

Item Nos. 04 &05

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 249/2021
(I.A. No. 187/2021)

WITH

Caveat Application No. 12/2021, Caveat Application No. 13/2021 &
Caveat Application No. 14/2021

Daljeet Singh & Anr.

Applicant

Versus

Uttar Pradesh Pollution Control Board & Ors.

Respondent(s)

WITH

Original Application No. 251/2021
(I.A. No. 189/2021 & I.A. No. 214/2021)

Daljeet Singh & Anr.

Applicant

Versus

Uttar Pradesh Pollution Control Board & Ors.

Respondent(s)

Date of hearing: 11.05.2022

**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**

Applicant: Mr. Ajit Sharma, Advocate

Respondent(s): Mr. Pradeep Misra & Mr. Daleep Dhyani, Advocates for UPPCB
Mr. Mukesh Verma, Advocate for the State of U.P
Ms. Priyanka Swami, Advocate for SEIAA, UP
Ms. Pallavi Pratap, Advocate for M/s Shakumbari Mines
Mr. Neeraj Jain, Advocate for M/s Star Mines
Mr. Anand Varma, Advocate for M/s Balaji Trading Company

ORDER

1. This order will deal with O.A No. 249/2021 and O.A No. 251/2021 as both the matters involve common issue of illegal mining by private respondents.

2. In O.A No. 249/2021, the private respondents R-07 to 14 are: Sanjay Bhatia, Satendra Kumar, Rajesh Kumar, Aadesh Pandey, M/s. Shakumbari Mines, M/s. Star Mines, M/s. Balaji Trading Company, and Prime Vision Industries P. Ltd., Saharanpur. In O.A No. 251/2021, only private respondent is R-6, M/s. Shakumbari Mines, Shamli. The issues raised are by and large common.

3. O.A No. 249/2021 was earlier considered on 28.10.2021 to the effect that the mining was done without requisite consent and in violation of environmental norms. The Tribunal accordingly constituted a joint Committee to verify the facts and furnish a report which should include the action taken, if any. An interim order was also passed directing that no illegal mining may be allowed. Operative part of the order is reproduced below:-

“2. This application has been filed by the applicant under Section 14 and 18 of National Green Tribunal Act, 2010, complaining that Respondents No. 7 to 14 are illegally operating in sand mining in different villages in Tehsil Behat and Nakud, District Saharanpur, without having received any consent from State PCB under the provisions of Water (Prevention and Control of Pollution) Act, 1974 (Water Act, 1974) and Air (Prevention and Control of Pollution) Act, 1981 (Air Act, 1981). Illegal mining, that too in river bed, is going on in connivance with local officials who are responsible for protection, preservation and maintenance of environment but ignoring to take any action against the above violators. Applicant has also placed on record documents showing that in the online applications submitted, Project Proponents i.e., private respondents have clearly mentioned that no NOC has been obtained from State PCB. In this regard, our attention is drawn to the documents on pages 88, 92 and 96 which pertain to Respondent Nos. 10, 11 and 12, who are represented through counsel, having filed Caveats in this matter.

3. When enquired from the Learned Counsel appearing for the Caveators, he could not give any specific reply that said Caveat Respondents have received any consent from State PCB under the provisions of the Water Act, 1974 and Air Act, 1981. The applicant

has also placed on record several photographs which show large scale mining, going on in river bed. In fact, Learned Counsel appearing for Caveators Respondent has also not denied this fact that mining activities had undergone by respondents 10,11, and 12, during the year 2021, but he says that the said mining was carried out after obtaining permission from mining Department. He however, could not give any reply with respect to the requisite consent/ permission/ NOC under environmental laws.

4. In view of the documents available on records and lack of clear information given on behalf of the Caveators respondents, prima-facie it appears that mining activities in Tehsil Behat and Nakud, District Saharanpur are going on in violation of environmental laws and a substantial question relating to environment regarding implementation of statutes under Schedule to NGT Act has arisen.

5. We issue notices to Respondents No. 1 to 9, and 13 to 15 by email and also give liberty to the applicant to serve a copy of the application upon all the Respondents except 10 to 12, personally and file affidavit of service within three weeks. Since respondents 10 to 12 are already represented through Counsel, no further notice need be issued

6. The Respondents including official respondents shall file their response within one month after receipt of the notice.

