REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

IA NO. OF 2012

IN

WRIT PETITION (CIVIL) NO. 562 OF 2009

Samaj Parivartan Samudaya & Ors. ... Petitioners

Versus

State of Karnataka & Ors. ... Respondents

O R D E R

Swatanter Kumar, J.

1. By this order we will deal with and dispose of, the recommendations made by the Central Empowered Committee (for short, 'CEC') in its report dated 20th April, 2012. Since we have heard the affected parties, the petitioners and the learned *Amicus Curiae*, we shall summarize the contentions of the

learned counsel for the respective parties. The learned counsel appearing for the affected parties contended:

a. CEC has submitted its report without providing them an opportunity of being heard.

b. CEC has exceeded its jurisdiction and enlarged the scope of the enquiry beyond the reference made by the Court. Thus, the Court should not accept any of the recommendations made by the CEC.

c. In relation to the alleged irregularities and illegalities pointed out in the report of the CEC, even where criminality is involved or criminal offences are suspected, the matters are *sub judice* before the Court of competent jurisdiction. Thus, this Court should not pass any orders for transferring the investigation of such offences to the Central Bureau of Investigation (for short 'CBI') as it would seriously prejudice their interests.

2. In order to deal with these contentions, it is necessary for this Court to briefly refer to the background of these cases, which has resulted in the filing of the unnumbered IA in Writ Petition No. 562/2009 and the peculiar facts and circumstances in which the CEC has made its recommendations.

3. Concerned with the rampant pilferage and illegal extraction of natural wealth and resources, particularly iron ore, and the environmental degradation and disaster that may result from unchecked intrusion into the forest areas, this Court felt compelled to intervene. Vide its order dated 9th September, 2002 in *T.N. Godavarman Thirumalpad* v. *Union of India & Ors.* [W.P.(C) No. 202 of 1995], this Court constituted the CEC to examine and monitor the various activities infringing the laws protecting the environment and also the preventive or punitive steps that may be required to be taken to protect the environment. In addition to this general concern for the environment, the order of this Court dated 9th September, 2002, this Court noted violations of its Orders and directed that the CEC shall monitor implementation of all orders of the Court and shall place before it any unresolved cases of non-compliance, including in respect of the encroachments, removals, implementations of working plans, compensatory afforestation, plantations and other conservation issues. In furtherance to the said order, the Government framed a notification in terms of Section 33 of the Environment Protection Act, 1996. The CEC constituted by this Court was proposed to be converted into a Statutory Committee. The draft

notification for the same was also placed before this Court on 9th September, 2002. After approval, the Court directed that a formal notification will be issued within a week and the functions and responsibilities given to the CEC were to be exercised by the said Statutory Committee. In fact, this Notification was issued on 17th September, 2002.

4. It may be noticed here that, it was in furtherance to the order of the Government of Andhra Pradesh vide G.O.M No. 467, Home (SCA) Dept. dated 17th November, 2009, supplemented by Notification No. 228/61/2009-AVD-11 dated 1st December, 2009 issued by the Central Government, that the CBI was directed to register a case against the Obulapuram Mining Company (OMC). Earlier the CBI had registered a case against the OMC on 7th December, 2009 and started the probe. This probably came to be stayed by the High Court vide its order dated 12th December, 2009 which stay was vacated by another order of that Court on 16th December, 2010 paving the way for a full-fledged probe. As a result of vacation of the stay, the CBI continued its investigation.

5. The CBI also filed a charge-sheet in a special court against the OMC, in an illegal mining case falling within the State of

Karnataka, charging the accused under Sections 120B, 409, 420, 468 and Section 471 of the Indian Penal Code, 1860 (for short 'IPC') read with the provisions of the Prevention of Corruption Act, 1988. The case against the OMC for illegal mining was under investigation in respect of the areas of Obulapuram and Malangapudi villages of Anantpur district in the State of Andhra Pradesh and in the rest of the State of Andhra Pradesh.

6. Further, the State of Andhra Pradesh vide its G.O. Rt. No. 723 dated 25th November, 2009, issued by the Industrial and Commercial Department, suspended the mining operations and also the transportation of mineral material by OMC and even other implicated companies, on the basis of the findings of a High Level Committee, headed by the Principal Chief Conservator of Forests, Hyderabad and the Report of the CEC submitted to this Court in I.A. No. 2/2009 in Writ Petition (Civil) No. 201 of 2009, a copy of which was forwarded to the State Government. This was challenged before the High Court of Andhra Pradesh which, vide judgment dated 26th February, 2010, set aside the notification and allowed the writ petitions, while holding that the G.O. issued by the Government suffered from a jurisdictional error and was

in violation of the principles of natural justice. Against the said judgment of the High Court, the Government of Andhra Pradesh filed a Special Leave Petition, SLP(C) No. 7366-7367 of 2010 on different grounds.

