

Report
of
the Court of Inquiry
in Bhati mines — Delhi.
by Justice V.S. Deshpande.

REPORT
OF
COURT OF ENQUIRY

IN

BHATI MINES - DELHI

BY

JUSTICE V. S. DESHPANDE

ASSESSORS

Shri S. L. Passey
Indian National Trade
Union Congress

Shri S. Sankaran
Retired Director General
of Mines Safety

REPORT
OF
COURT OF ENQUIRY

IN

BHATI MINES - DELHI

BY

JUSTICE V. S. DESHPANDE

ASSESSORS

Shri S. L. Passey
Indian National Trade
Union Congress

Shri S. Sankaran
Retired Director General
of Mines Safety

REPORT BY THE COURT OF INQUIRY UNDER S. 24(4)
Mines Act 1952 (JUSTICE V.S. Deshpande, former
Chief Justice, Delhi High Court)

FROM PRIVATE TO PUBLIC INTEREST

1. The terms of referrece :

The Court of Inquiry was appointed by the following
Notification :

"(To be published in the Gazette of India, Part II,
Section 3, Sub-Section (ii)

....

Government of India/Bharat Sarkar
Ministry of Labour & Rehabilitation
Shram Aur Punarvas Mantralaya
Department of Labour/Shram Vibhag

....

Dated, New Delhi, the 14.2.1983

NOTIFICATION

S.O. _____ Whereas three accidents occurred in the Bhati
Bajri Mines in the Union territory of Delhi on the 10th,
16th and 24th January, 1983, causing loss of lives;

And whereas the Central Government is of the opinion
that a formal inquiry into the causes of and circumstances
attending these accidents ought to be held;

And now, therefore, in exercise of the powers conferred
by sub-section (1) of section 24 of the Mines Act, 1952
(35 of 1952), the Central Government hereby appoints
Justice V.S. Deshpande, retired Chief Justice of the High
Court of Delhi to hold such inquiry and also appoints -

(i) Shri S.L. Passey,
Indian National Trade Union Congress,
16, Gurudwara Rakabganj Road,
New Delhi - 110001.

(ii) Shri S. Sankaran,
28, Loganathan Colony,
Mylapore, Madras - 4.

as assessors in holding the said inquiry.

2. The terms of reference of the said inquiry shall be :-

(a) to go into the causes of accidents in Bhati Bajri

contd...

Mines on 10th, 16th and 24th January, 1983,
causing loss of lives;

- (b) to go into the existing conditions in which mining operations are carried out in the said Mines;
- (c) to suggest such changes and corrective measures as may be necessary to improve the working conditions and to prevent recurring accidents in future in the said Mines.

(N-11012/1/83-MI)

Sd/-
(J.K. Jain)
Under Secretary

To

*With Hindi
version

*The Manager,
Govt. of India Press,
Mayapuri, New Delhi.

2. From Private to Public interest :

The nature of the subject matter of the inquiry is such as to suggest that its essence is the progress from private to public interest. I have given this title to this report as it sums up the essence of this inquiry. The inquiry relates to the conditions under which the mining operations are carried out in the Bhati Bajri Mines close to the Metropolis including the causes which led to accidents in the working of those mines and suggestions to be made to improve the working conditions to prevent such accidents in future. It thus relates to the past, the present and the future system of mining in this area.

contd...

3. Nature & importance of Mining:

It would be appropriate to know the nature and importance of mining, the working conditions therein and the public interest which is involved: firstly in the welfare of the labour working in the mines and secondly in the scientific exploitation of these most important exhaustible national resource. By its very nature mining activity involves risk of injury and even death to the labour working in the Mines. It was appropriate, therefore, that legislation was enacted to ensure the safety and welfare of the mining labourers as early as in 1923. The present statute is the Mines Act 1952 and the Metalliferous Mines Regulations, 1961 framed under S. 57 of the said Act. The progress from the private to the public interest in the system of the working of the Mines in India is two fold -

- (a) Entry 54 of List I - Union List of the VIIth Schedule of the Constitution authorises Central legislation for regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest; and
- (b) Entry 55 of the said Schedule empowers the Parliament to legislate on regulation of labour and safety in Mines and Oil Fields.

contd...

The special importance to mining and the safety and welfare of the mining labourers given in the Constitution itself is notable. Normally under Entry 23 of List II - State List of Schedule VII of the Constitution regulation of Mines and Mineral development is a subject of State legislation. But the over-riding importance of regulation of mines and mineral development by the Parliament on an all India basis was emphasised by Entry 53 of List I - Union List of the Schedule VII of the Constitution. By the declaration made in the Mines & Minerals (Regulation and Development) Act 1957, the regulation and development of mines has been taken over by the Centre from the States. Even earlier than the economic importance of the Mines, was emphasised the human aspect of it. The safety and welfare of the labour employed in the mines was provided for - first in 1923 and then in 1952 by the Mines Act. Even though the general subject of welfare of labour is in Entry 24 of List III - Concurrent List of the VIIth Schedule of the Constitution, Entry 54 of List I - Union List of the VIIth Schedule of the Constitution specially provided for Central legislation and control in the field of regulation and safety in mines and oil fields showing thereby that this is more important than the welfare of the labour in general.

contd...

Two aspects of public interest in Mining

(a) The Economic aspect

Since the minerals are exhaustible natural resources, their conservation and exploitation has to be done in public interest. Entry 54 of the List I - Union List of the Seventy Schedule of the Constitution authorises Parliament to declare that the regulations of mines and minerals development under the control of the Union is expedient in the public interest. The regulations of mines and minerals development was therefore taken over by the Central Government by the Mines and Minerals (Regulation and Development) Act, 1957. Thereafter no person can undertake any prospecting or mining operation except and in accordance with the terms and conditions of prospecting licence or a lease to be granted under this Act and the rules made thereunder. The minerals are divided into major minerals and minor minerals. The Delhi Minor Minerals Rules 1962, regulate the mining of the Bajri or Badarpur Sand in the Bhatti Mines with which we are concerned. Under these Rules also, no person except the holder of the permit granted by the Collector (Mines) can mine in minor minerals in the Union Territory of Delhi. The Ministry of Steel and Mines (Department of Mines) is the administrative Ministry for this purpose. The Lt. Governor of Delhi is the delegate

contd...

of the President or the Central Government for the Union Territory of Delhi.

(b) Safety Aspect

A mining operation be inherently dangerous. Entry 55 of List I - the State List has given the exclusive power to the Parliament to legislate as to the regulation of labour and safety in mines. The Mines Act, 1952 is enacted to ensure the safety of the mines workers. Metalliferous Mines Regulations 1961 have been promulgated under Section 57 of the said Act making detailed provisions for the welfare and safety of the mines workers. The Ministry of Labour is the administrative Ministry for this purpose. Under it is the Directorate General of Mines Safety, entrusted with the task of enforcement of these Regulations.

