

IN THE HIGH COURT OF JHARKHAND RANCHI

W. P. (P I L) No. 5871 /2012

Saryu Roy, Convenor, Save Saranda CampaignPetitioner

Versus

State of Jharkhand & Ors.Respondents

REJOINDER ON BEHALF OF THE PETITIONER

SARYU ROY IN RESPONSE TO COUNTER AFFIDAVIT

ON BEHALF OF RESPONDENT No. 9, THE PRINCIPAL

CHIEF CONSERVATOR OF FORESTS, GOVT. OF

JHARKHAND DATED 31.01.2013.

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I, Saryu Roy, S/o Late K. P. Roy, resident of 402-A, Lotus
Appartment, P.O. & P.S.-Doranda, Distt.-Ranchi, Jharkhand, do
hereby solemnly affirm and state as follows :-

1. That I am petitioner in W. P. (P I L) No. 5871/2012 and I am fully acquainted with the fact and circumstances of the instant case.

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2. That I have I have myself gone through the contents of the affidavit filed on behalf of the respondent no. 9, the Principal Chief Conservator of Forests, Govt. of Jharkhand and I have fully understood the same.
3. That the Petitioner craves leave of this Hon'ble Court to be allowed to file rejoinder giving detailed parawise reply to the instant affidavit if so required and/or if so directed by the Hon'ble Court.
4. That it is stated and submitted that contentions and avertments raised on behalf of the respondent in the affidavit are hereby denied and disputed save and except those which have specifically been admitted by the answering deponent in the present affidavit.
5. That in para 6 of the instant affidavit guiding principles available with the state for management of Natural

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Resources Development and Environment such as National Forest policy, National Industrial Policy, National Mineral/ steel Policy which reflect Government's vision in this connection find mention but irony of the fact is that these Policies, Acts, rules, regulations etc. are hardly considered and implemented at the time of grant of mineral concession.

The National steel policy-2008 envisages production of 100 Million Ton (MT) steel in the country which on date has been enhanced to 120 MT by a circular of the union Govt. which will require 192 MT iron ore annually. Presently production of steel in the country is near 53 MT per annum which requires about 84.80 MT iron ore whereas annual production of iron ore in the country is about 212 MT per annum against overall consumption of 126 MT iron ore annually. To meet the target of National Steel policy-2008 our country will need about 192 MT iron ore per annum

which is less than the annual iron ore production at present in India.

Even the National Mineral Policy-2008 in its para 7.10- Mineral Development and Protection of Environment- says that “ It is necessary to take a comprehensive view to facilitate the choice or order of land use keeping in view the needs of development as well as needs of protecting forests, environment and ecology. Both aspects have to be properly coordinated to facilitate and ensure a sustainable development of mineral resources in harmony with environment.” Had an integrated and comprehensive view of National steel policy-2008 and mineral policy- 2008 along with other policies been taken at the time of granting mineral concessions unnecessarily oblique attempts to enhance production and bring more and more forest areas in the

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ambit of mining at the cost of environment could have been avoided.

Photocopy of the relevant portion of National Steel policy-2008 and National Mineral Policy- 2008 along with the figures of iron ore production and consumption is annexed herewith as annexures 1,1A and 1B respectively.

6. That provisions and guidelines of Indian Forest Act 1927, Forest Conservation Act 1980, Environment Protection Act 1986, MMRD act 1957, Mineral Conservation (Development & Regulation) 1988, Bio-diversity Act 2002 are not taken into consideration comprehensively at the time of grant of Mineral Concession and/or mining of iron ore and

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Manganese in the Protected and Reserve Forests of Saranda. The petitioner addressed a letter to the Prime Minister of India on May 17, 2008 highlighting gross violations and irregularities at the time of granting mineral concession. He also compiled a brief details of such violations of related enactments at the time of grant of mineral concession as a separate chapter (page 276 to 283) in his book titled "Madhu Koda Loot Raj" which throw sufficient light on this aspect.

