

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH,
KOLKATA**

.....
ORIGINAL APPLICATION No.99/2022/EZ

IN THE MATTER OF:

Dipak Mahapatra,
Son of Prashanta Mahapatra,
Residing at Vill – Nayabasan,
P.O. & P.S. – Gopiballavpur,
District – Jhargram,
Pin – 721506,

.... Applicant(s)

Versus

- 1. West Bengal Mineral Development and Trading Corporation Ltd. (WBMDTCL),**
Through the Chairman and Managing Director,
3rd Floor, DJ – 10 (WBIIDC Building), DJ Block,
Sector II, Salt Lake City,
Kolkata - 700 091,
- 2. Directorate of Mines and Minerals,**
Through the Director,
4, Abanindranath Tagore Sarani, 2nd Floor,
Kolkata - 700 016,
- 3. Department of Environment, Government of West Bengal,**
Through the Chief Environmental Engineer,
PraniSampadBhaban, Block – LB-II,
5th Floor, Salt Lake Sector-3,
Kolkata - 700 106,
- 4. The Ministry of Environment, Forest & Climate Change,**
Government of India, Integrated Regional Office,
Through the Deputy Director General of Forests (C),
Kolkata IB – 198, Sector-III,
Salt Lake City,
Kolkata - 700 106,
- 5. The District Magistrate & Collector, Jhargram,**
District – Jhargram,
West Bengal,
Pin – 721507,
- 6. The Additional District Magistrate and District Land & Land Reforms Officer, Jhargram,**

District – Jhargram,
West Bengal, Pin – 721507,

7. The District Magistrate & Collector, PaschimMedinipur,
P.O. & Dist – PaschimMedinipur,
West Bengal,
Pin – 721101,

8. The Additional District Magistrate and District Land & Land Reforms Officer, PaschimMedinipur,
P.O. & Dist – PaschimMedinipur,
Pin – 721101,

9. Office of the Executive Engineer,
Kangsabati Canals Division No. V,
Through the Executive Engineer,
Irrigation & Waterways Department,
Ghoradhara,
Jhargram,
Pin – 721507,

10. M/s Reach Dredging Limited,
Through the Directors,
1, Garstin Place, Orbit Room No.3B,
B.B.D. Bagh, Kolkata, West Bengal,
Pin – 700001,

11. State Environment Impact Assessment Authority (SEIAA), West Bengal,
Through Member Secretary,

12. West Bengal Pollution Control Board,
Through Member Secretary,

....Respondent(s)

COUNSEL FOR APPLICANT:

Ms. Paushali Banerjee, Advocate

COUNSEL FOR RESPONDENTS :

Mr. Samrat Sen, Sr. Advocate a/w Mr. Sanjay Saha, Advocate for R-1,

Mr. Sudip Kumar Dutta, Advocate for R-2, 3, 5 to 9 & 13

Mr. Apurba Ghosh, Advocate for R-4,

Mr. Dipanjan Ghosh, Advocate for R-11,

Mr. Sibojyoti Chakraborty, Advocate for R-12,

JUDGMENT

PRESENT:

HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

HON'BLE DR. ARUN KUMAR VERMA (EXPERT MEMBER)

Reserved On:- August 25th, 2023
Pronounce On:- September 04th, 2023

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|---|------------|
| 1. Whether the Judgment is allowed to be published on the net? | Yes |
| 2. Whether the Judgment is allowed to be published in the NGT Reporter? | Yes |
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JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

Heard the learned Counsel for the parties and perused the documents on record.

2. The allegation in this Original Application is that the Respondent No.10, M/s Reach Dredging Limited, has been awarded contract for dredging in the river bed of Subarnarekha River but under the garb of dredging, it is also indulging in commercial sand mining activities. It is also alleged that the tender has been floated by the West Bengal Mineral Development and Trading Corporation Limited (WBMDTCL) for dredging/de-silting/removal of the river bed materials from the Subarnarekha River at Sankrail.

3. Learned Counsel for the Applicant refers to the documented page 29 which is part of the contract and which mentions that Floor Volume for the bidder is 1,16,90,000 cubic feet of sand (coarse+medium) out of the total estimated volume of 6,08,00,000 cubic feet (approximately) to be dredged/de-silted/removed.

4. Learned Counsel also referring to the Contract Agreement at page 107 points out that the Floor Volume for the bidder is 15,40,000 cubic feet of sand (coarse+medium) out of the total estimated Volume of river bed material of 2,27,00,000 cubic feet (approximately) to be dredged/de-silted/removed.