It is important to note that the economic and safety aspects have been carefully kept apart by the Constitution itself. The Parliament has passed two separate statutes separately dealing with each of them and the Government has entrusted the administrative powers relating to these aspects to two different Ministries. The reason may be that the safety aspect may not be unwittingly subordinated to the economic aspect. The Directorate General of Mines Safety(DGMS) is the watch dog on the working of the mines to see and enforce the welfare and the safety of the mines workers.

contd...

Unregulated exploitation of Bhatti Mines and the growth of vested private interests.

Bhatti mines yielding the red Badarpur Sand are situated close to the metropolis. This mineral is needed in great quantity for the enormous construction work that has been going on in the Capital for the last several decades. Private permit holders there started mining of this minor mineral for their own profit unmindful of the necessity to comply with safety regulations. These permit holders and others who are mining even without regular permits came to regard the mines as their own. Why? Because the State was in the control of mining only theoretically. The actual working of the mines was left to these private operators who had only to deposit the royalty for getting permit. The amount of the royalty varied according to the quantity permitted to be quarried by the permit holders. Since the issue of permits and the quarrying of the minor minerals related only to the economic aspect of mining, neither the conditions attached to the permit nor the powers of the authorities issuing the permit and collecting the royalty extended to the ensuring of the safety of the mines workers. That function was separately done by the DGMS. The result was that the

contd...

permit holders had a field day in exploiting the minerals as cheaply as possible and in selling it as profitably as possible. The supervision of the mining work by qualified persons required by the M.M. Regulations was not ensured by these permit holders. They did not even comply with the directions etc. given by the DGMS. The result was that the safety of mines workers was totally neglected and large number of accidents continued to occur in Bhatti Mines.

Assertions of the public interest in the safety of the mines workers by the Government.

The Collector(Mines) was issuing permits for extraction of Bajri and Stone and till October, 1975 such a permit was held by M/s Kiran Pal & Co. for working Bhatti Bajri Mines. During the inspections carried out by the officers of the DGMS, it was found that the mining operations were being conducted in haphazard manner. No attempt was made to comply with the safety precautions laid down in the Mines Act, 1952 and the M.M. Regulations 1961. The question of labour welfare measures was never considered. Some accidents occurred in this mine due to the failure to observe the safety precautions. Under Section 22(3) of the Mines Act, 1952, therefore, by letter No.D/32/1/4353 dated 1.5.1970, the DGMS prohibited the working in the mines. The DGMS must have been, therefore, of the opinion that there was an urgent and immediate danger to the life or safety of persons employed in the mines. The result of such

contd...

prohibitory order is that the mining operations cannot be resumed until the danger is removed. The responsibility for compliance with the safety precautions is placed by Section 18(1) of the Mines Act, 1952 on the owner, agent and manager of every mine. Since the holder of the permit was not complying with the safety precautions though he was the owner and some of his staff may be the agent and the manager of the mine, it becomes necessary to stop further working of the mine. The basic reason for this was the clear conflict between the private interest of the permit holder and the public interest of the safety of the mine workers. The permit holder was interested in minimising the cost of production. The safety of mines workers required that before the mining operation begins, the over burden of earth should be removed. This over burden is two-fold. Firstly, the loose earth covering the minerals has to be removed. Secondly, the earth in situ which clings to the mineral and is harder than the loose earth has also to be removed. This involves initial capital expenditure. It is only a permit holder who makes a long term plan to work the mine who would be expected to make this lay out of expenditure. In the long run he will be compensated for it. Meanwhile, after the removal of the over burden he has to comply with Regulation 106 of the M.M. Regulations. The relevant part of it is as follows:

contd...

"106. Opencast workings - In opencast workings, the following precautions shall be observed, namely -

- (1) In alluvial soil, morum, gravel, clay, debris or other similar ground -
 - (a) (i) the sides shall be sloped at an angle of safety not exceeding 45 degrees from the horizontal or such other angle as the regional inspector may permit by an order in writing and subject to such conditions as he may specify therein; or
 - (ii) the sides shall be kept benched, and the height of any bench shall not exceed 1.5 metres and the breadth thereof shall not be less than the height.

To facilitate such long term planning, leases for long terms were granted under the Mines and Minerals (Regulations and Development) Act 1957 and under the Minerals Concessions Rules framed thereunder. Provision was also made for renewal of these leases for equally long terms. Unfortunately, a minor mineral was not treated in that way. Under the Delhi Minor Mineral Rules 1962, short term permits were granted. This meant that long term planning was not accepted. The inevitable result was that neither the over burden was properly removed nor were any benches formed as required by Regulation 106 and mining is done without formation of benches. The steep sides of the mine can collapse burying under the debris the mine worker as also the mule used by him to transport the minerals from the bottom of the pit to its surface. It is precisely because such accidents had occurred that the prohibitory order was passed.

On the 3rd May, 1975, it was the Union Labour Minister who by his D.O. No.11012/110/75-M.I. suggested to the Lt. Governor of Delhi to consider the working of the mine in Union Territory of Delhi departmentally in accordance with the provisions of the Mines Act, 1952 and the M.M. Regulations. The Executive Council of Delhi in its meeting held on 13.11.1975 took the following decision:

"The question of taking over minor mineral operations around Bhatti and Badarpur by the DSIDC was also considered. It was decided that work may be taken over. A separate corporation will be formed for the purpose."

It is extremely important to note that this decision by the Executive Council of Delhi was taken at the request of the Labour Minister whose only anxiety was to ensure the safety of the mines workers. Just as the object of a statute is a key to its meaning, the object of the suggestion that the Bhatti Mines should be worked departmentally was to ensure the safety of the mines workers. For, the Government could make a long term plan and could ensure that Regulation 106 and other safety precautions will be taken before mining is carried on in these mines. Since the Government is a public authority, it can take steps to ensure the public interest both in its economic and its safety aspect. There would be, thereafter, no conflict between the interest of the Government in working the mine and the interest of the Government and law to ensure that the safety of the mines workers is not allowed to suffer.

Take over by the DSIDC

On the 22nd November, 1975, the Bhatti Mines were taken over by the DSIDC. This was simply done by a

contd...

policy decision of the Collector(Mines) that permit to quarry this mineral would issue only to the DSIDC and to no other person. This meant a monopoly conferred on the DSIDC which was constitutional under Article 19(6)(ii) of the Constitution. Monopoly by a Corporation owned or controlled by the Government is made constitutional by Article 19(6)(ii) of the Constitution because public interest could be better looked after by the State or by a Corporation owned or controlled by the State. When the DSIDC took over, it knew that prohibitory order issued under Section 22(3) of the Mines Act had already stopped work in an area which may be called old Bhatti Mine from 1970 onwards. It also knew that the only reason for issuing a prohibitory order under Section 22(3) was that under the existing system of mining, there was urgent and immediate danger to the life or safety of any person employed in the mine.

What did DSIDC do?

