

**BEFORE THE NATIONAL GREEN TRIBUNAL,
(EASTERN ZONE BENCH, KOLKATA)**

.....
**APPEAL NO. 06/2016/EZ
WITH
M.A NO. 1086/2016/EZ**

IN THE MATTER OF:

- 1. Aman Kumar Singh,
Village : Khagra
PO- Khagra,
Dist- Bhagalpur
Bihar
Pin- 853204**

..... Appellant

V e r s u s

- 1. The State of Bihar
Represented through the Chief Secretary,
Govt.of Bihar
Old Secretariat,
Patna,
Bihar—800015**
- 2. The Mines Commissioner – cum- Principal Secretary,
Mines & Geology Department
Govt. of Bihar,
Vikash Bhawan,
Bailey Road
Patna,
Bihar- 800015**
- 3. The State Environment Impact Assessment
Authority (SEIAA), Represented through its Chairman,
2nd floor, Beltron Bhawan, Bihar State Pollution Control
Board Office, Shastri Nagar,
Bailey Road, Patna- 800 023**

4. The District Magistrate-cum-Collector,
Banka, Bihar- 843102

5. The District Mining Officer, Banka
Bihar- 843102

6. The Union of India
Represented through its Secretary,
Ministry of Environment,
Forest & Climate Change,
Govt. of India,
Indira Paryavaran Bhawan
Jor Bagh, Lodhi Road,
New Delhi- 110 003

7. M/s Mahadev Enclave Private Limited
Hanuman Nagar, Jaipur
Rajasthan- 302012
Represented through its Director,
Mr. Manoj Kumar Pachisia

..... Respondents

COUNSEL FOR APPLICANT:

Mr. Gopal Singh, Advocate

COUNSEL FOR RESPONDENTS :

Mr. Brijender Chahar, Sr. