

Item No.8

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL**
(Through Video Conferencing)

Original Application No. 75/2021

Smt. Geeta @ Laxmi Meena

Applicant (s)

Versus

State of Madhya Pradesh & Ors.

Respondent(s)

Date of hearing: **04.04. 2022**

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant (s):

Mr. Rohit Sharma, Adv.

For Respondent(s):

Mr. Sachin K. Verma, Adv.

Mr. Yadvendra Yadav, Adv.

ORDER

1. Issue raised in this application is illegal sand mining being carried out in the village Chipaner & Chouraskhedhi, Tehsil Nasrullganj of District Sehore by means of tractors, dumpers & trollies along side of the River Narmada during night hours, mining through means of pandubbies and causing damage to the environment.
2. It is further alleged that the Sub-Divisional Magistrate carried out a drive and seized more than 13 vehicles, which were involved in the illegal sand mining and transportation. The contractor i.e. M/s Power Mech has established 04 separate Ghats at Village Chipaner and continuously excavating sand and transporting the same through these 04 Ghats without any declared or demarcated, auctioned sand quarries enabling the entire sand extraction as illegal.
3. The matter was taken up by this Tribunal on 28.09.2021 and a committee was constituted as follows :

“5. We deem it just and proper to call a report on the matter in issue, in present Original Application, from a Joint Committee consisting of:-

- (i) Collector, Sehore (M.P.)
- (ii) District Mining Officer, Sehore (M.P.)
- (iii) A representative of Madhya Pradesh Pollution Control Board
- (iv) A representative of Central Pollution Control Board.

6. The Committee is directed to visit the place and submit the factual and action taken report within six weeks. The State PCB will be the nodal agency for coordination and logistic support.

7. The Collector, Sehore is directed to ensure that the compliance of guidelines of the Sustainable Sand Mining Management Guidelines, 2016 & The Enforcement and Monitoring Guidelines for Sand Mining, 2020 and also to ensure that there shall not be any illegal mining and/or any illegal transportation of the sand mining from Itarsipata, Sehore connecting roads.”

4. In compliance thereof, the Joint Committee submitted the report, which is as follows :

“In compliance to the above order, the joint committee consisting of following officials of the concerned departments visited the Village Chhipaner and Chouraskhedi, Tehsil Nasrullaganj, District Sehore on 27/10/2021:

1. Shri Chandra Mohan Thakur (IAS), Collector and District Magistrate, Sehore
2. Shri Rajendra Parmar, Mining Officer, Sehore.
3. Shri Brajesh Sharma, Regional Officer, MPPCB, Bhopal
4. Shri Anoop Chaturvedi, Scientist B, CPCB, RD Bhopal;

Along with the joint committee Shri Dinesh Singh Tomar, Sub-Divisional Magistrate, Nasrullaganj, Ms. Paulomi C. Patil, SSA, CPCB, Shri Santosh Suryavanshi, Mining Inspector and Shri Adarsh Malviya, Assistant Engineer (C), MPPCB Bhopal were also present during the inspection.

During the joint committee visit, the geographical location, photographs and other relevant information related to the petition

were collected and are incorporated in the report. The observations recorded during the joint inspection are presented as follows:

- 1. GPS location of the ghat near Chhipaner and Chouraskhedhi on River Narmada has been recorded using a mobile-based GPS application. The google map of the site and photographs taken during the inspection are enclosed herewith. (Annexure-1)*
- 2. River Narmada flows from east to west direction and continuous flow of water in the river was observed during inspection.*
- 3. Committee visited the village Chhipaner & Chouraskhedhi, these villages are located on the right bank of River Narmada and sufficient flow of water is observed in the river during visit. The geographical coordinates of Chhipaner are 22.57964°N, 77.1509°E and Chouraskhedhi are 22.58419°N, 77.1702°E and marked on google map.*
- 4. Small pacca ghat is constructed on the right bank of river Narmada at the Village Chhipaner. The width of the river at the said location is approximately 500 m.*
- 5. Committee observed that there is no sand stock available naturally on the right bank of the River Narmada especially along the bank of village Chouraskhedhi and Village Chhipaner. The river Narmada is flowing with water filled up to the boundary of right bank.*
- 6. District Mining officer, Sehore informed that no sand mining leases are allotted on the right side bank of river Narmada in village Chhipaner & Chouraskhedhi Tehsil Nasrullaganj District Sehore.*
- 7. No tractors, dumpers, trollies, pandubbies and sand excavation are observed in the right bank of river during the visit. The left bank of the river falls under the jurisdiction of District Harda*
- 8. Committee observed some small heaps of sand collected on the right bank of village Chhipaner & Chouraskhedhi. District Mining Department informed the committee that the sand is brought from*