Photo copy of the letter of petitioner addressed to the Prime Minister of India and the photocopy of the relevant pages (276 to 283) from the book petitioner's Madhu Koda Loot Raj are annexed herewith and

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marked as annexures 2 and 2A
respectively.

7. That in para-7 of the affidavit the respondent rightly admits that till now out of total area of 85,654 hectares of Saranda forests 6,974 hectare forest land is under mining leases of SAIL, a PSU and 2531 hectare land are leased out to 15 private companies. Out of it so far only 1980 hectare forest land has been diverted for mining operations. The moot point is that if devastation looming large over Environment and Ecology of Saranda is so deplorable due to iron ore mining in such a small broken area out of a large chunk of leased land then what will happen when all the remaining leased land area will be allowed to be broken rapidly.

Moreover when all the pending lease applications will be granted in favour of the aspiring companies and the

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companies will be allowed to break significant portion of their respective lease areas without taking in to consideration its adverse impact then very existence of Saranda forests will be under obvious threat of destruction. If such rat race of trading and mining is allowed to continue the famous Saranda will one day vanish from the forest map of the world. The core issue of protection, conservation and augmentation of a pride forest like Saranda hence becomes more relevant in this context as it also forms core zone of Singhbhum Elephant Reserve with plenty of Biological diversity, rich flora and fauna and unmatched profusely regenerating speciality of Sal trees.

8. That It is submitted that respondent is the most competent and technically expert officer of the Govt. at state level and is fully empowered to guide, regulate and supervise the

implementation of provisions of relevant Acts, rules, regulations etc. enacted to protect, conserve and augment the Natural Resources, Environment and Ecology. It is distressing that in the instant affidavit he is advocating the case of iron ore mining companies at the cost of Ecology and Environment. It is strange that the respondent is of the opinion that mining is bound to have adverse impact on the forest cover of Saranda because iron ore and manganese ore resources are trapped beneath forest cover of Saranda. It would be relevant to quote here from the judgement of Supreme Court of India in M C Mehta vs Union of India (2004)12 scc 118. In para 48 of this judgement it is held that “ if any activity is allowed to go ahead, there may be irreparable damage to economic interest. In case of any doubt however protection of Environment would take precedence over economic interest. the Govt. agencies are

supposed to be duty bound to appreciate and keep it always in their mind.

9. That it is stated that the statement made in para 8 of the affidavit just illustrates the provisions of the relevant Acts, Rules and procedures to be followed in case of diversion of forest land for non forest uses such as mining. Both the Specific and General conditions of Environmental Clearances are being grossly violated by mining companies in collusion with the officials of Forest and Mining Departments of state and central Govt. There is no or very poor compliances of Forest clearance (FC) and Environment Clearance (EC) conditions and complete failure of monitoring mechanism. How serious the companies are to comply EC and FC conditions like management of overburden, upkeep of top soil and devastation of vegetation

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around boundary of leased area becomes evident by the photographs taken at mining site of a few companies.

Photographs of littering over burden, uncared top soils and completely cleared vegetation around a iron ore mines boundary are annexed and marked annexures-3.

An important conditions of EC is that first order water streams in mining areas will be kept intact and ground water status will be monitored by installing new peizometers. In para-6 of the compliance reports of M/s Devkabhai velji it is written that “ no natural water course and/or water resources are being/ shall be obstructed due to mining operation. Further in para-13 it is said that “ no perennial nala or spring Existed

in and around the lease area.” Exactly same is the discription in compliance report of M/s Misri Lal Jain & Sons. it is simply mentioned that no Nala or surface stream existed in the mining area and mining has not reached up to ground water level. Though from mere perusal of the Topo-Sheet no. 73 (F3, F4, F7, F8) of Survey of India, which relates to Saranda region, it is quite evident that large number of first and second order water streams are spread over in the mining area of both these companies besides every where in Saranda region. More over in para- XXIV and XXVI of compliance report of ML Jain and sons sentences such as “ Digital processing of the entire lease area using remt sensing technique shall be carried out as advised and all precautionary measures for conservation and protection of endangered fauna and flora shall be taken as advised by the forest department.”