7. Samaj Parivartan Samuday, a registered society, filed petition under Article 32 of the Constitution of India stating that the illegal mining in the States of Andhra Pradesh and Karnataka was still going on in full swing. Such illegal mining and transportation of illegally mined minerals were being done in connivance with the officials, politicians and even Ministers of State. There was a complete lack of action on the part of the Ministry of Environment and Forests on the one hand and the States of Andhra Pradesh and Karnataka, on the other. It was averred that there was complete breakdown of the official machinery, thereby allowing such blatant illegalities to take place. This inaction and callousness on the part of the Central and the State Governments and failure on their part to control the illegal mining has allowed large-scale destruction, both of forest and non-forest lands and has adversely affected the livelihood of the people. It thus, has filed WP (C) 562 of 2009 and has prayed for issuance of a writ of *mandamus* or any other

appropriate writ, order or direction to the respective State Governments and to the Union of India, to stop all mining and related activities in the forest areas of these two States. It further sought that the orders passed by this Court in the W.P.(C) No. 202 of 1995 be carried out and the provisions of the Forest Conservation Act, 1980 be implemented. It also prayed for cancelling of the 'raising contracts' or sub-lease executed by the Government of Karnataka in favour of the various private individuals and allowing back-door entry into the mining activity in those areas. The most significant prayer in this petition was that after stopping of the mining activity, a systematic survey of both the inter-state border between the States of Andhra Pradesh and Karnataka and mine lease areas along the border be conducted and proper Relief and Rehabilitation Programmes (for short 'RR Programmes') be implemented.

8. All the above cases, i.e., W.P.(C) No. 202/1995, 562/2009 and SLP(C) No. 7366-7367/2010, relate to protection of environment, forest areas, stoppage of illegal mining and cancellation of illegal sub-leasing and contracts executed by any State Government in favour of the third parties, to the extent such contracts are invalid and improper. The latter cases, Writ

Petition (Civil) No. 562 of 2009 and SLP(C) Nos. 7366-7367 of 2010 concern the Bellary Forest Reserve. Further, there were serious allegations raised in these petitions as to how and the manner in which the leases were executed and mining permits were granted or renewed for carrying out the mining activities stated in the petition.

9. The CEC was required to submit quarterly reports, which it has been submitting and with the passage of time, large irregularities and illegalities coupled with criminality were brought to the notice of this Court. The CEC, in discharge of its functions and responsibilities, was examining the matters, in both the States of Andhra Pradesh and Karnataka. These violations have come to the surface as a result of enquiries conducted by the CEC, regarding illegal mining and mining beyond their leased areas by these companies. It was pointed by the CEC with specific reference to these companies that there was not only illegal extraction of iron ore but the minerals was being also extracted beyond the leased area specified in the lease deeds. Further, there was unchecked export of iron ore from the border areas of the two States, Andhra Pradesh and Karnataka.

This related to the quantum, quality and transportation of ore as well.

10. While passing an order of complete ban on mining activity in these areas vide order dated 29th July, 2011 this Court sought submissions on the market requirement for mined ore and vide order dated 5th August, 2011 permitted only M/s. National Minerals Development Corporation Ltd. (for short "NMDC") to carry out very limited mining activity, so that the economic interest of the country and of the states does not suffer irretrievably. This Court has also directed the CEC to examine all aspects of the mining activity and report on various measures that are required to be taken for RR Programmes. Limited mining activity, thus, was permitted to be carried on in the area with the clear direction that the RR Programmes shall be simultaneously commenced and it is only after such RR Programmes are satisfactorily put into motion and the CEC makes a suggestion in this regard, that the mining activity would be permitted. Vide order dated 23rd September, 2011, this Court accepted various recommendations of the CEC and noticed that *prima facie* it appears that at the relevant time, there existed linkage between the alleged illegal mining in the Bellary Reserve

Forest, falling in the District Anantpur in Andhra Pradesh and the illegalities in respect of grant/renewal of mining leases and deviations from sanctioned mine sketch in the Bellary District in Karnataka. The Court also noted that illegally extracted iron ore belonging to one M/s. Associated Mining Company (for short "AMC") was apparently routed through the nearest Port in Vishakhapatnam, through district Anantpur in Andhra Pradesh. Thus, the Court felt that the CBI should examine the alleged illegalities. Vide the same order, this Court required the CBI to additionally present a status report of investigations which the CBI had undertaken in respect of OMC in Andhra Pradesh under FIR No. 17A/2009-CBI(Hyderabad). It was also reported that there was massive illegal mining by third parties in the mining lease No. 1111 of one M/s. National Minerals Development Corporation (NMDC). It was suspected that one M/s. Deccan Mining Syndicate (for short "DMS") was involved in such activities and no action had been taken on the complaints of NMDC. Some other directions were also issued including directions for further inquiry by the CEC and the CEC was required to put up a comprehensive report before this Court.

11. In the meanwhile, an application was filed by the petitioners of writ petition No.562 of 2009 which remained un-numbered. The prayer in this application was to extend the scope of investigation by the CBI relating to illegal mining and other allied activities which the politicians and major corporate groups including M/s. Jindal Group and M/s. Adanis were indulging in, within the State of Karnataka. They also prayed that both the States should also be directed demarcate the inter-state boundaries, particularly, in the mining area.

12. After examining the issues raised in the IA, the earlier orders of this Court and based on the meetings held by the CEC on 20th March, 2012 and 11th April, 2012, respectively, the CEC identified the issues as follows:-

i) The alleged serious illegalities/ irregularities and undue favour in respect of (a) the land purchased by the close relatives of the then Chief Minister, Karnataka for 0.40 crore in the year 2006 and subsequently sold to M/s South West Mining Limited in the year 2010 for Rs.20.00 crores and (b) donation of Rs.20.00 crore received by Prerna Education Society from M/s South West Mining Limited.

ii) the alleged illegal export of iron ore from Belekeri Port and associated issues;

iii) alleged export from Krishapatnam and Chennai Port after exports were banned by the State of Karnataka; and

iv) transfer of senior police officers on deputation to Lokayukta, Karnataka."

