

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 1086/2018
(Earlier O.A.No.140/2014)

(With report dated 30.09.2020)

Nanga Ram Dangi

Applicant

Versus

Secretary, Department of Environment
& Forests & Ors.

Respondents

Date of hearing: 06.10.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Ms. Katyayni, Advocate

Respondent: Ms. Sneha Ravi Iyer, Advocate for State of Rajasthan
Ms. Binita Thakur, IG, Udaipur Range, Dr. Kalpana Sharma, DTO
Udaipur and Mr. Jinesh Humad, Mining Engineer Udaipur
Mr. Raj Kumar, Advocate for CPCB
Mr. Rahul Khurana and Mr. Amit Kumar, Advocates in I.A. No.
133/2020 & 134/2020

ORDER

1. The issue involved in this matter relates to illegal mining in the area around Jaisamand lake, District Udaipur in Rajasthan. The applicant filed this Application in the year 2014 with the grievance that by illegal mining, serious damage is caused to the ecology. Illegal mining is happening in eight villages which form the catchment area of the lake. Villages named are Buthel, Bassa, Charmar, Kot, Kharka, Kenpura, Lodha and Utharda. The applicant mentioned that large numbers of cases of illegal mining have been registered which itself shows that the

illegal mining is rampant. Mere registration of cases has not brought about the desired result. The applicant also referred to the order of the Rajasthan High Court dated 21.10.2013 to make Jaisamand Lake area free from mining operations. It was alleged that the concerned Departments were not vigilant enough on account of which the mining continued.

2. The Tribunal considered the matter vide order dated 19.09.2018 and directed the Directorate of Mining and Geology to ensure closing of all illegal mining activities in the catchment area of the lake and give a compliance report to this Tribunal. It was directed that the amount of compensation to be recovered for illegal mining, including the cost of restoration of the ecology, should be utilized by the Divisional Forest Officer for restoration of the environment. The Tribunal also directed Divisional Commissioner, Udaipur and Inspector General of Police, Udaipur to provide requisite assistance for enforcement of law.

3. The matter was thereafter considered in light of the status reports filed from time to time. Reference may be made to the orders dated 08.01.2019, 22.01.2019, 25.02.2019, 13.03.2019, 27.05.2019, 26.08.2019, 16.09.2019, 18.10.2019, 06.11.2019, 20.01.2020, 05.02.2020 and 16.03.2020. By the last order, the Tribunal also directed that concerned officers i.e. IG Police, Udaipur, representatives of Transport and Mining Departments to be present in person.

4. We have taken up the matter in continuation of the earlier proceedings and also perused the action taken report filed on 30.09.2020 by the IG Police, Udaipur. It submits that regular touring was undertaken in the area and drone survey was also conducted.

Videography was done at Gomti River. Meetings were held with the concerned Departments. We have also interacted with the officers present in person.

5. We find that the action taken so far is not adequate and has not resulted in meaningful enforcement of law. It is well acknowledged that illegal mining remains a serious challenge and poses serious threat to the protection of environment which is basic right of the citizens and against the concept of sustainable development. The problem has been considered by this Tribunal in number of cases including O.A. No. 360/2015, *National Green Tribunal Bar Association v. Virender Singh (State of Gujarat)* and other matters connected therewith which were last taken up together on 17.08.2020. The Tribunal had, in light of Expert Committee report, directed issuance of statutory directions under the provision of Environment (Protection) Act, 1986. Reference was made to the judgement of the Hon'ble Supreme Court in *Deepak Kumar Vs. State of Haryana & Ors.: (2012) 4 SCC 629* wherein extent of damage to the environment on account of unscientific mining was noted and requirement of impact assessment and EC was laid down. The Tribunal directed revision of the Sustainable Sand Mining Guidelines, 2016 by the MoEF&CC to introduce effective monitoring mechanism for prevention of illegal mining and other remedial measures, including surveillance system and assessment and recovery of compensation. All earlier proceedings have been noted in the order dated 17.08.2020 in O.A. 360/2015 wherein Gujarat, Karnataka, West Bengal, Punjab, Uttar Pradesh, Haryana, Rajasthan and other States are parties. The directions, apart from introducing Mining Surveillance System in consultation with ISRO, Hyderabad, include demarcation of boundaries of different leases, issuance of SOP, evaluation of loss to the ecology and

assessment of cost of restoration, setting up institutional mechanism for effective monitoring, making provision for restoration of the affected area and compensating the victims, having independent environmental audit by repeating third party and placing such audit report in public domain.

