

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE**

**APPLICATION No. 34(THC)/2013(WZ)**

**CORAM:**

**Hon'ble Mr. Justice V.R. Kingaonkar**

**(Judicial Member)**

**Hon'ble Dr. Ajay A. Deshpande**

**(Expert Member)**

**B E T W E E N:**

**1. AWAAZ Foundation,**

Public Charitable Trust,  
New Silver House, New Kantwadi Road,  
Bandra (West), Mumbai 400 050

**2. Sumaira Abdulali,**

Indian Inhabitant,  
Residing at 74, New Silver House,  
New Kantwadi Road, Bandra (West)  
Mumbai 400 050

**....Applicants**

**A N D**

**1. State of Maharashtra,**

High Court, Bombay,

**2. The Secretary of Environment and**

**Forest**, State of Maharashtra,  
Having its office at Matralaya,  
Mumbai.

**3. Maharashtra State Pollution Control Board,**

Through : Its Chairman,

Office at Kalpataru Point,  
3<sup>rd</sup>, and 4<sup>th</sup> floor,  
Opp. Cine Circle, Sion (East)  
Mumbai

- 4. Maharashtra Maritime Board,**  
Having its office at Indian Mercantile  
Chamber, 3<sup>rd</sup> floor, Ramajibhai  
Kamani Marg, Ballard Estate,  
Mumbai.
- 5. The Collector of Raigad,**  
Having its office at Collectorate,  
Alibaug,
- 6. The Collector of Thane,**  
Having its office at Collectorate,  
Thane,
- 7. Union of India,**  
Having its office of the Government  
Pleader for Union of India,  
1<sup>st</sup> Floor, Ayakar Bhavan Churchgate,  
Mumbai 400 020,
- 8. Navi Mumbai Municipal Corporation,**  
Through Its Commissioner,  
Having its office at NMMC Bldg.,  
1<sup>st</sup> floor, CBD Belapur,  
Navi Mumbai
- 9. The City and Industrial Development  
Corporation of Maharashtra,**  
Through : Managing Director,  
CIDCO Bhavan, CBD, Belapur,  
Navi Mumbai.
- 10. The Commissioner of Police,**  
Navi Mumbai, Having its office  
At Police Commissionerate, CBD,

Belapur, Navi Mumbai

**...Respondents**

**Counsel for Applicant :**

Mr. Asim Sarode, w/  
Mr. Vikas Shinde,  
Ms. Pallavi Talware,

**Counsel for Respondent Nos.2 and 3 :**

Mr. D.M. Gupte, Adv., w/  
Ms. Supriya Dangara,

**Counsel for Respondent No.4 :**

Mr. Roshan D'Souza, Adv., w/  
Mr. S. Srivastav

**Counsel for Respondent No.8 :**

Mr. K.D. Ratnaparkhi, Adv.

**Counsel for Respondent No.10 :**

Mr. P.D. Jadhav, Adv.  
Mr. Suresh Pawar, ACP, Navi Mumbai.

**Counsel for Respondent No.11 :**

Ms. F.M. Mesquita, Adv.

---

**DATE : 29<sup>th</sup> May, 2014**

---

**J U D G M E N T**

1. Sumaira Abdulali-2<sup>nd</sup> Applicant in this Application is Managing Trustee of 1<sup>st</sup> Applicant which is a Non-Governmental Organization (NGO) registered under the Bombay Public Trusts Act. The Applicants claim to be activists in the environmental field. They claim that they have ventilated several issues of public interest in the Hon'ble High Court and Apex Court so as to protest public interest.

2. Originally, the Applicants filed Writ Petition (PIL) No. 138 of 2006 in the Hon'ble Court of

Judicature at Bombay. By that petition, they raised issues pertaining to illegal extraction of sand from Sea belt in blatant violation of CRZ Notification of 1991, illegal dredging activities in the coastal and River areas, of the State of Maharashtra, inaction on part of the authorities to control the illegal activities of illegal sand mining/dredging of sand, transportation thereof.

**3.** By order dated October 11<sup>th</sup>, 2013, Hon'ble High Court of Judicature, at Bombay was pleased to transfer the Writ Petition (PIL) No.138 of 2006 to the National Green Tribunal alongwith the Civil Application filed therein. The Application falls within ambit of Section 14, 15 and 18 of the National Green Tribunal Act, 2010 and is accordingly entertained by this Tribunal.

**4.** Briefly stated, case of the Applicants is that, in exercise of powers U/s. 3 of the Environment (Protection) Act 1986 and Rule 5(d) of the Environment (Protection) Rules 1986, the Ministry of Environment and Finance (MoEF)-Respondent No.8 issued CRZ Notification dated February 19<sup>th</sup>, 1991 declaring some Coastal Stretches of seas, bays, estuaries creeks, rivers and backwater as Coastal Regulation Zones (CRZ) for the purpose of controlling

certain categories of activities within the said area. State of Maharashtra prepared a Coastal Zone Management Plan (CZMP) as required under the said CRZ Notification. The CZMP was approved by the competent authority on September 27<sup>th</sup>, 1996. One of the activity is absolutely prohibited under the CRZ Notification is mining of sand, rocks and other substrata materials excluding only two (2) limited exceptions. Sand Mining and dredging of the Sea bed has become a huge commercial activity along the coastal areas in the State of Maharashtra. The unbridled, uncontrolled and rampant dredging of sea, dredging of Rivers for extraction of sand is being carried out in violation of CRZ Notification and other statutory provisions. A large number of sand mafias are indulging in such business which is causing damage to the environment, ecology and the flora and fauna. The gangs of sand mafias have encroached on various spots of the creeks, tidal water, estuaries and stretches of sea beds for the purpose of sand mining/dredging as well as transportation thereof. Unabated sand, dredging/mining activities would lead to damage to mangroves, marine life, interference with natural tidal flow of sea water on and along creeks