5. The submission of the Counsel is that under the garb of dredging, the Respondent No.10 has been permitted to take away the entire Floor Volume Area of sand which determines the minimum share of volume of sand to be shared by the bidder which as per Data Sheet will be taken away by the Respondent No.10 for commercial purposes as provided in paragraph 8.1 of the Contract Agreement under the heading **“Utilization of dredged/de-silted river bed material”**.

6. The learned Counsel also submits that if the Floor Volume of cubic feet of sand is to be utilized by the dredger for commercial purposes, he would be liable to follow the Sustainable Sand Mining Guidelines 2016 and 2020 and also to obtain Environmental Clearance from State Environment Impact Assessment Authority (SEIAA) which has not been done in the present case.

7. No one is present on behalf of the Respondent No.10, M/s Reach Dredging Limited, although the name of Mr. Anubhav Sinha, Mr. Subhasis Dey and Mr. Sahojit Dutta, Counsel are printed in the cause-list as Counsel for Respondent No.10.

8. Ms. Paushali Banerjee, learned Counsel for the Applicant has referred to the conditions of the contract, Paragraph-8.1 under the heading of Utilization of dredged/de-silted river bed materials and submitted that paragraph-8.1 stipulates that the successful bidder/contractor determined as per Clause 4.1.8, after sharing the volume of sand with West Bengal Mineral Development and Trading Corporation Limited (hereinafter referred to as 'Corporation') has utilized the remaining volume of dredged/de-silted sand and total volume of other dredged/de-silted materials at its own discretion after complying with relevant statutory rules/regulations including payment of royalty, cess and other statutory items.

9. The learned Counsel therefore submits that if the contract permits the successful bidder/contractor to utilize the volume of dredged/de-silted material remaining after dredging at his own discretion this gives liberty to the successful bidder to utilize such dredged/de-silted material for commercial purposes. The learned Counsel further submits that: -

- (i) For purposes of commercial utilization of sand and other materials, mining cannot be permitted inside the river and can only be carried out on the banks of the river.
- (ii) If the sand so mined under the garb of dredging/de-silting is to be commercially utilized by the successful bidder/contractor, Environmental Clearance is required from SEIAA, West Bengal and these two conditions cannot be circumvented under the garb of a contract which is

primarily titled as dredging/de-silted or River Subarnarekha.

10. The learned Counsel also submitted that if excess dredged/de-silted sand has to be utilized commercially by the successful bidder/contractor after being mined from the middle of the River (under the garb dredging/de-silting), there has to be a proper District Survey Report (DSR) of the quantum of sand available in the river and a proper Replenishment Study has to be carried out and on the basis of such material alone Environmental Clearance can be granted by SEIAA, West Bengal, which is mandatory. The submission of the learned Counsel for the Applicant is that under the garb of dredging/de-silting the requirement of Environmental Clearance has been circumvented relying upon the MoEF&CC Notification No. S.O. 1244 (E) dated 28.03.2020 Appendix-IX of which grants "Exemption of Certain Cases from Requirement of Environmental Clearance." **Item No.7** mentions one of such cases a being "*Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management*".

11. The learned Counsel for the Applicant has referred to the letter dated 22.04.2022 issued by the Respondent No.1, Corporation, which mentions that M/s Reach Dredging Limited, Respondent No.10, has quoted the highest bid for 30400000 Cft. (Three Crore Four Lakhs Cft.) of sand for sharing with West Bengal Mineral Development & Trading Corporation Limited. The letter mentions that the H-1 bidder shall share the said quantity of sand from

Subarnarekha River at Sankrail, Jhargram generated through Dredging/De-silting/Removal of river bed materials activity with the Corporation, Respondent No.1. The learned Counsel, therefore, submitted that out of the total estimated volume of river bed materials of 60800000Cft. (approximately) of river bed material to be dredged/de-silted/removed, the remaining 30400000Cft. i.e. 50% of the total estimated volume shall be at the disposal of the Respondent No.10 for commercial utilization which in the absence of a proper DSR and Environmental Clearance is wholly illegal.

12. Similarly the Respondent No.1, Corporation, has floated one tender for the Selection of Contractor, for unlawful sand mining, in the guise of Dredging/De-silting/removal of river bed materials from Subarnarekha River (preferably from center of the river) at Sankrail, District Jhargram, through RFP No.MDTC/SAND/002/501 dated 11.03.2022.