the left bank of the river manually and ferried to the right bank of the river using small boats by the locals of the nearby villages, stocked there in the form of small heaps and transported thereafter.

9. *During inspection no illegal sand mining and illegal transportation of sand was observed by the committee, also no visible impact on the course of the river has been observed by the committee near Village Chhipaner & Chouraskhedi.*

10. *Committee visited the area on the right bank of river Narmada near Village Chhipaner & Chouraskhedi and no stock of sand was found.*

Action taken:

11. *As per the records of District Mining Office, following actions have been taken by the department to check the illegal transportation of sand in this area:*

i. In last two years, 92 cases of illegal transportation were registered in village Chhipaner, Choraskhedi and Ranipur and a sum of Rs. 3689000/- were collected as a penalty.

ii. In last two years, 09 cases of illegal sand stocking were registered in village Gopalpur, Chhipaner, Choraskhedi and Ranipura. 5915 cum. of sand was seized, imposing a penalty of Rs. 1,53,87,500/- on the defaulters of which Rs. 1,00,000/- has been recovered.

iii. During the joint inspection of SDM, Nasrullaganj and District Mining Officer illegal sand stock of 1250 cum. was seized on dated 01.08.2020.

iv. During inspection dated 04.11.2020 at two different locations on Hoshangabad to Budhni route, 300 cum. of sand was seized.

v. At village Chhipaner, a temporary bridge has been demolished twice which was being used for illegal mining.

12. *In reference to Hon'ble NGT order dated 28.09.2021, District Collector, Sehore issued order no 2822 dated 11/10/2021 for the*

installation of two check posts at Village Chhipaner & Chouraskhedi to check / to prevent illegal transportation of sand. (Annexure-2)

13. To prevent the four wheeler movement from the village Chhipaner Ghat, metal barricading has been installed by the District Administration.

Recommendations:

- 1. Warning boards intimating the penalty for illegal mining and transportation of sand should be placed by the Mining Department at Village Chhipaner & Chouraskhedi.*
- 2. The mining department should ensure the compliance of sustainable sand mining guidelines 2016 and Enforcement and Monitoring guidelines for sand mining 2020.*
- 3. CCTV cameras should be installed at the check -posts. ”*

5. The matter was again taken up on 21.12.2021 by this Tribunal and CPCB was directed to submit the mechanism to control the illegal sand mining in consultation with the representative of the State Pollution Control Board, (M.P) before the next date of hearing for consideration.
6. In compliance thereof, the Central Pollution Control Board has submitted a recommendation as follows:

“In compliance of the same, Respondent No. 4 i.e. Central Pollution Control Board had consultation with Madhya Pradesh Pollution Control Board and Mining Department, Govt. of Madhya Pradesh to prepare a mechanism to control the illegal sand mining in light of the illegal sand mining reported in the above NGT matter along with the illegality in sand mining reported all over the Madhya Pradesh State in various NGT matters.

1. Problem Statement

The committee constituted in NGT O.A. 75 of 2021 has observed that mining department hasn't demarcated and declared any sand query on the right bank of Narmada River where villages Chipaner and

Choursakhedi of Sehore district is situated. The committee observed many boats on the right bank of the river and found a good quantity of stored sand. The number of boats and storage of sand in non demarcated area reveals that illegal mining is being practiced by nearby villagers and others through boats. The illegal mining may be practiced from the river stream or from the demarcated mine lease on the left bank of river Narmada, district Harda. This kind of illegal mining and transportation are results of non-availability of the declared mine queries on the particular right bank of Narmada and availability of sand on left bank in declared mine.

