

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPEAL No. 10/2013(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:

Shri Rajeev s/o. Krishnarao Thakre,
Aged : 40 years, Occ : Agriculturist,
R/o. Village Yeoti, Post Dhanora,
Tahsil : Ralegaon, Distt : Yeotmal.
....Applicant

A N D

- 1. The Union of India**
Through : Secretary,
Ministry of Environment & Forest,
Paryavaran Bhavan, CGO Complex
Lodhi Road, New Delhi-110 003
- 2. The State of Maharashtra,**
Through : Chief Secretary,
Ministry of Revenue and Forest,
Mantralaya, Mumbai 400 032.
- 3. The Principal Secretary,**
Maharashtra State,
Madama Cama Road, 15th floor,

New Administrative Building,
Mumbai 400 032.

- 4. The State Environment Impact,**
Assessment Authority (SEIAA),
Room No.217, Annex Mantralaya
Mumbai – 32
- 5. The Collector, Wardha.**
- 6. The Collector, Yeotmal,**
- 7. Shri Homeshwar s/o. Vasant Rao Thamekar,**
Aged 40 yrs., Occn : Business,
R/o. Ramnagar, Wardha.

...Respondents

Counsel for Appellant :

Ms. Shrilekha P. Golekar,

Counsel for Respondent No.1 :

Ms. Shweta Busar,

Counsel for Respondent No.3 & 4 :

Mr. D.M. Gupte, w/.

Smt. Supriya Dangare

Counsel for Respondent No.5 & 6 :

Ms. Madhav Kharat

Holding for Smt. Ujwala Pawar DGP

DATE : October 1st, 2014

J U D G M E N T

- 1.** By this Appeal, Appellant challenges Environmental Clearance (EC) granted by Respondent No.4 (SEIAA) for auction of certain sand-beds (*Sandghats*). He impugns

process of auctioning of *Sandghats* at village Dorla bearing Bed Nos.1, 2 and 3, done by Respondent No.5, Collector, Wardha and Bed No.1 and 2 at Hirapur, Bed No.1 at Jagjai and Bed No.1 at Rohini done by Respondent No.6, Collector, Yeotmal on the ground that it is contrary to the instructions given by the Ministry of Environment and Forest (MoEF) vide Office Memorandum (OM) dated 24th December 2013.

2. Briefly stated, case of the Appellant is that as per Judgment of Apex Court in “**Deepak Kumar Vrs. State of Haryana, 2012(4) SCC 629**” sand beds (*sandghats*) situated below 5 ha. area may be leased out only if distance between the two (2) ghats is of atleast 1 k.m. It is in keeping with such directions of the Apex Court that the MoEF has issued OM dated 24th December 2013. The State has no authority to consider the project activities of granting lease of area over and above 5 ha. of *sandghats* into the category of ‘B-2’ as per class 2(I)(iii) of the OM dated 24th December 2013. Such a project will have to be treated as category ‘B-1’ project for the purpose of appraisal and must be appraised by the MoEF. The SEIAA could not have done the work of assessment/appraisal nor the SEIAA could have granted the EC. According to the Petitioner the Respondents purposefully downsized the

sand beds without keeping marginal space of 1 k.m. between the two (2) sand beds. It is stated that the auction conducted by both the Collectors is illegal and erroneous. Consequently the Appellant seeks to challenge the same and urges to *quash* the same.

3. Affidavit in reply is filed on behalf of Respondent Nos.3 and 4. It is stated that extraction of sand activities should be undertaken only after obtaining EC from the Central Government or the State Government on case to case basis, depending on the nature of area covered by the Mining lease. In other words, if area is more than fifty (50) hectares, EC of Central Government may be required but for area below 50 ha. EC of State Government will suffice the purpose. Thus, it is stated that the peripheral area of 1 K.M. from another lease area is not considered during the appraisal for the project for the reason that the OM dated 24th December 2013 was not in existence at the relevant time.