13. The Respondent No.1, Corporation, has also floated another tender for the Selection of Contractor, for dredging/de-silting/removal of river bed materials from Subarnarekha River at Keshiyari, District Paschim Medinipur, through RFP No. MDTC/SAND/002/502 dated 11.03.2022 on the same terms and conditions as the contract for dredging/de-silting at Sankrail. It is stated that at Keshiyari the floor volume for the bidder is 1540000 Cft. of sand out of the total estimated volume of river bed materials of 22700000 Cft. to be dredged/de-silted on the same terms and conditions as at Sankrail.

14. The learned Counsel for the Applicant has also relied upon the decision of the National Green Tribunal, Southern Zone Bench, Chennai passed in *Original Application No.75 of 2020 (SZ), Tribunal on its own motion Suo motu vs. Chief Secretary of Kerala &Ors.*

15. A supplementary affidavit dated 27.09.2022 has been filed by the Applicant bringing on record photographs showing dredging activity being carried out at Sankrail in District-Jhargram.

16. The stand of the Executive Engineer, Jhargram Flood Management & Planning Division, in its affidavit dated 21.11.2022 is that the Department of Irrigation and Waterways vide its letter dated 30.07.2021 has proposed a list of prospective river stretches, identified primarily, from where sand and other river bed materials can be extracted without endangering the nearby structures, embankments etc. It is stated that thereafter a letter dated 06.12.2021 was issued by the River Research Institute containing instructions for obtaining details regarding works, sites and detailed drawings of the work and collection of soil/sand samples. Further by another letter dated 22.07.2022 one Nodal Officer was nominated for the purpose of periodical technical supervision of the Dredging/De-silting works at the subject location only.

17. In paragraph-10 of this affidavit, there is a categorical averment that a field visit was made by the nominated Nodal Officer of the site on 18.11.2022 and it is seen that no extraction has yet been started at the site but the approach is ready and site

preparation for mobilization of machineries etc. for extraction is under progress and the river in the proposed location of extraction is full of water having 1.50m average depth.

18. The Ministry of Environment, Forests and Climate Change has filed affidavit dated 23.12.2022 wherein it is categorically stated that if dredging of rivers, canals, is done for the purposes of maintaining the canals, etc. would not appear to require Environmental Clearance. If, however, mining is done for the purpose of earning profit and is undertaken as a commercial venture as it involves dredging and de-silting then all the provisions of Environmental Impact Notification of 2006 and its subsequent amendments shall be applied to the said project.

19. Reference has also been made to the directions given by Hon'ble High Court of Uttarakhand at Nainital in *Writ Petition (PIL) No.93 of 2015, Jai Prakash Badoni vs. Union of India & Ors. along with connected Writ Petition (PIL) No.95 of 2015, Shakti Sangh vs. State of Uttarakhand & Ors., passed on 24.06.2015.*

20. Paragraph-6 of this affidavit reads as under: -

“6. That if dredging of rivers, canals, is done for the purposes of maintaining the canals, etc. would not appear to require Environmental Clearance. If, however, mining is done for the purpose of earning profit and is undertaken as a commercial venture as it involves dredging and de-silting then all the provisions of Environmental Impact Notification of 2006 and its subsequent amendments shall be applied to the said

project. The same was reiterated in the judgment passed by the Hon'ble High Court in the matter of Writ Petition (PIL) No.93 of 2015 of Jai Prakash Badoni vs. Union of India &Ors. and another connected Writ Petition (PIL) No.95 of 2015, Shakti Sangh Priya vs. State of Uttarakhand & Ors.”

21. The stand of the Respondent No.10 in its affidavit dated 06.04.2023 is that the bidders had submitted Techno-Commercial Proposal and Financial Proposal in pursuance of the two Requests for Proposal ('RFP' for short) issued by the Respondent No.1 both dated 11.03.2022 and on the Techno-Commercial Proposal and Financial Proposal being evaluated by the Bid Evaluation Committee of the Respondent No.1, the Respondent No.10 was selected as the highest bidder and thereafter, letter of intent was issued in its favour by the Respondent No.1 followed by signing of a formal contract between Respondent No.1 and Respondent No.10 on 05.05.2022 (for Keshiyari Site) and 23.09.2022 (for Sankrail Site). The allegations in the Original Application have been denied by the Respondent No.10 and it is stated that there has been no violation in the RFP for grant of contract to the Respondent No.10.