and back water/estuaries. And therefore, it is essential to stop the illegal sand mining/dredging business. The Applicants brought the illegal dredging activities, transportation activities of the sand to the notice of the concerned authorities. The authorities of the State have failed to adopt proper control measures so as to prohibit the dredging and illegal sand mining activities of the sand mafias. By report dated March 17<sup>th</sup>, 2003 Superintendent of Police, Raigarh informed Divisional Commissioner, Kokan region that between 2001 and 2002 one Mr. Mahesh Oswal had extracted sand which was auctioned by him. It was reported that said Mr. Mahesh Oswal had collected royalties of about Rs.1,20,00,000/- (Rs. 1 Crore 20 lacks). Similar instances about illegal sand extraction by some other persons were reported by Superintendent of Police.

**5.** The Applicants have quoted certain instances of sand mining carried out at Kihim beach, Alibag, Ratnagiri District, CBD-Belapur area, Navi Mumbai. The Applicants allege that in one of such incident, Sumaira Abdulali (1<sup>st</sup> Applicant) was injured when she attempted to resist the illegal activity of sand mining and transportation thereof. She had to be hospitalized

as a result of the assault mounted on her person by Umesh Thakur and four others who were trying to take away sand in three (3) trucks from Kihim beach (Alibag). The life of environment activists in the area is endangered due to illegal activities of the sand mafias. The growing business of sand required for construction work is main cause of the uncontrolled and huge extraction of sand from the coastal stretches, sea beds, creeks and other areas by committing blatant violation of the CRZ Notification. The illegality committed by the gangs of Sand Mafias is being overlooked or the concerned officers have developed soft attitude towards them due to their internal connivance with each others. The Applicants would submit, therefore, that in order to protect the environment, along side the coastal stretches of State of Maharashtra, it is essential to curb extraction of sand by dredging, removal thereof, without proper control and transportation without any control mechanism. The Applicants therefore, seek prohibitory orders against illegal sand mining and implementation of such order by competent authorities and also regulatory action against the activities like dredging, mining extracting or removing

of sand from the areas covered under the CRZ Notification dated February 19<sup>th</sup>, 1991, as well as directing confiscation of all dredgers, earth movers, excavators and other machinery which is being used for illegal sand mining activities and in the process of dredging. Hence, the Application.

**6.** Respondent Nos. 1 and 2 together resisted the Application by filing Affidavit-in-reply, sworn in by Shri Chandrakant Sitaram Jadhav, District Mining Officer, Alibag (Raigarh). His Affidavit purports to show that no sand mining/dredging is being permitted along the coastal region within territory of Raigarh district. It is further stated that the sand dredging in the creeks of Raigarh District is permitted as provided under Chapter-(IV) and Rule 39(A) of the Maharashtra Mining Mineral Rules, 1955, as per procedure laid down in the Government Resolution of revenue and forest department dated September 5<sup>th</sup>, 2003 through process of auctioning after obtaining provisional No Objection Certificate (NOC) from the Maharashtra Maritime Board. The due procedure is valid as provided under clause 2(viii) of the MoEF CRZ Notification dated February 19<sup>th</sup>, 1991 and therefore such dredging/extraction of sand cannot be termed as

illegal activity. It is further submitted that depending of quantity of sand to be dredged, as mentioned in the No Objection Certificate (NOC) issued by the Maharashtra Maritime Board, upset auction price of the sand is fixed. The auction is done by giving public notice duly published in news paper. Thus, the auctioning of the sand, dredging process, extraction, and removal/transportation are the transparent activities. All these activities are controlled by the revenue authorities and the Maharashtra Maritime Board. The price of the sand is calculated on the basis of NOC issued by the Maharashtra Maritime Board coupled with other factors and thereafter the upset price is quoted in the auction process as per the publication in the newspaper. The order for extraction of the sand is issued only after entire amount of the highest bid is deposited with the District Authority. It is denied that the sea bed is eroded due to the sand mining/dredging and the activities adversely affect the environment in the area of coastal stretches. According to the Respondent Nos. 1 and 2 there is potent danger that in case of non removal of sand from the creeks, it is probable that there will be excess accumulation of sand in the sea bed which would

cause obstruction in the navigation of boats/ships etc. According to them, in order to avoid such adverse effect of floods and environmental impact, the navigational channel is required to be cleared. For such purpose, certain quantity of sand ought to be removed. It is for such reason that the limited permits are granted by Maharashtra Maritime Board for the activities of dredging/extraction of sand along the coastal stretches. The total ban on the sand mining may stop construction activities of the industries, individuals and Governments. On these premises, Respondent Nos. 1 and 2 sought dismissal of the Application.

**7.** On behalf of Respondent No.3-Maharashtra Pollution Control Board (MPCB) Shri S.K. Morey, filed reply affidavit. His Affidavit purports to show that the State of Maharashtra has taken policy decision as enumerated in Government Resolution dated September 5<sup>th</sup>, 2003, in the context of handling of sand etc. Accordingly, State Government has issued necessary instructions to all the Divisional Commissioners and District Collectors about implementation of the policy decisions reflected in Government Resolution dated September 5<sup>th</sup>, 2003.

The Affidavit further proceeds to point out that in another Writ Petition (PIL) No.112 of 2006 filed by “Janahit Manch” identical issue was considered by the Hon’ble High Court of Bombay. The Affidavit of Shri Morey further shows that the sand mining cannot per-se adversely affect the environment, though it may cause air pollution during course of transportation of the sand, if it is not properly transported. It is, however, admitted that large scale dredging of sand from the sea bed may cause harm to Marine life and tidal flows, including degradation of ecological balance and eco system. His Affidavit further shows that Ambient quality of noise within Maritime was done in the port areas which was found to be within prescribed limit. The Revenue Commissioner and Collector are the competent authorities to grant permissions after auctioning of the sand stock/dredging places etc. Hence, the MPCB has no role to play in such matter.

**8.** Maharashtra Maritime Board-Respondent No.4 filed Affidavit of Shri V.B. Karande, Dy. Engineer, attached to its office and resisted the Application. The Affidavit of Shri V.B. Karande goes to show that as per the CRZ Notification, dredging for clearance of

channels for making them navigable is permissible under Clause 2(viii). The Maritime Board, after receiving requests for permission of dredging, undertake hydrographic survey and thereafter No Objection Certificate (NOC) is issued. The areas of dredging, estimated quantity of sand to be dredged and other details are set out in the NOC issued by the Maritime Board. The Collector is required to issue the tender work after following due process, including the EIA study. The conditions envisaged in the NOC are specific and in keeping with CRZ Notification dated February 19<sup>th</sup>, 1991. According to Respondent No.4 Maharashtra Maritime Board, the Contractors to whom the tender work is given by the Commissioner/Collector for the purpose of dredging/excavation of sand and transportation thereof are not under its control. The activities of such contractors, therefore, are beyond control of the Maharashtra Maritime Board and hence, it is submitted that the Application filed against the Respondent No.4 deserves to be dismissed.

**9.** We called status report regarding the mining authorities in respect of sand. Shri Roshan Meshram, District Mining Officer, Raigarh at Alibag filed Affidavit

in pursuance to order dated February 4<sup>th</sup>, 2013 passed by the National Green Tribunal. His Affidavit shows that by Government Resolution No.GAV-KHA-NI-10/0510/PRA.KRA.300/KHA dated March 12, 2013 modified consent policy for extraction of sand has been evolved. Sand policy requires grant of permits to Hatpati (Manual excavators, extraction of sand without use of any mechanical equipments). The Affidavit shows that some areas are reserved that Hatpati extraction of sand and the permits are granted without auction. Whereas, certain areas are reserved for mechanical excavation of sand in which dredging is allowed for sand collection and removal. The work for dredging and excavation of sand is allotted by e'tender process and auctioning in such reserved areas. The Affidavit shows that the extraction of sand is allowed in the areas where it is necessary to remove sand for clearance of navigation channels as per report of survey carried through the Maharashtra Maritime Board which is the basis for identification of the Gats (slots) reserved for the dredging. It is stated that NOC was received in respect of 45 Gats for Hatpati and 12 Gats for mechanical dredging activities in the Raigarh District during 2013-14. It is also

stated that M/s. Fine Enviro Technical Engineers, Mahim, Mumbai has been appointed as Environment Consultant for conducting EIA study. It is stated that permission of the MCZMA is required for extraction of sand for mechanical dredging and is sought on basis of the EIA study after obtaining permission of Maharashtra Maritime Board. The proposal is submitted to the Government through Divisional Commissioner, Kokan vide letter dated September 11<sup>th</sup>, 2013 in order to seek Environmental Clearance/CRZ clearance for 'e'tendering and 'e'auctioning of the sand Gats. It is stated that 24 permits for Hatpati (manual excavators) are granted in respect of the reserved areas (Gats) in the creeks situated in Raigarh District for the year 2013-14. It is further stated that Hon'ble High Court also permitted extraction of sand for Hatpati workers on the Savitri River Bank creek in Raigarh District as per order in Civil Application No.57 of 2013 in Writ Petition (P.I.L.) 21 of 2013. It is further stated that directions are being given to the Divisional Officers, Tahsildars, staff members and Police Department to arrange flying squads to conduct surprise visits in the relevant

coastal areas in order to control illegal extraction of sand from the sea bed or the creeks/beaches etc.

**10.** An Affidavit is filed on behalf of Collector of North Goa, on April 4<sup>th</sup>, 2014, in pursuance to the order of this Tribunal passed on February 4<sup>th</sup>, 2014. The Affidavit shows that certain measures have been taken to control illegal extraction of sand from the beaches and the sea beds in the coastal area of North Goa. It is stated that officers are appointed Taluqawise for patrolling in order to apprehend the culprits of sand extractions/thefts. It is further stated that necessary help is being taken from the coastal security Police for conducting raids in area prone to illegal sand mining. The Superintendent of Police is also informed to take necessary steps and prosecute the culprits of illegal sand extractor's activities. The staff members of the Government departments, Motor Vehicle Inspector and others have conducted raid in six (6) Cities. The officers attached vessels which were found indulging in transportation of sand as well as the vehicles dealing in such business. The Deputy Collector of Pernem seized stock of illegally stored sand. The Captain of Ports was also directed to seize and confiscate the canoes which were found loaded

with illegally extracted sand. The Affidavit shows certain instances of illegal sand mining which have been taken care of. Similarly, affidavits of Police authorities and Shri Vinayak Kulkarni, District Mining Officer, Thane, go to show the steps taken to avoid the illegal sand mining business. It is stated that a large number of cases were detected and huge amount by way of fine has been recovered from the culprits. It is also reported that huge quantity of sand illegally extracted from the coastal area was confiscated by Members of Flying Squad and the authorities.