7. In the meantime, for obtaining factual details in the matter, **we find it appropriate to constitute a joint Committee comprising of CPCB, SEIAA, UP, State PCB and District Magistrate, Saharanpur. The State PCB will be the nodal agency for coordination and compliance. The said Committee shall examine the matter and submit its detailed report. The said report, besides other, should also clearly give the facts relating to factum of mining undergone by Project Proponents, including area, quantity and number of days and also the fact whether the said mining was carried out after obtaining requisite statutory consent/NOC/approval / permissions etc. or without that. The report will also include whether any action for prevention of mining, if it has undergone illegally in violation of environmental laws, has been taken by the concerned authorities in the District Administration and State PCB officials or not. The said report shall be submitted within two months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.**

8. In the meantime, **considering gravity of the issue and also having seen documents which prima-facie show that mining activities have been carried out without obtaining any consent from State PCB, as an interim measure we direct State PCB and District Magistrate, Saharanpur to ensure that no mining activities of sand are carried out in District Saharanpur illegally i.e. without obtaining consent under the provisions of Water Act, 1974 and Air Act, 1981 and they shall take further remedial action in the matter without any further delay, against all such violators including Respondents No. 7 to 14.”**

4. In O.A No. 251/2021, the matter was earlier considered on 01.11.2021 and the same was directed to be heard along with O.A No. 249/2021. The Tribunal directed the applicant to serve the respondents and also directed the District Magistrate and the State PCB not to allow illegal mining. Operative part of the order is reproduced below:-

“2. The facts stated in the application show that respondent 6 was granted EC by SEIAA, UP on 13.01.2021 permitting mining at Gata No. 228, Village Badauli, Tehsil Unn, District Shamli in river Yamuna.

*3. Respondent 6, after grant of the said EC, commenced mining operations. It was one of the conditions in EC that no mining operation shall be carried out **without obtaining other requisite statutory consent/permission/NOC. In the present case, Project Proponent could not have proceeded with the mining activities without obtaining consent under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 from State PCB. In this case, no such consent was obtained and instead Project Proponent started mining operations illegally.***

*4. Learned Counsel for applicant also pointed out that **the application for grant of consent to operate under Section 25/26 of Water Act, 1974 as amended from time to time has been rejected by State PCB vide order dated 11.10.2021.** A copy of the order has been placed before us today itself and we find that three reasons have been given in the said order for rejection of the application, and the said reasons are:*

- “1. District Mines Officer, Shamli has been informed vide their letter dated 30.09.2021 that in the past, 117561 cubic meters of sand has been mined by the unit in a total of 112 days. The sand mining has been done by the unit without obtaining CTE/CTO from the State Board.*
- 2. Industry has not obtained CTO for the earlier mining.*
- 3. Industry has not submit the satisfactory compliance of the Environmental Clearance.”*

*5. Project Proponent, M/s Shakumbari Mines is represented through Counsel namely, Ms. Pallavi Pratap, though, we have not issued notice and the matter has been listed today for admission but **since respondent 6 is represented though Counsel, we have entertained and heard her also. She admits that respondent 6 started mining proceedings after receiving EC on 13.01.2021 and for some time, mining activities were carried out though there was no consent issued to Project Proponent by State PCB under the provisions of Water Act and Air Act.** She further stated that the mining activities, however, have been stopped by Project Proponent since June, 2021 and she seeks time to file response/reply on behalf of the Project Proponent.*

6. We have considered the submissions advanced by learned Counsel for the applicant and also the stand taken by Project Proponent through Counsel. In our view, apparently Project Proponent has violated statutory environmental laws and a prima facie case has been made out giving rise to a substantial question relating to environment in regard to implementation of statutes under the Schedule to NGT Act, 2010.

7. Issue Notice to respondents 1 to 5 and 7 by email. We also give liberty to the applicant to serve a copy of the application upon all the Respondents except respondent 6, personally and file affidavit of service within three weeks. Since respondent 6 is already represented through Counsel, no further notice need be issued.