DSIDC was and is a Corporation. Its entity is separate from that of the Government. Its Board of Directors and officers in their capacity of being either Director or a servant of the DSIDC, had to shoulder the responsibility of ensuring mines safety. This is because the DSIDC was the owner of the mine according to the definition of the word 'owner' in Section 2(b) of the Act. Normally, it is General Manager (Mines) who would be the agent and the Manager of the individual mine would be the manager under the Act. The responsibility for compliance with Regulation 106 was of the owner,

contd...

the agent and the manager under Section 18(1) of the Act. Failure to take such precautions on their part can lead and has led to their prosecution by the DGMS. Under these circumstances, there was no alternative to the DSIDC to work the mines departmentally. Why did they not do so? The answer is found in two reports, one made in 1977 by the DSIDC itself and the other made in 1981 by the Managing Director of the DSIDC as the convenor of a Working Group which included the Labour Commissioner, Collector(Mines) and the Deputy Director of Mines Safety.

Revised feasibility report of 1977
on the Bhatti Mining Project by DSIDC

The following extracts are relevant:

4.3 At present a number of contractors have been engaged to excavate sand. Each has been allotted a particular area over which he removes the over-burden and excavates the underlying pay-mineral after making benches under the supervision of our Mining Engineers. With strict supervision it has been possible to enforce benching in pay-mineral since these bring remunerative prices. But the experience in over burden has been sad.

5.3 Thus the over burden removal may be spread over a period of 60 years. The work load per day comes to:

Total over burden : 3.92 m.m³

Work load per day : 54 trucks.

It is proposed to get this work done manually by awarding contract. The extra expenditure incurred will be recovered by increasing the levy on A & B Grades from the present rate Rs,20 to new rates of Rs.25 per truck.

contd...

5.8 During first year very strict supervision has to be maintained so that at the end of this period the requisite side slope and benches have been prepared. It will not be possible during this period to provide for truck loading facilities on the benches. Hence the present method is proposed to be continued during this transition phase.

6.4 For the out put of 1000 trucks per day the total face length required would be 2000 metres and number of persons employed would be 3000. After the pit has been developed, it is proposed to regulate the working in such a way that any time the working will be confined to 6 benches, in A and B grades. If all the work is done in these six benches the length of each bench will be 333 metres OR there will be 12 benches of half the face length. On top of these will be at least two full benches or four half benches, in 'C' grade.

6.9 The width of benches according to regulation must not be less than the height. But where the truck is to be loaded, the width is proposed to be made ten metres wide so that the truck movements does not hamper the mining operations and vice-versa. The Supervisory staff will ensure a strict enforcement of Bench Width maintenance. It is proposed to make every fourth bench the loading bench, with a width of 10 metres. The top three benches will be 1.5 metres high and same width. The material from top three benches will be loaded on the trucks on the fourth bench.

15. It is proposed to modify the system of revenue collection and management of contractors in such a way that the contractors are allowed to sell the product at pre-determined rate. These rates will be fixed in such a way that they are in conformity with accepted Govt. norms. While fixing the rates consideration will be given to the cost of production, the cost of guarding & maintaining the staff & the efforts required for sales.

Formation of benches was practicable

This feasibility report of 1977 is concerned essentially with the practicability of working the Bhatti Mine and the right method to work it. It shows full awareness on the part of the DSIDC that the benches would have to be formed. This was in accordance with the Regulation 106. The report also takes into into account the existence of contractors who are quarrying the mineral, the necessity of strict compliance with the formation of benches etc. is emphasised. The report nowhere says that there is any difficulty in formation of the benches and in disciplining the contractors to do so. The report does not given any reason why the working cannot be taken over and be done by the DSIDC departmentally. It is only a matter of inference that DSIDC WAS reconciled to the working of the mine by the contractors. But the DSIDC did not at all say that compliance with safety precautions by the contractors could not be ensured by the DSIDC. This leads to either of the two

contd...

inferences: (a) either the DSIDC hoped that the Regulation 106 will be complied with by the contractors or (b) that the DSIDC did not care whether the contractors did so or not.

In the proceedings before us Shri J.R. Vohra, General Manager(Mines) has stated that in the peculiar circumstances of the mines being worked by the contractors, it was not possible for the DSIDC either to work the mines departmentally or to ensure that the contractors work in compliance with Regulation 106. The Managing Director of the DSIDC Shri Bhattacharya did not deny that the new area marked out for mining by the DSIDC can be worked departmentally but only stated that the workmen were not forthcoming to work it. Both he and Shri Vohra apprehended resistance by the existing contractors to the taking over of the mining work by the DSIDC departmentally. They were of the view that a law and order problem existed and they needed large scale police help to tackle that problem. But no indication of such thinking is at all given by the DSIDC in the feasibility report of 1977.

The Working Group report of November, 1981.

Paras 1 and 2 explain that the reason for the formation of the Working Group and its report was that fatal accidents had occurred in the mine due to the collapse of the sides. Apparently, benches had not been formed on these sides. In para 3, the Group acknowledges the following criticisms levelled against the working of the DSIDC:

contd...

- (a) lack of effective supervision by the DSIDC on the deployment of labour by the contractors.
- (b) DSIDC's existance in the mining activity only as an agency to collect royalty at the checkpost.
- (c) Exploitation of the labour force by the contractors even to the point of prodding them to their death.
- (d) The suspicion that the contractors are working the mines in connivance with senior officers of the Delhi Administration in spite of the ban imposed on the working of the mines by the DGMS.
- (e) inaction of DSIDC because of political links of the contractors.

A perusal of the report, however, does not show that any convincing attempt was made to answer these criticisms.

In para 10 of the report, it was pointed out that the contractors continued the old system of working in the new Bhatti mine also and the DGMS had to issue a notice under Section 22(1) to the DSIDC to rectify the defects within the given time but even after the extension of the time originally granted, no improvement was noticed and an order under Section 22(1 A) of the Act was issued by the DGMS on 14.12.1978. In para 12, the Working Group

Contd..

clearly recommended that the DSIDC should expand its role in actual mining operations. But in para 14, it is pleaded that

- (i) The relationship between the management and the contractors who could raise and sell minerals independently did not allow adequate control in the hands of the managerial staff to enable them to force the contractors to work mines in accordance with the laid down specifications.
- (ii) The mining working has remained unsystematic and dangerous.

Contravention of the DGMS orders

In 1970, the old Bhatti mine was closed by the prohibitory order of the DGMS. In December, 1978, the new Bhatti mines part A was closed by the order of the DGMS under Section 22 (1A). In September, 1982, para B of the new Bhatti mine was closed by the order of the DGMS. In spite of these orders mining by the contractors was continued in the prohibited areas and the fixed payment per truck was received by the DSIDC from the contractors. Then came the three accidents in January, 1983. It is only from 28.1.1983 that the mines were actually closed by the DSIDC.

Explanation by DSIDC

In para 15 of the report, it is submitted that a decision was taken by the Delhi Administration to abolish

contd...

the contract system in August, 1980, after a major accident in August, 1980. Then the report says

"but this could not be implemented and instead agreements were made with the then existing contractors for a period of 11 months with a view to enable them to work the mines in a safe and systematic manner. More than a year has elapsed but the accidents continue to increase both in stone and in Badarpur Sand Mine."

