

**BEFORE THE NATIONAL GREEN TRIBUNAL, CENTRAL ZONAL BENCH,
BHOPAL**

Original Application No. 49/2015 (CZ)
Amkant Mishra Vs. State of MP & 3 Ors.
and
M.A.No. 345/2015

**CORAM : HON'BLE MR. JUSTICE DALIP SINGH, JUDICIAL MEMBER
HON'BLE MR. BIKRAM SINGH SAJWAN, EXPERT MEMBER**

**PRESENT : Applicant: Shri Dharamvir Sharma, Advocate
Respondent State &: Shri Sachin K.Verma, Advocate
Mining Corporation**

Date and Remarks	Order of the Tribunal
Order No. 4 20th July, 2015	<p>Reply on behalf of Respondent No. 1 and 2 has been filed. Copy of the same has been furnished to the Learned Counsel for the Applicant. Shri Sachin K.Verma, Learned Counsel appearing for Respondent No. 1 and 2 has raised two preliminary objections. It is contended that the Applicant in his application has infact, sought compliance of the EC conditions wherein there is no specific condition that mining shall be carried out only between 1st November to 31st May i.e. "non-monsoon period." It is contended that infact in the State there are only 124 State quarries which are operational (all of them sand mining) and in respect of the remaining 953 are all non-operational. It is further contended that while it is true that in case of 61 such sand mining quarries, the Condition No. 5 as set out in Annexure A-2 by SEIAA is in force, in remaining no such condition has been imposed. As such, there is a distinction between the two categories of trade quarries i.e. 61 in which SEIAA has imposed the condition and remaining out of 124 in which there is no such condition with regard to the period of operation i.e. between 1st November to 31st May only. It is therefore, contended by the Learned Counsel that in the Original Application no order with regard to trade quarries where no such conditions has been imposed by SEIAA can be put in place by this Tribunal. It is further being contended that the Applicant has not</p>

impleaded the MPPCB as a party as it is they who are responsible for enforcing of the EC conditions.

Learned Counsel for the Applicant on the other hand contended that he had filed this application challenging the order (Annexure A1) issued by the State of MP, Mining Department dated 30.06.2015 wherein a blanket extension with regard to the mining operations has been granted to permit them to carry on the mining operations beyond 30.06.2015 for a period up to 31.07.2015. It was submitted that since the order of 30.06.2015, which is under challenge, does not make any distinction between sand quarries and mines relating to other minerals and the issue raised in this application is primarily pertaining to the sand mining in the river beds where the eco-system, particularly the fish and marine life, is adversely affected as a result of mining during the breeding season needs to be taken care of and in the light of the constitutional provisions, the State could not have granted such blanket extension in the case of sand mining. It was further contended by the Learned Counsel for the Applicant, though objected to by the Learned Counsel for the State, in the 2008 Policy of the State of MP pertaining to fisheries a closed season, as per the Annexure 9 of the policy, has been identified being Item No. 3 between 16th June to 15 August every year. It was contended by the Learned Counsel for the Applicant that the State Fisheries Department itself has taken note of the breeding season of the marine life and particularly fishes in the river and declared that during the aforesaid breeding season no fishing activity is permissible. Based upon the above, it was contended that a blanket operation of the sand mining in the river bed would not be conducive to the fish and marine life in the river.

We have considered the rival contention as also the preliminary objections. We are in agreement with the contention of the Learned Counsel for the Applicant that the order dated 30.06.2015 granting

extension permitting mining operations beyond 03.06.2015 up to 31.07.2015 is not in consonance with the conditions contained in the EC granted by SEIAA particularly condition No. 5 which has been annexed as Annexure A-2 to the application wherein it has been specifically laid down that “mining shall be carried out only between 1st November to 31st May i.e. non-monsoon period.” We are of the view that in the light of the specific ban and the period specified in the EC condition by the SEIAA, the State Government and the Mining Department do not have any authority to grant a blanket extension to the sand mining in the river bed as contained in notification.

As regards the contentions of Learned Counsel for the State that such condition has only been imposed in 61 cases and does not find mention in the remaining cases out of the 124, we are of the view that it would not be possible to accept the above contention of the State. Having said so, we are of the view that even as per the reply submitted by the State, particularly admitting the fact that while granting the EC, a period of non-operation after 30th June has been made applicable only as a result of the ongoing “monsoon period.” The State Fisheries Policy, 2008 also takes into the fact with regard to the monsoon as being the breeding season for the fishes in the rivers in the State. The two cases, therefore, make it clear that during the monsoon season, the fishing activity is directed to remain closed and since the eggs are laid by the fish on the river bed, carrying out sand mining activity in the river would not at all be conducive to the growth of the fish and marine life and eco-system of the rivers.

In that view of the matter, we are of the view that firstly, the order dated 30.06.2015 does not at all taken into account the specific conditions pertaining to the river sand mining. Secondly, it has not at all taken into account for exclusion of cases where expressed condition for laying down

the period of sand mining in the EC has been provided by the SEIAA itself and, lastly, even in the cases where no such conditions may have been imposed by SEIAA as contended by the Learned Counsel for the State, the State should not have given permission for extension with regard to the period of sand mining up to 31st July particularly as it runs contrary to the Fisheries Policies of the State, 2008.

We are further strengthened in this behalf by the fact that even under Article 48-A of the Constitution of India itself, it is the duty of the State to protect the environment and safeguard forests and wildlife of the country. Under Article 51-A(g) it is a fundamental duty of every citizen to have compassion for living creatures. Thus, any policy decision taken by the State contrary to the mandate under Article 48-A and fundamental duties under Article 51-A(g), as also ignoring the mandate and the policy decision issued by the Fisheries Department which calls for the protection of the fishes and marine life in the rivers, cannot be allowed to operate in so far as the said order has given extension of the mining operation up to 31st July in the case of river sand mining. To that extent, the order of the Government (Annexure A1) dated 30.06.2015 deserves to be stayed. The same shall become inoperative. The State shall convey to all concerned i.e. the District Collectors, Mining Officers, Mining Corporation and concerned lease holders, who may be taking advantage of the order of 30.06.2015, to stop all river sand mining operations immediately.

Liberty is granted to all persons who may be affected adversely as a result of our above order to approach this Tribunal in this behalf. It would be the responsibility of the District Collectors and the Mining Officer to see that the above order is strictly enforced.

Counsel for the Applicant is directed to move an application for impleading the MP Pollution Control Board as party Respondents. The said application shall be filed today itself. Notice be issued to the

MPPCB who shall immediately take steps to see that our above order is complied and convey the same to the SEIAA.

Compliance shall be reported to the Tribunal on **23rd July, 2015**.

M.A.No. 345/2015

In view of the above order passed, the M.A.No. 345/2015 filed for interim directions stands disposed of.

.....,JM
(DALIP SINGH)

.....,EM
(BIKRAM SINGH SAJWAN)