**11.** We have heard learned counsel for the parties. We have perused the relevant record and documents.

**12.** The main issues which crop-up for determination in the present Application may be stated as follows :

- (i)** Whether illegal extraction of sand by way of dredging sea bed requires particular control measures, apart from the mining policy under which Hatpati permits and auctioning of sand Gats is undertaken by State of Maharashtra, particularly, in the coastal region of the State.

**(ii)** Whether sand mining and removal/transportation of sand from the sea bed/beaches/coastal stretches in the State of Maharashtra and Goa are covered by CRZ Notification dated February 19, 1991 and as amended by CRZ Notification dated January 6<sup>th</sup>, 2011 ? If yes, whether maintenance of/clearing of water way channels and ports, based on EIA study is a permissible activity under the relevant CRZ Notification ?

**13.** Before we proceed to consider merits of the matter, it may be stated that by Government Notification dated 16<sup>th</sup> February 1996, limits of the Port areas in the State of Maharashtra have been set out. The coastal areas at 48 places in the State of Maharashtra with demarcation/identification of the limits under the Indian Ports Act, 1908, have been notified. Obviously, beyond the limits of the areas covered by the Indian Ports Act, the creeks, the beaches, shores and seaward area would require categorical permission of the concerned authority for purpose of extraction of minor minerals, namely sand. It is not in dispute that the extraction of sand is required to be regulated by State Government. There

is no dispute about the need to regulate sand mining and the business of excavation of the sand. It is nobody's case that unbridled, arbitrary and uncontrolled sand mining activities can be permitted. The Respondents have not at all traversed the contention of the Applicants that action against those persons indulging in illegal dredging, mining, extracting or removing sand from the areas covered under CRZ Notification dated 19<sup>th</sup> February, 1991 is called for. Indeed, there is no dispute about the requirement to curb illegal sand mining in any manner.

**14.** Clinching question is how to go about implementation of the CRZ Notification dated 19<sup>th</sup> February, 1991 or the amended Notification dated January 6<sup>th</sup> 2011. The Applicants alleged that dredging contracts are awarded for Ratnagiri/Raigarh Districts. They alleged that commercial expansion of illegal activities is undertaken due to excessive sale of sand and gravel from the coastal areas. They would submit that inspite of repeated instances and occasional seizures of the stock of illegally extracted sand, the dredgers or other machinery found utilized for such extraction of illegal sand, such illegal

activities are continued. The Applicants have named some of the politicians who have clouts with and influence on the Police machinery and authorities.

**15.** Perusal of CRZ Notification dated February 19<sup>th</sup>, 1991 reveals that mining of sands rocks and other substrata material, except **(a)** those rare minerals not available outside the CRZ areas and **(b)** exploration and extraction of Oil and Natural Gas are the activities which are prohibited. However, proviso to the category of such prohibitory activities shown in Clause 2(iii) gives scope for relaxation in the matter. The proviso purports to show that the permission for mining of sand may be given on the basis of the mining plan and for such quantity which shall not have adverse impacts on the environment. For the purpose of reference, clause 2(iii) of the CRZ Notification dated February 19<sup>th</sup>, 1991 may be reproduced as follows:

**(iii)** Mining of sands, rocks and other substrata materials, except (a) those rare minerals not available outside the CRZ areas and (b) exploration and extraction of Oil and Natural Gas.

Provided that in the Union Territory of the Andaman and Nicobar islands, mining of sands may be permitted by the Committee which

shall be constituted by the Lieutenant Governor of the Andaman and Nicobar Islands consisting of Chief Secretary, Secretary, Department of Environment, Secretary, Department of Water Resources, and Secretary Public Works Department. The said Committee may permit mining of sand from non-degraded areas for construction purposes from selected sites, in a regulated manner on a case to case basis, for a period upto the 30<sup>th</sup> day of September 2002. The quantity of sand mined shall not exceed the essential requirements for completion of construction works including dwelling units, shops in respect of half yearly requirements of 2001-2001 and 2002-2003 annual plans. The permission for mining of sand may be given on the basis of a mining plan from such sites and in such quantity which shall not have adverse impacts on the environment”.

**16.** What appears from the record is that Coastal Zone Management Plan (CZMP) of Maharashtra was approved by the MoEF as per communication dated September 27<sup>th</sup>, 1996 (Ex.C). The MoEF approved the CZMP with certain conditions. It further appears that Government of Maharashtra thereafter issued public notice of auction in respect of sand/gravel through item No.29 dated 10<sup>th</sup> March 2009. Sand/gravel

groups of Raigarh and Ratnagiri Districts were put on auction. Similarly, other groups were put on auction. CRZ Notification dated 19<sup>th</sup> February 1991 was amended from time to time. It appears that amended Notification dated January 6<sup>th</sup>, 2011, is presently applicable on the subject. The activities of sand mining are permissible for maintenance or clearing of water beds, channels and ports based on EIA studies. The previous relaxation for the purpose of extraction of sand mining is apparently narrowed down under sub-clause (x) of clause (III) of the amended Notification. Thus, extraction of sand cannot be undertaken unless it is found necessary for maintenance or clearing of water beds, channels and ports. This also can be permitted only on the basis of EIA studies. It follows, therefore, that State Government cannot grant licenses for extraction of sand unless it is found necessary for the purpose of maintenance or clearing of water beds, channel and ports. This necessity report shall be backed up by EIA studies. So, in what manner the clearing of the water beds or channels is required to be done shall also be as per the recommendation of the experts (EIA studies). There is no EIA report to show that use of

dredgers, high powered machinery like earthmovers or suckling pump can be used for the purpose of extraction of sand.