No reason at all is given as to why the decision to work the mine departmentally could not be implemented. This has given rise to the criticism that the DSIDC is either utterly incompetent or it is conniving at the illegal working of the mine.

Departmental working or effective control is practicable.

Para 22 comes to this conclusion and deserves to be reproduced as below:

"Further, as mentioned earlier, as long term measure it would be necessary to introduce a system of management of mines by which both production of minerals and their sale is brought under effective control of the Corporation. At present working in all the mines are scattered, with the result that effective control is not possible both from production and safety point of view. For example in Bhatti Mine production of about 15,000 tonnes per day (current requirement) could be obtained from not more than 10 pits as against existing more than 100 pits which are being operated in the area. The entire operation could thus be concentrated in relatively safer areas of New Bhatti Mines. This will ensure greater supervision on the working of the mines.

contd...

It is thus clear that the DSIDC can concentrate on about 10 or even lesser number of pits to raise about 10000 tonnes of minerals per day either by employing departmental labour or by employing raising contractors. The difference between the present contractors and the raising contractors is clear. The present contractors are allowed to become the owners of the minerals mined by them and they sell the minerals to the purchasers, giving the DSIDC only a fixed sum of Rs.30 or so per truck load. But the raising contractors will not become the owners of the minerals. They will only raise the minerals for the DSIDC for a fixed payment. The minerals will be sold by the DSIDC and not by the raising contractors.

Final conclusions by the Working Group are produced below:

"Before the report is concluded the Working Group would like to express a word of caution about the recommendations made in the report. In the system presently followed, the contractors are free to raise the minerals and sell the same themselves from the area where they have been working over the years. DSIDC has only been collecting levy at their check posts from the trucks entering the mining area. This has resulted into a situation where contractors have developed almost independent control over the entire mining operations with the attendant financial benefits and they have been able to resist all attempts of DSIDC for rectification of defects in the workings of the mines as also ignore any directives issued in this regard. Large number of qualified Managers, Foremen and Mining Mates have been appointed by DSIDC but they are unable to have any effective control over the workers who are working at dangerous places inspite of the directives to the contrary given in writing to them. The Working Group also learnt that a system of

contd...

buying and selling the working areas also exists for which some time the amount charged is as high as Rs. one lac. The Working Group, therefore, apprehends that it may not be easy to bring about any change in the existing system of working of mines. The Working Group, however, also feels that as long as the present system continues of the labourers cannot be improved and the death of labourers because of the unsafe working conditions in the mines and cannot also be prevented."

In my view para 32 should be read in the context of para 22. It would then appear that the working of the mines by the DSIDC either departmentally or through raising contractors is practicable and the fears of any unlawful and violent resistance by the contractors are exaggerated. At any rate, according to the Managing Director of the DSIDC, Shri Bhattacharya, the DSIDC is waiting for the labourers to come and work the new virgin mine area departmentally for the DSIDC. There are two reasons why the labourers have not so far responded to the call of the DSIDC. Firstly, the contractors have been begging of them not to work for the DSIDC because the contractors will be deprived of their occupation. Secondly, the labour has to settle its wages with the DSIDC. Till now, the contractors were paying the labour piece wages and the whole family of the labourers including children were working in the mine and women were even working at night contrary to the labour laws. The DSIDC will not allow children to work and women to work at night. Consequently, the wages to be earned by the labourers might be less. But this is not an insoluble problem. The DSIDC would be willing to pay piece wages to the labour and hopefully the labour will also accept those wages without insisting that children should be allowed to work or women should be allowed to work at night.

Contd...

Terms of reference

In the light of the background given above we will facilitate our dealing with the terms of reference.

Causes of accidents :

The DSIDC in the written statement signed by its Counsel, Shri R.L. Tandon has admitted in paragraph 2 that all the three accidents which occurred on the 10th, 16th and the 24th Jan., 1983 were caused due to the fall of the sides of the pits at the bottom of which the victims were working in these Mines. The D.G., Mines Safety, has also held inquiries and taken evidence into the occurrence of these accidents. This evidence was made available to me as the Report of these accidents was not submitted by the D.G., Mines Safety in view of the appointment of the Court of Inquiry. This evidence also shows that the accidents were due to the collapse of the sides of the pits. The victims were buried under the debris.

The fall of the sides of these pits has been occurring repeatedly during the past also and used to be the sole cause for the accidents in these Mines. In para 2 of the Report of the Working Group in November, 1981 the details of the accidents causing deaths have been given. The deaths were three in 1977, six in 1978, two in 1979, eight in 1980 and ten in 1981 (upto 20.10.81). The cause of all these deaths was the collapse or the fall of the sides of the pits at the bottom of which the victims had been working.

✓ The Director of Mines Safety, Ghaziabad region, Shri S. Kumar has also given a statement regarding the causes of accidents on 10th, 16th and 24th January, 1983. The accident of 10th January, 1983 occurred in the new Bhati Mines, Part A, whereas the accidents on the 16th and 24th January, 1983 occurred in the old Bhati Mines. Shri Kumar has rightly stated that the fall of the sides occurred due to the non-compliance of the provisions of Regulation 106 of the Metalliferous Mines Regulations, 1961 and that under Sec. 18 of the Mines Act 1952 the Owner, Agent and the Manager are responsible for the contravention of the provisions of the said Regulation. ✓ The Director General, Mines Safety has never been informed that apart from the statutory Owner and Manager any intermediaries were working in these Mines. There has been some uncertainty as to whether Shri J.R. Vohra, General Manager (Mines) was appointed as an Agent by the DSIDC which was undoubtedly the owner of these Mines. Shri Vohra is at pains to show that he was not appointed an Agent. This does not really matter. The responsibility for the compliance with Regulation 106 was admittedly of the DSIDC and there is no denial by the DSIDC that it did not comply with Regulation 106. Nor is it possible to give any legal status to the contractors which were working in the Mines. These persons had never held any permits after the appointment of the DSIDC as the sole permit holder on 23.11.1975.

contd...

They were working the Mines de facto, but had no standing to do so de jure. The DSIDC knew that it could not transfer the permit to these contractors. As the sole permit holder the DSIDC as the Owner of the Mines was responsible for compliance with Regulation 106.

If the DSIDC wanted to act according to law it had only two options which were recognised clearly in the Report of the Working Group in November 1981. Either it had to work the Mines departmentally by labour employed by itself or it could employ only Raising Contractors or Labour Contractors who would get wages from the DSIDC like the labour actually working in the Mines but would not get any right in the minerals quarried. Unfortunately the DSIDC did not adopt any of these alternatives. On the contrary the DSIDC allowed the contractors to claim the Ownership of the minerals because the DSIDC received only a fixed amount of Rs.27/- or so per truck and the amount of Sales Tax which was Rs.4/- or so per truck and allowed the contractors to sell the minerals to the purchasers. The difference between the sale price and the cost of quarrying the minerals was the profit which ought to have gone to the Owner of the Mines but which was illegally pocketed by the contractors.

contd...

