

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

.....

Application No. 264 of 2015

In the matter of :

1. Jagannath Mane s/o Late Shri Shivaji Mane,
Aged about 46 years, R/o A-576, Ram Nagar,
Khandwa (M.P)

....Applicant

Versus

1. Union of India,
through Secretary, Ministry of Forest and Environment,
Paryavaran Bhawan, New Delhi
2. The State of Madhya Pradesh
Through Secretary Department of Mines,
Mantryalaya Vallabh Bhawan,
Bhopal.
3. M.P Regional Pollution Control Board,
Scheme No. 78, Part-2, Aranya,
Vijay Nagar, Indore (M.P)
4. The Collector Khargon,
District Khargon (M.P)
5. District Mining Officer,
Khargon District, Khargon (M.P)

.....Respondents

Counsel for Applicant:

Mr. Shekhar Sharma, Advocate

Counsel for Respondent(s):

Mr. Vishwendra Verma, Adv for Respondent no.1

Mr. Rajul Shrivastav, Adv for MPPCB

Mr. V.K Shukla, Adv for respondent no. 2,4,5 & State of M.P & Mr. M.C Dhingra, Ms. Ganni Neo Kampal, Adv

ORDER**CORAM:**

HON'BLE MR. JUSTICE M. S. NAMBIAR, JUDICIAL MEMBER

HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE, JUDICIAL MEMBER

HON'BLE DR. D.K AGRAWAL, EXPERT MEMBER

HON'BLE MR. PROF. A. R.YOUSUF, EXPERT MEMBER

Reserved on: 22nd March, 2016

Pronounced on: 2nd May, 2016

JUSTICE M.S NAMBIAR (JUDICIAL MEMBER)

1. Whether the judgment is allowed to be published on the net?

2. Whether the judgment is allowed to be published in the NGT Reporter?

1. The applicant claiming to be an environmental activist has filed this application under sections 14 and 15 of the National Green Tribunal Act, 2010 for a direction to the respondents to stop illegal mining and stone crushing activities, to take action against the officials and for realization of the restoration and remedial of environmental damages. The applicant contended that illegal mining and stone crushing is rampant by unidentified persons between villages of Selda and Katora of Sanavad Tehsils of Khargaoan District of State of Madhya Pradesh. Still Mining Officer is not taking any action. Even after the appellant filed a complaint before the Principal

Secretary, Mining Department, no action has been taken and therefore, he had to approach the Tribunal.

2. Respondent no. 2, 4 and 5 filed a joint reply contending that on receipt of the complaint by the appellant on 26-06-2015, the Mining Officer was directed to verify the allegation on inspection. The Mining Officer on inspection found that in between village Selda and Katoraa stone crusher was found installed near village Aarsi for crushing morum and Gitti. The two persons found there revealed that the work of NTPC power plant is under construction by M/s. R.K Sancheti, a PWD contractor and permission from SEIAA or PCB was not taken. The officials therefore sealed the machinery and directed them not to tamper the seal. The place of excavation was measured and found 40/15/1.5 meter and the total quantity was assessed to be 900 cubic meters. A case under M.P. Minor Mineral Rules was registered proposing a penalty of Rs.1710000/-. The District Collector issued a show cause notice against M/s Sancheti on 2-7-2015 to reply by 27-7-2015. In the light of the action taken, the application is only to be closed.

3. In the light of the said contentions M/s Sancheti was impleaded in the application. Thereafter M/s Sancheti filed a reply contending that the Executive Engineer, PWD (B&R) floated a tender for construction of Katora a road to Selda road to a length of 7 K.M and the tender submitted by him was accepted and the work was allotted to him on 13-9-2013. He was required to commence the work in consultation with the Sub Divisional Officer of PWD. Laying the road involves, the digging of earth, and in the process the stones that

come out are to be crushed and are to be used for laying the road. It is for that purpose the stone crusher was brought at the site. It was in accordance with the standard practice the Deputy Collector accorded sanction for temporary installation of stone crusher on the request of the Executive Engineer. By letter dated 9-12-2014, the Executive Engineer directed that the stones excavated from the site shall be reused in the road construction. The construction is part of the NTPC project. The Ministry of Environment and Forest has accorded all permissions including Environmental Clearance for the said project of NTPC and hence the work is perfectly legal. On receipt of the show cause notice, all facts were informed and the District Collector by order dated 5-10-2015, dropped the proceedings finding that there is no illegal mining. It was therefore contended that the proceeding as against the contractor is to be dropped.

4. In view of the said contentions, the counsel appearing for the State was directed to clarify the position. The Learned counsel appearing for the State submitted that the NTPC has taken Environmental clearance for the whole project and the construction of the road is part of that project and no separate consent or clearance is needed for the construction work relating to the road.
5. The learned counsels appearing for the applicant as well as the respondents were heard.

6. The points for determination are:

- (1) Whether there is any illegal mining as alleged in the application.
- (2) Whether there is sufficient consent and permissions for installation and operation of the stone crusher by M/s Sancheti.
- (3) What are the directions to be issued.

