

Item No. 01

Court No. 1

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

Appeal No. 57/2016  
(M.A. No. 1236/2016 & M.A. No. 1237/2016)

Rana Randeep Singh

Appellant(s)

Versus

Union of India & Ors.

Respondent(s)

Heard on : 23.09.2019

Uploaded on: 01.10.2019

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

For Appellant(s):

Mr. Rahul Choudhary and Ms. Meera Gopal,  
Advocates.

For Respondent(s):

Mr. Divya Prakash Pande, Advocate for  
HPSPCB.

Mr. Krishna Kumar Singh, Advocate for  
MoEF&CC.

Mr. Sarthak Ghonkrokta, Advocate for  
HPEIAA.

Mr. Deepak Kaushal, Advocate for  
Respondent Nos. 6 & 7.

**ORDER**

**Per Justice S.P. Wangdi, Judicial Member**

1. In this Appeal the Appellant assails Environmental Clearance (EC) dated 19.07.2016 granted in favour of the Respondent No. 6 by the State Level Environment Impact Assessment Authority (SEIAA), Himachal Pradesh for mining of sand, stone

and bajri in river Yamuna. It is alleged that the EC is bad for the following reasons:

- i) The Respondent No. 6 had furnished wrong information in Form 1 submitted by him on 29.03.2016 as required under Environment Impact Assessment (EIA) Notification, 2006 and also had concealed vital information in part (III) relating to Environmental Sensitivity in Form 1 of EIA Notification, 2006. The Respondent project proponent failed to disclose existence of Simbalbara Wildlife Sanctuary & National Park (also known as Sher Jung National Park), Notified Kalesar National Park Park (Haryana), Notified Asan Bird Conservation Reserve (Uttarakhand) and Rajaji National Park. It is contended that such information is required to be furnished in Form 1. The project also falls within the proposed Eco-Sensitive Zone (ESZ) contained in the draft Notification dated 09.12.2015. The project is also in the close vicinity of a school, a temple and community facilities lying within the prohibited distance of 15 km.
- ii) As per the impugned EC, the area of sand mining falls partly within the riverbed and the mining would be done mostly in the center of the river Yamuna as almost 80% of the mining areas lie within the riverbed of Yamuna.

According to the Appellant, stream sand mining activities will have an adverse impact on the river's water quality, including increased short-term turbidity and the mining site due to re-suspension of sediments, sedimentation due to stockpiling and dumping of excess mining materials and organic particulate matter and oil spills or leakage from excavation machinery and transportation vehicles.

iii) It is reemphasized that proposed mining areas falls within the prohibited zone as per the draft ESZ Notification of Simbalbara Wildlife Sanctuary and National Park. It is contended that considering the rich bio-diversity of the sanctuary, several activities had been prohibited within the area which includes mining of minor minerals.

iv) The proposed mining site is an important wildlife habitat and wildlife corridor as it is surrounded by important National Parks, Sanctuaries and Conservation Reserves. It is 5 km from the Sambalbara Wildlife Sanctuary and Notified Kalesar National Park (Haryana), 8 km from Notified Asan Bird Conservation Reserve (Uttarakhand), Dhaula Reserve Forest which acts as an extension and buffer to Rajaji National Park which is just across the river where the mining site is located.

v) The Divisional Forest Officer (DFO), Tehsil Paonta Sahib, District Sirmour issued an incorrect distance certificate to the project proponent stating that “no wildlife national park/sanctuaries areas lies within 5 kms radius of the study area situated in mauza Batamandi, Tehsil Paonta Sahib, District Sirmour, Himachal Pradesh” in response to a written query made by the project proponent. This according to the Appellant, amounts to misrepresentation of facts that misled the State Expert Appraisal Committee (SEAC) and the State Level Environment Impact Assessment Authority (SEIAA).

vi) Permission was not obtained from the Standing Committee of NBWL even though the project falls within 10 km of national park which is necessary as per order dated 04.12.2006 in Writ Petition (C) No. 460/2004.