17. At this juncture, it would be useful to refer Dictum in case of “**Deepak Kumar etc. Vrs. State of Haryana & Ors. 2012 A.I.R.(SCW) 1954 : 2012 A.I.R.(SC) 1386**”. The Apex Court considered the issue of damage caused by unregulated river bed mining of sand. The Apex Court observed :

“5.0 Conclusion :

*Mining of minor minerals though individually, because of smaller size of mine leases is perceived to have lesser impact as compared to mining of major minerals. However, the activity as a whole is seen to have significant adverse impacts on environment. It is, therefore, necessary that the mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of the mined out areas. Further, while granting mining leases by the respective State Governments- location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked Rules/Notifications governing such zones and the judicial pronouncements, if any, need be duly noted. The Union Ministry of Mines*

*along with Indian Bureau of Mines and respective State Governments should therefore make necessary provisions in this regard under the Mines and Minerals (Development and Regulation) Act, 1957, Mineral Concession Rules, 1960 and adopt model guidelines to be followed by all States--(emphasis supplied).*

*The report clearly indicates that operation of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals. It was also felt necessary to have a re-look to the definition of minor minerals per se. The necessity of the preparation of comprehensive mines plan for contiguous stretches of mineral deposits by the respective State Governments may also be encouraged and the same be suitably incorporated in the Mineral Concession Rules, 1960 by the Ministry of Mines. Further, it was also recommended that States, Union Territories would see that mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of mined out areas. Mining Plan should take note of the level of production, level of mechanization, type of machinery used in the mining of minor minerals, quantity of diesel consumption, number of trees uprooted, export and import of mining minerals, environmental impact, restoration of flora and host of other matters referred to in 2010 rules. A proper*

*framework has also to be evolved on cluster of mining of minor mineral for which there must be a Regional Environmental Management Plan. Another important decision taken was that while granting of mining leases by the respective State Governments, location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked Rules/Notifications governing such zones and the judicial pronouncements, if any, need to be duly noted.*

*12. The Minister for (E & F) wrote DO letter dated 1<sup>st</sup> June, 2010 to all the Chief Ministers of the States to examine the report and to issue necessary instructions for incorporating the recommendations made in the report in the Mineral Concession Rules for mining of minor minerals under Section 15 of Mines and Mineral (Development and Regulation) Act, 1957. Following are the key recommendations re-interated in the letter :*

- (1) Minimum size of mine lease should be 5 ha.*
- (2) Minimum period of mine lease should be 5 years.*
- (3) A cluster approach to mines should be taken in case of smaller mines leases operating currently.*
- (4) Mine plans should be made mandatory for minor minerals as well.*

- (5) *A separate corpus should be created for reclamation and rehabilitation of mined out areas.*
- (6) *Hydro-geological reports should be prepared for mining proposed below groundwater table.*
- (7) *For river bed mining, leases should be granted stretch wise, depth may be restricted to 3m/water level, whichever is less, and safety zones should be worked out.*
- (8) *The present classification of minerals into major and minor categories should be re-examined by the Ministry of Mines in consultation with the States.*

13. *x x x x x*

19. *We, in the meanwhile order that leases of minor mineral including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from the MoEF. Ordered accordingly.”*

**18.** It appears that after the judgment in **Dipak Kumar’s** case, MoEF issued Office Memorandum (OM) dated 18<sup>th</sup> May 2001. The Memorandum shows that mining projects which leads area upto less than 50 ha. including projects of minor mineral like sand, with lease area less than 5 ha. would be treated as category

“B” projects as defined in the EIA Notification 2006 and will be considered by the respective SEIAA notified by MoEF and following procedure prescribed under EIA Notification, 2006. The Apex Court, however, granted liberty to those who desired to carry on mining of minor minerals below 5 ha., to approach it for such purpose. Thus, now the grant of such lease is subject within domain of the State Environment Impact Assessment Authority (SEIAA).

**19.** We may take note of the Writ Petition (PIL) No. 21 of 2013 in which Civil Application No.15 of 2013 was considered by Hon’ble Division Bench of the Hon’ble High Court of Bombay. The Hon’ble High Court of Bombay held that once the seven (7) Members Committee constituted under the Government of India, Notification dated 8<sup>th</sup> November 2011 grants clearance, there is no need to obtain any further Environmental Clearance from the MoEF for the purpose of issuing permits for removal of sand by Traditional Coastal Communities by Manual method. Needless to say, this order passed by the Hon’ble High Court takes care of the interest of the Hatpati permit holders. They can be permitted to excavate the sand from given area. The Hatpatidar (Traditional coastal

communities who employ manual method for removal for sand) shall not be permitted to utilise any mechanical equipment for extraction of sand, removal thereof and its transportation. This embargo ought to be strictly followed, if illegal extraction and excessive removal of sand is required to be prohibited.

**20.** There cannot be any two (2) opinion about the necessity of clearance of channel required for navigational purpose in the sea area. It is also reasonable to say that for the purpose of clearance of the navigational channel, extraction of sand would be required. The Maharashtra Maritime Board by letters bearing Nos. 754, 755, 756, 757, 763 and 764 dated 19<sup>th</sup> December 2013, letter No.780 dated 27<sup>th</sup> December 2013 and letter No.16 and 17 dated 7<sup>th</sup> January 2014 issued NOC for grant of the permits to remove sand for the purpose of clearing navigational channels. The Maharashtra Maritime Board also recommended estimated stock of sand which was required to be excavated/removed for such purpose from identified sites. It appears that State of Maharashtra called for tenders and thereafter issued permits to the successful bidders.