7. **Issue No.1:-** Though it was alleged that there is rampant illegal mining in Sanavad Tehsil of Khargaon district and in particular villages Selda and Katora the pleading itself is too vague. No material is also placed to show that there was any such illegal mining. At the time of arguments, the submission was only relating to the activities of M/s Sancheti, the PWD contractor and that too relating to the construction of the road. It is not disputed by the applicant that the construction work of the road from Katora to Selda having a length of 7 K.M is part of the NTPC project as canvassed by the respondents. It is also not disputed that the tender submitted by the contractor was accepted and the work allotted to M/s Sancheti. The construction work involves excavation of earth for laying the road. Necessarily while excavating earth, stones would also be excavated in the process. Such excavations can never be termed as mining. When the said construction work forms part of the NTPC project and Environmental Clearance was also granted by the Ministry of Environment and Forest such work is not an illegal mining.
8. It is specifically provided in the contract that the stones obtained during the excavation work shall be used for laying down the said road itself. As rightly contended by the respondents, the crushing of the stones so obtained at the site while excavating has to be crushed to be used for spreading to lay the road. Therefore, the installation of stone crusher is part of the work of construction of the road, it cannot be said to be unconnected with the project or part of an illegal mining.

9. Therefore, on the materials produced we hold that there is no illegal mining as alleged in the application.

10. **Issue No. (2) and (3):-** The case of the respondents is that as environmental clearance was granted to the NTPC project and M/s Sancheti was awarded the construction work of the road and it being part of the project no further consent or clearance is needed. True, the crusher was installed as part of the execution of the work awarded to the contractor pursuant to the tender invited as part of the NTPC project. But for the reason that environment clearance was granted to the NTPC project, it cannot be claimed that no other consent/permission is to be taken, if it is otherwise is to be taken under the law. That exactly is the case herein. Even if environment clearance is granted for the project as long as the clearance specifically deals with the requirements under the law for installation and operation of a stone crusher, the necessary consent/permission is/are to be separately taken. Based on the environmental clearance granted for the whole project one cannot legally establish a stone crusher in violation of the parameters fixed for installation and operation of the stone crusher. All the parameters provided under law including site specification needs to be adhered to.

11. The question then is, what are the legal requirements for the installation and operation of a stone crusher to be fulfilled by the project proponent. Sub section 1 of section 21 of the Air (Prevention and Control of Pollution) Act 1981, provides that no person shall establish or operate any industrial plant in an air pollution control

area without the previous consent of the concerned state pollution control Board. Section 21 of the Act reads:

'21. Restrictions on use of certain industrial plants-

(1) subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of Section 9 of the Air (Prevention and control of Pollution) Amendment Act, 1987, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.]

(2) An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed:

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant ^{15[* *]} such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.*

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section

(1) and in making any such inquiry, shall follow such procedure as may be prescribed.

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing ¹⁶[and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent]:

¹⁷[Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first proviso, a reasonable opportunity of being heard shall be given to the person concerned.]

(5) Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely:-

- (i) The control equipment of such specifications as the State Board under approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;*
- (ii) The existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board.*
- (iii) The control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;*
- (iv) Chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises;*
- (v) Such other conditions as the State Board may specify in this behalf; and*

(vi) *The conditions referred to in clauses (i), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf:*

Provided that in the case of a person operating any industrial plant (* *) in an air pollution control area immediately before the date of declaration of such area as an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months:*

Provided further that-

(a) After the installation of any control equipment in accordance with the specifications under clause (i), or

(b) After the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or

(c) After the erection or re-erection of any chimney under clause (iv), no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-erected except with the prior approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of the opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.

12. It is not disputed before us that the stone crusher installed and the road being constructed is not in an air pollution control area or that establishing and operating a stone crusher is not an industrial plant as provided under section 21. Therefore it mandatory that the contractor is legally bound to take the consent to establish and also to operate as provided under the Air (Prevention and Control of Pollution) Act, 1981.
13. So also section 25 of the Water (Prevention and Control of Pollution) Act, 1974 provides restrictions for establishing or taking any steps for establishing any industry, operation or process which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land without obtaining consent.
14. Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 reads:

“25. Restriction on new outlets and new discharge-
Subject to the provisions of this section, no person shall, without the previous consent of the State Board-
(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream, or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage) or
(b) bring into use any new or altered outlet for the discharge of sewage; or
(c) begin to make any new discharge of sewage:”

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may-

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being-

(i) in cases referred to in clauses (a) and (b) of sub-section (1) of Section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period may be specified in the order,

and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorized by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and Sections 27 and 30-

(a) the expression "new or altered outlet" means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression "new discharge" means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.

15. It is therefore, clear that consent under the water Act is also necessarily to be taken before establishing and operating the stone crusher.

16. Respondents have no case that consent under any of these Acts were obtained. In fact, M/s Sancheti has no case that even an application for consent under any of these Acts was even submitted.

