

Item No. 02

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 83/2020
(I.A. No. 424/2020, I.A. No. 09/2021 &
I.A. No. 92/2021)

(With report dated 30.03.2021)

Krishan Chander

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 14.07.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE M. SATHYANARAYANAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Ms. Nidhi Mittal, Advocate

Respondent(s): Mr. Rahul Khurana, Advocate for HSPCB
Mr. Amit Kumar, Advocate for M/s DSP Associates (R-10)

ORDER

1. The issue for consideration is remedial action against illegal mining by M/s D.S.P. Associates, Sonipat by diverting natural flow of river by digging a man-made pit i.e. 20 ft. deep and 1 km long and making a bund to stop the natural river flow.

2. Vide order dated 16.06.2020, the Tribunal sought a factual report and a report was filed on 08.10.2020 by the State PCB that Embankment construction by the Irrigation Department was not being used in violation of orders of this Tribunal. There was no separate pathway which may obstruct natural flow of the river. A separate road has been constructed for transportation of the mined material. The said report is proved to be

false by subsequent report now submitted in pursuance of later order dated 12.10.2020.

3. Vide order dated 12.10.2020, the Tribunal modified the constitution of the Committee in view of objections of the applicant to the correctness of report dated 8.10.2020 and sought a further action taken report. The operative part of the order is reproduced below:

“3. The applicant states that the report refers to the period when there was no illegal mining going on, on account of rains. The Committee should ascertain the allegation of illegal mining by diverting the natural flow of the river by digging a man-made pit at the time when the mining is going on. In I.A. No. 226/2020 also, the applicant has sought a direction to that effect.

4. Accordingly, we direct the same Committee which has given present report i.e. the State PCB, Irrigation Department and the Mining Department of Sonipat along with a representative of CPCB and a nominee of the District Magistrate, Sonipat may furnish a further report. The State PCB will be the nodal agency for coordination and compliance. The applicant may furnish a representation with his grievance to the State PCB within one week from today. The meeting of the Committee may be held physically or by video conferencing within one month and physical inspection may be conducted in any appropriate manner, through the representatives of the Committee. If any violations are found, action may be taken in accordance with law.

5. Let an action taken report be filed before the next date 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.”

4. Accordingly, the Committee has filed its report on March 30, 2021 as follows:

“04. Observation

The observations are summarized as under:

1. The unit has erected a sand bund across the river as reported by Irrigation Department and the same was demolished by the Department on 23.10.2020 in compliance with the order dated 23.10.2020, issued by Deputy Commissioner, Sonipat.

2. A show cause notice issued by Mining Department on 23.10.2020 as the unit was found diverting River flow and the flow of river was obstructed having constructed a sand bridge /path

across the river flow. **The mining activity was permitted to resume by mining department on 28.10.2020.**

3. Irrigation Department dismantled the same bund to maintain the natural flow of the river and no mining operation was carried out.

4. **The unit found to have violated the specific condition of sustainable mining and as mentioned at Sr. No. 17 of Environment Clearance dated 22.03.2016 that "No stream should be diverted for the purpose of sand mining. No natural course and water resource are obstructed due to mining operation."**

05. Estimation of Environment Compensation

The unit is found to be violating Environmental Clearance and inter-alia CTO conditions and therefore, liable to pay environmental compensation as estimated below:

Reference document	Specific violation and date of violation noticed	No. of day of violation period	Total period of violation (in days)
The unit was found violating with the specific condition of sustainable mining practice mentioned at Sr. No. 17 of Environment clearance dated 22.03.2016 that No stream should be diverted for the purpose of sand mining. No natural course and water resource are obstructed due to mining operation. The unit start its mining activity from 18.05.2018 therefor initial date of violation has been taken from 18.05.2018.	(18.05.2018-30.06.2019), (16.09.2019-30.06.2020), (16.09.2020-22.10.2020), (28.10.2020-26.01.2021).	408 days 289 days 37 days 90 days	824 days

The Estimates:

PI=Pollution Index of Industrial Sector (taken as '80' considering 'Red Category')

N= Number of days of violation took place (Violation Period) 824 days

R= A factor in Rupees (Rs.) (taken as '250')

S= Factor for scale of operation ('1.0' considering scale of operation being 'medium')

LF= Location factor ('1.0' considering population of area being < 1 million)

$$EC=PI*N*R*S*LF$$

$$80*824*250*1.0*1.0$$

$$=1,64,80,000 /-$$

EC Assessed Rs: 1,64,80,000 /-

06. Recommendations

Based on the above observations, the committee recommends the following:

1. *M/s DSP Associates, village Tikola, District Sonapat shall require to pay Rs. 1,64,80,000/- (One crore sixty four lacs eighty thousands) towards Environment Compensation as estimated. The unit is also liable to pay the cost of damage caused to the water and land environmental due to obstruction and diversion of the river. The damage is required to be assessed by an institute having expertise in the field of water environment, flora and fauna study.*

2. *The mining operation activity shall not be permitted to resume unless Environment Compensation is deposited/paid in full by the Unit.*

3. *The Unit shall comply all the conditions stipulated in the Environment Clearance, Mining Lease and Consent to Operate.”*

5. The State PCB has filed status report dated 13.07.2021 which is inter-alia as follows:

“ xxx.....xxx.....xxx

3. *That information was procured from Mining Department, Sonapat with respect to action taken. As per information received from the Mining Department, vide Notice Dated 05.03.2021 the mining operation of the said unit was suspended and it was ordered to immediately stop the mining operation. It is further submitted that vide detailed order dated 02.07.2021 passed by the Director General, Mines and Geology, Haryana **the contract granted to unit for extraction of minor mineral has been terminated in violation of terms of Environmental Clearance. Out of security amount of Rs.2,26,75,000/- lying with the Department, an amount of Rs. 1,64,80,000/- equal to Environmental Compensation recommended to be imposed by the Joint Committee, has also ordered to be forfeited.”***

6. The mining lessee in question Respondent No. 10, M/s DSP Associates has also put in appearance through Counsel and has not raised any objection to the report. We have heard learned Counsel for the parties and perused the record.

7. It is pointed out on behalf of the applicant that the report clearly shows that a sand bund was erected across the river which has been

demolished on 23.10.2020. It is surprising that the mining activity was permitted to be resumed on 28.10.2020 inspite of such serious violations. The report further shows that instream mining was being done in violation of EC condition no. 17. The violation continued for 824 days without any check.

8. We find that the above shows a very sorry state of affairs. Illegal mining continued for 824 days, sand bund was illegally erected, instream mining was done and river flow was illegally diverted. In spite of this sorry state of affairs, in the earlier report filed on 08.10.2020 by the State PCB, it was falsely reported that though there was no violation. The fact that mining was continuing for three years without any action by the statutory regulators which shows failure of the statutory regulatory mechanism, for which remedial action needs to be taken with the intervention of the higher authorities by the Government. No criminal prosecution has been initiated. Officers of the mining department and any other concerned regulatory or supervisory officers patently appear to be hand in glove without any meaningful action against such collusion by the concerned officers.

9. We have perused the judgments relied upon on behalf of the applicant. In State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772, it was held by the Hon'ble Supreme Court that apart from action under the mining laws, illegal mining involves an offence of theft which requires the concerned police to take remedial action by registration of criminal offence. Order of this Tribunal dated 30.05.2017 in O.A. No. 78/2015 (CZ) reported in 2017 SCC OnLine NGT 1097 show that instream mining is against the EC conditions as well as against the Sustainable Sand Mining Guidelines, 2020.

10. Need for strengthening monitoring mechanism has been reiterated in recent orders of this Tribunal vide order dated 26.02.2021 in OA 360/2015, *NGT Bar Association v. Virender Singh (State of Gujarat) and other connected matters*. Relevant extract from order dated 30.05.2017 in O.A. No. 78/2015 (CZ) reported in 2017 SCC OnLine NGT 1097 is as follows:

“In the light of the above, we answer the question that has been referred to us that no river sand mining is permitted in the submerged area in accordance with the Sustainable Sand Mining Guidelines 2016 alternatively in so far as the issue whether it can be permitted in the submergence areas is concerned our answer to the same is that in submergence area which may be a wider area than the one actually submerged as a submergence area would encompass the full reservoir level of the river or the high flood level of the river recorded by in any case where the mineral is exposed and not in stream such sand mining in accordance with the Sand Mining Guidelines 2016 and the conditions imposed in the environmental clearance may be carried out.”

11. In order dated 26.02.2021 in O.A. No. 360/2015, *NGT Bar Association v. Virender Singh (State of Gujarat) and other connected matters*, on exhaustive review of the issues relating to sand mining, this Tribunal has issued directions, including the mechanism for enforcement of environmental norms, inter-alia as follows:-

“1to26...xxx.....xxx.....xxx

27. We direct all the States/UTs to strictly follow the SSMG-2016 read with EMGSM-2020 reinforced by mechanism for preparation of DSRs (in terms of directions of this Tribunal dated 14.10.2020 in Pawan Kumar, supra and 04.11.2020 in Rupesh Pethe, supra), Environment Management Plans, replenishment studies, mine closure plans, grant of EC (in terms of direction dated 13.09.2018 in Satendra Pandey, supra), assessment and recovery of compensation (as per discussion in Para 25), seizure and release of vehicles involved in illegal mining (in terms of order dated 19.02.2020 in Mushtakeem, supra), other safeguards against violations, grievance redressal, accountability of the designated officers and periodical review at higher levels. As already noted, EMGSM-2020 contemplates

extensive use of digital technology, including remote sensing.