**21.** At this juncture, it would be appropriate to consider Affidavit of Shri Roshan Meshram, District Mining Officer, Raigarh. His Affidavit purports to show that Divisional Commissioner, Kokan Division, organized the auction by process of 'e' tender and 'e' auction for two sand Gats of Walkot creek and remaining ten (10) Gats in Revdanda Creek/Kundalika River are yet to be auctioned. It is stated that 24 permits for Hatpatti (Manual excavators) in the reserved sand Gats in the creeks in Raigarh District have been issued for the year 2013-14. It is stated in his Affidavit that such permits are issued in keeping with orders of the Hon'ble High Court passed in Writ Petition (PIL) No. 21 of 2011 and office memorandum (OM) dated 8-11-2011 issued by the Revenue and Forest Minister. We have perused the Communication dated 1-11-2013 issued by the Department of Revenue and Forest. The Communication appears to have been issued by the Desk Officer of the said department. The Communication itself shows that the period covered by the auction process is only upto 30<sup>th</sup> September 2014. We may note that except for the two (2) sand Gats of Walkot creek, remaining proposal is yet pending. The rainy season is in the offing. The

process of dredging during rainy season is unlikely to be undertaken. Obviously, it does not appear that prior to 30<sup>th</sup> September, 2014, the extraction of sand for clearance of the water channels can be done in the slots (Gats) of area situated in the Revdanda creek, Kundlika river, (10 sand Gats). Moreover, the Communication dated 1-11-2013 issued by the Revenue and Forest Department reveals that the permission for extraction of sand will be subject to consent issued by the Environment Department. There is nothing on record to show that such consent has been granted by the State Environment Department. The Communication issued by Maharashtra Coastal Zone Authority (MCZA) dated 4-1-2014 reveals that the MoEF has issued Notification dated 29<sup>th</sup> March 2011 on the subject of mining of sand, rocks and other substrata material. The Communication issued by the MCZMA purports to show that the fishermen community and local community residing in the coastal area may be permitted to remove the sand bar only by manual method in various coastal states. Thus, the stand taken by MCZMA clearly indicates that removal of

sand in the CRZ area by using mechanical equipments dredgers, suction pumps and other methods which can degrade the environment is impermissible. Obviously, to the extent of the permits granted to Hatpaddidars, the extraction of sand by manual method can be approved. Moreover, it has been already permitted by the Hon'ble High Court vide directions in Writ Petition (PIL) 21 of 2013 (Civil Application No.57 of 2013).

**22.** The Applicants are chiefly aggrieved due to the unbridled, uncontrolled and rampant dredging activities in the coastal area which allegedly cause serious environmental impacts and loss of sand which is illegally extracted for business purpose. It would not be out of place to examine environmental impacts of the dredging activities. We may briefly take survey of the environment impacts of the dredging activities as follows :

**(I)** *Environment impacts :*

*Dredging can create disturbance to aquatic ecosystems, often with adverse impacts.*

*In addition, dredge spoils may contain toxic chemicals that may have an adverse effect on the disposal area.*

*The process of dredging often dislodges chemicals residing in benthic substrates and injects them into the water column.*

*The activity of dredging can create the following principal impacts to the environment :*

- 1. Release of toxic chemicals (including heavy metals and PCB) from bottom sediments into the water column.*
- 2. Short term increases in turbidity, which can affect aquatic species metabolism and interfere with spawning.*
- 3. Secondary effects from water column contamination of uptake of heavy metals, DDT and other persistent organic toxins, via food chain uptake and subsequent concentrations of these toxins in higher organisms including humans.*
- 4. Secondary impacts to marsh productivity from sedimentation.*
- 5. Tertiary impacts to avifouna which may prey upon contaminated aquatic organisms.*

6. *Secondary impacts to aquatic and benthic organisms' metabolism and mortality.*

7. *Possible contamination of dredge spoils sites.*

8. *Changes to the topography by the creation of "spoil islands" from the accumulated spoil."*

**23.** There are various categories of dredging activities. We may mention three (3) significant categories of the dredging. They are as follows :

**I) Low-volume dredging that complies with local or regional conditions.**

*MMO will decide whether maintenance dredging applications with a volume between 500 and 3,000 cubic metres a campaign, and fewer than 10,000 cubic metres a year can be processed under a new accelerated licensing process, developed to license relatively small scale ongoing dredging activities with a limited consultation. Applicant must be able to demonstrate the low-risk nature through complying with agreed criteria and local or*

*regional conditions. MMO aims to decide qualifying applications within 20 working days.*

*Activities will be licensed through this process if :*

- 1. Dredging is ongoing and has been carried out in the same way for at least 3 years.*
- 2. Campaigns are separated by at least 1 month.*
- 3. Evidence on the quality of the sediment is provided.*
- 4. The project is assessed as part of a maintenance dredging baseline document or another form of assessment agreed with Natural England of likely impacts.*

*Other criteria relating to environmental protection and interference with other legitimate uses of the sea must also be met before a dredging activity can be confirmed as appropriate for the accelerated licensing process.*

**24.** *In the context of the present case, we are much concerned with the category of “maintenance dredging”.*

**II)** *The “**maintenance dredging**” is required for clearance of navigational channel, berths or construction works are maintained at their designed depts. It involves removing recent*

*unconsolidated sediments such as mud, sand and gravel and is carried out by many ports, harbor authorities, berth operators and marinas to maintain safe navigation.*

*Typically, maintenance dredging is performed on a series of repeated dredging campaigns, MMO's definition of maintenance dredging is "dredging the seabed in an area" :*

*Where the level of the seabed to be achieved by the dredging proposed is not lower (relative to Ordnance Datum) than it has been at any time during the preceding 10 years and there is evidence that dredging has previously been undertaken to that level (or lower) during that period.*