8. All the respondents may file their replies/response within one month after receipt of notice.

9. Further, we are informed that a **similar issue has been raised in respect to the same proponent, though relating to other leases and the matter was considered by this Tribunal on 28.10.2021 in O.A. No. 249/2021, Daljeet Singh & Anr. vs. Uttar Pradesh Pollution Control Board & Ors. In our view, this matter may also be heard along with above OA. Connect this matter with O.A. No. 249/2021.**

10. In the meantime, we direct District Magistrate, Shamli and State PCB to ensure that respondent 6 does not carry out any mining activities without having a statutory consent/permission/NOC, until further orders.”

5. In pursuance of above, a reply has been filed by the State PCB in O.A No. 251/2021 as follows:-

“As per the order dated 01.11.2021, on behalf of respondent No. 1, pointwise action taken report are as follows:

1. Regarding the directions issued by N.G.T. notice against M/s. Shakumbri Mines Gata No. 228, Vill. Bidoli, District Shamli has been issued vide office letter no. 733/C/S-249/Shamli/2021 Dated 23.11.2021 (Annexure-1) for compliance that no mining activity will be carried on without having consent to operate. A copy of notice is being forwarded to District Magistrate Shamli, Member Secretary UPPCB for intimation and Mining Inspector Shamli for ensuring the compliance of above said order.
2. As per the complaint received against the illegal mining by M/s. Shakumbri Mines, a letter regarding the violation days has been sent to District Mining Officer Shamli vide office letter no. 506/C/249/Shamli /2021 dated 27.09.2021 (Annexure-2), in continuation information regarding violation of days 112 Nos. and mining quantity 1,17,561 Cum. till dated 30.06.2021 is received via letter no. 4643/Kh.Vi.-2021- 22 dated 30.09.2021 (Annexure-3). Further, no mining activities is being carried on

by the said unit as per the latest information dated 02.12.2021 (Annexure-4) till dated 02.12.2021.

3. *Due to the past violation of Environmental Acts unit online consent application dated 05.09.2021 (Annexure-5) is being refused by the State Pollution Control Board on dated 11.10.2021 (Annexure-6).*
4. *Due to the past violation regarding illegal mining, recommendation for imposing Environmental Compensation of Rs. 11,20,000/- has been sent to Head Office Lucknow vide office letter no. 790/C/S249/Shamli/2021 dated 04.12.2021 (Annexure-7). In continuation Environmental Compensation of Rs. 11,20,000/- has been imposed vide H.O. Letter No. H69300/C-3/Jal-434/M.Nagar/2021 dated 13.12.2021 (Annexure-8).*
5. *Unit has not submitted the Environmental Compensation yet. If unit deny to pay E.C., recommendation against the unit for recovery of E.C. as per land revenue will be sent to Head Office, U.P. Pollution Control Board, Lucknow and District Magistrate Shamli.”*

6. From the above, it is seen that violations have been found and mining activity have been stopped. Recommendation has also been made for levy of compensation for conducting mining without requisite consents.

7. In O.A No. 249/2021, even though no reply has been filed, learned counsel for the State PCB has made a statement that illegal mining has been stopped and further action will be taken in accordance with law.

8. In view of above, the State PCB and the District Magistrate may take further action of not permitting mining without requisite Consents and assessing and recovering compensation as per law. It is made clear that compensation for illegal mining has to be equal to the value of mined material in view of Section 21 (5) of the MMDR Act, 1957 and orders of the Hon'ble Supreme Court in *Common Cause vs. Union of India & Ors., (2017) 9 SCC 499*. Apart from recovering value of the mined material as compensation, for violation of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act,

1981, compensation has to be in addition having regard to the cost of restoration of damage and the paying capacity of the project proponent (PP). Compensation be also to be assessed for illegal extraction of ground water. This exercise may be completed by the State PCB within three months. Recovered compensation be utilised for restoration of environment by preparing an action plan to be approved by CPCB.

The Applications are disposed of accordingly.

A copy of this order be forwarded to the CPCB, State PCB and the District Magistrate, Shamli and the District Magistrate, Saharanpur, U.P by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

May 11, 2022
Original Application No. 249/2021
(I.A. No. 187/2021)
WITH Caveat Application No. 12/2021, Caveat Application No. 13/2021
& Caveat Application No. 14/2021
With Original Application No. 251/2021
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AB