Further, in Madhya Pradesh state illegal sand mining w.r.t. excavation of sand cases have been observed w.r.t. excavation of sand in excess quantity, excavation from non-demarcated area, improper District Survey report, unavailability of Annual Replenishment Studies, Environmental Clearance transfer without field verification of authorities etc. These issues were also discussed and included for finalizing the mechanism on the control of illegal sand mining.

2. Methodology adopted for the preparation of mechanism

To prepare a mechanism to control the illegal sand mining, Central Pollution Control Board had discussion with Madhya Pradesh Pollution Control Board and Mining Department, Govt. of Madhya Pradesh. The status of sand mining in light of sustainable sand mining guideline, 2016 (Annexure-R4-I) was explained by mining department. It was informed that mining is majorly operating inline of the guideline however there are several instances reported of illegal excavation of sand from the allotted quarries as well as from the areas which are not yet identified or allotted to anyone by mining department. It was also informed that no permission is granted for underwater sand mining, further it was informed that local habitat of village Chipaner and Choursakhedi of Sehore district are traditionally engaged in such underwater mining for livelihood.

3. Illegal Sand Mining

3.1 Definition

The Hon'ble Supreme Court in its Judgment dated 02.08.2017 in W.P 114 of 2014 in the matter of Common Cause Vs Union of India & Ors., defined the illegal mining as:

".....the holder of a mining lease is required to adhere to the terms of the mining scheme, the mining plan and the mining lease as well as the statutes such as the EPA, the FCA, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. If any mining operation is conducted in violation of any of these requirements, then that mining operation is illegal or unlawful. Any extraction of a mineral through on illegal or unlawful mining operation should become illegal or unlawfully extracted mineral."

3.2 Ways of Illegal Sand Mining

There are various ways adopted by the miners to excavate, transport, and sell the sand illegally by violating the law and by-passing the system. Following are the few reported / observed ways by which illegal sand mining takes place:

- i. Inadequate survey of available minable minerals*
- ii. Excavation of sand outside the defined lease boundary and at deeper depth (>3m)*
- iii. In-stream sand mining with heavy machineries and water boats and construction of permanent pathway in river*
- iv. Excess loading of sand, transportation without ETP and time delay in transportation to the destination*
- v. Transportation through alternative route*
- vi. Continue excavation after the expiry of statutory permissions viz. Environmental Clearance, Consent to Operate*

4.0 Recommended control mechanism to stop illegal mining

i. Case: Inadequate survey of available minable minerals

District Survey Report (DSR) is required for proper identification and quantification of available mineral resources. DSR is an important

initial step before grant of mining lease/LOI (Letter of intent). The MoEF & CC has issued notification S.O. 3611(E) dated 25.07.2018, wherein, the procedure of preparation of DSR is mentioned. Since sand deposition is a dynamic process, the DSR needs to be regularly updated i.e. every 5 year. Such kind of survey needs to be conducted by the committee comprising of Revenue department, Irrigation department, State Pollution Control Board (SPCB), Forest department and Geology & Mining department of the State Government through extensive field verification to quantify the minable minerals more authentically. Any third party survey report prepared without field visit and using secondary data/ satellite data shall results in improper quantification. Such kind of unauthentic minable sand data provides opportunities to the sand miners to excavate in excess or excavate from outside the boundaries to earn profit. Further, the Annual Replenishment Study (ARS) need to be carried out as per the procedure elaborated under the Enforcement & Monitoring Guidelines for Sand Mining, 2020 to have the authentic quantification of the available mineable mineral after the monsoon and accordingly the permitted quantity of sand excavation may be revised to avoid illegal mining.

ii. Case; Excavation of sand outside the defined lease boundary and at deeper depth then permitted

The mining department need to ensure the geo-referencing of the declared mine lease to audit the ongoing mining activity w.r.t. illegal quantity of the mined sand. The provision of erecting permanent pillars is not followed at most of the mine lease site. The reason provided by mining department that it's not possible to erect the pillars as the base is not stable. To resolve this issue, tractor-mounted drillers can be used to fix the permanent pillar with flexible plastic rod that can bear the water pressure during rivers flow also the positioning of the pillars needs to be re-verified after the monsoon period to replace them as per the geo-referencing.