4. On behalf of Respondent No.5 reply-affidavit is filed by Suryakant Badhe. His reply-affidavit shows that the feasibility certificate issued by Ground Water Survey and Development Agency (GWSDA) regarding availability of the sand-beds in the area. His affidavit further shows that as a single ghat nobody comes for bidding as it is costly affair,

therefore, *sandghats* are divided in small parts. It is denied that Respondent No.5 has divided the *sandghats* to bring them below 5 ha. although the area is, infact, of 5 ha. or more.

5. By filing reply Affidavit of Respondent No.6 Shriram Kadu, District Mining Officer also resisted the Petition. His reply Affidavit shows that the Notice was issued on 1st November, 2011 by Government of Maharashtra for permission to auction the sand-beds without EC. It is contended that if the excavation is not stopped by the authority, there will be paucity of water in the summer season. His affidavit shows that the action taken by the Collector is lawful and bonafide.

6. Additional Affidavit is filed by Respondent No.5 and Respondent No.6. It is stated that Bank guarantees are taken while auctioning the *sandghats*. It is further stated that the *sandghats* are divided into parts so as to bring down the size below 5 ha. Area as per the OM dated 24th December 2013. It is denied that the auction conducted by District Collector, Yavatmal was over and 10-12-2013 and as such the OM dated 24th December 2013 is not at all applicable to Respondent No.5 and 6. It is further stated that specific conditions are imposed in the Environmental Clearance that District Collector shall ensure that distance

between *sandghats*/cluster of *sandghat* would be of more than 500 meters. According to these Respondents, though the *sandghat* is divided into three (3) parts for practical purpose, sand stretch is still one. Thus, a single sand stretch has been divided into three (3) parts for revenue purpose by the State Government. On these premises, the Respondent Nos. 5 and 6 sought dismissal of the Petition.

7. Being dis-satisfied with Environmental Clearance for sand extraction proposal and eventual decision to grant EC to the sand blocks by SEIAA (Respondent No.4) for certain blocks of sandbed (*Retighat*) situated in village Dorla 1, 2 and 3 in District Wardha and Hirapur 1 and 2, Jagjai-1 and Rohini-1 in Yeotmal District by Respondent No.6-Collector Yeotmal, this petition is filed.

8. So far as the Respondent No.7 is concerned, there appears no counter affidavit filed by him. Notwithstanding, the fact that he is a beneficiary of the auction process.

9. Only significant issue which arises in the present petition is :

“Whether the directions of the Apex Court in ***Deepak Kumar Vrs. State of Haryana, 2012(4) SCC 629*** are duly complied with by the Respondent Nos.1 to 6 while conducting the auction of this auctioning

process of the sand-bed in Wardha and Yavatmal Districts ?”

10. We have heard learned Advocates for the parties and learned D.G.P. We have carefully perused the record. We have also perused the OM dated 24th December 2013 issued by the MoEF. The OM issued by the MoEF is clear as regards the guidelines for consideration for proposals for grant of EC. The OM states as follow :

“(iii) No river sand mining project, with mine lease area less than 5 ha, may be considered for granting EC. The river sand mining projects with mining lease area > 5 ha but < 25 ha will be categorized as ‘B2’. In addition to the requirement of documents, as brought out above under sub-para (ii) above for appraisal, such projects will be considered subject to the following stipulations :

- (a)** *The mining activity shall be done manually.*
- (b)** *The depth of mining shall be restricted to 3m/water level, whichever is less.*
- (c)** *For carrying out mining in proximity to any bridge and/or embankment, appropriate safety zone shall be worked out on case to case basis to the satisfaction of SEAC/SEIAA, taking into account the structural parameters, locational aspects, flow rate, etc, and no mining shall be carried out in the safety zone so worked out.*
- (d)** *No in stream mining shall be allowed.*
- (e)** *The mining plan approved by the authorized agency of the State Government shall inter-alia include study to show that the annual replenishment of sand in the mining*

lease area is sufficient to sustain the mining operations at levels prescribed in the mining plan and that the transport infrastructure is adequate to transport the mines material. In case of transportation by road, the transport vehicles will be covered with taurpoline to minimize dust/sand particle emissions.

