far as the instances referred by the Petitioner in Para. 10, proper compensation has already been paid and all the instances are cited out of context without placing any material and making any of them as party-respondents against whom allegations are made. Accordingly the same are liable to be rejected.

23) The apprehensions of the Petitioners are unfounded and are blown out of proportion. The allegation that this Respondent should not be allowed to proceed with the proposed action without ensuring safeguards, is totally misconceived and presumptuous. 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.

24) 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 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 Indian Bureau of Mines, Government of India. Without getting approval of Mining Leases, no work can be commenced in these areas. It is only after grant of leases and execution of lease deeds, the APMDC can conduct the Mining Operations strictly adhering to the rules & regulations and follow the conditions as stipulated by the Government. APMDC, a State Government undertaking is the rightful authority to carry out mining operations in Schedule areas as per the Judgment of Supreme Court order in SAMATA. The MoU between 1st and 7<sup>th</sup> respondents will commence only after the grant of Mining Leases to APMDC and after extraction of the mineral by the 6<sup>th</sup> respondent. The supplies of mineral would commence thereafter. Unless industrialization takes place, there is no scope to solve the large-scale unemployment and unrest in the youth in India is. Industrialization is required and essential, however subject to protection of environment and reducing the impact of industrialization.

25) The allegation that this Respondent is going ahead with the activities affecting the interests of the tribals is absolutely false. The MOU is only a preliminary step and lease application of the 6<sup>th</sup> respondent is yet to be processed. The same will be considered and granted only after obtaining all statutory clearances as already stated. The 6<sup>th</sup> Respondent would start mining activities only after getting all statutory permissions. The prayer for granting Interim Stay of further proceedings is premature and untenable.

26) 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 6th 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 « and proper in the circumstances of the Case.

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH**

**AT HYDERABAD**

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF FEBRUARY TWO THOUSAND AND SIX

**PRESENT**

**THE HON'BLE SRI O.S. SINGHVI, THE CHIEF JUSTICE**

**And**

**THE HON'BLE SRI JUSTICE G.BHAVANI PRASAD**

**WRIT PETITION NO; 26984 of 2006**

Between:

"Sakti" a voluntary Social Organisation, for the upliftment of Tribes People, (Regd.No. 76/85) Ramapachodavarm, East Godavari District, Represented by its Director, Dr. P. Sivaramkrishna

.....PETITIONER

AND

1 Government of Andhra Pradesh, Rep by its Principal Secretary to Government, Home (Courts-A) Department, Secretariat, Hyderabad.

2 Secretary Government of Andhra Pradesh, Law, Legislative Affairs & Justice Home (Courts-C) Department, Secretariat, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate Writ, Order or Direction, more particularly, onejn the nature of Writ of Mandamus declaring the G.O. Ms. No. 41, Law (LA&J), Home (Courts B) Department, dated 25-3-2004 and Go Ms.No. 33 Law (LA&J, Home (Courts B) Department dated 11-3-2004 as illegal and void and contrary to the provisions of the Constitution of India and consequently declare that the provisions of Code of Criminal Procedure 1897 are applicable to the tribal areas in the State of Andhra Pradesh as per GO Ms.No. 485, Home (Courts-B) Department dated 29th March, 1974

Counsel for the Petitioner: SRI ARAMALINGESWARA RAO

Counsel for the Respondents.: HOME

The Advocate General & GP FOR

The Court made the following: Order:

Per G.S. SINGHVI, CJ

This is a petition for quashing G.O.Ms.No.33, Law (LA&J Home Courts-B) Department dated 11-03-2004 and G.O.Ms.No.41, Law (LA&J, Home Courts.B) Department, dated 25-03-2004 issued by the Government of Andhra Pradesh and for grant of a declaration that the provisions of the Code of Criminal Procedure, 1898 are applicable to the tribal areas of the State as per G.O.Ms.No.485, Home (Courts-B) Department, dated 29-3-1974.

A perusal of the record shows that vide G.O.Ms.No.33, dated 11-3-2004 read with G.O.Ms.No.41 dated 25-3-2004, the Code of Criminal Procedure, 1973 has been made applicable to the entire State of Andhra Pradesh, including the tribal areas.

A copy of G.O.Ms.No.41 dated 25-3-2004 was produced before the Supreme Court in Writ Petition (Civil) No.324 of 2003 A. Sadguru Prasad Vs. State of A.P. and others. After taking cognizance of the same, the Supreme Court disposed of the writ petition on 02-04-2004 in the following terms:

"Learned Attorney General has filed a notification dated 25th March, 2004 published in the Gazette of the Government of Andhra Pradesh. The same is taken on record.