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Compliance report of M/s
Devkabhai velji, M/S Misri Lal Jain
& Sons and photographs of Topo
sheet no. 73 (F3, F4, F7, F8) are
annexed herewith and marked
as annexures 4, 4A and 4B
respectively.

10. That the Saranda region has been categorised as severely polluted zone by the Central Pollution Control Board. Due to pollution from vehicles plying in large numbers Leaves of trees adjacent to roads connecting mining area have become heavily coloured. But cumulative impact of mining and economic activities including vehicular traffic is not assessed. Neither mitigative steps are taken though it is a mandatory requirement as per the EIA Notification 2006 of

the Ministry of Environment & Forests. The hazards of vehicular pollution may be imagined by the number of heavy vehicles plying per day in the area. The figure mentioned in the EIA document of M/S Electrosteel Casting is an eye opener. It claims that over 6700 heavy and 100 light vehicles will ply in course of its mining operations. Equal or more amount of iron ore transportation is presently operational but in compliance and/ or monitoring reports it is not a cause of concern. If unbridled economic activities kept on going as usual and mining leases are granted in present speed the Saranda region will soon be converted in critically polluted Zone to the detriment of Environment, Ecology, wildlife, Biodiversity and of course to the Human being.

The photocopy of relevant pages of
the EIA document of Electro steel

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casting is annexed herewith and
marked as Annexure-5.

11. That it is stated that statement of the respondent in para-10 of the affidavit is based on misconception and is an attempt to camouflage the misdeeds of the system. In fact state of Jharkhand produce more iron ore than consumption annually. In Lok Sabha on 16th December, 2011 Govt. of India in a written reply to an unstarred question gave figures of production and consumption of iron ore in the years 2008-09, 2009-10 and 2010-11 in different states of India. According to it 21.329 million ton (MT) iron ore was produced and 13.912 MT iron ore was consumed in the year 2008-09 in Jharkhand. In the year 2009-10 a quantity of 22.547 MT iron ore was produced and 14.286 MT iron ore was consumed in the state. Similarly in the year 2010-11 iron ore production and consumption in Jharkhand was 23.174

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MT and 11.602 MT respectively. It means each year production of iron ore is much more than domestic consumption within the state. The vast gap of this precious metal ore each year thus goes to trading sector for export rather than value addition activities within the state. Same is the story at the national level also as revealed in the parliament against this question. The news bulletin of FIMI (Federation of Indian Mineral Industries) dated 15 march 2013 carries a report about iron ore import to China from 2008 to 2012. According to this report India exported huge amount of iron ore to china in these years.

The photocopy of unstarred question no. 3800 and its reply on 16.12.2011 is annexed herewith and marked as annexure-6 and

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the photocopy of iron ore import figures to China from India and other countries is annexed and marked as annexure-6A.

12. That it is stated and submitted that there are two major consumers of iron ore in Jharkhand. One the Bokaro Steel Ltd. in public sector with annually 4 million ton steel production capacity and the other is the Tata Steel Ltd. in private sector with 10 Million ton projected annual steel making capacity. Besides Usha Martin Ltd. with 1 MT per Annum production capacity and some smaller producers of pig iron and sponge iron industries also need iron ore. Taken together about 15 MT maximum steel is produced in Jharkhand and it's maximum iron ore consumption comes to nearly 15×1.60 MT i.e 24 MTPA iron ore will be sufficient for their full capacity production. Extrapolated for next 50

years requirement of these steel plants 24 x 50 i.e. about 1200 MTPA iron ore will serve the purpose of development need of jharkhand for next 50 years.

It would not be out of context to mention here that iron ore lease hold area with the Steel Authority of India in chiria area of West Singhbhum in jharkhan alone has deposit of about 3000 MT.

Then what is the need of such mad race to get iron ore mining leases in Jharkhand for next 100 years to come.