13. The CEC filed two comprehensive reports before this Court, one dated 20th April, 2012 and other dated 27th April, 2012, both in Writ Petition (Civil) No. 562 of 2009.

14. Out of the above issues indicated, the CEC dealt with issue No. 1 in the Report dated 20th April, 2012, while issue Nos. 2 to 4 were dealt with in the Report dated 27th April, 2012. On issue No. 1, after summarizing the facts and its observations during its enquiry, the CEC pointed out illegalities, irregularities and instances of misuse of public office committed for the benefit of the close relatives of the then Chief Minister, State of Karnataka. It made the following recommendations :-

> "15. Keeping in view the above facts and circumstances the CEC is of the considered view that the purchase of the above said land notified for acquisition for public purpose, its de-notification from acquisition, permission granted for conversion from agriculture to non-agricultural (residential) purpose and subsequent sale to M/s South West Mining Limited prima facie involves serious violations of the relevant Acts and

procedural lapses and prima facie misuse of office by the then Chief Minister, Karnataka thereby enabling his close relatives to make windfall profits and raises grave issues relating to undue favour, ethics and morality. Considering the above and taking into consideration the massive illegalities and illegal mining which have been found to have taken place in Karnataka and the allegations made against the Jindal Group as being receipient of large quantities of illegally mined material and undue favour being shown to them in respect of the mining lease of M/s MML it is **RECOMMENDED** that a detailed investigation may be directed to be carried out in the matter by an independent investigating agency such as the Central Bureau of Investigation (CBI) and to take follow up action. This agency may be asked to delve into the matter in depth and in a time bound manner. This agency may also be directed to investigate into other similar cases, if any, of lands de-notified from acquisition by the Bangalore Development Authority and the illegalities / irregularities / procedural lapses, if any, and to take follow up action.

16. The Prerna Education Society set up by the close relatives of the then Chief Minister, Karnataka has during March, 2010 vide two cheques of Rs.5.0 crores each received a donation of Rs.10 crores from M/s South West Mining Limited, a Jindal Group Company. In this context, it is of interest to note that during the year 2009-2010 the net

profit (after tax) of the said Company was only Rs.5,73 crores. Looking into the details of the other donations made by the said Company or by the other Jindal Group Companies to any other Trust / Society not owned, managed or controlled by the Jindal Group. After considering that a number of allegations, with supporting documents, have been made in the Report dated 27th July, 2011 of Karnataka Lokayukta regarding the M/s. JSW Steel Limited having received large quantities of illegal mineral and alleged undue favour shown to it in respect of the extraction / supply of iron ore by / to it from the mining lease of M/s MML, it is **RECOMMENDED** that this Hon'ble Court may consider directing the investigating agency such as CBI to also look into the linkages, if any, between the above said donation of Rs.10 crores made by M/s South West Mining Limited and the alleged receipt of illegal mineral by M/s JSW Steel Limited and the alleged undue favour shown to it in respect of the mining lease of M/s MML.

17. The CEC has filed its Report dated 28th March, 2012 wherein the representation filed by the petitioner against Mr. R. Parveen Chandra (ML 2661) has been dealt with (refer para 6(ii), page 11-13 of the CEC Report dated 28th March, 2012). In the said representation it has been alleged that Mr. Parveen Chandra the lessee of ML No.2661 has made two payments, one of Rs.2.50 crores to M/s Bhagat Homes Private Limited and the other of Rs.3.5 crores to M/s

Dhavalagir Property Developers Private Limited as a quid pro quo for allotment of the said mining lease. It is **RECOMMENDED** that this Hon'ble Court may consider directing the investigating agency such as CBI to investigate the payments made by the above said lessee to these two companies whose Directions / shareholders are the close relatives of the then Chief Minister, Karnataka and whether there was any link between such payments and grant of mining lease to Mr. Parveen Chandra."

15. When we heard the parties to the *lis* and even permitted the affected parties as interveners, the hearing had been restricted to the Report of the CEC dated 20^{th} April, 2012. Therefore, presently, we are passing directions only in relation to that Report, while postponing the hearing of the second Report which is dated 27^{th} April, 2012.

16. In the backdrop of the above events of the case, reference to certain relevant provisions of the Criminal Procedure Code, 1973 (Cr.P.C.) can now be appropriately made, before we proceed to deal with the above noticed contentions.

17. The machinery of criminal investigation is set into motion by the registration of a First Information Report (FIR), by the

specified police officer of a jurisdictional police station or otherwise. The CBI, in terms of its manual has adopted a procedure of conducting limited pre-investigation inquiry as well. In both the cases, the registration of the FIR is essential. A police investigation may start with the registration of the FIR while in other cases (CBI, etc.), an inquiry may lead to the registration of an FIR and thereafter regular investigation may begin in accordance with the provisions of the CrPC. Section 154 of the CrPC places an obligation upon the authorities to register the FIR of the information received, relating to commission of a cognizable offence, whether such information is received orally or in writing by the officer in-charge of a police station. A police officer is authorised to investigate such cases without order of a Magistrate, though, in terms of Section 156(3) Cr.P.C. the Magistrate empowered under Section 190 may direct the registration of a case and order the police authorities to conduct investigation, in accordance with the provisions of the CrPC. Such an order of the Magistrate under Section 156(3) CrPC is in the nature of a pre-emptory reminder or intimation to police, to exercise their plenary power of investigation under that Section. This would result in a police report under Section 173, whereafter the Magistrate may or may not take cognizance of the offence and proceed under Chapter XVI CrPC. The Magistrate has judicial discretion, upon receipt of a complaint to take cognizance directly under Section 200 CrPC, or to adopt the above procedure. [Ref. *Gopal Das Sindhi & Ors.* v. *State of Assam & Anr.* [AIR 1961 SC 986]; *Mohd. Yusuf* v. *Smt. Afaq Jahan & Anr.* [AIR 2006 SC 705]; and *Mona Panwar* v. *High Court of Judicature of Allahabad Through its Registrar & Ors.* [(2011) 3 SCC 496].