The main cause of the accidents, therefore, is the divorce of legal responsibility for compliance with Reg. 106 from the actual working of the Mines. The responsibility was borne by the DSIDC while the quarrying was done by the contractors. The actual compliance with Reg. 106 required the formation of the Benches which alone could have secured the safety of the workers working in the Mines. The sole object of the formation of these Benches in the sides of the pits which are dug for the quarrying of the minerals is to prevent the collapse of the sides. It is admitted by the DSIDC and even by the contractors and emphasised by the Director, Mines Safety and the representatives of the labour working in the Mines that the Mines could not have been allowed to be worked legally without taking this precaution of the formation of Benches.

But the anomalous position was this. The DSIDC tried to discipline the contractors and the labourers to comply with the Reg. 106 and other safety precautions. The Managers and the mining mates of the DSIDC reported against the contractors and labourers contravening Reg. 106 and other precautions. Such reports were made to two authorities, - to the Director, Mines Safety and to the Police. With or without these reports the Director, Mines Safety has been discharging its statutory functions under Chapter IV of the

contd...

Mines Act 1952. Before the mining operations are started the Owner, Agent or the Manager of the Mines has to give a notice to the Director, Mines Safety and others under S. 16(1) of the Act. Under S. 17 of the Act every mine had to be under the Manager who was to be responsible for the control, management, supervision and direction of the Mines. The DSIDC as the Owner of these Mines appointed Managers for discharging these functions. Under S. 18(1), the Owner, Agent and the Manager of every Mine shall be responsible that all operations carried on in connection therewith are conducted in accordance with the provisions of the Act, and the Regulations. Under S. 18(2) in the event of any contravention of any such provision by any person whatsoever, (the contractors in this case), the Owner, Agent and the Manager of the Mine shall be deemed to be guilty of such contravention unless they prove that they had taken all reasonable means by publishing and to the best of their power enforcing these provisions to prevent such contravention. S. 18(3) makes it quite clear that it shall be no defence in any proceeding brought against the Owner or the Agent of a Mine under this Section that a Manager of the Mine has been appointed in accordance with the provisions of this Act.

contd...

Conclusion:

The DSIDC alone was responsible for the occurring of the accidents because it alone could enforce compliance with Reg. 106 and thus prevent these accidents. Of course in a criminal prosecution the DSIDC can take the defence that it had taken all reasonable means to the best of its power to enforce the provisions to prevent such contravention. We are not concerned with the question to what extent the prosecutions launched against the DSIDC by the Director, Mines Safety will succeed and to what extent the defence by the DSIDC will protect it from being convicted.

The question before us is not of criminal responsibility at all. The question before us is whether the DSIDC failed to ensure compliance with Reg. 106 and was thus not only legally but also morally responsible for the occurring of the accidents. After hearing the DSIDC the PUCL, the representatives of the labour, the representatives of the contractors and the Director of Industries, Delhi Administration and also workmen and Shri R.L. Tandon counsel for the DSIDC the only conclusion that we could form was that the legal and the moral responsibility of the DSIDC for the occurrence of these accidents cannot be explained away. The reasons for this conclusion may be shortly stated as below:

contd...

1/ Just as no person can undertake the mining of any major mineral except in accordance with a lease granted by the State Government in view of S. 4 of the Mines & Minerals (Regulation & Development) Act 1957, no person can quarry or cause to be quarried any minor mineral without first obtaining the permit from the Collector of the Mines in view of clause 3 of the Delhi Minor Minerals Rules 1962. The application for such a permit is to be made under clause 4 of the said Rules and this must have been done by the DSIDC. It is immaterial whether the Mine is situated on the land which is owned by the Government or a private person. Rule 27 of these Rules prohibits the owner of the land on which the quarry is situated from interfering in any way with the quarrying done by the permit holder. The right of the owner of the land is only to receive compensation determined by the Collector of the Mines keeping in view the provisions of the Land Acquisition Act. The DSIDC alone was, therefore, the owner of these mines as the sole permit holder within the definition of the term "owner" in S. 2(1) of the Mines Act 1952.

2/ The DSIDC was thus directly responsible for the formation of the Benches as required by Reg. 106. It had either to do itself or get it done by the Raising Contractors/Labour Contractors. It neither did it itself nor got it done by the Raising Contractors/Labour Contractors.

contd...

3/ It is true that the formation of Benches has to be preceded by the removal of the overburden of the earth covering the minerals. The money spent on such removal is a capital investment which will yield return only after the minerals are quarried and sold. The Government was aware of the need for such expenditure and was prepared to meet it. It was a duty of the DSIDC to have received such finance from the Government. It could then itself use the money by removing the overburden or get the overburden removed by the contractors by paying them from this fund.

4/ It is also true that the system of issuing permits was not suited to a long range operation by the permit holder. For, the royalty had to be deposited by the permit holder in advance. Since the amount of money to be so deposited would be very large if the permit was to be for long period, the DSIDC got a permit for eleven months or one year and deposited the amount of the royalty calculated on the out-turn of the minerals to be worked during the period of the permit. Nevertheless the DSIDC knew that the policy of the Government was that the Mines should be worked by a Public Undertaking because the contractors prior to November 1975 had repeatedly shown that they would never comply with Reg. 106 if the mining was left

contd...

to them. The DSIDC also says that inspite of repeated requests and warnings to the contractors there was no compliance with Reg. 106 by the Contractors. The DSIDC thus knew that the permit would be renewed to it every year. The DSIDC thus could have planned a long period operation of the Mines and could have got the overburden removed before the actual mining started. It is the defective removal of the overburden which directly contributed to the collapse of the sides of the pits in the absence of the Benches. The DSIDC knew that the contractors could never be expected to remove the overburden effectively because legally they had no right to quarry and, therefore, no responsibility for the formation of the Benches.

5/ The DSIDC resorted to issuing licence to the contractors in 1981 on an experimental basis. The reason for the issue of these licences is not clear. If it was to make the contractors Raising/Labour Contractors then this purpose has not been fulfilled because the contractors claimed the ownership of the minerals and sold them. If it was to transfer legal responsibility for the formation of the Benches to the contractors then it was futile. For, the permit holder was not authorised to do so.

6/ As stated above, the working in the Old Bhati Mines was prohibited by the Director General, Mines Safety

contd...

in 1970, that in new Bhati Mines - Part A in December 1978 and in new Bhati Mines - Part B in September 1982. The working could not be resumed unless the defects which made the working dangerous to the safety of the miners were rectified. Thus the actual working of the Mines without rectification was not only a contravention of Reg. 106 and other safety precautions but also was violation of the prohibitory orders issued by the Director General, Mines Safety. It was only on the 28th Jan., 1983 that the Mines were actually closed for working though clandestine working seems to have gone on here and there in the Mines even thereafter. But the majority of the contractors have shifted their operations to the adjoining Mines in Haryana. Like the dacoits who operate on the inter-State borders, the Contractors are quarrying the minerals on the border between Delhi and Haryana. Questioned by the Delhi authorities, they would say that they are working in Haryana and vice versa. If the DSIDC could not really prevent the contravention of Reg. 106 by the Contractors, it could have abstained applying for the renewal of the permit. In that event the Mining Department of the Delhi Administration would have become responsible to prohibit the contractors from mining. Unfortunately the DSIDC continued to apply for the renewal of the permit and yet did not exert itself enough to ensure compliance with Reg. 106 and thus to prevent the accidents. Their liability for the causation

contd...

of the accidents is their negligence in ensuring compliance with Reg. 106. Alternatively, the DSIDC could have abstained from obtaining the permit and thus freed itself from such responsibility.

