

Item No. 01

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

(By Video Conferencing)

Appeal No. 58/2015(WZ)

Ajay Shivajirao Bhosale & Ors.

Appellant(s)

Versus

MOEF & Ors.

Respondent(s)

Date of hearing: 19.07.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Appellant: Mr. Nikhil Nayyar, Senior Advocate with Mr. Raghuvendra Sreyas & Mr. Sangramsingh Bhonsle, Advocate

Respondent(s): Mr. Rahul Garg, Advocate for MoEF & CC
Ms. Supriya Dangare, Advocate for MPCB
Mr. Gopal Jain, Senior Advocate with Mr. Yashraj Singh Deora & Mr. Siddhant Singh, Advocates for M/s Gogte Minerals (R - 4)

ORDER

1. This appeal has been preferred under section 16(g) of the NGT Act read with section 5A of the Environment (Protection) Act, 1986 against order of the MoEF&CC dated 2.9.2015 under section 5 of the EP, Act as follows:

"In reply to the show cause notice PP submitted its reply dated 17.06.2015 stating that dumping outside the lease area was known to MOEF&CC since the beginning. The mining plan of the Project approved by 13M, specifically mentions and marks the area where external dump would be maintained. The Project Proponent, prior to maintaining the said dump, also took permission from the District Mining Officer Sindhudhurg which was granted on 12.3.2010. Apart from the information being provided to MOEF in the six monthly reports

of compliance, MOEF was also made aware about maintaining of the said dump when the Project Proponent filed its reply to SLP (C) 7348 of 2011 in which MOEF was also a party. The EC dated 31.12.2008 and more specifically, specific conditions No. (xviii) and (xix) provides for the measure of protection of walls and trenches/ garland drains was to be undertaken with reference to the dumps.

(xviii) Measures for prevention and control of soil erosion and management of silt shall be undertaken. Protection of dumps against erosion shall be carried out with geo textile matting or other suitable material and thick plantations of native trees and shrubs shall be carried out at the dump slopes. Dumps shall be protected by retaining walls.

(xix) Trenches/garland drains shall be constructed at foot of dumps and coco filters installed as regular intervals to arrest silt from being carried to water bodies....De-silting at regular intervals shall be carried out.

3. The Project Proponent, therefore, understood the E.C. condition no (xxvii) as having provided permission to maintain dumps at identified sites, which site as having stated has been identified in the mining plan. The Project Proponent has submitted that they also informed the EAC constituted for considering the revival of the E.C. about maintaining of the dump outside the lease area.

4. The Regional Office, Bhopal has also submitted its site visit and compliance report vide letter dated 08.07.2015. An additional representation from Shri Ajay Shivajirao Bhonsle has been received: mentioning that he has observed illegal dumping at Sy. No. 188 of Village Ajgaon at Sawantwadi taluka, Sindhudurga, 4 Maharashtra.

5. A personal hearing to the PP was given on 10.08.2015 after considering the submissions of the lessee. it was opined that even though the lessee has continued it's operations of maintaining dumps outside the mining lease area 5 passed on it's bonafide impressions, however, pursuant to the Hon'ble Supreme Court declaring the law in Goa Foundation Vs. Union of India writ petition No. 435 of 2012, a separate Environmental Clearance would be required for the purpose of dumping material waste outside the lease area. No further dumping can be permitted to be undertaken outside the mining lease area without seeking clearance from the Ministry to undertake such a process.

6. The mine lessee accordingly sought time to consider the suggestion of Ministry and the matter was fixed for further hearing on 21.8.2015. On the said date the mine lessee has informed the Ministry that the lessee had already suspended dumping operations outside the mine lease since April 2015 and that it would not resume the said

dump operations outside the lease area. Further lessee has also informed that in the future if required, the lessee shall apply for necessary permission from the Ministry before undertaking maintaining of over burden dumps outside the mining lease area.

7. Keeping in view the facts and circumstances of the case, the lessee shall be bound to its undertaking and it should not undertake any further dumping outside lease area of over burden/waste unless prior permission is sought and obtained from MoEF.”