22. The stand of the Respondent No.1 in its counter-affidavit dated 10.04.2023, *inter-alia*, is that dredging is necessary to remove large accumulation of sediment to preserve the health of the waterway and enable commercial applications. Deposition of silt is a natural process in alluvial rivers and rivers pick up, carry and drop silt load as per their regime conditions i.e. discharge in river, river

slope, morphology, nature of silt etc. However, accumulation of silt in reservoirs/water bodies leads to reduction of their water storage capacity. An excessive build-up of sediment can cause serious issues such as reduce the depth of the waterway and prevent passage of ships. It can also lead to contamination that poses a threat to aquatic plant and wildlife, therefore, dredging of river bed has to be undertaken from time to time.

23. It is stated that as a part of such exercise, the Irrigation & Waterways Department identified two river stretches of River Subarnarekha at Jhargram and Paschim Medinipur. The Respondent No.1, Corporation, initiated the job of dredging and de-silting at different sites though the technical specifications and methodology for such dredging had been prepared by the Irrigation & Waterways Department and the entire process was to be carried out under the periodical supervision of the Irrigation & Waterways Department of the Government of West Bengal. It is also stated that a Joint Inspection was carried out on 29.08.2021 by the Department, River Research Institute and Technical Advisor of West Bengal Development and Trading Corporation Limited and during the course of such Joint Inspection, it was detected that both the locations in question have huge river bed aggradations which have decreased the capacity of the river to carry water to a great extent. It is further stated that deposition of aggradations was so huge that it had caused numerous horizontal aggradation bars greatly impacting the carrying capacity causing braiding of the channel.

24. It is stated that thereafter a Report on prospective De-siltation titled as Preliminary Report from the River Subarnarekha on the Districts of Jhargran and Paschim Medinipur in March, 2022, was prepared. It is also stated that in this Report analysis was made as to how and in what manner and up to what level, the proposed de-siltation work would be carried out. On the basis of this Report, the Department also gave its No Objection in engaging the Respondent No.1, West Bengal Development and Trading Corporation Limited, to carry out the dredging/de-siltation works. This Report was issued under the covering letter dated 02.03.2022 and thereafter, the RFP was issued on 11.03.2022.

25. The stand of the Irrigation & Waterways Department, Ghoradhara, Jhargram, in its affidavit dated 13.04.2023 is that dredging and de-silting work of Subarnarekha River is going on at present in block-Sankrail, District-Jhargram. Along with this affidavit, a Preliminary Report on Prospective De-siltation from the River Subarnarekha at the blocks of Sankrail & Nayagram in the Districts of Jhargram and Paschim Medinipur, August, 2022, has been filed.

26. The Applicant has filed affidavit dated 28.04.2023 wherein it is stated that the Ministry of Water Resources, River Development and Ganga Rejuvenation had constituted the following Committees to study the problem of silting of rivers:-

- (i) A Committee headed by Dr. B.K. Mittal, former Chairman, Central Water Commission (2001) to study the problem of silting in the Rivers.
- (ii) A Committee headed by Shri Madhav Chitale, Expert Member (NGRBA) (2016), for preparation of guidelines for works on de-siltation from Bhimgauda (Uttarakhand) to Farakka (West Bengal).
- (iii) An Expert Committee on Erosion and Siltation in Rivers (ECESR) headed by Director, CWPRS, Pune in 2016 to study the problem of erosion, siltation and requirement of de-siltation/dredging of rivers particularly in Brahmaputra and Ganga.

27. Along with this affidavit, the Applicant has also filed the questions raised in the Lok Sabha and answers given during the Lok Sabha proceedings by the Hon'ble Minister of Water Resources, River Development and Ganga Rejuvenation. Reference has also been made to certain issues raised in *Original Application No.107/2022, Awadhesh Dikshit vs. Union of India & Ors.*, in the National Green Tribunal, Principal Bench, where a Report was filed regarding policy and guidelines on mining of soil and sand on the bank of River Ganga and proper utilization/disposal of dredged material. This Report appears to have been filed vide F.No.25012(11)/2/2022-LME-NMCG, National Mission for Clean Ganga.