Even the requirement of iron ore production to achieve the need of 120 MT steel production target by Govt. of India for next 50 years expansion plan too does not exceed this limit.

Thus Production of iron ore at present is sufficient to cater the need of future development of steel sector in india but of course it may not be enough to fulfil the greed of the

vested interests in the system. The stand of the respondent in the name of development in the instant affidavit In this light seems to resemble with the saying that what will happen when “the fence starts eating the field.”

13. That it is stated that para- 11 of the affidavit exhibits and accepts much of the contentions of the petition but it conceals the vital one. It elaborates the steps taken by the Govt. to phase out the mining and other economic activities from the Saranda area but conceals the information that in the proposal submitted by the PCCF to the Govt. pretty long time of 20 years was given to those lease holders who do not have their own production industries to completely stop mining by that time. In the instant affidavit a submission has been made by the respondent PCCF, Jharkhand Govt., that each matter of diversion of forest land in Saranda and adjoining forest divisions be forwarded to Ministry of

Environment and Forests, Govt. of India for taking decision.

He has further revealed that a proposal was submitted to the state Govt. for notifying in state gazette the identified inviolate compartments. Though the consent was given from the minister level but at higher level it was decided to seek reports from other states regarding practices there in this regard and final decision will be taken only after reports from other states are received with the jharkhand Govt. It is strange that the affidavit again conceals the fact that Saranda is an unique forest area with altogether distinct nature and has no resemblance with other forest areas in different states where iron ore mining is in practice. The Environment, Ecology, Wildlife dispersal, Biodiversity etc. of Saranda area is much much different compared to the management of Natural Resources and Mining practices in other parts of

the country and hence asking reports from other states in this regard is an exercise in futility. Already more than two and half years time has been elapsed in this exercise. It seems to be an attempt to buy maximum time to help keep the unhealthy mining practices in Jharkhand going on as usual. It is a sort of mockery that the expert who is supposed to lawfully guide the Govt. in such matters seems to be arguing in favour of those forces who least care for conservation of Natural Resources and are guided by sheer profit making motive at the cost of nature and Humanity.

14. That contention in para- 12 of the affidavit need no comment.
15. That it is stated that in para-13 of the affidavit the respondent accepts that a few iron ore leases are granted in the areas proposed to be declared as Virgin areas and these new proposals are under different stages of consideration. It

means that very soon the areas of Saranda other than in northern and eastern area would be broken under mining leases. It will bring new virgin areas of Saranda .

16. That the contention of the respondent in para- 14 of the affidavit is not true because grant of mining lease/ prospecting licenses are subject to approval of the appropriate Clearances from the department of Forest and Environment of the state Govt. Even the environmental clearance too is subject to forest clearances.
17. That views expressed in para-15 of the affidavit is an attempt to dilute the gravity of the situation created by unscrupulous, illegal mining and transportation. The respondent has just cited a few provisions of related enactments and role of concerned institutions created to safeguard the Natural resources and checkmate the unholy

practices under influence of greed. In fact such legal measures are under threat in Saranda and rules are deliberately bent by those who has been assigned responsibility to protect the law of the land under oath. For example several roads such as hatgamharia to Baraiburu, Manoharpur to Gua, Chaibasa to Chakradharpur and others have been widened and strengthened by taking additional forest land but required clearances have been obtained from the competent authorities for diversion of forest lands. Moreover hindrances in the movement of wild life too has not been taken into consideration in road making though the area forms core zone of Singhbhum Elephant corridor. The photographs of a road portion taken before and after its widening tells the truth.

Copies of the Photographs of
portion of a road taken before and

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after widening is annexed and
marked as annexure-7.

