

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPLICATION No. 44/2014 (WZ)**

CORAM:

**Hon'ble Mr. Justice V.R. Kingaonkar
(Judicial Member)
Hon'ble Dr. Ajay A. Deshpande
(Expert Member)**

B E T W E E N:

Mr. Paramjeet Singh Kalsi,
Age 32 yrs., Occn : Business,
R/o. Dhobale Layout, Surya Nagar,
Nagpur- 440 035.

....Applicant

A N D

1. Ministry of Environment and Forest,

Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi – 110 003

2. State of Maharashtra,

In the Department of Revenue and Forest,
Through Its Chief Secretary,
Mantralaya, Mumbai 400 032

3. The Principal Secretary,

Environment Department,
Maharashtra State, Madam Cama Road,
15th Floor, New Administrative Building,
Mumbai 400 032.

**4. The State Environment Impact
Assessment Authority, (SEIAA),**

Room No.217 Annex,
Mantralaya, Mumbai 400 032.

5. The District Collector,
Collector office, Civil Lines,
Nagpur.

...Respondents

Counsel for Appellant :

Mr. Asim Sarode a/w.
Mr. Vikas Shinde,
Ms. Alka Babaladi, Advs.

Counsel for Respondent No. 3 & 4:

Mr. D.M. Gupte a/w
Mrs. Supriya Dangare, Advs.

Counsel for Respondent No.5 :

Mrs. Ujwala Pawar, DGP.
Mr. A.S. Mulchandani, AGP

DATE : May 15th, 2015

J U D G M E N T

1. The Applicant has filed the present Application under Section 14, 15 and 17 of the National Green Tribunal Act, 2010 related to substantial question of environmental degradation due to illegal sand mining, with the use of heavy machinery in village Rajola, Tq. Kuhi, District Nagpur.

2. The Applicant claims that the sand mining is being done with help of heavy machinery in the river beds in District Nagpur which is causing irreparable loss to the environment. The Applicant made complaints to the

authorities regarding such illegal sand mining which is detrimental to the local eco system. The Ground Water Survey and Investigation Department (GWSID) informed the Applicant that they have not granted any permission for sand mining to be done by using heavy machinery during period between 2011 to 2013. Therefore, based on such information, he also lodged complaint with the Police authorities.

3. The main grievances of the Applicant are related to illegal sand mining by way of using permits, issued for other locations, using suction pump/mechanical equipment in blocks reserved for manual sand mining and excessive sand mining. The Applicant, therefore, contends that such illegal and unauthorised mining which result in excessive sand mining adversely affecting the river banks, beds, and ground water circulation and cause pollution of river water. In short, he contends that such illegal activities are affecting the entire riverine system. He, therefore, prays as follows :

- 1) Issue appropriate order or direction may kindly be issued to prohibit any mechanical mining in the absence of appropriate permissions from the relevant authorities.
- 2) The State of Maharashtra and the Department of Revenue & Forests/Collectors of the concerned district may be directed to prepare and submit reports providing details of all auction notices

licenses granted thereto, whether for manual or mechanical excavation in areas falling, particularly in Nagpur District in Maharashtra, including quantities mined and steps taken to monitor the mining, excavation, dredging of sands from different Ghats for period between September 2011 till date.

4. Respondent No.1 is MoEF which in our opinion do not have direct role in local level enforcement of environmental regulations. However, MoEF, has notified EIA Notification of 2006, and therefore is required to frame regulation, guidelines etc. for proper and effective enforcement of the said EIA notification and also, compliance of Environment Clearance granted to an activity. Section 3 of Environment (Protection) Act, 1986 empowers the MoEF to take all effective measures to protect and improve environment. MoEF has not filed any affidavit on record.

5. Respondent Nos.3, 4 and 5 are the main contesting parties. Respondent No.5 filed an affidavit through District Mining Officer on 26-8-2014 and submitted that Respondent No.2 issued guidelines on 1-11-2013 wherein certain directions have been issued under clause-11 which are reproduced below :

Equipments to be used for sand excavation :-

- (a) Dredger/suction pump shall be used as per sanction of the Maharashtra Maritime Board in the group reserved for dredger in creek/river bed.

