

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

M.A. No. 16/2020

(Filed by the State of Haryana for modification of order of this Tribunal dated 05.04.2019 read with order dated 26.07.2019 laying down terms on which vehicles or other equipment involved in illegal mining may be released.)

In

Original Application No. 44/2016

Mushtakeem

Applicant(s)

Versus

MoEF & CC & Ors.

Respondent(s)

Date of hearing: 19.02.2020

**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  
HON'BLE MR. SIDDHANTA DAS, EXPERT MEMBER**

For Respondent(s): Mr. Ajay Bansal, AAG with Mr. Rahul Khurana, Advocate and Mr. Sanjay Simberwal, AME, Faridabad

**ORDER**

1. This application seeks modification of order dated 05.04.2019 read with order dated 26.07.2019 laying down terms on which vehicles or other equipments involved in illegal mining may be released passed by this Tribunal. After referring to the earlier orders on the subject passed by this Tribunal and the Hon'ble Supreme Court referred to therein, and perusing the reports received from different States, this Tribunal found that steps taken by the States to check illegal mining were not adequate. The Tribunal *inter alia* directed the States to ensure that in compliance of polluter pays principle, the illegal miners may be required to be pay compensation which should include not only the value of illegal mined material but also cost of restoration of environment as well as cost of ecological

services foregone forever. It should be deterrent so as not to render such illegal activity profitable. It was further directed that the vehicles or any other equipments used for illegal mining are required to be confiscated and to be released only on payment of atleast 50% of the showroom value as laid down by this Tribunal earlier in Original Application No.110(THC)/2012, Threat to life arising out of coal mining in South Garo Hills District v. State of Meghalaya & Ors., affirmed by the Hon'ble Supreme Court in (2019) 8 SCC 177.

2. The above order was passed by this Tribunal in exercise of jurisdiction under Section 15 of the NGT Act, 2010. It is well settled that terms for release of vehicles and equipments involved in violation of special law is not control by the general provisions of the Cr.P.C. In this connection reference may also be made to another order of this Tribunal on the same subject in O.A. No. 840/2019, Atul Chouhan v. State of U.P. The said order was challenged by the State of U.P. in C.A. 1590/2019 which was dismissed by the Hon'ble Supreme Court on 07.05.2019. The Tribunal also referred to order of the Hon'ble Supreme Court dated 26.03.2019 in Cr.A. 524/2019, State of Madhya Pradesh v. Uday Singh that special procedure for confiscation prevailed over procedure under Section 451 of Cr.P.C. In the said case principle laid in Sujit Kumar Rana, (2004) 4 SCC 129 was followed.

3. In spite of above legal position, any other view on the subject will be against the law laid down by the Hon'ble Supreme Court. The plea that different Courts are taking different interpretation and releasing vehicles on *superdari* without any conditions is

untenable. Legal position need to be brought to the notice of such courts where matters are taken up.

4. Other difficulty pointed out by the State is that police stations are finding it difficult to provide sufficient space for custody of the vehicles. 669 vehicles have already been seized and more may be seized. The stand of the State itself supports the allegation that illegal sand mining and illegal use of vehicles for the purpose is taking place at large scale which itself may require a stern approach in the matter. The vehicles can be stored by the State at any appropriate place and cost recovered from the law violators. The State has to take necessary steps for enforcing rule of law and for protection of environment. As regards the difficulty that with the scale of compensation laid down by this Tribunal, the vehicle owners do not find it profitable to come forward and take the vehicles unless the scale of compensation is reduced. The showroom value of a truck is said to be around Rs. 30 lacs and 50% thereof comes to Rs. 15 lacs. In terms of order of this Tribunal, if amount of Rs. 15 lacs is to be deposited for release of every seized vehicle, there may be many vehicles which may be of much lesser value, in which case nobody may come forward to take such vehicles.

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

| <b>Sr. No.</b> | <b>Category of Vehicle</b>   | <b>Penalty Amount</b> |
|----------------|--|-----------------------|
| 1              | Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and less than 5 years old.                        | Rs. 4 lacs            |
| 2              | Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and more than 5 years but less than 10 years old. | Rs. 3 lacs            |

|   |   |            |
|---|---|------------|
| 3   | 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. | Rs. 2 lacs |
| <p><b>Note – I:</b> On repetition of the offence by the same vehicle/ equipment, Order dated 05.04.2019 will be applicable.</p> <p><b>Note – II:</b> 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.</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.

A copy of this order be sent to all the Chief Secretaries of all States/UTs, PCBs/ PCCs, CPCB and MoEF&CC.

The application is disposed of.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

Dr. Nagin Nanda, EM

Siddhanta Das, EM

February 19, 2020



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