Facts

2. It is necessary to refer to the facts on record leading to the passing of the impugned order. The Project Proponent (PP), respondent No.4 M/s. Gogate Minerals was granted mining lease rights by the Maharashtra Government on 06.11.1971 for year 20 years at village Tiroda, Taluka Swantwadi, District Sidhudurg (then Ratnagiri) at Survey Nos. 22, 20, 27, 33, 38, 39, totally admeasuring to 34.81 Ha. The lease was renewed on 04.04.2000 for further 10 years. The MoEF&CC granted EC on 30.12.2008 for mining activities as per EIA Notification, 2006. The EC provided that out the 34.481 ha., mining will be carried out only in 12.16 ha, an area of 5.98 ha. will be kept for waste dump, 0.02 ha for infrastructure, 1.08 ha. for roads, 10.50 ha for green belts, 2 ha. for other engineering structures such as setting ponds and 2.6412 ha shall be utilized. However, contrary to the specified area of the dump site within the leased area and in violation of EC condition No. (xxvii), the PP dumped overburden outside the leased area. A report to this effect was made by the District Mining Officer on 12.03.2010, followed by further report dated 18.03.2015 as result of further inspection. The appellant made representation dated 03.01.2015 to the MoEF&CC for taking of action for violation of EC conditions under section 5 of the EP, Act. The MoEF&CC issued show cause notice but unjustifiably dropped the proceedings, based on untenable stand of the PP.

Contention of the Appellant

3. According to the appellant, once there was violation of binding EC condition prohibiting dumping of overburden beyond the leased area, accountability for such violation had to be fixed. The issue has also been specifically considered in *Goa Foundation v. UOI & Ors.*¹ and it has been held dumping of waste outside the leased area amount to mining without EC for the purpose.

Procedural History

4. The appeal was admitted on 06.10.2015 and notice was issued to the PP, the MoEF&CC, the District Collector and the State PCB, who have filed their respective replies to which reference will be made.

5. Vide order dated 18.11.2016, the Tribunal overruled the preliminary objections of the PP and held that the matter has to be considered on merits.

Stand of the PP and other respondents

6. The stand of the PP is that it has given valid explanation to the show cause notice issued by the MoEF&CC that it disclosed the dumping of overburden outside the leased area in the mining plan itself which was approved by the IBM. It understood that the legal position enabled it to maintain the dump site outside the leased area. The PP placed these facts before the Environment Appraisal Committee (EAC) and MoEF&CC and also in 6 monthly compliance report. Thus, it cannot be said that dumping of overburden outside the leased area was beyond the EC conditions.

¹ (2014) 6 SCC 590

7. The stand of the MoEF&CC is that prior to judgment of the Hon'ble Supreme Court in *Goa Foundation v. UOI & Ors.* supra, miners in the State of Goa were maintaining dump outside the leased area. Thus, the PP had no intention to violate the EC conditions and therefor the MoEF&CC dropped the proceedings without any direction under Section 5 of the EP, Act.

8. The State PCB in its affidavit filed on 11.07.2022 has stated that as per information from the Controller of Mines, final mine closure plan of the PP stands approved. Final mining closure plan has been implemented, as per approved plan. On visit to the side on 06.07.2022, the mine was found closed. Mining lease has expired on 18.06.2022. Mining operation were discontinued from 2016-2017.

Consideration, finding and directions

9. We have heard learned Counsel for the parties and perused the record. Only question is whether the PP is to be held accountable for the violation in dumping overburden outside the leased area and in what manner.

10. It is clear from the record that there was dumping of overburden outside the leased area in violation of law and the EC condition. The spot inspection report of the District Mining Officer dated 18.03.2015 is as follows:-

*“4. In the physical presence of all the above mentioned persons/officers at the site of inspection, **the measurements of dump were taken with the help of “Total Station Machine” in the land bearing Survey No. 176 hissa No. 0 & Survey No. 177 hissa No. 1 respectively, accordingly the dump measurement is to the tune of 6,25,217 Toones.***

*5. Thereafter, the **distance from the actual dump to the site of mining from village Tiroda, Taluka-Savantwadi, Distt.-***

Sindhudurg which his belonging to M/s. Gogate Minerals, was measured by G.P.S. machine & it came to be 3.56 km & also with the help of odometer of vehicle Jeep by road which came to be 4.20 km.”