18. Once the investigation is conducted in accordance with the provisions of the CrPC, a police officer is bound to file a report before the Court of competent jurisdiction, as contemplated under Section 173 CrPC, upon which the Magistrate can proceed to try the offence, if the same were triable by such Court or commit the case to the Court of Sessions. It is significant to note that the provisions of Section 173(8) CrPC open with *non-obstante* language that nothing in the provisions of Section 173(1) to 173(7) shall be deemed to preclude further investigation in respect of an offence after a report under sub-Section (2) has been forwarded to the Magistrate. Thus, under Section 173(8), where charge-sheet has been filed, that Court also enjoys the

jurisdiction to direct further investigation into the offence. {Ref., *Hemant Dhasmana* v. *Central Bureau of Investigation & Anr.* [(2001) 7 SCC 536]}. This power cannot have any inhibition including such requirement as being obliged to hear the accused before any such direction is made. It has been held in *Shri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandha Maharaj* v. *State of Andhra Pradesh and Ors.* [JT 1999 (4) SC 537] that the casting of any such obligation on the Court would only result in encumbering the Court with the burden of searching for all potential accused to be afforded with the opportunity of being heard.

19. While the trial Court does not have inherent powers like those of the High Court under Section 482 of the CrPC or the Supreme Court under Article 136 of the Constitution of India, such that it may order for complete reinvestigation or fresh investigation of a case before it, however, it has substantial powers in exercise of discretionary jurisdiction under Sections 311 and 391 of CrPC. In cases where cognizance has been taken and where a substantial portion of investigation/trial have already been completed and where a direction for further examination would have the effect of delaying the trial, if the trial

court is of the opinion that the case has been made out for alteration of charge etc., it may exercise such powers without directing further investigation. {Ref. *Sasi Thomas v. State & Ors.* [(2006) 12 SCC 421]}. Still in another case, taking the aid of the doctrine of implied power, this Court has also stated that an express grant of statutory power carries with it, by necessary implication, the authority to use all reasonable means to make such statutory power effective. Therefore, absence of statutory provision empowering Magistrate to direct registration of an FIR would not be of any consequence and the Magistrate would nevertheless be competent to direct registration of an FIR. {Ref. *Sakiri Vasu* v. *State of Uttar Pradesh & Ors.* [(2008) 2 SCC 409]}.

20. Thus, the CrPC leaves clear scope for conducting of further inquiry and filing of a supplementary charge sheet, if necessary, with such additional facts and evidence as may be collected by the investigating officer in terms of sub-Sections (2) to (6) of Section 173 CrPC to the Court.

21. To put it aptly, further investigation by the investigating agency, after presentation of a challan (charge sheet in terms of Section 173 CrPC) is permissible in any case impliedly but in no event is impermissible.

22. A person who complains of commission of a cognizable offence has been provided with two options under Indian Criminal jurisprudence. Firstly, he can lodge the police report which would be proceeded upon as afore-noticed and secondly, he could file a complaint under Section 200 CrPC, whereupon the Magistrate shall follow the procedure provided under Sections 200 to 203 or 204 to 210 under Chapter XV and XVI of the CrPC.

23. In the former case, it is upon the police report that the entire investigation is conducted by the investigating agency and the onus to establish commission of the alleged offence beyond reasonable doubt is entirely on the prosecution. In a complaint case, the complainant is burdened with the onus of establishing the offence and he has to lead evidence before the Court to establish the guilt of the accused. The rule of establishing the charges beyond reasonable doubt is applicable to a complaint case as well.

24. The important feature that we must notice for the purpose of the present case is that even on a complaint case, in terms of Section 202, the Magistrate can refer the complaint to investigation by the police and call for the report first, deferring

the hearing of the complaint till then. Section 210 CrPC is another significant provision with regard to the powers of the Court where investigation on the same subject matter is pending. It provides that in a complaint case where any enquiry or trial is pending before the Court and in relation to same offence and investigation by the Police is in progress which is the subject matter of the enquiry or trial before the Court, the Magistrate shall stay the proceedings and await the report of the investigating agency. Upon presentation of the report, both the cases on a Police report and case instituted on a complaint shall be tried as if both were instituted on a Police report and if the report relates to none of the accused in the complaint it shall proceed with the enquiry/trial which had been stayed by it. The section proceeds on the basis that a complaint case and case instituted on a police report for the commission of the same offence can proceed simultaneously and the Court would await the Police report before it proceeds with the complaint in such cases. The purpose again is to try these cases together, if they are in relation to the same offence with the intent to provide a fair and effective trial. The powers of the trial court are very wide and the legislative intent of providing a fair trial and presumption of innocence in favour of the accused is the essence of the criminal justice system.