28. Minutes of the Meeting held on 08.08.2022 to discuss the Policy and Guidelines for mining of sand & soil and proper

utilization and disposal of the dredged material, of the Department of Water Resources, River Development & Ganga Rejuvenation, Ministry of Jal Shakti, has been filed. Paragraph-14 of which is relevant and is extracted herein below: -

“14. Central Water Commission (CWC) representative stated that the dredging done for maintenance purposes do not require Environmental Clearance. However, if the dredging is undertaken for a project for any commercial purposes, the following aspects are to be duly considered/addressed: -

- i. Feasibility report of the project must be prepared and duly examined to assess the impact;*
- ii. Detailed Project Report (DPR) must be prepared by an expert agency;*
- iii. Dumped/dredged material must be utilized urgently;*
- iv. Flood Control Guidelines, already prepared, must be adhered to.”*

29. The Irrigation and Waterways Department in its affidavit dated 13.04.2023 has referred to the departmental letter dated 30.07.2021 & 20.07.2022 and explained that it is in pursuance of the instructions that Nodal Officer was nominated for the purpose of periodical supervision of the dredging/de-silting works at the location in question vide letter dated 22.07.2022. These letters have already been referred to by the Applicant in his Original Application. However, in paragraph-12 of this affidavit, there is a categorical averment that dredging and de-silting work of Subarnarekha River is going on at present in block-Sankrail,

District-Jhargram and the river stretch was also jointly inspected by the Irrigation Department Officials.Paragraph-12 of the affidavit reads as under: -

“12.This is to state that Dredging and Desilting work of Subarnarekha river is going on at present in block-Sankrail, Dist-Jhargram. The river stretch which has been identified earlier, was jointly inspected with Irrigation Department Officials.”

30. This averment that dredging and de-silting works is still going on at the site is in sharp contrast to the averments made by the Executive Engineer, Jhargram Flood Management & Planning Division, in paragraph-10 of his affidavit dated 21.11.2022 wherein he has denied that any extraction has yet started at the site but only approach road and site preparation for mobilization of machinery for extraction is under progress.

31. The EIA Notification No.S.O.1533(E) dated 14.09.2006 in Section 6 clearly mentions that there must be a prior Environmental Clearance in all cases made by the Project Proponent for mining of minor mineral up to five hectares under Category ‘B2’ projects, as given in Appendix VIII, before commencing any construction activity, or preparation of land, or mining at the site by the Project Proponent.

32. Mining of minor mineral sand is governed by the Sustainable Sand Mining Management Guidelines, 2016 and the Enforcement &

Monitoring Guidelines for Sand Mining, 2020 issued by the MoEF&CC.

33. The stand of the MoEF&CC in paragraph-6 of its affidavit dated 23.12.2022, is also categorical that if mining is done for purposes of earning profit and is done as a commercial venture and involves dredging and de-silting then all the provisions of Environmental Impact Notification of 2006 and its subsequent amendments shall be applied to the said Project.

34. A similar matter arose in the Hon'ble High Court of Uttarakhand at Nainital in *Writ Petition (PIL) No.93 of 2015, Jai Prakash Badoni vs. Union of India & Ors. along with Writ Petition (PIL) No.95 of 2015, Shakti Sangh Priya vs. State of Uttarakhand & Ors.*, and the Hon'ble High Court has clearly held that if dredging is done only for purpose of earning profit and is undertaken as a commercial venture it would require permission. Paragraph-12 of the said judgment reads as under: -

“12. As far as the requirement of getting clearance from the MoEF is concerned, we would think that the stand is made very clear in Paragraph 3. Dredging of rivers, canals, if it is done for the purposes of maintaining the canals, etc. would not appear to require clearance from MoEF and if, however, dredging is done only for the purpose of earning profit and is undertaken as a commercial venture, going by the stand of the Government of India, it would require permission. Therefore, it would appear that, having regard to the public purpose underlying the maintenance of these water bodies, if the dredging is undertaken for the purpose of maintaining the water bodies, as stated in Paragraph 3, no clearance is

required, but if the dredging is undertaken only with the profit motive and as the commercial venture, then certainly it requires environmental clearance. We would, therefore, dispose of the WPPIL Nos. 93 of 2015 and 95 of 2015 recording the stand of the Government of India and directing that the dredging can be done, as stated in Paragraph 3, if it is for the purpose of maintaining the water bodies, etc. without obtaining permission of the MoEF; whereas if it is done with a commercial eye and for earning profit, then it can be done only after getting permission from the concerned Authority under the Environment (Protection) Act.”