28. We further direct that periodic inspection be conducted by a five-members Committee, headed and coordinated by the SEIAA and comprising CPCB (wherever it has regional office), State PCB and two expert members of SEAC dealing with the subject. Where CPCB regional office is not available, if MoEF&CC regional office is available, its Regional Officer will be included in the Committee. Where neither CPCB nor MoEF&CC regional office exists, Chairman, SEIAA will tie up with the nearest institution of repute such as IIT to nominate an expert for being included in the Committee. Such inspection must be conducted at least thrice for each lease i.e. after expiry of 25% the lease period, then after 50% of the period and finally six months before expiry of the lease period for midway correction and assessment of damage, if any. The reports of such inspections be acted upon and placed on website of the SEIAA. Every lessee, undertaking mining, must have an environment professional to facilitate sustainable mining in terms of the mining plan and environmental norms. This be overseen by the SEIAA. Environment Departments may also develop an appropriate mobile App for receiving and redressing the grievances against the sand mining, including connivance of the authorities and also a mechanism to fix accountability of the concerned officers. Recommendations of the Oversight Committee for the State of UP quoted earlier may be duly taken into account.

The mechanism must provide for review at the level of the Chief Secretary at least once in every quarter, in a meeting with all concerned Departments in the State. The Chief Secretary UP may ensure further action in the light of the report of the Oversight Committee.

Similarly, at National level, such review needs to be conducted atleast once in a year by the Secretary, Environment in coordination with the Secretaries Mining and Jalshakti Ministries the CPCB.”

11. In the above judgement, the Tribunal has also referred to the earlier order dated 17.8.2020 on the issue of determination of compensation for illegal mining taking into account the value of mined material, cost of restoration of damage to the environment and cost of ecological services forgone forever, apart from deterrent element where violations are continuing. In this regard, it was observed:

“10. Vide order dated 17.08.2020, the Tribunal considered the CPCB report dated 30.01.2020, in pursuance of earlier orders on scale of compensation to be recovered for violation of norms for mining on polluter pays principle and the matter was deferred for further consideration of such scale and further orders in the light of the EMGSM 2020. **On the issue of scale of compensation for violations, the Tribunal held that the same has to be calculated having regard to the polluter pays principle and not mere loss of royalty. This requires taking into account value of the illegally mined material and cost of restoration of the environment.** CPCB did the exercise by constituting an expert Committee. The Tribunal considered the report as follows:-

“8. The Committee considered two approaches:

- (I) **Approach 1: Direct Compensation based on the market value of extraction, adjusted for ecological damages.**
- (II) **Approach 2: Computing a Simplified NPV for ecological damages.**

9. In the first approach, the criteria adopted is:

- Exceedance Factor (EF).
- Risk Factor (RF).
- Deterrence Factor (DF).

10. Approach 1 is demonstrated by Table 1 as follows:

“

Table No. 01: Approach 1				
Permitted Quantity (in MT or m³)	Total Extraction (in MT or m³)	Excess Extraction (in MT or m³)	Exceedance in Extraction:	Compensation Charge (in Rs.)
X	Y	Z = Y-X	Z/ X	D * (1+RF + DF) Where D = Z x Market Value-of-the-material-per-MT-or-m ³
				DF = 0.3 if Z/X = 0.11 to 0.40 DF = 0.6 if Z/X = 0.41 to 0.70 DF = 1 if Z/X >= 0.71
				RF = 0.25, 0.50, 0.75, 1.00 (as per table 2)

”

11. Approach 2 is demonstrated by following formula:

“Till such time as data and information for a comprehensive NPV is worked out in a site specific manner to account for all (or atleast the major) ecological damages, a simplified NPV, proxied on the market value of the illegally extracted amount may be computed. In this case the NPV approach would imply that **the total benefits from the activity of sand mining (as represented by the market value of the extracted amount) be deducted from the total ecological costs imposed by the activity.** In the absence of data on benefits and costs separately, we recommend a modification of the formula as shown below:

Total Benefits(B) = Market Value of illegal extraction : D
(refer Table 1)

Total Ecological Costs = Market Value Adjusted for risk factor: D *RF (refer Table1).

For present purposes, it is assumed that the Benefits would accrue only in the first year (in which the extraction of the illegally mined material takes place), while the ecological costs would continue to be felt over a period of time. NPV is to be calculated for a period of 5 years on the net value, $\Sigma (C-B)$, at a discount rate ranging from 8%-5%, varying in inverse with the risk factor. Thus, where the highest risk factor (say 1) is applicable, the discount rate applicable would be the lowest (say 5% in this case).”