25. The Court is vested with very wide powers in order to equip it adequately to be able to do complete justice. Where the investigating agency has submitted the charge sheet before the court of competent jurisdiction, but it has failed to bring all the culprits to book, the Court is empowered under Section 319 Cr.P.C. to proceed against other persons who are not arrayed as accused in the chargesheet itself. The Court can summon such suspected persons and try them as accused in the case, provided the Court is satisfied of involvement of such persons in commission of the crime from the record and evidence before it.

26. We have referred to these provisions and the scope of the power of the criminal court, in view of the argument extended that there are certain complaints filed by private persons or that the matters are pending before the court and resultantly this Court would be not competent in law to direct the CBI to conduct investigation of those aspects. We may notice that the investigation of a case or filing chargesheet in a case does not by itself bring the absolute end to exercise of power by the investigating agency or by the Court. Sometimes and

particularly in the matters of the present kind, the investigating agency has to keep its options open to continue with the investigation, as certain other relevant facts, incriminating materials and even persons, other than the persons stated in the FIR as accused, might be involved in the commission of the crime. The basic purpose of an investigation is to bring out the truth by conducting fair and proper investigation, in accordance with law and ensure that the guilty are punished. At this stage, we may appropriately refer to the judgment of this Court in the case of *Nirmal Singh Kahlon v. State of Punjab & Ors.* [(2009) 1 SCC 441] wherein an investigation was being conducted into wrongful appointments to Panchayat and other posts by the Police Department of the State. However, later on, these were converted into a public interest litigation regarding larger corruption charges. The matter was sought to be referred for investigation to a specialised agency like CBI. The plea taken was that the Special Judge was already seized of the case as charge sheet had been filed before that Court, and the question of referring the matter for investigation did not arise. The High Court in directing investigation by the CBI had exceeded its jurisdiction and assumed the jurisdiction of the Special Judge.

The plea of prejudice was also raised. While rejecting these arguments, the appeals were dismissed and this Court issued a direction to the CBI to investigate and file the charge sheet before the Court having appropriate jurisdiction over the investigation. The reasoning of the Court can be examined from paragraph 63 to 65 of the said judgment, which reads as under:-

> "63. The High Court in this case was not monitoring any investigation. It only desired that the investigation should be carried out by an independent agency. Its anxiety, as is evident from the order dated 3-4-2002, was to see that the officers of the State do not get away. If that be so, the submission of Mr Rao that the monitoring of an investigation comes to an end after the charge-sheet is filed, as has been held by this Court in Vineet Narain and M.C. Mehta (Taj Corridor Scam) v. Union of India, loses all significance.
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> 64. Moreover, it was not a case where the High Court had assumed a jurisdiction in regard to the same offence in respect whereof the Special Judge had taken cognizance pursuant to the charge-sheet filed. The charge-sheet was not filed in the FIR which was lodged on the intervention of the High Court.
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> 65. As the offences were distinct and different, the High Court never assumed the jurisdiction of the Special Judge to direct reinvestigation as was urged or otherwise."

27. Now, we shall proceed to examine the merit of the contentions raised before us. We may deal with the submissions (a) and (b), together, as they are intrinsically inter-related.

28. The CEC had submitted the Report dated 20th April, 2012 and it has been stated in the Report that opportunity of being heard had been granted to the affected parties. However, the contention before us is that while the CEC heard other parties, it had not heard various companies like M/s. South West Mining Ltd. and M/s. JSW Steel Ltd. Firstly, the CEC is not vested with any investigative powers under the orders of this Court, or under the relevant notifications, in the manner as understood under the CrPC. The CEC is not conducting a regular inquiry or investigation with the object of filing chargesheet as contemplated under Section 173 CrPC. Their primary function and responsibility is to report to the Court on various matters relating to collusion in illegal and irregular activities that are being carried on by various persons affecting the ecology, environment and reserved forests of the relevant areas. While submitting such reports in accordance with the directions of this Court, the CEC is required to collect such facts. In other words, it has acted like a fact finding inquiry. The CEC is not

discharging quasi-judicial or even administrative functions, with a view to determine any rights of the parties. It was not expected of the CEC to give notice to the companies involved in such illegalities or irregularities, as it was not determining any of their rights. It was *simpliciter* reporting matters to the Court as per the ground realities primarily with regard to environment and illegal mining for appropriate directions. It had made different recommendations with regard to prevention and prosecution of environmentally harmful and illegal activities carried on in collusion with government officers or otherwise. We are of the considered view that no prejudice has been caused to the intervenor/affected parties by non-grant of opportunity of hearing by the CEC. In any case, this Court has heard them and is considering the issues independently.

29. As far as the challenge to the enlargement of jurisdiction by the CEC beyond the reference made by the Court, is concerned, the said contention is again without any substance. We have referred to the various orders of this Court. The ambit and scope of proceedings before this Court, pending in the above writ petition and civil appeal, clearly show that the Court is exercising a very wide jurisdiction in the national interest, to ensure that

there is no further degradation of the environment or damage to the forests and so that illegal mining and exports are stopped. The orders are comprehensive enough to not only give leverage to the CEC to examine any ancillary matters, but in fact, place an obligation on the CEC to report to this Court without exception and correctly, all matters that can have a bearing on the issues involved in all these petitions in both the States of Karnataka and Andhra Pradesh. Thus, we reject this contention also.

30. Contention (c) is advanced on the premise that all matters stated by the CEC are *sub-judice* before one or the other competent Court or investigating agency and, thus, this Court has no jurisdiction to direct investigation by the CBI. In any case, it is argued that such directions would cause them serious prejudice.

31. This argument is misplaced in law and is misconceived on facts. Firstly, all the facts that had been brought on record by the CEC are not directly *sub-judice,* in their entirety, before a competent forum or investigating agency.