- (b) Traditional equipments shall be used in the reserved group for Hatpati/Dubi method. Take caution that no use of technical equipments like suction pump in any circumstance would be made.
- (c) Suction pump for sand excavation is not admissible. Yet for making use of suction pump for public interest; in the exceptional circumstances, the Govt. approval shall be obtained by obtaining opinion of Ground Water Survey and Development Agency and Environment Department.
- (i) It is not possible to excavate in creek bed/river bed by Hatpati manner or by dredger. As there is necessity in such place to make easy boating, sand excavation becomes unavoidable. To make boating easy in that area, the Govt. sanction shall be obtained for use of suction pump.
- (ii) Govt. permission shall be obtained to use suction pump in the group where there shall be no creation of flood danger by creation of flood condition or there shall be no loss of agricultural land and danger to village by change of natural bed of river.

6. Respondent No.5 further submits that though the Collector Office and also, the Mining Office are trying to enforce various conditions stipulated in the lease agreement as well as the environmental clearance, certain illegalities have been committed by the some individual mining agency and their contractors and therefore, stringent action has been initiated under the provisions of the Bombay Mining and Mineral Rules. As per Respondent No.5 :

“In the year 2011-12, total 1650 cases, 2012-13 total 2044 cases of illegal transportation and extraction of minor Minerals were detected collecting the fine of Rs.1.07 Crores and Rs.1.34 Crores respectively from the wrong doers. In the current year 2013-14 total 1522 cases of illegal transportation and extraction of minor Minerals were detected lodging 111 FIRs against them and collected the fine of Rs.98,41,578/- from the wrongdoers till 31-3-2014. During the current financial year 2014-15 total 422 illegal extraction and transportation of Minor Mineral cases total penalty of Rs.41,43,400/- were recovered till June 2014 and so also 8 FIRs were registered regarding

illegal extraction and transportation of Minor Mineral in the concerned Police Station within Nagpur District.

In view of the present application in so far as allegation are made regarding the illegal excavation by means of machinery in Saoner, Kuhi, Kamptee and Mouda, this authority has called the report from the aforesaid Tahsildars regarding the said illegality at the relevant period of time. Pursuant to that all these respective Tahsildars have submitted the report giving the figures of illegal excavation and transportation, the figure. However, for the sake of clarity report submitted by the respective Tahsildars is enclosed herewith as Annexure R-3 (Colly) for the kind perusal of this Hon'ble Tribunal.”

7. Respondent No.5, therefore, contends that they have taken necessary action to streamline the sand mining activities on the principle of “sustainable development” and therefore, they have prayed for dismissal of the Application.

8. The Tribunal on 13-2-2015 directed the Deputy Director, Geology, Nagpur to visit the sites in question and assess the quantity of sand which was mined during the relevant period. Accordingly, Sr. Deputy Director of Directorate of Geology of Mining has submitted a report dated 25-3-2015. The report states that the area in question is now under the back-waters of Gosikhurd dam and therefore, presently, no observations can be made in this regard.

9. The Respondent Nos.3 and 4 initially filed an Affidavit on 9-1-2015 and while elaborating the procedure under environmental notification 2006, it is submitted that in all, two (2) environmental clearances, one for sixteen (16) mines and another for fourteen (14) mines have been

granted by the SEIAA. The Department of Environment is on record that the environmental clearances for the sand mining have been issued in the name of the District Collector and therefore, it is obligatory on the part of District Collector, Nagpur to do the needful to comply with the conditions mentioned in the environmental clearance. The Tribunal had enquired about any particular legal action against the non-compliance of the EC observed by the authorities, however, Respondent No.3 and 4 has filed an affidavit on 27-3-2015 wherein list of 119 prosecutions filed under Section 15 of the Environment (Protection) Act, 1986 is appended. However, all these prosecutions are related to construction activities, initiated without prior environmental clearance, and therefore, are not related to violations in sand mining.

11. Considering the records of the Application and Affidavits filed by the contesting parties, we are of the opinion that following issues are required to be decided for the final adjudication of the matter :

- 1.** What is the enforcement mechanism of the environment clearance granted to the sand mining activities including verification, legal action and assessment of environmental damages by authorities ?
- 2.** Whether any objective parameters for the non-compliance of Environmental Clearance by the sand mining activities including area of mining, volume of sand extracted, rate of sand mining etc. are identified and defined for initiating legal action ?

