

Item Nos. 03&04

Court No. 1

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

(BY HYBRID MODE)

Appeal No. 01/2022
(I.A. No. 98/2022 & I.A. No. 320/2022)
With
Appeal No. 02/2022
(I.A. No. 317/2022 & I.A. No. 318/2022)

Suraj Singh Karki

Appellant

Versus

State Level Environment Impact Assessment
Authority, Uttarakhand & Ors.

Respondent(s)

Date of hearing: 09.12.2022

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

Appellant: Mr. Chirag Joshi, Advocate

Respondent: Mr. S.P. Subudhi, Member Secretary with Mr. Aman Rab,
Advocate for SEIAA, Uttarakhand
Mr. Abhay Chatopadhyay & Mr. Sparsh Prasad, Advocates for R -
4 (PP's)

ORDER

1. These appeals have been filed against grant of Environmental Clearances (EC) dated 09.11.2020 by SEIAA, Uttarakhand in favour of Ramesh Chandra Singh and Manish Nand Kishore Agrawal, project proponents (PPs) for mining soap stone at Village Nayal Biladi (Nayal Dhapola) Tehsil and District Bageshwar, Uttarakhand.

2. According to the appellant, ECs in both cases are in violation of EIA Notification dated 14.09.2006. They ignore degradation of wildlife habitats and that such activity was not viable in earthquake prone area. The area is close to the reserved forest. No EIA has been conducted in respect of mining cluster as required in terms of Notification dated 15.01.2016 and orders of this Tribunal dated 04.09.2018 and 13.09.2018 in OA No. 173/2018, *Sudarshan Das v. State of West Bengal & Ors.* and OA No. 186/2016, *Satender Pandey v. MoEF & Ors.*

3. Vide order dated 21.01.2022, the Tribunal found it necessary to seek response from SEIAA, Uttarakhand and the PPs - Ramesh Chandra Singh and Manish Nand Kishore Agrawal. The Tribunal also constituted a joint Committee comprising PCCF, Bageshwar, District Magistrate, Bageshwar and the Regional office, CPCB to give its report to enable the Appeal to be decided. Accordingly, report of the joint Committee has been filed and response has also been filed by the PP in Appeal No. 02/2022.

4. Vide order dated 29.08.2022, the Tribunal further considered the matter in light of report of the joint Committee and the reply of the PP. The Tribunal found it necessary to require SEIAA to file its response showing how relevant factors have been appraised before granting EC.

5. The operative part of the order is reproduced below:-

“4. We have heard learned counsel for the parties and perused the record. The report of the joint Committee is that lease was granted based on the application for the purpose and EC was granted by the SEIAA after due appraisal. The lease area was within 2 kms of the Reserved Forest. There was no provision to consider whether area was earthquake prone.

5. The PP in reply filed in Appeal No. 02/2022 has submitted that there is no reserved forest within 10 kms of the lease area and that seismic zone is not relevant for open cast mining as no explosive is used.

*6. The applicant has filed objections to the report of the joint Committee to the effect that **SEIAA has not considered the impact***

of mining within 2 Km from the Reserved Forest, in a seismologically dangerous zone. No impact of mining cluster has been separately considered. There is nothing to show application of mind by SEIAA to the relevant environmental factors including impact of mining on river, existence of which finds mention in application seeking EC in Appeal No. 01/2022.

7. Since, neither SEIAA has filed response nor produced original record nor it is represented, we direct Member Secretary, SEIAA to remain present in person by Video Conferencing and also to file a photocopy of relevant SEIAA record to show whether above relevant factors have been appraised. If not, whether the impugned ECs can be sustained without factoring in the sensitivity due to seismic region.”

6. In pursuance of above, SEIAA has filed its response dated 07.12.2022 to the effect that due procedure has been followed and EC has been granted after due appraisal. There is no response to the specific questions mentioned in the last order. The PP has filed IA for seeking permission to conduct mining. In the said application, the PP has merely mentioned the steps taken in the process of grant of EC based on which consent has been granted by the State PCB. The PP has stated that it has filed EIA report dealing with the environmental impact for the project which was the material available before the SEAC and is thus, the same is deemed to have been considered. PP has also not responded to the questioned framed in the last order.

7. As laid down by the Hon'ble Supreme Court in (2019) 15 SCC 401, *Hamuman Laxman Aroskar vs. Union of India & Ors.*, EC can be granted only after due application of mind which has to be reflected in minutes of SEAC and the EC order which in the present case has not been done. Specific question of showing consideration of particular relevant factors - impact of mining on Reserved Forest and river and seismologically dangerous zone has not been adverted to.

8. In view of above options before the Tribunal is either to quash the impugned EC or to require SEIAA to specifically consider these aspects.

9. We consider second approach to be better in the circumstances. For this purpose, we have gone through the EIA report filed by the PP, prepared by the EIA consultant. It has mentioned Seismicity of the study area in para 3.6 but it does not deal with the impact of mining in the Chapter dealing with the Impact Identification (Chapter-11) which was necessary. With regard to study of impact on Forest/Wildlife Biodiversity, though para 3.14.9 mentions the heading, no impact study is mentioned.

10. While considering surface water monitoring locations in Chapter 3, distance from Pungar river is mentioned as 1 Km and details pertaining to surface water and of the Topography, Hydrology, and Drainage are mentioned and these are reproduced below:-

4.5.1 Surface Water Flow

Precautions for confinement of Dumps to Prevent Pollution of Surface Water bodies/courses and to prevent flow of water from gadhera/nalla to ML Area:

- *In guls, gadheras, nallas, passing through the mining lease area or near the mining lease areas check dams will be constructed to retard the speed of water. And retaining walls will be constructed on both sides of guls, gadheras, nallas to prevent flow of water to mining lease areas.*
- *Retaining walls will be provided at the bottom of top soil, waste dumps, backfilled areas to protect from erosion.*
- *garland drains will be provided at the top of mining pits, dumps and backfilled areas. Siltation tank will be provided in guls, gadheras, nalla from where water will discharge from the lease area. Slits will be cleared during rains.*

4.8 Topography, Hydrology, and Drainage

The mining is proposed above the water table, so there will be no effect on ground water table. Mining is restricted upto 12 m depth and ground water table is 38 to 48 m below the surface based on hydro geological study done in this area since natural water stream are the major source of water supply in this area and are 38 to 48 m below the lower most ground level and nearby nallas.”

11. Having regard to the above, we permit the PP to file relevant studies about impact of mining on seismicity and impact on Forest/Wildlife Biodiversity within two months before SEIAA so that SEIAA may consider the same and pass a reasoned order considering all vital aspects before operationalizing the EC. Till such order is passed, the EC will remain suspended.

The appeals stand disposed of accordingly.

All pending I.A.s also stand disposed of accordingly.

A copy of this order be forwarded to SEIAA, Uttarakhand by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

December 09, 2022
Appeal No. 01/2022 &
Appeal No. 02/2022
SN