35. In the present case, we find that the Request for Proposal (RFP) was issued ostensibly for purposes of dredging and de-silting but Clause 8.1 thereof clearly permitted the successful bidder, that after sharing the volume of sand with West Bengal Development Mineral Development and Trading Corporation Limited (Respondent No.1), *he may utilize the remaining volume of dredged/de-silted sand and total volume of other dredged/de-silted materials at its own discretion after complying with relevant statutory rules/regulations including payment of royalty, cess and other statutory items.*

36. Paragraph-8.1 of the Request for Proposal (RFP), if examined in its proper light leads to the only conclusion that it conveys a blanket power to the successful bidder to utilize the remaining volume of dredged/de-silted sand at his own discretion i.e. commercially. We are, therefore, of the view that the successful bidder was required to have a valid Environmental Clearance prior to disposal of the excess or remaining volume of dredged/de-silted sand and total volume of other dredged/de-silted materials.

37. There is another aspect of the matter. Sand mining is not permissible in the midstream of the River but can be carried out only on the river banks. The Sustainable Sand Mining Management Guidelines, 2016 under the head **“Management Plan”** paragraph-1 provides that if mining is limited to the downstream end of the bar with a riparian buffer on both the channel and hill slope (or floodplain) side, bar skimming would minimize impacts. It further provides that direct disturbance of the substrate in the low flow channel should be avoided. The Rules further provide that for permitting mining volume based on measured annual replenishment and provides that replenishment (up to the elevation of the selected channel configuration) would need to occur before subsequent extraction could take place.

38. The Enforcement & Monitoring Guidelines for Sand Mining, 2020, under the head **“Paragraph-4.0 Requirements for Monitoring & Enforcement”** states that Environmental Clearance is a process wherein the regulatory authorities after considering the potential environment impact of mining clearance is granted with a set of specific & standard conditions to carry out mining operations. It also states that it is the responsibility of the mine owner to obtain all the statutory clearances and comply with the conditions stipulated in the clearance letter. Mining should be carried out within the mining lease as per approved mining plan or mining plan concurred by other regulatory authorities. The Guidelines further state that the river reaches with sand provide the resource and thus it is necessary to ascertain the rate of replenishment of

the mineral. Regular replenishment study needs to be carried out to keep a balance between deposition and extraction. Paragraph-4.0 (v) (vi) and (viii) read as under: -

***v.** Environmental Clearance is a process wherein the regulatory authorities after considering the potential environment impact of mining clearance is granted with a set of specific & standard conditions to carry out mining operations, but often it is observed that letter of intent is granted for a location which has less potential for mining and not feasible for environment-friendly mining. This leads to an unnecessary financial burden on the mine owners and litigations. Thus, LoI should be preferably granted for those locations which have the least possibility of an impact on the environment and nearby habitation.*

***vi.** It is the responsibility of the mine owner to obtain all the statutory clearance and comply with the conditions stipulated in the clearance letter. Mining should be carried out within the mining lease area as per approved mining plan or mining plan concurred by other regulatory authorities.*

....

***viii.** The river reaches with sand provide the resource and thus it is necessary to ascertain the rate of replenishment of the mineral. Regular replenishment study needs to be carried out to keep a balance between deposition and extraction.*

This document provides the procedure to be followed for conducting replenishment study.”

39. Thus on a conjoint reading of the EIA Notification, 2006 read with the Sustainable Sand Mining Management Guidelines, 2016 and Enforcement & Monitoring Guidelines for Sand Mining, 2020, the picture that emerges is that for mining sand from river stretches, for commercial purposes, Environmental Clearance and other statutory clearances are absolutely mandatory and there also has to be a Replenishment Study.

40. The Sustainable Sand Mining Management Guidelines, 2016 issued by MoEF&CC further requires preparation of District Survey Report (DSR) which is an important step before grant of mining lease/letter of intent. The Rules, 2016 contemplate a Committee for Districts which will make recommendations/suggestions on the District Survey Report (DSR) to the District Environment Impact Assessment Authority.

41. The Hon'ble High Court of Uttarakhand has held as already noted hereinabove that if dredging is done only for the purpose of earning profit and is undertaken as a commercial venture, it would require permission/clearance from the MoEF&CC.