The mining department may schedule periodic visit of the ongoing mining followed by annual audit to check for its operation as per mine plan, excavated quantity, depth, pillars positions etc. The area not identified for mining due to restriction or otherwise is also to be monitored on a regular basis by the District Level Task Force (DLTF). Any observations of mining activity from the restricted area shall be reported and corrective measures shall be initiated on an urgent basis by the D.L.T.F. Mostly illegal sand mining occurs in the buffer zone area of bridge, highway, ESZ etc. to control it, help of local police and local administration is required with cordial coordination of local authorities and awareness among the peoples who are associated in it.

The local habitants, who are involved in the illegal excavation of sand, may be trained for other work or enrolled in MG-NREGA or similar type of government schemes of employment. The State Mining Department is already in progress of the same for the site related to the case i.e. Chhipaner and other nearby villages. On illegal sand mine, the mining department shall impose compensation for violation of norms for mining on polluter pays principle. The assessment of the compensation needs to be computed based on the NET PRESENT VALUE (NPV) of ecological damage. The NPV is worked out in a site specific manner to account for all (or at least the major) ecological damages, a simplified NPV; proxies on the market value of the illegally extracted amount may be computed. In this 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. As per the Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rule 2019 and according to Rule 20, the penal provision for illegal mining, Transportation and Storage of Sand has been provided viz.

- *Penalty and Compounding of cases of Illegal Mining*
- *Penalty and compounding of cases of illegal transportation*

- *Compounding and Penalty in cases of Illegal Storage*

These penal provisions needs to be exercised in letter and spirit and deterrent penalty may be work out for repeated violator. A heavy penalty and seizer of vehicle will result in good control on the illegal sand mining.

iii. Case: In-stream sand mining with heavy machineries & water boats and construction of permanent pathway in river

It was reported that sand miners are excavating the sand by using heavy machineries viz. JCB, Dumper etc in place of manual mining. In-stream sand mining by using heavy machineries and through water boats was also reported. In present matter, large number of the water boats was found on the right bank of the river Narmada near Chipaner and Choursakhedi village of Sehore district. Such kind of in-stream mining damages the eco-system of the river bed. The placing of the High definition Pan-Tilt-Zoom (PTZ) camera with internet connectivity at strategic location may help in strict vigilance by the mining department. The frequently used path needs to be restricted for heavy machineries by placing barricades. As done in this matter, by placing the barricades at strategic location the movement of boats and other vehicles was restricted for the illegal sand transportation. Further the mining department may take strict action on the violation as per the Madhya Pradesh Mines and Minerals (Development and Regulation) Rules, 20 19 Chapter -X which deals with penalty and compounding of cases of illegal mining, transportation and storage of sand.

Further, on seizer of the vehicle used in illegal sand mining needs to be penalized as ordered on 19.2.2020 in O.A. 44 12016 in the matter of Mushtakeem v. MoEF & CC & Ors. by Hon’ble NGT

Sr. No	Category of Vehicle	Penalty amount
1	<i>Vehicles / Equipments / Excavators with showroom value more than Rs. 25 lacs and less than 5 years old.</i>	Rs. 4 lacs

2	<i>Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and more than 5 years but less than 10 years old.</i>	<i>Rs. 3 lacs</i>
3	<i>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.</i>	<i>Rs. 2 lacs</i>
<i>Note: 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.</i>		

iv. Case: Excess loading of sand, transportation without ETP & time delay in transportation to the destination