2. On the above premises, the Appellant has prayed that the impugned EC dated 19.07.2016 granted in favour of the Respondent No. 6 by the SEIAA, Himachal Pradesh for mining of sand, stone and bajri from river Yamuna be quashed.

3. The Ministry of Environment Forest and Climate Change (MoEF&CC), Respondent No. 1 filed a reply affidavit setting out the scheme for grant of EC with regard to mining of minor minerals including sand prescribed under EIA Notification, 2006. EIA Notification, 2006 was amended on 15.01.2006

focusing on the provisions for mining of minor minerals including sand mining. By this Notification, the Ministry had delegated the power/authority to grant EC upto 5 ha of individual mining lease of minor minerals and 25 ha in clusters to the District Level Environment Impact Assessment Authority (DEIAA) headed by the District Magistrate/District Collector. A District Expert Appraisal Committee (DEAC) has been constituted under the chairmanship of the Executive Engineer, Irrigation Department to assist the DEIAA. *Vide* Gazette Notification dated 20.01.2016, the DEIAA/DEAC has been authorized for appraisal of smaller leases of minor minerals. Appendix X of the Notification dated 15.01.2016 prescribed the procedure for preparation of District Survey Report (DSR) which envisages (a) identification of areas of aggradations or deposition where mining can be allowed and identification of areas of erosion and proximity of infrastructural structures and installations where mining should be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining in that area, (b) the mining of minor minerals is mostly in clusters. The EIA or EMP are required to be prepared for the entire cluster in order to capture all the possible externalities. These reports shall capture carrying capacity of the cluster, transportation and related issues, replenishment and recharge issues, geo-hydrological study of the cluster area. The EIA or EMP shall be prepared by the State or State nominated Agency or group of project proponents in the

cluster or the project proponent in the cluster and (c) there shall be one public consultation for entire cluster after which the final EIA or EMP report for the cluster shall be prepared.

4. The procedure for grant of EC of mining of minor minerals including cluster is provided in Appendix XI of the Notification dated 15.01.2016.

5. Amongst the respondents only the SEIAA, Himachal Pradesh has filed a substantive affidavit in reply to the Appeal denying all factual allegations and the contentions imputed to assail the impugned EC. It is stated that the impugned EC had been granted in favour of the Respondent No. 6 for mining of minor minerals as a Category 'B2' project under appropriate terms and conditions to ensure environmental protection as per approved Mining Plan and Environment Management Plan (EMP). The impugned EC has been granted after due diligence and careful examination of the recommendations of the SEAC.

6. It is stated that prior to grant of EC the Appellants are required to obtain necessary permission of the Mining Department, Government of Himachal Pradesh, various No Objection Certificates with regard to wildlife sanctuary, Forest Department, Public Works Department, Ground Water Authority, IPH Department, etc. Joint inspection of the site is required to be carried out under the Chairmanship of the SDO (Civil), approved Mining Plan, Forest Clearance in case forest land is involved. In this case the Committee had also taken on

record certificate from the Forest Department with regard to the location of the mining site, its distance from the wildlife sanctuary, etc., prior to the appraisal of the proposal. As per procedure, EC is granted only after the mining lease area is approved by the Competent Authority, i.e., the State Government, under the Minor Minerals (Concession) Rules and after due consideration of all materials furnished by the Appellant. All these had been taken into consideration in the present case and EC was granted by the SEIAA after due diligence and deliberations by SEAC taking into consideration all the statutory clearances required for the purpose.