- 7/ The obtaining of the permit involved the deposit of the advance royalty by the DSIDC. This compelled the DSIDC to recover some sort of levy and sales tax from the Contractors. This conduct of the DSIDC appeared as if the DSIDC was condoning the illegal operations of the Contractors. A public corporation like the DSIDC should have taken care not to allow its image to be sullied like this in the public mind.
- 8/ The feasibility report of 1977 did not envisage any insuperable obstruction to DSIDC working the Mines in accordance with law. The report of the Working Group in 1981 suggested a practical method of operation of Mines in para 23 of the Report. This was to employ Raising/Labour Contractors whose licences would be forfeited for contravention of Reg. 106 and would also be liable to pay heavy penalty for such contravention. There is no satisfactory explanation why this system has not been brought into operation since then.
- 9/ In para 22, the size of the problem was determined by the Working Group. It was practicable to restrict the working of the Mines to 10 pits or less with the help of about 3,000 workmen. Supervision for compliance

contd...

with Reg. 106 with such a smaller area was practicable according to para 22. It is regrettable that this was also not put into operation by the DSIDC.

- 10/ In para 32 of Working Group Report, it is pointed out that the Contractors with vested interests would resist the implementation of the above measures and it would not be easy to bring about any changes in the existing system of the working of the Mines. But the Working Group also recognised that if the present system is allowed to continue then the deaths caused by the accidents and the accidents caused by the falling of the sides of the pits could not be prevented. The mere fact that "it would not be easy to bring about the change" cannot be a satisfactory explanation for not bringing about the change.
- 11/ Shri Bhattacharya, the Managing Director of the DSIDC, has at last thrown open the virgin area for departmental mining. This means that from 4th Feb., 1983 onwards when this offer has been made by the DSIDC to the labourers the Contractors did not create any law and order problem. It was only stated on behalf of the pro-Director Labour that the labour has not yet accepted the offer of the DSIDC because the Contractors are persuading them not to co-operate with the DSIDC in departmentally working the Mines. The Contractors say that this will deprive them of their means of

contd...

livelihood. On the other hand Swami Agnivesh, who is the leader of the independent labour and whose Union has about 1500 labourers said that the members of his Union will be willing to give full co-operation to the DSIDC in the departmental working of the Mines if realistic wages were paid to the labourers. The labour was receiving piece wages. The work was done not only by the adults but also by children and by women at night. DSIDC cannot allow work by children and by women at night. It has only to ensure that piece wages payable to the labourers are commensurate with the piece wages received by the labourers from the Contractors making allowance for the fact that children are not allowed to work and women are not allowed to work at night. This difficulty will be solved in course of time because the labour wants to earn wages and the DSIDC also wants that the supply of the minerals should not be stopped for too long a time to the detriment of the customers. The Officers of the DSIDC will, however, have to come out of their shell and sit down to talk with the labour and the labour leaders and to hammer out the rate of the piece wage by intensive negotiations. If the permit holder was a private person or a private corporation it is impossible to believe that it would not be able to arrive at an agreement with the labour as to the rate of piece wages. If a private person

contd...

or a private corporation can do so, the public undertaking like the DSIDC must prove that it also can do so.

The existing conditions in which mining operations are carried out in Bhati Mines

- 1) The fundamental anomaly of the existing conditions of work is this. Legally, the sole permit holder, the DSIDC, alone is authorised to quarry the mineral. Actually the mineral is quarried by the Contractors. There is no legal relationship between the DSIDC and the Contractors. Such relationship cannot exist if the Contractors are to work independently. For, the DSIDC cannot assign the permit to the Contractors. The DSIDC can only employ Raising/Labour Contractors.

- 2) The public interest in both its dimensions - (a) economic and (b) safety of the miners, has been completely sacrificed by the existing system of work. The ownership of the minerals is in the permit holder - the DSIDC. It alone has the right to sell the mineral. Yet the mineral is being allowed to be sold by the Contractors who have no right to do so. The profits of such sale ought to have come to the public revenue. To allow the contractors to take them away is to connive at an open theft of valuable national resources. It is highly regrettable that such connivance should be on the part of a public corporation like the DSIDC.

contd...

3) The sacrifice of the public interest in the safety of the miners working the Mines is equally indefensible. It has not been shown that the DSIDC was physically prevented at any time from working the Mines departmentally or with the help of Raising/Labour Contractors. The real reason why the Officers of the DSIDC have not actually and physically tried to work the mines departmentally or with the help of Raising/Labour Contractors is this. The Officers of the DSIDC have either been Civil servants in the past or have tended to imbibe the mentality of civil servants. It is well known how civil servants are averse to shoulder responsibility for un-popular decision or to take risks in pushing through un-popular reforms. But the working of a public undertaking cannot be made a success unless this mentality is cast away. The very object of entrusting a mining to a public corporation is to give it autonomy. A corporation unlike the Government is intended to be free from political influence. The slowness of a Government Department may sometime be due to consideration of public opinion or political considerations, but the DSIDC does not have to take these factors into account. At any rate, the public opinion has been shown to be overwhelmingly in favour of the mining being done strictly in accordance with the safety precautions and particularly in compliance with

contd...

Reg. 106. Indeed, certain articles in the Press have accused the DSIDC for failing to enforce the safety precautions in mining. Even corruption has been alleged against them. The reason is that the only difficulty in the enforcement of safety measures put forward by the DSIDC is the existence of the Contractors who are habituated to do the mining work without compliance with Reg. 106 and other safety measures. Public opinion is not convinced that it is physically impossible for the DSIDC to enforce the law. It is true that these contractors are openly saying that they would not allow their Mines to be taken away from them and they also threatened Swami Agnivesh, the leader of the independent labour if he were to help the DSIDC in actually taking over the Mines. But even private persons have not been deterred by such oral threats. They have sought Police help when necessary. Why cannot the DSIDC act like a private entrepreneur? Unless it does so, it will be behaving like the proverbially inactive civil servant. As an independent entity the DSIDC has no business to behave like supine civil servants. It must act like a businessman, who will not allow the economic and the safety aspects of public interest to be defeated by a few disgruntled persons.

contd...

Changes and corrective measures to improve the working conditions and to prevent accidents in the said mines in future.