11. The EC condition dated 31.12.2008 show as follows:-

“(xxvii) Overburden (OB) shall be stacked at earmarked dump site(s) only and shall not be kept active for long period. The maximum height of the dump shall not exceed 30m, each stage shall preferably be on 10m and overall slope of the dump shall not exceed 28°. The OB dump shall be backfilled. The OB dumps shall be scientifically vegetated with suitable native species to prevent erosion and surface run off.

Monitoring and management of rehabilitated area shall continue until the vegetation becomes self-sustaining. Compliance status shall be submitted to the Ministry of Environment & Forest on six monthly basis.”

12. Para 2 of the EC shows the earmarked dump sites as follows:-

“2. It has been noted that the proposal is for Iron mining at capacity 0.40 MTPA. The lease area is 34.4812 ha which is a private land. Out of 34.4812 ha mining will be carried out only in 12.15 ha. **An area of 5.98 will be kept for waste dump**; 0.02 ha for infrastructure; 1.08 ha for roads; 10.50 ha for green belt; Other engineering structures such as settling ponds 2.0 ha; and 2.8412 ha will be unutilized. The average elevation of the ML area ranges from 18m to 70m above MSL. Nanos river with its estuary flows along south of the western block of the lease. A 100m width no mining barrier all along the lease on the side facing Nanos river will be demarcated and a retention wall will be raised all along to prevent siltation of the river. Kanyal bank is located at a distance of 2.85km south east of the lease. Redi Port is located 3.8km west of the lease. Terekhol and Shiroda creeks are located 3.5 km and 1.6 kms respectively away from the lease. Arabian Sea is located 3.4km away from the lease boundary. A school is located adjoining the northern boundary of the lease. Ultimate depth of mining will be at 18 m above MSL. Ground water table is at 43m above MSL. Mining will intersect ground water table. Hydro geological study has been conducted. The result indicates the following: (i) the radius of influence due to mine pit dewatering is 156 m from the centre of the mine pit; (ii) the stage of ground water development is 47.03% which is well within the permissible limit as per CGWB norms; and (iii) the result of chemical analysis of surface and ground water indicates no contamination due to mining activity. Sawantwadi reserve forest is located 10.5 km away from the lease boundary. There are no wild life sanctuary, national parks, bio-sphere reserves; heritage sites etc. within 10.0 km of the lease area. The mineral reserves are 5.30 MT

for iron ore. Life of the mine is proposed rate of production will be 15 years. Method of mining will be open cast and mechanized involving blasting, water requirement will be 268KLPD which will be met from ground water. Solid waste of about 9.4MT will be generated. Approval of Mining plan (including mine closure plan) was accorded by IBM on 20.11.2007. Public hearing was conducted on 28.08.2008. Cost of project will be Rs. 5.0 Crores.”

13. Thus, dumping of overburden outside leased area is clearly shown and is against express EC condition. Hon’ble Supreme Court in *Goa Foundation v. UOI & Ors. supra*, reiterated the legal position that such action is prohibited under the law. Relevant observations are quoted below for ready reference:-

“xxx.....xxx.....xxx

36. Rule 16 of the MCD Rules provides that the overburden and waste material obtained during mining operations shall be dumped and stacked separately on the ground earmarked for the purpose and the ground selected for dumping of overburden, waste material shall be away from working pit. There is nothing in sub-rules (1), (2) and (3) of Rule 16 of the MCD Rules, which provides that such overburden or waste material obtained from mining operations shall be kept “outside the leased area”. On the other hand, clause (7) of Part II of Form K provides as follows:

“7. To use land for stacking, heaping, depositing purposes— Liberty and power to enter upon and use a sufficient part of the surface of the said lands for the purpose of stacking, heaping, storing or depositing therein any produce of the mines or works carried on and any tools, equipment, earth and materials and substances dug or raised under the liberties and powers mentioned in this part.”