6. The Tribunal also directed that the vehicles involved in the illegal mining should be seized and not released without recovering compensation laid down therein. In that regard, vide order dated 19.02.2020 in O.A. No. 44/2016, *Mushtakeem v. MoEF & CC & Ors.*, following scale of penalty for release of vehicle was laid down and further direction was issued:-

“5. Having regard to the above practical difficulty, we modify the orders dated 05.04.2019 and 26.07.2019 as follows:

Sr. No.	Category of Vehicle	Penalty Amount
1	<i>Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and less than 5 years old.</i>	Rs. 4 lacs
2	<i>Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and more than 5 years but less than 10 years old.</i>	Rs. 3 lacs
3	<i>For the remaining Vehicles older than 10 years/Equipments/ Excavators which are otherwise legally permissible to be operated and not covered by Serial No. 1 and 2.</i>	Rs. 2 lacs
<p>Note – I: <i>On repetition of the offence by the same vehicle/ equipment, Order dated 05.04.2019 will be applicable.</i></p> <p>Note – II: <i>The option of release may be available for a period of one month from the date of seizure and thereafter, the vehicles may be confiscated and auctioned.</i></p>		

6. *The State may issue an appropriate Office Order/Rule to the above effect and publish the same. Needless to say that any private contract between a financier and a debtor cannot affect the States’ sovereign power to protect the environment and take incidental coercive measure for enforcement of rule of law. Lien of the State will override any private interest. The above compensation regime will be over and above any existing Rules or provisions. The amount collected may be remitted to the State PCBs/PCCs for being utilized for restoration of the environment.*

7. The above course of action will be permissible to all the States at their option.”

7. This Tribunal vide order dated 04.07.2019 in O.A. No. 670/2018, *Atul Singh Chauhan v. MoEF&CC & Ors.*, referred to the legal position based on the law laid down by the Hon’ble Supreme Court that where special procedure is applied for seizure of the vehicle, general procedure under Cr. P.C. for release of the vehicle does not apply.

8. The Tribunal also considered the report of the Expert Committee on compensation and made observations for further revision. The Tribunal noted the new Guidelines of the MoEF&CC called “Enforcement and Monitoring Guidelines for Sand Mining, 2020” which are available on the website of the MoEF&CC. The said matter now stands posted for 14.10.2020.

9. We also note that vide order dated 16.01.2019 in O.A. No. 606/2018, *Compliance of Municipal Solid Waste Management Rules, 2016 and other environmental issues*, the Tribunal required the presence of Chief Secretaries of all the States/UTs before this Tribunal with the status report as to compliance status of important environmental issues, including illegal mining. All the Chief Secretaries did appear¹. In view of continued large scale violation of statutory norms and Supreme Court judgements, mentioned in the order, one of directions was direct monitoring by the Chief Secretaries with the District Magistrates once in a month. For this, the Chief Secretaries were to set up environmental cell directly under them. It is not clear whether this is happening in the State of Rajasthan and whether remedial action against illegal mining is being monitored by the District Magistrates at district level and the Chief

¹ The Chief Secretary of Rajasthan appeared on 16.04.2019 and 31.01.2020

Secretary at the State level. If not, it needs to be done. In the report of the IG or other Departments of Rajasthan, there is no reference to such monitoring. The concerned officers dealing with the enforcement of law do not appear to be aware of significant orders of this Tribunal which is first step for enforcement.

10. In view of above, we direct the Chief Secretary, Rajasthan to consider appropriate course of action in light of various orders passed by this Tribunal and circulate appropriate guidelines at grass root level, particularly the District Magistrates and Superintendents of Police. Electronic Surveillance System said to have been introduced may be reviewed, including requirement of GPS for the vehicles used in transportation and mined materials, CCTV cameras at the hotspots, an App which can be used by any complainant for giving information about illegal activities of this nature and methodology for assessment and recovery of compensation. The mechanism can function preferably under the District Magistrate, with suitable involvement of Mining and Forest Departments and wherever necessary, of the Superintendent of Police and the representative of the State PCB. A grievance redressal portal may be set up at district level. Such mechanism needs to be reviewed from time to time. As already directed, the Chief Secretary may have Environmental Cell directly attached to his Office who may constantly monitor compliance of environmental norms as already directed in O.A. No. 606/2018. The District Magistrates may undertake an initiative for awareness at the Panchayat level by calling an appropriate meeting of the functionaries operating at Panchayat level. Appropriate publicity about the guidelines evolved may be done at the grass root level so that aggrieved citizens can make their complaints and also there is

community involvement in enforcement of law. The District Magistrates may allocate a particular authorized officer to deal with applications for release of vehicles consistent with the directions of this Tribunal.

11. Accordingly, we defer further proceedings in the matter to 14.10.2020 when other matters are listed for hearing. Learned Counsel for the State of Rajasthan may communicate this order to the Chief Secretary, Rajasthan and take instructions about the latest steps taken in the matter.

In view of above, applications filed for releasing vehicles may now be dealt with by the concerned District Magistrates or as per mechanism which may be evolved on the pattern of such existing mechanism in some other States, including Haryana and UP.

I.A. No. 133/2020 & I.A. No. 134/2020 will stand disposed of.

List for further consideration on 14.10.2020.

A copy of this order be sent to the Chief Secretary, Rajasthan, Inspector General of Police, Udaipur and the District Magistrates by e-mail for compliance.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

October 06, 2020
Original Application No. 1086/2018
(Earlier O.A.No.140/2014)
(I.A. No. 133/2020 & I.A. No. 134/2020)
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