18. That para- 16 of the affidavit is same as its para-11 and hence no further comment is required.
19. That it is stated that department of Mines and Geology may kindly be directed to file reply with regard to the para-17,18 & 20 of the instant affidavit
20. That it is stated and submitted that contention of the respondent in para-18 of the affidavit is an attempt to evade its responsibilities. The Govt. of India also may be asked to file a report in this regard.
21. That it is stated that in para-19 of the affidavit mention of an expert committee to prepare plan to mitigate the threats on Environment, Wildlife, Flora & Fauna etc. is made but no

detail of the constitution of the committee and its mandate has been provided.

22. That it is stated and submitted that with regard to the statement made in para-21 of the affidavit the Ministry of Environment & Forests, Govt. of India be directed to file an appropriate reply.

23. That it is stated and submitted that assertions of the respondent from para-22 to para-27 of the affidavit is evasive and repetitive. Answer of the moot question that whether the state Govt. is keen to implement the direction of the centre to phase out the economic activities from dense and reserve forests or not and similarly the provisions of related laws will be expected or not by the state Govt is found nowhere.

24. That it is stated and submitted that when the then Minister of environment and forests Mr. Jairam Ramesh renewed the lease of Chiria mines in favour of SAIL it was declared in writing on 09.02.2011 that " Given the ecological sensitivity of Saranda forest area, the ministry will assume direct responsibility and set up a multidisciplinary expert group (that would include not only ecologists but also anthropologists) to be responsible for the monitoring. After laps of more than two years time such committee has not been constituted. The Govt of India has recently written to the Vice Chancellor, Kolhan University and Director XISS, Ranchi to send a panel of anthropologists for constitution of the multidisciplinary committee but of no avail.

Photocopies of the request letters sent to the vice chancellor of Kolhan University, Chaibasa and Director,

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XISS, Ranchi are annexed and marked as annexures 8 and 8A respectively.

25. That it is submitted that ignoring the threat on Saranda the Govt. of India has given Mining leases in favour of M/S JSW and okayed its proposal of diversion of 998.70 hectare forest land in Ankua reserve forest of Saranda forest division last month. Besides one more mining lease was granted in favour of M/S JSPL last month in which diversion of 512.43 hectare of forest land in Ghatkuri area of Saranda forest division is involved. The following points may be worth consideration in this connection :-

- a) Mining sites of both the projects are rich in flora and faunal diversity with tree density 0.7 – 0.8. Apart from elephants, several other wild animals which are

listed in Schedule-I of the Wildlife (Protection) Act, 1972 occupy the area.

- b) Both the proposed mining leases are well within 10 km aerial distance of the Ankua-Ambia elephant corridor.
- c) Proposed lease area of M/s M/s Jindal Steel & Power Ltd. is situated on the northern tip of Ghatkuri RF which is now only direct remaining connectivity with RF/PF area of Kolhan forest division. Allowing proposed mining activity will adversely affect the movement of elephant further and also damage the Karo and Koina river system which flows on eastern and western side of the proposed lease. Diversion of this last connectivity will increase man-elephant conflict in the villages like Roam, Peccha, Salai etc.

situated in the vicinity and in other areas of the landscape due to long range disoriented migration of elephants from their natural home.

- d) Proposed lease of M/s JSW Steel Limited in Ankua reserve forest is adjacent to Chirya mining complex of M/s SAIL. The proposed area is in-between two mining lease complex of SAIL and having excellent valley forest which is heavily used by elephant. The Conservator of Forests in his site inspection reported that this patch of forest is regularly being used by elephant herds. Diversion of this forest patch will directly increase human-elephant conflict in the surrounding villages such as Ponga, Tetrighat, Ankua, Kodlibad etc. and further aggravate the long range disoriented migration of elephant from their natural

habitat. Breaking of any new forest land in this block will further damage the ecology and hydrology of river Koina and its catchment too which is already under severe threat due to high silt load. Effect of mine discharge on the riverine habitat use pattern of elephants *Elephas maximus* and other mammals in Singhbhum forests.