12. It is an admitted fact that the sand mining activities have been covered under the environmental clearance regime subsequent to the orders of Apex Court in “Deepak Kumar Vrs. State of Haryana” through MoEF Office Memorandum dated 24-12-2013. It is submitted by the environment department that the SEIAA in the present matter, has granted two environmental clearances, one for cluster of 16 sand mines and another of 49 sand mines, in August 2014 and December 2014 respectively. A close reading of these environment clearances granted to the mining activities would reveal some important points which are as under :

- i) Though the environmental clearance has been granted to number of mines in different parts of the District, it is issued in the name of District Collector.
- ii) The condition No.4 (page 262) specifies that sand mining through the suction pump is prohibited except in case of large public interest, as per Revenue Department GR dated 12-4-2013.
- iii) Condition Nos.5 and 9 entrust the responsibility of compliance on District Collector and further specifically mentions that the District Collector and District Mining Officer will be responsible personally for non-compliance of conditions stipulated in the EC and shall be liable for legal action under the Environment (Protection) Act, 1986.

13. The Environment Clearance further deals with several conditions related to use of remote sensing, standard operating procedures, safeguard mechanism, so

on and so forth, including system of reporting the non compliance/violation and environmental norms to the Collector.

14. The environmental clearance granted to the cluster of sand mines in the present case seems to be well drafted document, on paper, embedded with several environmental safeguards as well as various conditions related to medical facilities, occupation, health environmental audit etc. Now, the core question is that who will enforce such well drafted environmental clearance and in what manner ? During the final hearing, it was informed by the Environment Department that the enforcement of this EC is the sole responsibility of the District Collector. At the same time, the EC as a specific condition, puts the responsibility of compliance of EC on the District Collector. In other words, the responsibility of enforcement of EC as well as the compliance of EC has been placed on the District Collector. This proposition at the very preliminary consideration itself seems to be unrealistic, un-feasible and non implementable, and against basic principles of the governance. As per the above interpretation, if the Collector is the project proponent, he cannot be expected to regulate himself. This was also argued by the learned DGP who would submit that the District Collector and District Mining Authority are the authorities enforcing the minor mineral regulations and in no way, can be

construed as project proponent. She further submits that for the administrative convenience and for the speedy disposal of matters, the District mining Office compiles the information of all sand mining leases and submits proposal to the SEIAA, through the District Collector, for the environmental clearances. She, therefore, contends that the role of the Collector and District Mining Office in the instant case is more of facilitation and coordination, and not being as project proponent. Individual sand mining lease is signed with prospective sand mining agencies that excavate the sand as per the condition of EC and mining lease. In any event, those agencies who are individually authorised under mining regulations, to mine the sand, are the project executing agencies and any non-compliances at the respective sand mine has to be attributed to them only. She further submits that the Mining Department in association with the Police as well as the Revenue Department conducts some surprise checks and initiate legal action, as per the mining regulations.

15. We inquired whether any action under the Environmental Regulations has been initiated for non-compliance of EC. by such sand mining agencies. It was brought to our notice that the competent authority for taking cognizance of such violations is SEIAA and MoEF Regional office as per the notification dated 28-2-2015, as

far as issuance of directions under Section 5 of the Environment (Protection) Act, 1986.

16. The environmental impacts due to uncontrolled, unscientific and unabated sand mining is a matter of record. There are several references as well as judgments in this regard and the most important of one is the judgment of Hon'ble Apex Court in the matter of "Deepak Kumar and others Vrs. State of Hariyana and others". We are not inclined to reproduce such adverse environmental impacts in order to avoid the repetitions, but it is suffice to say that the illegal sand mining activities in the river beds is affecting the entire riverine system. It is more relevant in case of non-perennial rivers, in draught prone area of Maharashtra, where such excessive and unscientific sand mining is affecting the entire water cycle and water availability, besides other ecological disturbances. A riparian zone (river bank) is known to be a very productive and critical area along a river. It helps in absorbing floodwaters, recharges aquifers, purifies water and is a habitat for fish, water birds and riparian vegetation. Riparian areas are efficient at processing organic matter, sediments and sediment-bound pollutants. They also regulate microclimates; remove phosphorus and nitrogen containing compounds besides reducing coliform and pathogens. Riparian areas are extremely valuable ecosystems and can even serve as natural water treatment

facilities, saving money, time and the environment. Unfortunately, the importance of riparian zones is not appreciated at all and these areas are being lost to short sighted sand mining, urban planning and encroachments.

17. Hon'ble Supreme Court has already emphasised the need of enforcing the Environmental Laws and Regulation, highlighting that the Environment Protection and Conservation are the need of hour and any laxity in the enforcement of such Regulation will have its long term and non-repairable adverse impacts affecting future generations. The Apex Court in Writ Petition (C) No. 664 of 1993, Indian Council for Enviro-legal Action Vs. Union of India (Uoi) and ors. (1996)5SCC281 has laid down the importance of enforcement of environment regulations as follows :

26. Enactment of a law, but tolerating its infringement, is worse than not enacting law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the Enforcement Authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for law abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the Legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that the Parliament enacted the Anti-Pollution Laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and Notification issued thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibits certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced.

Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse affect of which will have to be borne by the future generations.

18. In the present case, the District Administration and Mining Authorities have found numerous violations of mining lease agreement and accordingly, they have proceeded with certain legal action against the violators under the provisions of Bombay Mining and Minerals Rules. All these violations would finally be leading to unauthorised and excessive sand mining, may be even outside the approved area/location in the Environmental Clearance. Obviously, such non-compliances need to be examined in view of the conditions stipulated in the environmental clearance granted by SEIAA for the sand mining activities. During the final hearing, the Environment Department would submit that the department do not have sufficient man- power to enforce the conditions of the EC. It was the stand of the Environment Department that as per the conditions of the EC, Collector and Mining Officer are responsible for the enforcement and compliance of the EC conditions. Such submission has put forth contradictory stand, as the environmental clearance for the sand mines is granted to the Collector of the District and at the same time the

responsibility of enforcement is also entrusted to him. It is a settled principle of Law that the project proponent itself cannot be the enforcement or regulatory agency. The role of the enforcement agency is different and separate than that of project proponent. In case of any violation, the enforcement agency is expected to take suitable legal action against the project proponent. In the instant case, the violation of EC will amount to violation of Environment (Protection) Act, 1986 and therefore, the offender will be liable for legal action which may include penal action under Section 15 of the Environment (Protection) Act, which prescribe imprisonment as well as fine. Under these circumstances, the stand of the Environment Department that the Collector and the Mining Officer are required to enforce the conditions of the EC cannot be accepted, if the Collector is deemed as a project proponent. The District Mining Officer would submit that the Collector in the present case is coordinating sand mining activity for sustainable mining as sand is required for various developmental purposes and role of Collector as well as District Mining Officer cannot be deemed as of project proponent. Any violation of EC condition should be construed as violation or offence by the respective mine lease holder. We are inclined to accept such an argument advanced by the learned DGP that violation of the EC conditions in case of a particular sand mining lease need

to be attributed to the respective mine lease holder who is actually carrying out the sand mining for commercial purposes and is responsible to adhere to the conditions of the mining lease as well as Environment Clearance.

19. Considering these difficulties, the next point which is to be considered is the enforcement mechanism. The MoEF has published a report of the Committee constituted for development of criteria and formulation of guidelines for categorisation for non compliance into the category of serious and not so serious in September 2011. The report includes such classification for the mining project also. Needless to say that there is a significant policy gap for setting up a mechanism for enforcement and for ensuring compliance of the EC conditions as far as sand mining is concerned.

20. In view of above discussions, we are of the opinion that both these issues are answered in NEGATIVE.

21. The sand mining for that matter, other minor mineral exploration activities, are spread over the entire District and the number of such mine leases is also significant. It may not be therefore, feasible for the state level authority, for that matter the Regional Office of the MoEF which is located in Bhopal to enforce the EC condition in the field. However, there is a need of setting up an enforcement mechanism for such sand mining

project as large scale violations are reported in the present matter, which may be the case in the other Districts of the state also. Therefore, considering this urgent need for formulating an enforcement mechanism in order to protect the environment based on precautionary principle, we are inclined to partly allow this Application with following directions, which are issued under the powers conferred by Section 20 of the National Green Tribunal Act.

- 1.** Secretary, Environment Department, Government of Maharashtra and SEIAA shall formulate enforcement mechanism for compliance of Environment Clearance conditions in respect of sand and other minor mineral mining activities within a time frame of two (2) months.
- 2.** Such enforcement mechanism shall clearly outline the enforcement protocol including the criteria for assessment of compliance and/or violations, the department, officers and their roles and responsibility including taking legal action under the Environment (Protection) Act, along with required delegation of powers; and also guidelines for assessment of damages and restoration costs.
- 3.** Secretary, Environment Department shall submit a copy of such enforcement mechanism to the Registry of Tribunal by 31-7-2015.
- 4.** In the meantime, the District Collector and Mining Officers shall send monthly information on compliance and also, actions taken against sand mining lease holders to SEIAA and

Environment Department on monthly basis for further action.

The Application is accordingly disposed of, with no order as to cost.

The Application be listed for compliance on 1-8-2015.



....., **JM**
(Justice V. R. Kingaonkar)

....., **EM**
(Dr. Ajay. A. Deshpande)

Date : May 15th, 2015.

ajp

NGT