

**GOVERNMENT OF INDIA
MINES
LOK SABHA**

UNSTARRED QUESTION NO:3295
ANSWERED ON:30.08.2013
MINING IN SCHEDULE V AREAS
Ajay Kumar SHRI

Will the Minister of MINES be pleased to state:

- (a) whether the Apex court of the country has ruled out that mining could be undertaken by persons or organisations owned by Scheduled Tribes (STs) people or by public sector companies only in Schedule V areas;
- (b) if so, the details thereof; and
- (c) the response of the Government thereon?

Answer

THE MINISTER OF MINES (SHRI DINSHA PATEL)

(a) to (c): Supreme Court in *Samatha vs. State of A. P. and Others* in 1997, while interpreting the A.P. Scheduled Areas Land Transfer Regulation, 1959 (Regulation) held that the words `transfer of immovable property.....by a person` in section 3(1) of the Regulation included the transfer by way of grant of mining lease by the State Government. Section 3(1) was interpreted as prohibiting any such transfer in favour of a non-scheduled tribe and it was further declared that such transfer shall be absolutely null and void.

Thereafter, the Supreme Court in 2001 in *BALCO Employees Union (Regd.) Vs Union of India & Ors.* has observed that:

"While we have strong reservations with regard to the correctness of the majority decision in *Samatha's* case, which has not only interpreted the provisions of aforesaid Section 3(1) of the A.P. Scheduled Areas Land Transfer Regulation, 1959 but has also interpreted the provisions of the Fifth Schedule of the Constitution, the said decision is not applicable in the present case because the law applicable in Madhya Pradesh is not similar or identical to the aforesaid Regulation of Andhra Pradesh. Article 145 (3) of the Constitution provides that any substantial question of law as to the interpretation of the provisions of the Constitution can only be decided by a Bench of five judges. In *Samatha's* case, it is a Bench of three Hon'ble judges who by majority of 2:1, interpreted the Fifth Schedule of the Constitution."

The Central Government has introduced the Mines and Minerals (Development and Regulation) Bill, 2011 in the Lok Sabha on 12.12.2011 which has the following provisions / features related to tribals:

- (i) For all exploration activities suitable compensation shall be payable to the person or family holding occupation or usufruct or traditional rights on the area of exploration
- (ii) All Mining Lease holders to pay annually into District Mineral Foundation (DMF) - a sum equivalent to royalty in case of major minerals (other than coal) and a sum equivalent to 26% of profit in case of coal minerals; and in case of minor minerals a sum prescribed by the State Government (since royalty for minor minerals are set by States and vary from State to State) will be payable to DMF.
- (iii) A portion of the amount paid into the DMF by the leaseholders will be used partly to making recurring payments to people affected by mining related operations.
- (iv) Mining companies allot at-least one share at par to each person of the family affected by mining.
- (v) Mining Companies provide employment or other compensation as stipulated under Rehabilitation & Resettlement policy.
- (vi) After mining is complete, mining companies need to pay for damages, if any, to affected persons as part of the mine closure and restoration process.
- (vii) Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA) provides that consent of the local Gram Sabha/District Council is essential for grant of concessions for minor minerals. Accordingly, grant of Mineral Concessions in Fifth and Sixth Schedule Areas requires consultation with Gram Sabha/District Council, in terms of any process defined under PESA.
- (viii) In Fifth and Sixth Schedule Areas, State may give preference in grant of mineral concessions to a cooperative of Scheduled Tribes.

(ix) All mining lease holder are required to share their mining benefits with the local population affected by mining, including those in tribal areas. This would give mining companies "social licence" to mine in tribal areas without compromising on scientific mining.