Now, we come to the most important part of the inquiry. It is true that the causes of the accidents had to be found and the existing working conditions had to be enquired into. But the inquiry into the past causes of the accidents and into the present conditions of the working of the mines was to be the foundation for the measures to improve the conditions of work and to prevent the accidents in future. The inquiry into the causes of the accidents was not with a view to punish anyone but with a view to know what should be done to eliminate the causes of the accidents so that the accidents are prevented in future. Similarly, the inquiry into the present working conditions was not primarily with a view to condemn anyone in particular but with a view to improve the present conditions for ensuring a better life to the workmen. While our attitude has been constructive, we regret to say the DSIDC was more anxious to escape responsibility for the past and the present rather than to suggest and bring about improvements for the future. This is illustrated by the statement filed by Shri J.R. Vohra, General Manager(Mines) and also by his oral evidence. His main anxiety was to show that he was not the agent of the owner of the mine even though DSIDC was the owner and he was the General Manager(Mines). It may be that he has successfully avoided being appointed as the agent by the DSIDC but it is really a shame that he was compelled to take such a technical plea. It was expected of him to own the

contd...

responsibility for the illegality committed by the DSIDC in permitting contractors to mine the mineral and sell it when DSIDC alone was legally entitled to do so. No wonder allegations of connivance complicity or even corruption has been made by the press, by the PUCL, by the contractors and by other members of the public against such officers of the DSIDC. The illegality and immorality of this system was admitted by everybody who participated in the inquiry and was clear to us. We are of the view that the DSIDC was certainly in a position to have ended this system long ago. There was no real justification why the DSIDC did not do so. As stated above, the only possible reason could be either sheer incompetence unworthy of any of civil servants or servants of a corporation or complicity and/or corruption, in league with the contractors. The changes and the corrective measures are therefore to be directed against ending this system and eliminating the contractors from it as they have no legal or a moral right to mine and sell the minerals. Since the economic and the safety aspects of mining act on each other, the changes and the corrective measures have to relate to both these aspects.

The Economic Aspect

1. In respect of major minerals under the Mines & Minerals (Regulation & Development) Act, 1957 and the Mineral Concession Rules framed thereunder long term leases are given to persons or corporations for mining. These leases are also renewable for equally long terms. The reason is that a considerable capital investment has to precede

contd...

the ultimate profit to be derived from mining and to ensure safety of the miners. The Delhi Minor Mineral Rules provide for permits rather than leases. But this gives an impression of short-term permits. Long term permits are not prohibited but in practice they are difficult to obtain because the amount of advance royalty to be deposited would be unduly high. The first change needed, therefore, is that permits under the existing rules or leases after amending the rules should be for longer periods. They should also be renewable for equally long terms in view of the long-term capital investment made by the permit holders or the lessees. The permits or leases should be given to the DSIDC or a newly created mining corporation owned and/or controlled by the State for a period of 15 or 20 years as recommended by the Working Group.

2. The pre-requisite of advance payment of royalty and attaching No Objection Certificates from the Land owners by the DSIDC should be dispensed with by the amendment of the rules.

3. The ownership of the DSIDC in the minerals is assured by the law and must be asserted by the DSIDC. Those contractors who claim the ownership of the minerals must not be allowed to do any mining work at all. The sale of the minerals must be done by the DSIDC and the profits of the sale must go to the DSIDC.

4. In view of the necessity for safeguarding the public interest both in its economic and safety aspects it is necessary that the permit/lease of mining the minor mineral must be given only to the DSIDC or another public corporation formed exclusively for the purpose of mining. This alone will prevent the greed of making profit from defeating the compliance with safety measures.

5. The working of the mines may be done either departmentally by the DSIDC directly employing their labour or by employing what the Working Group has called Raising Contractors. The word "contractor" has however, assumed a meaning which gives him a right in the mineral. It also looks as if the DSIDC has assigned some of its own rights to the contractors. We recommend, therefore, that this word should be avoided and instead the expression "labour supervisors" should be used. For, the work to be done is better described as that of a labour supervisor than that of a Contractor. The word "raising" indicates the necessity of ensuring an adequate out-turn of the mineral by the work of the labour. This can be ensured by the payment of wages by piece rates and not by time rates. Piece wages have everywhere succeeded in getting the desired out-turn from the labour and thus should be adopted by the DSIDC as they used to be adopted by the contractors in these very mines.

6. The actual rates of piece wages could be settled even with the heads of families so long as care is taken

that children do not work at all and women do not work at night.

7. Preference should be given to the employment of those members of the labour force who have actually worked in these Mines and fresh labour should not be brought in unless the existing labour is either un-cooperative or insufficient in number.

8. The capital investment in the removal of the over-burden as a pre-requisite to the starting of the actual mining operation should be made by the DSIDC in as much as the profits of the sale are also to be taken by the DSIDC.

9. The terms of the labour supervisors and the labour should be standardised. They should be the same based on piece wages irrespective of the value of minerals or the price that would be fetched by the sale of the minerals.

10. Those among the existing contractors who are prepared to work on wages and who agree not to claim the right to sell the minerals, may be employed as labour supervisors if the DSIDC is satisfied that they would be law abiding.

11. The present General Manager(Mines) has not shown adequate awareness of his responsibility. In the nature of things he has to be held responsible for the incompetence or connivance of the DSIDC at the illegal mining done by the contractors and the failure of the DSIDC to comply with the safety precautions. He would not appear to be the right choice to begin the new

contd...

system of working. On the other hand, Shri Bhattacharya, the Managing Director, as a candid and conscientious officer has shown his preparedness to change the system and has actually attempted to do so. This was the first attempt made by him on the 4th February, 1983. But his predecessors as also the General Manager of Mines Shri Vohra and his predecessors should have made such an attempt long ago. It would be perhaps desirable to start the working of the new system with a new General Manager assisting the Managing Director and even lower down new personnel as far as possible.

The Safety Aspect

1. The dichotomy of the leasing or working of the mines being with the Ministry of Steel and Mines (Department of Mines) and the enforcement of laws and regulations to ensure the safety of the miners being with the Ministry of Labour has advantages and also disadvantages. One advantage has been to ensure the independence of the Directorate General of Mines Safety in enforcing the laws and regulations. This may be the reason why they are not subordinate to the authorities who regulate the granting of leases and the conditions attached to them. But experience in the Bhatti Mines has shown that not only the contractors but even a responsible public corporation like the DSIDC has not been restrained from indulging in illegal and immoral practices by the fear of the exercise of the powers entrusted in the DGMS under the Mines Act, 1952 and the M.M. Regulations, 1961. The DGMS (particularly its dynamic and dedicated Director

contd...

Shri S. Kumar who is in charge of this region) has done an excellent job. It has been tireless as a watch dog. It has discharged its statutory functions with honesty and independence but the scope of the action to be taken by the DGMS is limited. According to the provisions of Chapter IV, V and IX of the Mines Act, 1952 to ensure the safety of miners, the DGMS can issue notices of warning, can stop the law breakers from working and can ultimately prohibit the mining operations until the danger to the miners is removed. Law breakers are also subject to penalties and prosecutions under Chapter IX. But the prosecutions or judicial proceedings take long time. The illegal mining in the Bhatti Mines took place in spite of the prohibitory orders and in spite of the prosecutions launched by the DGMS. Obviously, the fear of these provisions has not proved sufficient to deter the law breakers. Something more has to be done to ensure that the legal provisions are not violated.