By this notification, in exercise of powers conferred by sub-paragraph (1) of paragraph 5 of the Fifth Schedule to the Constitution of India and subsection (2) of Section 1 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the Governor of Andhra Pradesh has directed that the entire Code of Criminal Procedure, 1973 as amended shall apply to all the tribal areas in the State retrospectively from 11th March, 2004, The G.O.Ms.No.33, Law (LA&J.Home (Courts.B) Department, dated 11th March, 2004, which was published in Part I

Extraordinary issue of the Andhra Pradesh Gazette dated 11th March, 2004 has

been amended as follows:

### **AMENDMENT**

"In the said Government Order, in the Notification for the expression "the provisions of Section 167(2)(a), Section 374(2) and (3), "< Sections 428, 438 and 468 of the Code of Criminal Procedure, 1973" the expression "the Code of Criminal Procedure, 1973" shall stand substituted."

In view of the above amendment, we hereby 'direct that the State Government shall take consequential steps for its enforcement.

This writ petition stands disposed of in the aforesaid terms.

This order shall be communicated to the Registrar of Andhra Pradesh High Court who shall circulate it to all the subordinate courts in the State for necessary action and also its wide publicity through the media."

Since the relief sought for by the petitioner would indirectly impinge on the order passed by the Supreme Court, this Court cannot entertain the writ petition and grant relief in terms of the prayer made by the petitioner.

With the above observations, the writ petition is dismissed.

Sd/-M. SIVANARAYANA  
ASSISTANT REGISTRAR  
//TRUE COPY//

SECTION OFFICER

To

1. The Principal Secretary to Government, Government of Andhra Pradesh , Home (Court-A) Department, Secretariat, Hyderabad.
2. The Secretary Government of Andhra Pradesh, Law, Legislative Affairs.\* Justice Home (Courts-C) Departments, Secretariat, Hyderabad.
3. Two CC's to The Advocate General, High Court Buildings, Hyderabad.
4. Two CC's to Government Pleader for Home, High Court Buildings, Hyderabad. (OUT).
5. Two C.D.Copies.
6. One CC to Sir A. Ramalingeswara Rao, Advocate, (OPUC)

### **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 tones. 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 7<sup>th</sup> 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 7<sup>th</sup> 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 7<sup>th</sup> respondent for manufacturing Alliminium. was decided that such supplies shall be made from the deposits in Araku group (Galikonda, Raktakonda 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 7<sup>th</sup> respondent through 6<sup>th</sup> respondent. The MoU is only for supply of material for the Industry of 7<sup>th</sup> respondent and the 7<sup>th</sup> respondent is in no way connected with grant of Mining leases or the Mining activation. The excavation will be done by the 6<sup>th</sup> respondent and excavated Ore will be supplied to the 7<sup>th</sup> respondent at the price to be fixed by a Committee formed by the State Government as per condition III of I the MOU. The 7<sup>th</sup> Respondent shall establish units of Refinery and Smelter outside scheduled areas as per MoU.

g) As per the MoU the 7<sup>th</sup> respondent shall train local tribals for making use of them in Industry and a minimum of 0.5 percent of the revenue of the 7<sup>th</sup> 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 7<sup>th</sup> 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 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 Chithamgondi 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 Panchapatmali 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 over burden and Bauxite in the area. As the geographical structure, topography, mining deposit formation and mining activity are similar to Panchapatmali 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, ie. 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 6<sup>th</sup> 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 planed 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 liaising 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, 6<sup>th</sup> 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 be 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 6<sup>th</sup> respondent and Mining will be done by the 6<sup>th</sup> respondent only. As per the MoU the Bauxite Ore will be supplied to 7<sup>th</sup> respondent at a consideration. As already mentioned 6<sup>th</sup> 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, Dharamapet, 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 problems 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 7<sup>th</sup> 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 6<sup>th</sup> respondent, the arrangement for supply of mineral to the 7<sup>th</sup> 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 6<sup>th</sup> 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 6<sup>th</sup> 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 6<sup>th</sup> 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 7<sup>th</sup> respondent wherein the excavated mineral is to be purchased by 7<sup>th</sup> 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 7<sup>th</sup> 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 7<sup>th</sup> 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