The expression “said lands” in clause (7) of Part II of Form K quoted above refers to the area of the lease in Part I of Form K and, therefore, is confined to the leased area. **Rule 16 of the MCD Rules, therefore, cannot be read to permit dumping of overburden and waste materials obtained from mining operations outside the leased area.**

37. The learned counsel for the lessees, however, submitted that many of these areas in which they have dumped the overburdens, tailings and rejects are lands owned by them and by virtue of their ownership right they could dump the mining waste on their own lands. This contention of the learned counsel appearing for the lessees loses sight of the fact that most of these lands are located in forest areas where non-forest activity, such as mining, is prohibited under Section

2 of the Forest (Conservation) Act, 1980 without the prior permission of the Central Government. Moreover, the notification issued under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 requiring prior environmental clearance covers the activity of mining. Sub-rule (3) of Rule 5 empowers the Central Government to impose prohibition or restrictions on the location of an industry or the carrying on of processes and operations in an area for the purpose of protecting the environment. Inasmuch as the activity of dumping mineral wastes will pollute the environment, it will come within the meaning of activity of mining included in the Schedule to the notification issued under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986. Thus, for dumping of mining waste on a private land, a prior clearance of the Central Government under the notification issued under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 would be necessary. We, therefore, do not find any merit in the contention of the learned counsel for the lessees that they can dump mining waste outside the leased area.”

14. In view of EC condition in the case of the PP as well as legal position discussed in the judgment of the *Goa Foundation v. UOI & Ors.*, it is clear that dumping of overburden by the PP outside the leased area was illegal. Defence of the PP as accepted by the MoEF&CC fact that other lessees also committed such violations or that the PP misunderstood the legal position cannot be held to be valid. There is no parity in illegality nor ignorance of law can be an excuse. What is expressly prohibited by law can never be held to be legal or bonafide. Accordingly, we hold that the PP acted illegally in dumping overburden outside leased area and is thus accountable for the same. The impugned order to the contrary is quashed.

15. Having quashed the impugned order, question is what is the further order to be passed. The appeal is continuation of proceedings before the original authority. Power of appellate authority is coextensive with that of the original authority, in view of principle incorporated under section 107 CPC.

16. Violation of EC condition is a punishable offence. In addition, compensation can be assessed and recovered on ‘polluter pays’ principle.

According to Goa Foundation, supra, compensation can be equal to 10% of sale proceeds while according to section 21(5) MMDR Act as interpreted in Common Cause, (2017) 9 SCC 499, it can be total value of mined material, apart from cost of remediation of damage to the environment. There are other judgements for fixing compensation having regard to nature and extent of violation with deterrent amount having regard to financial capacity.

17. Though learned counsel for the appellant submitted that he had given undertaking not to press the relief of directing prosecution, in our such undertaking can be no bar to prosecution. Crime is against society and not against the appellant individually. Thus, no statement of the appellant can stand in the way of prosecution for the crime.

18. On the issue of compensation on polluter pays principle, having regard to the illegality committed by the PP, even in absence of data of financial capacity or value of mined material, taking conservative view in the matter, we direct that the PP to pay compensation of Rs. 5 Crores on 'Polluter Pays' principle within three months. From the size of the area of the mining lease and cost of material during the period of violation, price of mined material is certainly much higher, though the project proponent, who possesses this information has not given the precise data. If it is less than the said amount, the PP may place the relevant data and seek variation of this order to that extent. If the compensation is not paid, the Maharashtra State PCB may initiate coercive measures for recovery. The compensation amount will be utilized for rehabilitation and restoration of mining area, including stabilization of overburden and restoration of environment in the District as per District Environment Plan. Restoration plan may be prepared by a joint Committee of CPCB, State PCB and District

Magistrate, Sidhudurg within three months of amount being deposited/recovered and may be executed by the District Magistrate, Sidhudurg in the manner laid down by the joint Committee.

The Appeal is allowed as above.

A copy of this order be forwarded to the CPCB, State PCB and District Magistrate, Sidhudurg by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dinesh Kumar Singh, JM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

July 19, 2022
Appeal No. 58/2015(WZ)
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