- e) The PCCF, Jharkhand while recommending both the proposal also showed his concern about allowing any new mining in the Saranda and therefore left the decision on Government of India on permission to divert forest.
- f) CCF (Central), Jharkhand in his report also showed his concern about further fragmentation of Saranda forest and recommended to "conduct interstate study

of the said region (Jharkhand, West Bengal, Orissa and Chattisgarh) instead of impact study of any individual mine or group of mines to assess the impact of the upcoming non-forestry activities in the region general and Saranda forest in particular."

- g) Minutes of FAC meeting held on 15th May 2012 mentioned that the PCCF, Jharkhand is in favour of intensive mining instead of extensive mining in Saranda. The FAC also recommended that state must finalize the comprehensive wildlife management plan and submit to MOEF for considering any new mining proposal. The FAC also made recommendation to identify inviolate areas in Saranda and its depiction on map within two months in view of 40 more mining proposals which are

pending with the state government. If the entire existing mining proposals get clearance over the period then about 500 sq km of Saranda Forest Division will be under the mining areas (Total area of division is 818 sq. km). State government were also asked to furnish details of unbroken area from amongst the existing leased out area and furnish a long term plan for the phased utilization of those areas. Unfortunately state has yet not comply any of above recommendations of FAC,

- h) The then Hon'ble Minister of Environment & Forests, Govt. of India Jairam Ramesh approved the Chiriyā lease to SAIL by overruling the decision of previous FAC in national interest to protect Maharatna PSU. While giving clearance to SAIL Hon'ble Minister made

a public declaration on 9th February 2011 in which he promised that “Given the ecological sensitivity of the Saranda forest area, MOEF will assume direct responsibility and set up a multi disciplinary expert group to be responsible for monitoring. The monitoring, evaluation and compliance report will be made available in public domain once a quarter. The monitoring committee will pay special attention to the concerns relating to the impact of mining on elephant habitats and migratory routes”. This is very unfortunate that till now no committee has been constituted by MOEF who could really monitor the situation in field on regular basis to protect this excellent forest which is also home of several endangered wildlife, tribal population including primitive tribe (Birhor).

- i) Mining, crushing and transportation of ore has already deteriorated the environment of the region therefore, the CPCB has already declared West Singhbhum region as severely polluted area (CEPI index = 67.30). Citizen right to clean and pollution free environment has been regarded as part of article 21 of the constitution (Subhash Kumar vs State of Bihar (1991) 1 SCC 598. Therefore, Opening of any new or expansion of any existing mining activity in the region will increase the load of pollutant in environment which could increase the CEPI index up to 70 or more to make this area as critically polluted area.

- j) Movement of elephant on eastern side in South Chaibasa forest division is completely stopped due

to opening of large number of iron ore mines on the eastern ridges (Ghatkuri Block) of Saranda in last 10-12 years. MOEF conditions to fence the mining lease areas have further worsen the movement of any ground dwelling wild animals. This has resulted into long range disoriented migration of elephant to various districts (Ranchi, Saraikela, Jamtara, Dhanbad, Dumka etc) of Jharkahnd and up to Chattisgarh thus leading to heavy casualty of human life and property.

- k) Allowing any fresh/expansion of new mining operation in Saranda will bring irreparable damage to elephant conservation and excellent sal regeneration capacity of this forest for which Saranda is well known in the world. Even Hon'ble Supreme Court of India in M.C.

Mehta vs Union of India (2004) 12 SCC 118 held, that if any activity is allowed to go ahead, there may be irreparable damage to environment and if activity is stopped there may be irreparable damage to economic interest. In case of doubt, however protection of environment would take precedence over economic interest (para 48 of judgement).

26. That this affidavit is being filed bonafide and in the interest of Justice.
27. That I have gone through the contents of this affidavit and have fully understood the same.
28. That the statements made in paragraphs.....
.....are true to my knowledge and those made
in paragraphsare
true to my informations derived from the relevant records

of this case and the rest are by way of my humble submissions before this Hon'ble Court.

24. That annexures are photocopy of their respective originals.

Verified, signed and sworn this affidavit at the premises of the Hon'ble Jharkhand High Court on the 1st day of April 2013.