

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

Original Application No. 277/2018
(M.A. No. 704/2018)

Prem Singh Yadav

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 05.04.2019

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

For Applicant(s):

Mr. Rahul Choudhary and Mr. Saran
Balakrishna, Advocates

For Respondent (s):

Mr. Shlok Chandra and Mr. Ritesh Kr. Sharma,
Advocates for MoEF
Mr. Gigi C. George, Advocate for State of UP
Mr. Amit Upadhyay and Mona K. Rajvanshi,
Advocates for R-10&11
Mr. Mayank Pandey, Advocate for R-10&11
Mr. Shashank and Mr. T. Bhadana, Advocates
for R-13

ORDER

1. The issue for consideration is the alleged illegal sand mining by Respondents No 9 to 13 i.e. M/s. Dijiyani Mining Corporation Pvt. Ltd., M/s. Silvrr Mist Retail Pvt. Ltd., Vikas Parmani, Rupesh Kumar Chauhan and RSI Stone World Pvt. Ltd. in Districts Jalaun, Hamirpur, Banda and Jhansi in the State of Uttar Pradesh in violation of Environmental Clearance (EC) conditions.
2. According to the applicant, the mining has to be permitted only during day time. It has to be open cast and manual. It cannot be within 3 meters or 10 % of width of the bank of the river and it has

to be in conformity with the plan. It should not disturb the water flow. Adequate safeguards are required to be taken. Transportation should be properly recorded and safeguarded. These conditions are being violated by the above private respondents.

3. Vide order dated 06.07.2018, the concerned authorities of the State of Uttar Pradesh were required to furnish their version in the matter after ascertaining the factual position.
4. Accordingly, affidavit dated 30.07.2018 had been filed that the task force constituted by the State is ensuring that mining is in accordance with conditions of the EC. State Level Environment Impact Assessment Authority (SEAIAA) has also filed similar affidavit and submitted that EC is given by policy of de-centralized grant of clearance and that policy has been quashed.
5. In view of above, the issue for consideration is whether mining is being done as per EC conditions. However, learned Counsel for the applicant, during his submissions, submitted that mining has to be declared illegal and discontinued even without adjudication of the question whether EC conditions are violated. Grant of EC itself is illegal and in violation of law laid down by the Hon'ble Supreme Court and this Tribunal.
6. Our attention has been drawn to the order of this Tribunal dated 13.09.2018 in *O.A. No. 186/2016, Satendra Pandey Vs. Ministry of Environment, Forest & Climate Change & Anr.* dis-approving the dilution of procedure for EC for mining of minor mineral in view of law laid down by the Hon'ble Supreme Court in *Deepak Kumar Vs.*

*State of Haryana & Ors.*¹ The order of Hon'ble Supreme Court is that EC has to be subject to strict regulatory framework at par with the regulation of major minerals. In violation of the said procedure, the Notification dated 15.01.2016 issued by the Ministry of Environment, Forest and Climate Change (MoEF&CC) has been dispensed with the necessity of obtaining EC for area below 5 ha and EIA and EMP were exempted for the area ranging from 5 ha to 25 ha.

7. The Tribunal held that the procedure is inconsistent with the direction of the Hon'ble Supreme Court to the extent that there is exemption from EIA for the area from 5 ha to 25 ha. The policy is mine-centric rather than striving a balance between mining and environment, as required under the law. Parameters for preparing District Mining Plan and District Survey Report are different from the parameters laid down under the EIA. The procedure was also contrary to the Sustainable Sand Mining Management Guidelines, 2016 issued by the MoEF&CC. Accordingly, the Tribunal directed as follows:

“22. For all these reasons, we direct that the procedure laid down in the impugned Notification be brought in consonance and in accord with the directions passed in the case of Deepak Kumar (supra) by (i) providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling under Category B-2 at par with Category B-1 by SEAC/ SIEAA as well as for cluster situation wherever it is not provided; (ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA; (iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance; (iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendations 6, 7 and

¹ (2012) 4SCC 629

8 thereof; (v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area; (vi) the MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining.

23. We have permitted retention of 0-5 ha as a category keeping in view that some States grant isolated single lease of 5 ha and less not falling in cluster situation for which stringent requirements in Form-1M will serve the purpose of providing safeguards for protection of the environment and sustainable mining of minor minerals. This is particularly true in smaller and mountainous States as will also appear from condition no. 2 under "The Issues and Management of Mining in Cluster" referred to earlier in para 20 of this order.

24. It is reiterated that any attempt to split the lease area for the purpose of avoiding the applicable regulatory regime shall be viewed seriously. This in our view will be in the interest of the environment as deliberated in detail in the case of Deepak Kumar (supra) and would also satisfy the Precautionary Principle and the Principle of Sustainable Development contemplated under Section 20 of the National Green Tribunal Act, 2010.

25. The MoEF&CC shall, therefore, take appropriate steps to revise the procedure laid down in the impugned Notification dated 15th January, 2016 in terms of the above directions and observations so that it is conformity with the letter and spirit of the directions passed by the Hon'ble Supreme Court in Deepak Kumar (supra)."

8. There is no dispute that the above directions are still holding the field and are binding.

9. Vide order dated 29.03.2019 in Appeal No. 258/2018, Sunil Kumar Vs. State of Uttar Pradesh & Ors., the Tribunal noted the stand of the State of UP that similar EC granted in violation of order dated 13.09.2018 will be recalled. The Tribunal also directed that similar EC be not acted upon till appropriate order is passed by the competent authority. Present matter is fully covered by the said orders.

10. In view of above, the State of UP may take steps in the matter consistent with the above order dated 29.03.2019 within one month and till an appropriate order is passed, the EC may not be acted upon.

The application is disposed of accordingly.

Adarsh Kumar Goel, CP

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

April 05, 2019
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