42. The Hon'ble Supreme Court in (2012) 4 SCC 629, *Deepak Kumar etc. vs. State of Haryana &Ors.*, has held 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.Paragraphs-8, 9, 10, 11, 25 and 26 of the said judgment read as under: -

“8. We have no materials before us to come to the conclusion that the removal of minor mineral boulder, gravel, sand quarries etc. covered by the auction notices dated 3.6.2011 and 8.8.2011, in the places notified therein and also in the river beds of Yamuna, Ghaggar, Tangri, Markanda, Krishnavati river basin, Dohan river basin etc. would not cause environmental degradation or threat to the biodiversity, destroy riverine vegetation, cause erosion, pollute water sources etc. Sand mining on either side of the rivers, upstream and in-stream, is one of the causes for environmental degradation and also a threat to the biodiversity. Over the years, India’s rivers and Riparian ecology have been badly affected by the alarming rate of unrestricted sand mining which damage the ecosystem of rivers and the safety of bridges, weakening of river beds, destruction of natural habitats of organisms living on the river beds, affects fish breeding and migration, spells disaster for the conservation of many bird species, increases saline water in the rivers etc. Extraction of alluvial material from within or near a streambed has a direct impact on the stream’s physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both in-stream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine

ecosystem and also upset the ability of natural marine processes to replenish the sand.

9. We are expressing our deep concern since we are faced with a situation where the auction notices dated 3.6.2011 and 8.8.2011 have permitted quarrying mining and removal of sand from in-stream and upstream of several rivers, which may have serious environmental impact on ephemeral, seasonal and perennial rivers and river beds and sand extraction may have an adverse effect on bio-diversity as well. Further, it may also lead to bed degradation and sedimentation having a negative effect on the aquatic life. The Rivers mentioned in the auction notices are on the foothills of the fragile Shivalik hills. Shivalik hills are the source of rivers like Ghaggar, Tangri, Markanda etc. River Ghaggar is a seasonal river which rises up in the outer Himalayas between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes through Ambala and Hissar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal river like Ghaggar, which also originates from the lower Shivalik hills and enters Haryana near Ambala. During monsoon, this stream swells up into a raging torrent, notorious for its devastating power, as also, river Yamuna.

10. We find that it is without conducting any study on the possible environmental impact on/in the river beds and elsewhere the auction notices have been issued. We are of the considered view that when we are faced with a situation where extraction of alluvial material within or near a river bed has an impact on the rivers physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that the extraction is in blocks of less than 5 hectares, separated by 1 kilometre, because their collective impact may be significant, hence the necessity of a proper environmental assessment plan.

11. Possibly this may be the reason that in the affidavit filed by the MoEF on 23.11.2011 along with the annexure-2 report, the following stand has been taken:

“The Ministry is of the opinion that where the mining area is homogenous, physically proximate and on identifiable piece of land of 5 ha or more, it should not be broken into smaller sizes to circumvent the EIA Notification, 2006 as the EIA Notification, 2006 is not applicable to the mining projects having lease area of less than 5 ha. The Report of Committee on Minor Minerals, under the Chairmanship of the Secretary (E&F) with representatives of various state Governments as members including the State of Haryana and Rajasthan recommended a minimum lease size of 5 ha for minor minerals for undertaking scientific mining for the purpose of integrating and addressing environmental concerns. Only in cases of isolated discontinued mineral deposits in less than 5 ha, such mining leases may be considered keeping in view the mineral conservation.”

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25. Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive in-stream sand and gravel mining causes the degradation of rivers. Instream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics.

26. We are of the considered view that it is highly necessary to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long term rational

and sustainable use of natural resource base and also the bio-assessment protocol. Sand mining, it may be noted, may have an adverse effect on bio-diversity as loss of habitat caused by sand mining will effect various species, flora and fauna and it may also destabilize the soil structure of river banks and often leaves isolated islands. We find that, taking note of those technical, scientific and environmental matters, MoEF, Government of India, issued various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of Article 48A, Article 51A(g) read with Article 21 of the Constitution.”

43. The Hon’ble Supreme Court has clearly observed that extraction of alluvial material from within or near a stream bed as a direct impact on the streams physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. The Hon’ble Court has further observed that without conducting any study on the possible Environmental Impact on/in the river beds and elsewhere the auction notices have been issued. It is necessary that there has to be a proper environmental assessment.

