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To:

Shri Naveen Patnaik,

Chief Minister,

Government of Odisha,

Secretariat, Bhubaneswar,

Odisha.

Subject:      Grant and Renewal of Mining Leases in the State of Odisha

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

Dear Shri Patnaik,

I am addressing this letter on behalf of Common Cause, petitioner in Writ Petition (Civil) No.114/2014, and in the context of the implementation of the interim directions given by the Supreme Court of India in its order dated 16.05.2014 in the said petition.

As you are aware, the said petition was filed against the backdrop of rampant illegal mining in the State of Odisha as highlighted in the reports of the Court-appointed Central Empowered Committee and the Justice J. B. Shah Commission of Inquiry. It has been established that the reckless extraction of the precious and finite national resource constituted by the State’s mineral wealth was resulting in windfall gains to a privileged group of entities without commensurate benefits to the exchequer.

It is a matter of satisfaction that in its depositions before the Shah Commission, the Government of Odisha had pressed for systemic reforms in the regulatory framework for the exploitation of the mineral wealth. One of the key reforms suggested by the state government was that competitive bidding should be the general methodology for the grant of finite natural resources, since it was a transparent mechanism that will not only result in the selection of meritorious applicants, but will also ensure maximum gains to the state and the community. The Senior Counsel appearing on behalf of the State government had drawn the attention of the Commission to the letters addressed by you in this regard to Shri Pranab Mukherjee, the then Minister for Finance and Chairman of the Group of Ministers on New MMDR Bill on 06.01.2011 and to Shri Dinsha Patel, the then Minister of State for Mines (Independent Charge) on 23.02.2011. The unequivocal stand of the State government for the adoption of competitive bidding was fully endorsed by the Shah Commission.

Your  suggestion for adoption of the system of competitive bidding for alienating finite natural resources is in conformity with the Constitutional and legal principles expounded by the Supreme Court. Recent judgments of the Apex Court leave no room for doubt that the only Constitutional method of allocation of mining leases of iron ore and other scarce and valuable natural resources would be by competitive auction/bidding.

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

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

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

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

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

The Supreme Court has further held:

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

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

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

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

The adoption of competitive bidding does not call for any amendment in the Mines and Minerals (Development and Regulation) Act, 1957. In the context of allocation of coal blocks for captive mining, the Law Ministry had categorically opined that the system of auctions can be introduced by way of administrative instructions without amending the said Act.

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

I may add here that the adoption of competitive bidding for the attribution of natural resources to commercial entities is poised to become the norm. The Government of Karnataka is preparing to auction 51 C-category iron ore mines to end users. This action is being taken pursuant to the directions given by the Supreme Court in the Samaj Parivartan Samudaya Case to re-allot the cancelled mining leases through a transparent mechanism.

In view of the foregoing, I would urge that no mining lease in the State of Odisha may be granted or renewed in future through a process that does not guarantee maximum revenue to the State.

I shall be grateful for a line in confirmation.

With best regards,

Yours faithfully,

Kamal Kant Jaswal

Director

CC:

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| Shri Jugal Kishore Mohapatra, IASChief Secretary and Chief Development Commissioner, Odisha    Shri Aditya Prasad Padhi, IAS  Additional Chief Secretary to Chief Minister,Odisha |