12. Final recommendation is as follows:

“Thus, it is recommended that the annual net present value (NPV) of the amount arrived at after taking the difference between the costs and the benefits through the use of the above approach, maybe calculated for a period of 5 years at a discount rate of 5% for mining which is in a severe ecological damage risk zone. The rationale for levying this NPV is based on expert opinion that reversal and/or restoration of the ecological damages is usually not possible within a short period of time and rarely is it feasible to achieve 100% restoration, even if the sand deposition in the river basin is restored through flooding in subsequent years. The negative externalities of the mining activity are therefore to be accounted for in this manner. Ideally, the worth of all such damages, including costs of those which can be restored should be charged. **However, till data on site-specific assessments becomes available, this approach may be adopted in the interim.** In situations where the risk categorization charged. However, till data on site-specific assessments becomes available, this approach may be adopted in the interim. In situations where the risk categorisation is unavailable or pending calculation, the following Discount Rates may be considered:

Severity	<i>Mild</i>	<i>Moderate</i>	<i>Significant</i>	<i>Severe</i>
Risk Level	1	2	3	4
Risk Factor	0.25	0.50	0.75	1.0
Discount	8%	7%	6%	5%

11. Annexure-A appended to the report gives the calculation as follows:

“Compensation Charge (Scenario II - explicit accounting of NPV)

Market Value of Illegally Mined Material (D)	5000*400 = 2000000/-
Annual Value of Foregone Ecological Values	D*RF = 2000000/-

- **Present Value of Foregone Ecological Values (@ 5% discount rate and over 5 years)**

$$PV = \sum_{t=1}^5 \frac{(D+RT)}{(1+r)^t}$$

$$= \frac{(2000000)}{(1+0.05)^1} + \frac{(2000000)}{(1+0.05)^2} + \frac{(2000000)}{(1+0.05)^3} + \frac{(2000000)}{(1+0.05)^4} + \frac{(2000000)}{(1+0.05)^5}$$

$$= \text{Rs. } 86,58,953/-$$

- *Net Present Value (after netting out market value of illegally mined material) - i.e., Total Compensation to be levied*

$$= NPV = PV - D$$

$$= \text{Rs. } 66,58,953/-$$

Compensation Charge in above case:

Approach 1 (no explicit accounting of NPV)	Approach 2 (explicit accounting of NPV)
$D*(1+RF+DF)$	@ 5% discount rate and over 5 years
Rs. 46,00,000/-	Rs. 66,58,953/-

12. The Tribunal directed undertaking of scenario analysis, as suggested on behalf of the applicant and to furnish a further report accordingly. Further report dated 12.10.2020 has been filed by the CPCB reiterating its earlier report. **We propose to approve approach-2 in the report.** Apart from the above, a report dated 15.01.2021 has been filed by the Oversight Committee for the State of UP¹ to which reference will be made later.”

12. In the present assessment, all relevant factors have not been taken into account while fixing compensation. Neither the cost of restoration is mentioned nor action plan for restoration has been provided. Principle of deterrence has also not been involved.

13. Accordingly, we dispose of this application with following directions:

- The Chief Secretary, Haryana may review the existing monitoring mechanism in the light of facts disclosed in the present case and directions of this Tribunal on the subject.
- The Committee already constituted, with the addition of Regional Officer, MoEF&CC, Chandigarh may revisit the

¹ constituted by this Tribunal to oversee compliance of environmental issues, on suggestions of the State Government.

compensation as per principles referred to above and give a report to the Chief Secretary, Haryana within two months for further follow up action in coordination with the concerned statutory authorities

- iii. The Chief Secretary may also look into the conduct of erring officers who failed to take action against illegal mining for more than three years and who gave a false report to this Tribunal earlier that there was no illegal mining.
- iv. The Environment Department, Haryana alongwith the District Magistrate, Sonipat may prepare and execute a restoration plan and the cost thereof may be met out of the compensation already recovered and which may be recovered further.
- v. The Chief Secretary may ensure further legal action including prosecution and blacklisting of the unit involved in illegal mining to enforce the rule of law.
- vi. The amount to the credit of the Respondent No. 10 available with the State may not be released till the decision of the Chief Secretary, Haryana.

In view of order in the main matter, all pending I.A.s will stand disposed of.

A copy of this order be forwarded to MoEF&CC (Regional Office, Chandigarh), the Chief Secretary, Haryana, Environment Department, Haryana and the District Magistrate, Sonipat by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

M. Sathyanarayanan, JM

Dr. Nagin Nanda, EM

July 14, 2021
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