(f) *EC will be valid for mine lease period subject to a ceiling of 5 years.*

Provided, in case the mining lease area is likely to result into a cluster situation i.e. the periphery of one lease area is less than 1 km. from the periphery of another lease area and total lease area equals or exceeds 25 ha, the activity shall become Category 'B1' Project under the EIA Notification, 2006. In such a case, mining operations in any of the mine lease areas in the cluster will be allowed only if the environmental clearance has been obtained in respect of the cluster."

11. Before we proceed to consider merits of the matter, let it be noted that in W.P. No. 900/2014 similar issue was agitated before the Hon'ble High Court, Bench at Nagpur. The Hon'ble Divisional Bench observed that the single sand stretch has been divided into three (3) parts for revenue purpose by the State Government. It is further observed that it was open to the Petitioner to approach the Collector, Wardha with his grievance in the context of the said matter. In other words, if the single stretch of the Sandghat is divided into parts, for the purpose of Revenue Collection and due to convenience, it cannot be said to be

any illegality. It is nobody's case that the sandghats are illegally divided along Wardha river.

12. Perusal of the directions given by the Apex Court in "**Deepak Kumar Vrs. State of Haryana, 2012(4) SCC 629**" would clearly show that in case of rivers and mining projects, the Environmental Clearance cannot be granted unless distance between the two stretches of the *sand ghats* are of atleast 1 k.m. Obviously, proviso added in OM is dated 24th December 2013 is in keeping with the directions of the Apex Court.

13. The main issue raised by the Petitioner is that the distance between the two (2) *sandghats* is not left as required under Notification dated 24th December 2013 issued by MoEF and moreover, the directions of the Hon'ble Supreme Court of India in case of **Deepak Kumar Vrs. State of Haryana, (supra)** have been violated while conducting the auction proceedings.

14. It is worthy to be mentioned here that the 64th (sixty fourth) meeting of SEIAA was held on 23rd and 24th December 2013, and OM was also issued on 24th December 2013. Thus, it is stated that at the relevant time, the SEIAA had no information about the OM dated 24th December 2013 to follow the instructions issued under the said OM. Needless to say the non-compliance of

the OM dated 24th December 2013 will not be a ground to dislodge the impugned decision of the SEIAA.

15. Coming to the second ground of the objection raised by the Petitioner, it may be observed that the fact situation is verified through District Land Surveyor. The Report of the Senior Geologist dated 27th June 2013 was taken into consideration. The Report shows that the distance between two (2) sandbeds is of more than 1 k.m. A map of the relevant Taluq is produced on record (P-187). The said map and information is in tabular form (P-288) filed with Affidavit of Shri Bagul, Deputy Secretary of Environment Department and minutes of the meeting go to show that distance between the relevant *Retighats* situated in Wardha District is as per the standard enumerated in the Judgment of the Apex Court. Needless to say, there is hardly any serious ground to challenge the decision of the Respondents. The auctioning process cannot be impeded without there being serious environmental issue involved which will indicate damage to the environment and particularly likelihood of damage for the river water or possibility of the illegal extraction of sand from the riverbed.

16. In view of foregoing discussion, we do not find any substance in the petition. The petition is accordingly

dismissed. However, we direct that when further auctioning process is required to be conducted, ordinarily, the sandbeds falling between the sandbeds which are now already auctioned shall be avoided unless there is special certification issued by the competent authority which would indicate absence of any environmental damage, having regard to precautionary principle which is required to be adopted. We mean to say, it should not happen that presently the sandbeds are auctioned by keeping distance of 1 k.m. from each other and gap is filled up subsequently under one or another pretext. This direction would be appropriate, by applying precautionary principle.

Petition is accordingly disposed of. No costs.

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

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

Date : October 1st, 2014