**III) Capital dredging :**

*Capital dredging is required to create new or deepen existing facilities such as navigational channels, harbor basin and berths and for engineering purposes such as trenches for pipes, cables and immersed tube tunnels or the removal of material unsuitable for foundations. It generally involves excavating consolidated*

*material such as rock and clay. Typically, capital dredging is performed in a single dredging campaign.*

*MMO considers that capital dredging covers all new dredging activities and those in an area that has not been dredged to the desired depth within the last 10 years. MMO's definition of capital dredging is "dredging the seabed, generally for construction or navigational purposes, in an area or down to a level (relative to Ordnance Datum) not previously dredged during the preceding 10 years."*

*If the dredging is associated with an infrastructure project, then an EIA may be required to ensure any impacts are assessed at the project level.*

**25.** The record shows that such "maintenance dredging" has to be undertaken by the competent authority in order to ensure that navigational channels are properly maintained. The Maharashtra Maritime Board (MMB) is the competent authority, therefore, to undertake such activity and regularize maintenance of the navigational channels. Reverting

to the Affidavit of Respondent No.4-Maharashtra Maritime Board, it may be gathered that the NOCs (No Objection Certificates) are given by the Board subject to compliances of certain conditions and the Collector is authorized to undertake EIA study before awarding of the contracts on the competitive basis. The Collector of the coastal districts is, therefore, said to be the authority who conducts, the EIA study, decides fate of the auctions which are held and decides the conditions to be imposed in the consents granted to the contractors. Thus, according to MMB (Maharashtra Maritime Board) though NOC is issued by its office, the compliance of the conditions enumerated in the NOC is within domain of the Collector of the coastal districts, who award the contractual work to a successful bidder. According to MMB, the Collector himself is authority who has to undertake EIA study for such purpose of deciding the issue of environmental degradation due to the sand mining. The Collector himself is required to ensure the compliance of CRZ Notification. We find it difficult to appreciate as to how the Collector can be assigned such important multi faceted roles including

conducting of EIA study prior to awarding of the contracts on competitive basis and finalize the auction based on such EIA study. The same Collector is given role of regulatory body to ensure the compliances of the conditions enumerated in the NOC issued by the MMB (Maharashtra Maritime Board). For example some of the conditions like Condition No.1, 2, 3, 4 and 5 shown in the NOC may be reproduced as follows :

- 1.** No dredging will be permitted within 30 meters off the banks on both sides of the creeks/rivers
- 2.** No dredging is permitted within 75 meters on either side or marine constructions/installations. Manual dredging may be adopted between 75 meters to 600 meters of the marine constructions/installations.
- 3.** Contractor should mark the channel/area of dredging by buoys. The limit of 75 meters and 600 meters from marine installation can be marked by stakes.
- 4.** Over dredging in any area is not permitted and the contractor should restrict

dredging to achieve depth as mentioned in NOC.

5. The dredged material should be stored on the landward side of the High Tide Lines in the area to ensure that the dredged material does not call back in the rivers/ creeks.

26. We have reproduced above conditions only with a view to show that the implementing mechanism is the revenue agency whereas NOC is being issued by the MMB. The third agency like CRZ does not have any role as implementing agency in the context of the maintenance dredging process. In our opinion, the maintenance dredging activity shall be kept outside the domain of the revenue department. No doubt, Government of Maharashtra is ultimately entitled to recover Royalty for the sand which is extracted and sold. However, the extraction of sand for clearance of navigational channel is, infact, the Port activity and therefore, is a regulated permissible activity under the CRZ Notification. Resultantly, execution and implementation of the activity of maintenance dredging must be the joint exercise required to be

under taken by Maharashtra Maritime Board (MMB) and the MCZMA. It is necessary, therefore, for the State Government to take appropriate policy decision and ensure that the work of maintenance dredging is planned by the Maharashtra Maritime Board (MMB) by conducting EIA study on its own and extraction of the sand or removal of the sand from the Gats shall be done under strict supervision of the MCZMA. The Maharashtra Maritime Board (MMB) may be assigned the work to call tenders for awarding the work for removal of sand for maintenance of navigation channels by using dredgers but such removal of the sand from the navigational channels shall be managed appropriately so as to avoid illegal extraction/removal or murky business of the sand.

**27.** In our opinion, the Maharashtra Maritime Board may take help of the District Collector for co-ordination of the auctioning process for the maintenance dredging. In any case, however, there shall be no permission granted for use of suction pumps, use of transport vehicles up to the sea beach and use of un-licensed, un-identified and unregistered dredgers.

**28.** Certain precautionary measures in the process are likely to cause protection of the beaches and environment in the coastal areas. We cannot overlook fact that the demand of sand is increasing day by day due to excessive construction activities. It is but natural that the business of sand mafias is also clandestinely increasing. We are aware that such illegal activities cannot be completely stopped merely through Judicial process and it is necessary that the Executive Wing of the State should give proper response and so also the public support for the cause of environment is essential in such matters.

**29.** Having discussed the relevant aspects involved in the Application, we are of the opinion that the extraction of sand by manual method may be permitted to certain extent in accordance with the direction of the Hon'ble High Court. Still, however, sand dredging without pre EIA study is not a permissible activity. We are also of the opinion that the Maharashtra Maritime Board (MMB) itself shall carry out the EIA study before deciding necessity of the "maintenance dredging" and shall approximately estimate how much quantity of the sand will have to

be extracted for clearance of the navigational channel, number of dredgers required and the period required for completing the work of clearing the navigational channels. It is only after such EIA study that MMB may call for the tenders for allotment of the dredging work through the District Collector and the execution of the work may be undertaken by the MMB with help of the Police authorities and the Coastal Police Squads. It follows that both the issues will have to be answered in the affirmative and the same are accordingly answered. The Application is required to be allowed by giving certain directions to secure protection of the environment in the coastal areas.