44. In the present case, we find that under the garb of a Request for Proposal (RFP) for dredging and de-silting the highest bidder/successful bidder has been permitted to utilize the dredged/de-silted materials at his own discretion i.e. for commercial purposes. It is not the case of the Respondent No.1, West Bengal Development Mineral Development and Trading

Corporation Limited or the successful bidder Respondent No.10 that the Respondent No.10 has the Environmental Clearance and other statutory clearances for purposes of mining sand for commercial purposes. Therefore, mining activities of the Respondent No.10 at the site in question is in clear violation of the Rules 2016, Rules, 2020, EIA Notification, 2006 and the judgment of the Hon'ble Supreme Court and Uttarakhand High Court.

45. We are of the opinion that in view of the Sustainable Sand Mining Management Guidelines, 2016 and the Enforcement & Monitoring Guidelines for Sand Mining, 2020, sand mining operation could not have been undertaken by the Respondent No.10 nor permitted by the Respondent No.1 under the Request for Proposal (RFP) for commercial utilization of dredged/de-silted sand without statutory clearances.

46. We may also advert to the Government of West Bengal, Department of Industry, Commerce & Enterprises, Mines Branch Notification No.48-ICE/O/MIN/GEN-MIS/17/2021 dated 25.01.2022. Section 7 thereof under the heading 'Environmental aspects of Sand Mining', provides that the environmental aspects of mining as provided in Chapter V (*Environmental Aspects of Mining*) of the West Bengal Minor Minerals Concession Rules, 2016 as amended from time to time, or such other law applicable on minor minerals as prescribed by the State Government from time to time, shall mutatis mutandis apply to sand mining. Rule 7 of the Notification reads as under: -

“7. Environmental aspects of Sand Mining:*The environmental aspects of mining as provided in Chapter V (Environmental Aspects of Mining) of the West Bengal Minor Minerals Concession Rules, 2016 as amended from time to time, or such other law applicable on minor minerals as prescribed by the State Government from time to time, shall mutatis mutandis apply to sand mining.”*

47. Rule 9 of this Notification provides prohibits sand mining under specified conditions. Rule 9 of the Notification reads as under:-

“9. Prohibition on Sand Mining under Specified

Conditions: *(1) No sand mining shall be carried out within two hundred meters, upstream and downstream, measured from the centre line of any bridge, regulator or similar hydraulic structure and from hundred meters from the endpoint of bank protection works.*

(2) No sand mining shall be carried out beneath three meters of the riverbed or ground water level, whichever is less.

(3) No sand mining/dredging shall be carried out within a distance of two km of a barrage axis or dam on a river unless otherwise permitted by the concerned Executive Engineer and such distance shall be reckoned across an imaginary line parallel to the barrage, or dam axis, as the case maybe,

(4) No sand mining shall be carried out beyond the central one third or the riverbed keeping a safe zone of one hundred meter from the existing river bank or within 50 meters of any embankment, canal bridge, road, public building.

(5) The State Government may add further conditions any/ or modify the aforesaid conditions by notification published in the Official Gazette.”

48. Sub-Rule (4) of the Notification provides that no sand mining shall be carried out beyond the central one third of the riverbed keeping a safe zone of one hundred meters from the existing river bank or within 50 meters of any embankment, canal bridge, road, public building.

49. Considering Rule 9 sub-Rule (4) of the Notification dated 25.01.2022, it is clear that sand mining activities cannot be carried out for commercial purposes within the flowing river under the garb of dredging/de-silting.

50. On conspectus facts and law, we, therefore, dispose of this Original Application with a direction to the State Respondents that neither the Respondent No.1 nor Respondent No.10 shall be permitted to carry out any further dredging/de-silting operation which permits commercial utilization of the dredged/de-silted materials by the successful bidder till a District Survey Report (DSR), Replenishment Study of the sand source in question is carried out and strict compliance of the Sustainable Sand Mining Management Guidelines, 2016 and the Enforcement & Monitoring Guidelines for Sand Mining, 2020, are observed and the successful bidder possesses the Environmental Clearance and all other statutory clearances for mining operations for commercial purposes.

51. In view of the particular facts of the present case, we further restrain the Respondent No.10 from carrying out any further mining operations till all statutory clearances are not obtained by it.

52. Interlocutory Applications, if any, stand disposed of accordingly.

53. There shall be no order as to costs.

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B. AMIT STHALEKAR, JM

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DR. ARUN KUMAR VERMA, EM

**Kolkata,
September 04th, 2023,
Original Application No.99/2022/EZ
MN**