32. In relation to issue 1(a) raised by the CEC which also but partially is the subject matter of PCR No. 2 of 2011 pending

before the Additional City Civil and Sessions Judge, Bangalore under the Prevention of Corruption Act. The Court took cognizance and summoned the accused to face the trial, writ against the same is pending in the High Court. It primarily relates to the improper de-notification of the land, which had been under acquisition but possession whereof was not taken. This land was purchased by the family members of the then Chief Minister for a consideration of Rs.40 lacs and was sold after de-notification for a sum of Rs.20 crores to South West Mining Ltd. after de-notification. For this purpose, office of the Chief Minister and other higher Government Officials were used. While the earlier part of above-noted violations is covered under PCR No. 2 of 2011, the transactions of purchase sale and other attendant circumstances are beyond the scope of the said pending case which refers only to the decision of de-notification. It appears that the entire gamut or the complete facts stated by the CEC and supported by documents are not the matter *sub-judice* before the Trial Court. Similarly, issue 1 (b) relates to the donation of Rs.20 crores received by Prerna Education Society from M/s. South West Mining Ltd. The society is stated to be belonging to the members of the family of the Chief Minister Shri

Yeddyurappa. The written submissions filed on behalf of M/s. South West Mining Ltd., do not reflect that issue 1(a) and (b) of the CEC report under consideration are directly and in their entirety are the subject matter of any investigations in progress and proceedings pending before any competent forum. These are merely informatory facts, supported by relevant and authentic documents, highlighted by the CEC in its report for consideration of the Court. A suspect has no indefeasible right of being heard prior to initiation of the investigation, particularly by the investigating agency. Even, in fact, the scheme of the Code of Criminal Procedure does not admit of grant of any such opportunity. There is no provision in the CrPC where an investigating agency must provide a hearing to the affected party before registering an FIR or even before carrying on investigation prior to registration of case against the suspect. The CBI, as already noticed, may even conduct pre-registration inquiry for which notice is not contemplated under the provisions of the Code, the Police Manual or even as per the precedents laid down by this Court. It is only in those cases where the Court directs initiation of investigation by a specialized agency or transfer investigation to such agency from another agency that the Court may, in its discretion, grant hearing to the suspect or affected parties. However, that also is not an absolute rule of law and is primarily a matter in the judicial discretion of the Court. This question is of no relevance to the present case as we have already heard the interveners.

33. In the case of *Narmada Bai* v. *State of Gujarat & Ors.* [(2011) 5 SCC 79], this Court was concerned with a case where the State Government had objected to the transfer of investigation to CBI of the case of a murder of a witness to a fake encounter. The CBI had already investigated the case of fake encounter and submitted a charge sheet against high police officials. This Court analyzed the entire law on the subject and cited with approval the judgment of the Court in the case of *Rubabbuddin Sheikh* v. *State of Gujarat* [(2010) 2 SCC 200]. In that case, the Court had declared the law that in appropriate cases, the Court is empowered to hand over investigation to an independent agency like CBI even when the charge-sheet had been submitted. In the case of *Narmada Bai*, the Court had observed that there was a situation which upon analysis of the allegations it appeared that abduction of Sohrabuddin and Kausarbi thei their subsequent murder as well as the murder of the witnesses are one series of

facts and was connected together as to form the same transaction under Section 220 of the Code of Criminal Procedure and it was considered appropriate to transfer the investigation of the subsequent case also to CBI.

34. If we analyse the abovestated principles of law and apply the same to the facts of the present case, then the Court cannot rule out the possibility that all these acts and transactions may be so inter-connected that they would ultimately form one composite transaction making it imperative for the Court to direct complete and comprehensive investigation by a single investigating agency. The need to so direct is, *inter alia*, for the following considerations:

(a) The report of the CEC has brought new facts, subsequent events and unquestionable documents on record to substantiate its recommendations.

(b) The subsequent facts, inquiry and resultant suspicion, therefore, are the circumstances for directing further and specialized investigation.

(c) The scope and ambit of present investigation is much wider than the investigations/proceedings pending before the Court/investigating agencies.

(d) Various acts and transactions *prima facie* appear to be part of a same comprehensive transaction.

(e) The requirement of just, fair and proper investigation would demand investigation by a specialized agency keeping in view the dimensions of the transactions, the extent of money involved and manipulations alleged.

35. To give an example to emphasize that this is a case requiring further investigation and is fit to be transferred to the specialized investigating agency, we may mention that the South West Mining Ltd. was initially found to be a front company of JSW Steels Ltd. Thereafter all transactions were examined and the improper purchase of land and donations made by them came to light. These facts appear to be inherently interlinked. Despite that and intentionally, we are not dealing with the factual matrix of the case or the documents on record, in any detail or even discussing the merits of the case in relation to the controversies raised before us so as to avoid any prejudice to the

rights of the affected parties before the courts in various proceedings and investigation including the proposed investigation.