7. It is contended that the project proponent had duly submitted Form 1 and Form 1M applicable to the minor minerals under Category 'B2' as per requirement based on self declaration which is in accordance with the requirement of EIA Notification, 2006. The requirement of providing information of 15 km aerial distance from the project location as contended by the Appellant had been denied asserting that information within 5 km of interstate boundary is required to be provided which had been furnished by way of certificate from the Competent Authority. No in stream mining of river Yamuna has been allowed although the power of allocation of mining area is vested in the Mining Department of the State Government. The role of the SEIAA is confined to ensuring protection and sustenance of ecology in such areas. The terms and conditions have been imposed in the EC is required

to be strictly adhered to by the project proponent during the operational phase of the project for ensuring protection of the environment and strict implementation of the EMP. The EC was granted with the condition that it was subject to final order of the Hon'ble Supreme Court in Writ Petition No. 460/2004 requiring project proponents to seek clearance from the Standing Committee of NBWL for projects falling within 10 km of national parks/sanctuaries. It is thus contended that EC was granted by the SEIAA giving due regard to the orders of the Hon'ble Supreme Court.

8. On behalf of the Respondent No. 5, the Principal Chief Conservator of Forests (PCCF), Himachal Pradesh, an affidavit had been filed stating that the project proponent had applied for conducting EIA studies for survey of flora and fauna in mauza Batamandi mining for an area measuring 3.5 ha and, as per inspection of the Range Officer, Majra and forest Kanungo it had been reported that the area was at a distance of more than 2 km and less than 5 km from Simbalwara National Park. It is stated that earlier information furnished *vide* order dated 03.03.2016 that there was no wildlife national parks/sanctuaries lying within 5 km radius from the study area had been rectified by letter dated 31.03.2016 as being a typographical error.
9. During the course of the argument, the Appellant laid great stress on Form 1 contending that the Appellant had failed to furnish information prescribed for Environmental Sensitivity



prescribed in the table which is reproduced below for convenience:

*“(III) Environmental Sensitivity)*

| <b>S.No.</b> | <b>Areas</b>   | <b>Name/<br/>Identity</b> | <b>Aerial<br/>distance<br/>(within 15<br/>km.)<br/>Proposed<br/>project<br/>location<br/>boundary</b> |
|--------------|--|---------------------------|---|
| 1            | Areas protected under international conventions, national or local legislation for their ecological, landscape, culture or other related value.            |                           |   |
| 2            | Areas which are important or sensitive for ecological reasons- Wetlands, watercourses or other water bodies, coastal zone, biospheres, mountains, forests. |                           |   |
| 3            | Areas used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting, over wintering, migration.             |                           |   |

10. The question for consideration is as to whether in the present case where the EC has been granted to a project for mining of sand of an area less than 5 ha, which would admittedly fall under Category ‘B2’ project, will require to fill Form 1. In our view all other questions would be rendered redundant if this question is answered in the negative in so far as the project in question is concerned.

11. As stated by the MoEF&CC in its reply affidavit, EIA Notification, 2006 was amended *vide* Notification dated 15.01.2016 focusing on the mining of minor minerals including sand. This amendment had to be brought about as a consequence of the order of the Hon'ble Supreme Court 27.02.2012 in *Deepak Kumar & Ors. v. State of Haryana & Ors.*<sup>1</sup>, mandating prior EC for mining of minor minerals irrespective of the area of mining lease. This was on account of fact that earlier EC was not necessary for areas of mining of less than 5ha.

12. Clause 3A was introduced providing for DEIAA as a authority to deal with Category 'B2' projects pertaining to mining of minor minerals of lease area less than or equal to 5ha on the recommendation of DEAC.

13. Clause 6 was also amended, relevant portion of which reads as follows:

“Application for Prior Environmental Clearance (EC):-

An applicant seeking prior environmental clearance in all cases shall be made by the project proponent in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II after the identification of prospective site(s) for the project and/or activities to which the application relates; and in Form 1M for mining of minor minerals up to five hectare under Category 'B2' projects, as given in Appendix VIII, before commencing any construction

---

<sup>1</sup> (2012) 4 SCC 629

activity, or preparation of land, or mining at the site by the project proponent. The project proponent shall furnish along with the application, a copy of the pre-feasibility project report, in addition to Form 1, Form 1A, and Form 1M; and in case of construction projects or activities (item 8 of the Schedule), a copy of the conceptual plan shall be provided instead of pre-feasibility report.”