The capacity of vehicle used in transportation of the sand needs to be certified by the Regional Transport Office and no modification in vehicle to increase its carrying capacity needs to be allowed and action as per the MP sand Rule 2019 need to be initiated for recovering the cost and vehicle seizure action may be taken as deterrent step towards controlling illegal transportation. The vehicle which transports sand is only allowed with valid Electronic Transit Pass (eTP). Madhya Pradesh Government has provided a system to check the eTP online through vehicle number or eTP number. The link to verify the eTP is <https://minigs.mp.gov.in/VerifyEtp>

The eTP has details of vehicle registration number, Date & time of transportation, sand quantity, eTP validity etc. However in many cases it was observed that travelling time exceeded for many hours; this raises doubt as with one eTP vehicle is carrying multiple trips. To resolve this issue, the system needs to be updated for re-scheduling the transportation time with authentic reasoning from the driver through SMS or mobile application. Further on repeated events of delay, penalty as per the MP Sand Rule 2019 may be imposed.

v. Case: Transportation through alternative route

As per the Enforcement & Monitoring Guidelines for Sand Mining (EMGSM, 2020) guideline, the transportation route need to be decided by the district authority to have vigilance; however the vehicles travel through different ways or either from one bank to other bank of river

through temporary/permanent path. To control such kind of practices District administration must identify the check post at road junctures to have check over the vehicles transporting the mineral without valid eTP. Numbers of check posts are not sufficient in numbers and needs to be identified at significant locations viz. circle, T-point etc. Also, the manpower posted at check posts need to be equipped with mobile devices to verify the vehicle registration status with mining department and report the illegality accordingly to senior officers immediately. The placement of the CCTV camera at check post also minimizes the illegal transportation. Mobile app based reporting system may be developed for illegal mining/ transportation by making a video of the same. A round-the clock complaint cell must be set up at the Collectorate Control Room for the public to register complaints regarding illegal sand mining in the district.

vi. Case: Continue excavation after the expiry of statutory

permissions viz. Environmental Clearance, Consent to Operate

The Environmental Clearance (EC) issued by SEIAA and the Consent to Operate (CTO) issued by SPCBs are the two statutory requirement under which compliance of environmental rules are ensured. The permission depends on the documents viz. mining plan, Letter of Intent and quantity of sand available for excavation. In the absence of proper DSR, the quantity of available sand in few cases of fresh EC or in case of EC transfer varies a lot from the DSR value to allotted lease area. To avoid such discrepancies that attract illegal mining, the DSR need to be more authentic and based on the survey and field investigation rather based on secondary data. Further, the miner is bound to submit six monthly EC compliance report to SEIAA; the compliance verification mechanism need to be framed by SEIAA to ensure verification by engaging SPCB, Mining Department, Third-Party Agency (NIT/ State Eng. College etc.).

The Regional Office, State Pollution Control Board before issuing the CTO may verify the site in light of the approved DSR and statutory

provisions under Water Act 1974, Air Act 1981 & EPA, Act 1986. Further SPCB need to verify the compliance of consent condition on the renewal of the CTO and ensure that no mine operates without valid CTO. On non-compliance the Environmental compensation may be assessed and imposed as per Tribunal order dated 26.2.2021 in NGT O.A. 360/2015 in the matter of National Green Tribunal Bar Association Vs Virender Singh (State of Gujarat).

5. Conclusion:

By adopting the provisions of Sustainable Sand Mining Management Guidelines (SSMM, 2016), Enforcement & Monitoring Guidelines for Sand Mining, 2020 and the above control mechanism the illegal sand mining may be checked effectively and effective action may be initiated for minimizing the illegal mining.

7. In view of the recommendations, we direct the State and the State Pollution Control Board to submit the further Action Taken Report in light of the recommendations of the Central Pollution Control Board and by the Committee within 04 weeks

List it on 05th July, 2022.

Sheo Kumar Singh, JM

Arun Kumar Tyagi, JM

Dr. Arun Kumar Verma, EM

Dr. Afroz Ahmad, EM

04th April 2022
O.A. No. 75/2021 (CZ)
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