2. The authorities administering the grant of leases and permits have to lend their support to the authorities ensuring the safety of the mine workers. This may be done by attaching new conditions to the leases and the permits for mining. These new conditions should empower the authorities granting leases and permits to cancel leases and permits for the contravention of these new conditions. The new conditions will be that the lessee or the permit holder would be bound to comply with the provisions of

contd...

Mines Act, 1952 and the Metalliferous Mines Regulations 1961 (Regulation 106 in particular). In case of non-compliance, the authorities granting leases and the permits will have the right to forfeit the leases and the permits if they become aware that the lessee or the holders of the permit are not complying with the safety precautions in spite of the appropriate action taken by the DGMS. In future, the DGMS shall send copies of all proceedings taken by them under the Mines Act, 1952 and the M.M. Regulations, 1961 to the authorities granting leases and permits and these authorities shall act on receiving this information in taking steps to cancel leases and permits after hearing those against whom action is to be taken.

2. The ecological considerations should also be taken into account and appropriate obligations should be imposed on the lessees and the permit holders in working of the mines. The mines in the Ehatti area have been worked without any consideration to ecology. The pits present a horrifying spectacle of unregulated exploitation of the minerals and the spoliation of the land. Mining should not be a robbery but should be a scientific winning of the minerals.

3. The condition may also be added to the lessee and the permits making it incumbent on the lessees and the permit holders to comply with the relevant provisions of the Mines Act, 1952 and the M.M. Regulations 1961,

contd.,..

particularly Regulation 106 which should be fully reproduced on the back of the permit itself.

4. The enforcement of safety precautions will be facilitated if a new area opened for mining is restricted to 10 or less pits to ensure the out-turn of 10,000 tonnes per day with the help of labour force of about 3000 a day.

5. At the time of granting permit or the lease, it should be made clear that the lessee or the permit holder will work the mines himself. Alternatively, he may employ the labour and also labour supervisors on wages but without giving them any title to the minerals. This should also be a condition attached to the permit. How much area can be worked by how many labourers and labour supervisors may be determined by the Collector of Mines in consultation with the DGMS.

6. For planning and working the mines in a systematic and safe manner, investment of a sizeable capital is required for the removal of the over burden consisting of the loose earth as also the earth in situ and also for the payment of royalty to the State Government in advance. We have also recommended that the royalty need not be paid in advance if the lease or the permit is granted to a State Corporation. Provisions must be made in the budget of the State Corporation for capital expenditure on the removal of the over burden. Similarly, provision has to be made for construction of canteens, first aid rooms,

contd...

rest shelters and other welfare measures and appointment of medical and welfare officers. The DSIDC has submitted a note on 29.4.1983 stating the details and the existing welfare measures at the Bhatti Mines. These are not adequate and they should be further supplemented.

7. The wages payable to the labour and the labour supervisors should be uniform and in accordance with the minimum wages legislation applicable. They should be appropriate to the work involved and should not vary according to the value of the minerals extracted.

8. Proper registers should be maintained in respect of the labour employed including the labour supervisors, the wages paid to them, the quantity of the mineral which has been raised and which has been sold.

9. Since the labour and the labour supervisors are to be employed directly by the DSIDC, no workmen or labour supervisors shall be deemed to be employed as contract labour within the meaning of the Contract Labour (Regulation and Abolition) Act, 1970. In this way, the word "contractor" and the words "contract labour" will have to be avoided altogether.

10. The mineral bearing area should be identified and demarcated into zones. Each zone should be sufficiently big and amenable for systematic benching. The zone may consist of one or two big mines for easy supervision and control. Each of the zones may, as far as possible,

contd....

include virgin area and worked out pits so that production can come from virgin areas while the old pits could be under reconstruction and development and the cost can be balanced.

11. The old pits should be widened for formation of benches required under regulation 106 of Metalliferous Mines Regulations, 1961 and the prohibitive orders issued by the Directorate of Mines Safety vacated before regular production from these pits is commenced. Till such prohibitive orders are vacated, approaches to the bottom of all the pits covered by such orders should be blocked effectively to prevent entry.

12. Adequately thick barriers may be provided between the zones for laying approach roads.

13. The boulders on the surface may have to be blasted and the ground levelled before exploitation.

14. Some of the pits have reached ground water level beyond which mining is fraught with the danger of land slides even when benches are only 1.5m. high. It is, therefore, advisable to keep general angle of the slope of the pits at about 30° or so. For this purpose, there has to be a wide bench after every 3 or 4 small benches.

15. The system of payment of compensation for accidents caused to the mine workers has to be properly organised. The liability of the employer (DSIDC) to

contd....

pay compensation for injuries suffered by a labourer during the mining arises under Section 3 of the Employers Liability Act, 1938 unless no blame for the accident can be attached to the employer or to a co-employee. The Workmen Compensation Act 1923 will not apply as the labourers in the Bhatti Mines are paid piece wages. It may also be considered if the Employees State Insurance Scheme can be made applicable to these labourers. For payment of ex gratia compensation a Labour Welfare Fund may have to be created.

We are pleased to record that the Court of Inquiry and the Assessors have been unanimous in their views and recommendations. We are thankful to the co-operation extended by the Government of India, Ministry of Labour, particularly by Shri S. Kumar, Director Mines Safety for this Region as also by the PUCL and by Swami Agnivesh and Mrs. Lewis representing the independent labourers in the Mines. The contractors fall into two groups, those who live in the Mining area and consider the Mines as their own and the others who come to Mine from outside. The former contractors refused to co-operate and even expressed their resentment against not being allowed to claim the ownership of the minerals. Shri J.K. Sethi, belonging to the latter group, on the other hand, expressed his willingness to co-operate in the new scheme of employing the contractors as Raising Contractors or Labour Supervisors.

We regret to say that the time taken by the inquiry was prolonged only because of the delays caused by the DSIDC

contd....

who was firstly not prepared to face the inquiry and secondly had no satisfactory explanation to give for its dismal failure to manage the Mines in compliance with law.

This sad story of the Bhati Mines is a warning against certain pit falls. Firstly, the public interest in the scientific exploitation of the Mines and in the taking of safety precautions to prevent accidents to the miners are not likely to be protected/obeyed by those persons who are interested only in making quick profits by haphazard mining without complying with the safety precautions. Secondly, even when a Public Corporation like the DSIDC is made the sole permit holder having the sole right to mine the minerals the protection of these public interests is not automatically assured. The employees of the Corporation must realise that they are public servants not only in law but in fact. They must fulfil their statutory responsibilities or otherwise step aside. It is hoped that the shocking spectacle of one Department of the Government (Directorate General of Mines Safety) prosecuting a State Corporation set up by another Department of the Government (DSIDC) will never be seen again.

New Delhi
3rd May 1983

sd/-
V.S. DESHPANDE
Court of Inquiry