**[Underling supplied]**

14. Further clause 7(iii) was introduced providing for preparation for DSR for sand mining or riverbed mining and mining of other minor minerals which was to be carried out as per procedure given in Appendix X and the procedure for grant of EC for the purpose including cluster situation was prescribed under Appendix XI, the relevant provisions which would be necessary to deal with the questions arising in present case.

15. From amended clause 6 of the EIA Notification, 2006 brought about by Notification dated 15.01.2016, it will be quite apparent that application seeking prior EC in all cases is required to be made by the project proponent in the prescribed Form 1 and Supplementary Form 1A, if applicable, as given in Appendix II. For those applications seeking EC for mining of minor minerals up to 5 ha falling under Category 'B2' projects, it was Form 1M as given in Appendix VIII that is required to be filled up if applicable. A pre-feasibility project report is necessary to be submitted along with the applicable forms, i.e., either Form 1, Form 1A and Form 1M. This is how the new clause 6 has to be read. Any other interpretation of the newly added clause 6 would be illogical.

16. In light of the above, it is undisputed that the project proponent in the present case had to apply in Form 1M as the proposal fell under Category 'B2' projects being for a mining area of about 3.5 ha.

17. Schematic Presentation of requirement on Environmental Clearance of minor minerals including cluster situation *inter alia* for areas less than 5ha provided in Appendix XI provides as follows:

| Area of Lease (Hectare)  | Category of Project | Requirement of EIA/EMP                     | Requirement of Public Hearing | Requirement of EC | Who can prepare EIA/EMP | Who will apply for EC | Authority to appraise/grant EC | Authority to monitor EC compliance                 |
|--|---------------------|--|-------------------------------|-------------------|-------------------------|-----------------------|--------------------------------|--|
| <i>EC Proposal of Sand Mining and other Minor Mineral Mining on the basis of individual mine lease</i> |                     |  |                               |                   |                         |                       |                                |  |
| 0 – 5ha  | 'B2'                | <b>Form-1M, PFR and Approved Mine Plan</b> | No                            | Yes               | Project Proponent       | Project Proponent     | DEAC/DEIAA                     | DEIAA<br>SEIAA<br>SPCB<br>CPCB<br>MoEFCC<br>Agency |

The Schematic Presentation thus also confirms that the applicable form in the present case would be Form 1M to be submitted along with pre-feasibility report and approved mine plan.

18. It is undisputed that a joint inspection of the project site had been carried out by a Committee under the Chairmanship of SDO (Civil) and, apart from the clearances from various authorities referred to earlier, an approved mining plan had been submitted by the project proponent along with pre-feasibility report with Form 1M.

19. On a comparison of Form 1 and Form 1M, we find that these widely differ in its content in as much as in Form 1M requirements are not so stringent as Form 1 and the requirement of furnishing of aerial distance (within 15 km) of the proposed project location is not provided in Form 1M. For convenience we may reproduce Form 1M below:

**“Appendix VIII  
(See paragraph 6)  
FORM 1 M**

**APPLICATION FOR MINING OF MINOR MINERALS UNDER  
CATEGORY ‘B2’ FOR LESS THAN AND EQUAL TO FIVE  
HECTARE**

- (II) *Basic Information*  
 (viii) *Name of the Mining Lease site:*  
 (ix) *Location / site (GPS Co-ordinates):*  
 (x) *Size of the Mining Lease (Hectare):*  
 (xi) *Capacity of Mining Lease (TPA):*  
 (xii) *Period of Mining Lease:*  
 (xiii) *Expected cost of the Project:*  
 (xiv) *Contact Information:*