36. Now, we shall proceed on the assumption that the illegalities, irregularities and offences alleged to have been committed by the affected parties are the subject matter, even in their entirety, of previous investigation cases, *sub-judice* before various Courts including the writ jurisdiction of the High Court. It is a settled position of law that an investigating agency is empowered to conduct further investigation after institution of a charge-sheet before the Court of competent jurisdiction. A magistrate is competent to direct further investigation in terms of Section 173(8) Cr.P.C. in the case instituted on a police report. Similarly, the Magistrate has powers under Section 202 Cr.P.C. to direct police investigation while keeping the trial pending before him instituted on the basis of a private complaint in terms of that Section. The provisions of Section 210 Cr.P.C. use the expression 'shall' requiring the Magistrate to stay the proceedings of inquiry and trial before him in the event in a similar subject matter, an investigation is found to be in progress. All these provisions clearly indicate the legislative scheme under the

Cr.P.C. that initiation of an investigation and filing of a chargesheet do not completely debar further or wider investigation by the investigating agency or police, or even by a specialized investigation agency. Significantly, it requires to be noticed that when the court is to ensure fair and proper investigation in an adversarial system of criminal administration, the jurisdiction of the Court is of a much higher degree than it is in an inquisitorial system. It is clearly contemplated under the Indian Criminal Jurisprudence that an investigation should be fair, in accordance with law and should not be tainted. But, at the same time, the Court has to take precaution that interested or influential persons are not able to misdirect or hijack the investigation so as to throttle a fair investigation resulting in the offenders escaping the punitive course of law. It is the inherent duty of the Court and any lapse in this regard would tantamount to error of jurisdiction.

37. In the case of *Rama Chaudhary* v. *State of Bihar* [(2009) 6 SCC 346], this Court was considering the scope of Sections 173(8), 173(2) and 319 of the CrPC in relation to directing further investigation. The accused raised a contention that in that case, report had been filed, charges had been framed and nearly 21

witnesses had been examined and at that stage, in furtherance to investigation taken thereafter, if a supplementary charge-sheet is filed and witnesses are permitted to be summoned, it will cause serious prejudice to the rights of the accused. It was contended that the Court has no jurisdiction to do so. The Trial Court permitted summoning and examination of the summoned witnesses in furtherance to the supplementary report. The order of the Trial Court was upheld by the High Court. While dismissing the special leave petition, a Bench of this Court observed :

> "**14.** Sub-section (1) of Section 173 CrPC makes it clear that every investigation shall be completed without unnecessary delay. Sub-section (2) mandates that as soon as the investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government mentioning the name of the parties, nature of information, name of the persons who appear to be acquainted with the circumstances of the case and further particulars such as the name of the offences that have been committed, arrest of the accused and details about his release with or without sureties.
>
> **15.** Among the other sub-sections, we are very much concerned about sub-section (8) of Section 173 which reads as under:

"173. (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

A mere reading of the above provision makes it clear that irrespective of the report under sub-section (2) forwarded to the Magistrate, if the officer in charge of the police station obtains further evidence, it is incumbent on his part to forward the same to the Magistrate with a further report with regard to such evidence in the form prescribed. The abovesaid provision also makes it clear that further investigation is permissible, however, reinvestigation is prohibited.

16. The law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police. Reinvestigation without prior permission is prohibited. On the other hand, further investigation is permissible.

18. Sub-section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a "further" report and not a fresh report regarding the "further" evidence obtained during such investigation.

19. As observed in *Hasanbhai Valibhai Qureshi* v. *State of Gujarat* the prime consideration for further investigation is to arrive at the truth and do real and substantial justice. The hands of the investigating agency for further investigation should not be tied down on the ground of mere delay. In other words

> "[t]he mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice."

38. Reference can also be made to the judgment of this Court in the case of *National Human Rights Commission* v. *State of Gujarat & Ors.* [(2009) 6 SCC 342], wherein the Court was dealing with different cases pending in relation to the communal riots in the State of Gujarat and the trial in one of the cases was at the concluding stage. In the meanwhile, in another FIR filed in relation to a similar occurrence, further investigation was being conducted and was bound to have a bearing even on the pending cases. The Court, while permitting inquiry/investigation, including further investigation, completed stayed the proceedings in the Trial Court as well and held as under :

> "**10.** We make it clear that SIT shall be free to work out the modalities and the norms required to be followed for the purpose of inquiry/investigation including further investigation. Needless to say the sole object of the criminal justice system is to ensure that a person who is guilty of an offence is punished.
>
> **11.** Mr K.T.S. Tulsi, learned Senior Counsel had submitted that in some cases the alleged victims themselves say that wrong persons have been included by the police officials as accused and the real culprits are sheltered. He, therefore, suggested that trial should go on, notwithstanding the inquiry/ investigation including further investigation as directed by us. We find that the course would not be appropriate because if the trial continues and fresh evidence/materials surface, it would require almost a de novo trial which would be not desirable."

39. We do not find any necessity to multiply the precedents on this issue. It is a settled principle of law that the object of every investigation is to arrive at the truth by conducting a fair, unbiased and proper investigation.

40. Referring to the plea of prejudice taken up by the affected parties before us, we are unable to see any element of prejudice being caused to the affected parties if the CBI is permitted to investigate the entire matter. The plea taken by the interveners before us is that M/s. JSW Steels Ltd. is a *bona fide* purchaser of