**30.** In the result, the Application is allowed. We deem it proper to issue following directions :

- (i)** The extraction of the sand from coastal area by manual method may be permitted but the quantification of such sand shall be set out and if so required, the same traditional fishermen, if can be found eligible may be assigned the work of “*maintenance dredging*” without use of mechanical equipments in the channels which are required to be cleared.

**(ii)** The sand extracted from the channels which are to be cleared/already cleared by dredging shall not be allowed to transported by any transport vehicle within HTL area. Thus, all the transport vehicles shall be parked only at approved designated locations marked by the Maharashtra Maritime Board or concerned MB and regulated by the MMB.

**(iii)** The contractors to whom the work for clearance of the channel is given on contract basis shall be allowed to use dredgers only during day time between 11.00 a.m. to 4.00 p.m. The transportation vehicles also shall not be permitted to be used beyond the day time and in any case the same shall not be allowed to be parked in the CRZ areas, I, II or III between 6 p.m. to 6.00 a.m.

**(iv)** The Collector may act as co-ordinator over auctioning process and controller for the activities, so also for the purpose of collecting the revenue after 'e' auction sale of the sand so extracted. The sand shall become property of the Contractors only after it is transported beyond the CRZ areas and till then it will be

under the domain of the Maharashtra Maritime Board.

**(v)** The competent authorities, including the controlling authority like Police/Coastal Police shall give full support/assistance to the Maharashtra Maritime Board (MMB) and CRZ authorities to ensure compliances of the CRZ as well as the conditions enumerated while awarding the contracts for maintenance dredging, transportation of the sand and use of the vehicles. The vehicles like JCB mounted machines/equipments like earth movers, suction pumps etc. shall be immediately confiscated if found anywhere within CRZ, I, II and III areas of the coastal zones and shall not be released without specific orders of the competent authority/concerned Magistrate. The Police shall register F.I.R. and in case, no one would claim such seized vehicle within a reasonable period. It may be sold by way of auction and thereafter the auction money shall be credited to the Government authority.

**(vi)** These directions are however, restricted only to the cases of dredging/clearing of channels in

sea/creeks and not in respect of sand mining in River beds which activity is covered by case of “Deepak Kumar” (supra).

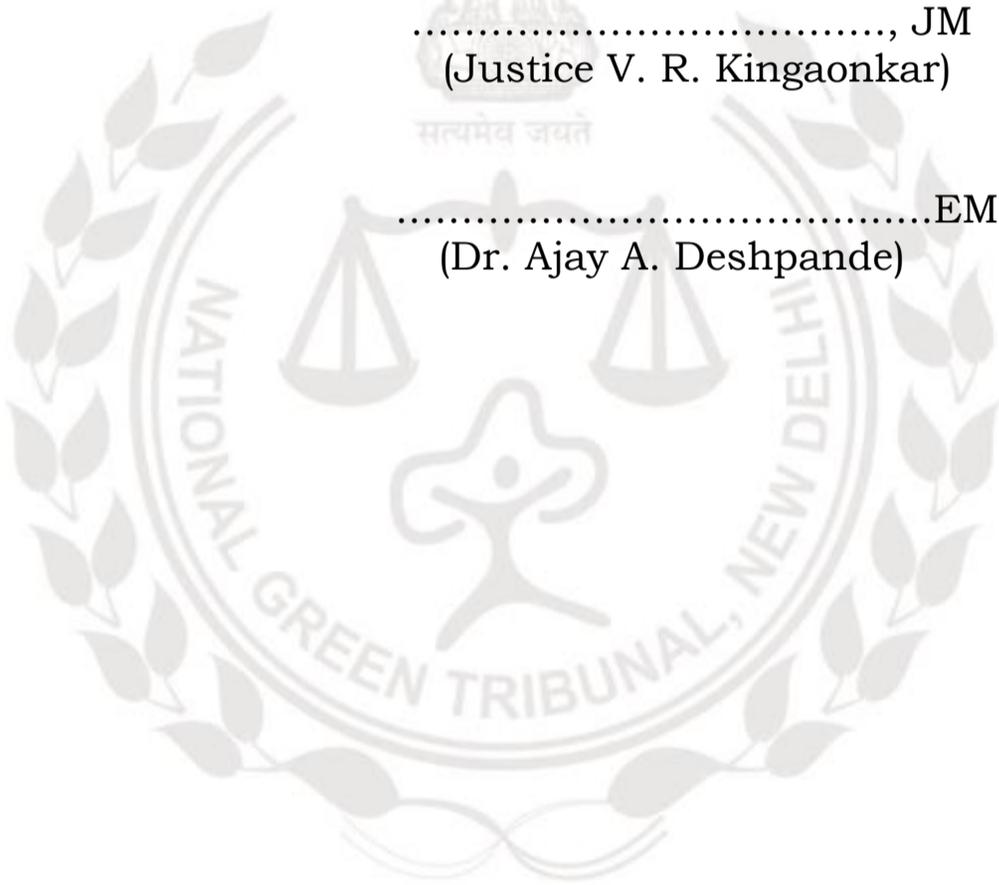
The Application is accordingly disposed of. No costs.



....., JM  
(Justice V. R. Kingaonkar)

सत्यमेव जयते

.....EM  
(Dr. Ajay A. Deshpande)



NGT