**Environmental Sensitivity**

| <b>Sl.No.</b> | <b>Areas</b>  | <b>Distance in kilometer/Details</b> |
|---------------|---|--------------------------------------|
| 1.            | <i>Distance of project site from nearest rail or road bridge over the concerned River, Rivulet, Nallah etc.</i>   |                                      |
| 2.            | <i>Distance from infrastructural facilities<br/>Railway line<br/>National Highway<br/>State Highway<br/>Major District Road<br/>Any Other Road<br/>Electric transmission line pole or tower<br/>Canal or check dam or reservoirs or lake or ponds<br/>In-take for drinking water pump house<br/>Intake for Irrigation canal pumps</i> |                                      |
| 3.            | <i>Areas protected under international conventions, national or local legislation for their ecological, landscape, cultural or other related value</i>  |                                      |
| 4.            | <i>Areas which are important or sensitive for ecological reasons - Wetlands, watercourses or other water bodies, coastal zone, biospheres, mountains, forests</i>   |                                      |
| 5.            | <i>Areas used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting, over wintering, migration</i>  |                                      |
| 6.            | <i>Inland, coastal, marine or underground waters</i>  |                                      |
| 7.            | <i>State, National boundaries</i>   |                                      |
| 8.            | <i>Routes or facilities used by the public for</i>  |                                      |

|     |  |  |
|-----|--|--|
|     | <i>access to recreation or other tourist, pilgrim areas</i>  |  |
| 9.  | <i>Defence installations</i>   |  |
| 10. | <i>Densely populated or built-up area, distance from nearest human habitation</i>  |  |
| 11. | <i>Areas occupied by sensitive man-made land uses (hospitals, schools, places of worship, community facilities)</i>  |  |
| 12. | <i>Areas containing important, high quality or scarce resources (ground water resources, surface resources, forestry, agriculture, fisheries, tourism, minerals)</i>   |  |
| 13. | <i>Areas already subjected to pollution or environmental damage. (those where existing legal environmental standards are exceeded)</i>   |  |
| 14. | <i>Areas susceptible to natural hazard which could cause the project to present environmental problems (earthquakes, subsidence, landslides, erosion, flooding or extreme or adverse climatic conditions)</i>  |  |
| 15. | <i>Is proposed mining site located over or near fissure / fracture for ground water recharge</i>   |  |
| 16. | <i>Whether the proposal involves approval or clearance under the following Regulations or Acts, namely:-<br/>(a) The Forest (Conservation) Act, 1980;<br/>(b) The Wildlife (Protection) Act, 1972;<br/>(c) The Coastal Regulation Zone Notification, 2011. If yes, details of the same and their status to be given.</i> |  |
| 17. | <i>Forest land involved (hectares)</i>   |  |
| 18. | <i>Whether there is any litigation pending against the project and/or land in which the project is propose to be set up?<br/>(a) Name of the Court<br/>(b) Case No.<br/>(c) Orders or directions of the Court, if any, and its relevance with the proposed project.</i>  |  |

*(Signature of Project Proponent  
Along with name and address)"*

20. The Appellant stresses that the project proponent is required to fill Form 1 which we find difficult to accept in view of the clear and unambiguous terms used in amended Clause 6 to the EIA Notification, 2006<sup>2</sup> and the Schematic Presentation of requirements under Appendix XI <sup>3</sup> reproduced above. There is no doubt that the project proponent had also submitted Form 1 without entering the relevant column prescribed for

<sup>2</sup> Paragraph 13 of this order

<sup>3</sup> Paragraph 17 of this order

Environmental Sensitivity but, in our considered opinion filing of Form 1 was a superfluous exercise undertaken by the project proponent as the requisite Form 1M had been duly filled up and submitted along with pre-feasibility report and approved mine plan as mandated under Form 1M.

21. Thus, the entire case of the Appellant that the project proponent had not furnished the requisite information in Form 1 which tantamount to misleading the SEAC and SEIAA, fails. Other questions being incidental to this plea and quite peripheral, would stand rendered redundant and, therefore, not necessary to be dealt with.

22. In the result the Appeal is dismissed with no order as to costs.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

1<sup>st</sup> October, 2019  
avt