The permission obtained from the Deputy Collector or any Revenue Authority is not a substitution for the consent to be granted by the Pollution Control Board. Therefore M/s Sancheti or anybody under him cannot be permitted to operate the stone crusher till they obtain consent under the two Acts.

17. It is proved that M/s Sancheti in violation of the Air and Water Act had installed and operated the stone crusher for some period and thereby caused the environmental degradation. He is therefore, bound to compensate the environmental degradation caused by illegally establishing and operating the stone crusher. M/s Sancheti was heard on this specific aspect applying the Principle of Polluter Pays, we direct M/s Sancheti to pay an environmental compensation of Rupees one lakh to the Madhya Pradesh Pollution Control Board within one month from the date of the judgment. The said environmental compensation shall be used only for restoration of the environment of the said area.

18. We therefore issue the following directions:

1. M/s Sancheti or anybody under him is hereby restrained from operating the stone crusher in the disputed site before obtaining consent under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.
2. M/s Sancheti is directed to pay environmental compensation of Rs. 100000/- (Rupees one lakh only) to the Pollution Control Board within one month from today. The said amount shall be used only for the restoration of the environment of the said area.

19. The application is disposed accordingly without cost.

.....,JM
(M. S. Nambiar)

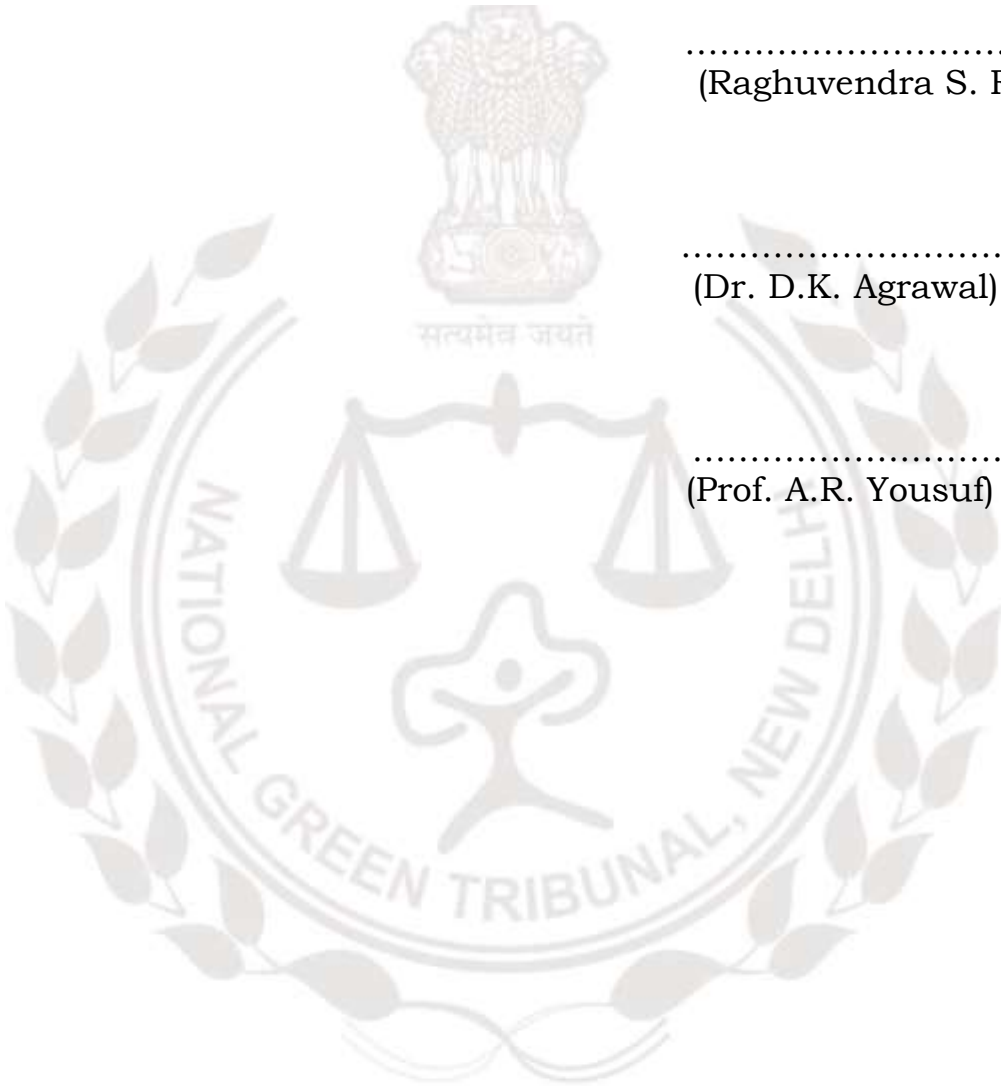
.....,JM
(Raghuvendra S. Rathore

.....,EM
(Dr. D.K. Agrawal)

.....,EM
(Prof. A.R. Yousuf)

New Delhi

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