iron ore from the open market and they have been affected by the unilateral actions of one M/s. Mysore Minerals Ltd. They state that they have no statutory liability to check origin of iron ore or to maintain Form 27. According to M/s. JSW Steels Ltd., they are already co-operating with the CBI in the investigation directed by the Supreme Court. As far as M/s. South West Mining Ltd. is concerned, it has stated that it is the purchaser of the land for *bona fide* consideration and genuine purpose. The land has been converted to commercial use and that is why Rs.20 crores were paid as consideration. They further claimed that they had Rs.23.96 crores of pre-tax profit and, therefore, they were in a position to make the donation which they had made. Not only they, but other companies affiliated to Jindal Group have also made similar contributions. It is not for us to examine whether the stand taken by the intervener companies is correct or not. It requires to be investigated and an investigation *per se* would help them to clear their position, rather than subjecting them to face multifarious litigations, investigations and economic burden. Having heard them, we are unable to find any prejudice to parties if further or wider investigation is directed by this Court. The direction of further investigation is based upon documents and facts brought to light by the CEC as a result of examination conducted in the course of its primary function relating to inquiry into environmental violations and illegal mining activity. If the proceedings are permitted to continue and finally investigations reveal that a case which requires to be tried in accordance with law exists, then the interveners would have to face proceedings all over again. So, it is in their own interest that the specialized agency is permitted to investigate and bring out the true facts before the Court of competent jurisdiction.

41. We must notice that the criminal offences are primarily offences against the State and secondarily against the victim. In this case, if the investigation by specialized agency finds that the suspect persons have committed offences with or without involvement of persons in power, still such violation undoubtedly would have been a great loss to the environmental and natural resources and would hurt both the State and national economy. We cannot expect an ordinary complainant to carry the burden of proving such complex offences before the Court of competent jurisdiction by himself and at his own cost. Doing so would be a travesty of the criminal justice system.

42. It was ever and shall always remain the statutory the obligation of the State to prove offences against the violators of law. If a private citizen has initiated the proceedings before the competent court, it will not absolve the State of discharging its obligation under the provisions of the CrPC and the obligations of Rule of Law. The Court cannot countenance an approach of this kind where the State can be permitted to escape its liability only on the ground that multifarious complaints or investigations have been initiated by private persons or bodies other than the State. In our considered view, it enhances the primary and legal duty of the State to ensure proper, fair and unbiased investigation.

43. The facts of the present case reveal an unfortunate state of affairs which has prevailed for a considerable time in the mentioned districts of both the States of Andhra Pradesh and Karnataka. The CEC has recommended, and the complainant and petitioners have also highlighted, a complete failure of the State machinery in relation to controlling and protecting the environment, forests and minerals from being illegally mined and exploited.

44. Wherever and whenever the State fails to perform its duties, the Court shall step in to ensure that Rule of Law prevails over the abuse of process of law. Such abuse may result from inaction or even arbitrary action of protecting the true offenders or failure by different authorities in discharging statutory or legal obligations in consonance with the procedural and penal statutes. This Court expressed its concern about the rampant pilferage and illegal extraction of natural wealth and resources, particularly, iron ore, as also the environmental degradation and disaster that may result from unchecked intrusion into the forest areas. This Court, vide its order dated 29th July, 2011 invoked the precautionary principle, which is the essence of Article 21 of the Constitution of India as per the dictum of this Court in the case of *M.C. Mehta* v. *Union of India* [(2009) 6 SCC 142], and had consequently issued a ban on illegal mining. The Court also directed Relief and Rehabilitation Programmes to be carried out in contiguous stages to promote inter-generational equity and the regeneration of the forest reserves. This is the ethos of the approach consistently taken by this Court, but this aspect primarily deals with the future concerns. In respect of the past actions, the only option is to examine in depth the huge

monetary transactions which were effected at the cost of national wealth, natural resources, and to punish the offenders for their illegal, irregular activities. The protection of these resources was, and is the constitutional duty of the State and its instrumentalities and thus, the Court should adopt a holistic approach and direct comprehensive and specialized investigation into such events of the past.

45. Compelled by the above circumstances and keeping in mind the clear position of law supra, we thus direct;

a) The issues specified at point 1(a) and 1(b) of the CEC Report dated 20th April, 2012 are hereby referred for investigation by the Central Bureau of Investigation.

b) All the proceedings in relation to these items, if pending before any Court, shall remain stayed till further orders of this Court. The CBI shall complete its investigation and submit a Report to the Court of competent jurisdiction with a copy of the Report to be placed on the file of this Court within three months.

c) The Report submitted by the CEC and the documents annexed thereto shall be treated as 'informant's information to the investigating agency' by the CBI.

d) The CBI shall undertake investigation in a most fair, proper and unbiased manner uninfluenced by the stature of the persons and the political or corporate clout, involved in the present case. It will be open to the CBI to examine and inspect the records of any connected matter pending before any investigating agency or any court.

e) The competent authority shall constitute the special investigating team, headed by an officer not below the rank of Additional Director General of Police/Additional Commissioner forthwith.

f) Any investigation being conducted by any agency other than CBI shall also not progress any further, restricted to the items stated in clause (a) above, except with the leave of the Court. The CBI shall complete its investigation uninfluenced by any order, inquiry or investigation that is pending on the date of passing of this order.

g) This order is being passed without prejudice to the rights and contentions of any of the parties to the *lis*, as well as in any other proceedings pending before courts of competent jurisdiction and the investigating agencies.

h) All pleas raised on merits are kept open.

i) We direct all the parties, the Government of the States of Andhra Pradesh, Karnataka and all other government departments of that and/or any other State, to fully cooperate and provide required information to CBI.

46. With the above directions, we accept the recommendation of the CEC to the extent as afore-stated.

47. Let the matter stand over to 3rd August, 2012 for consideration of the Report dated 27th April, 2012 filed by the CEC.

....CJI.
(S.H. Kapadia)

....J.
(Aftab Alam)

....J.

(Swatanter Kumar)

New Delhi
May 11, 2012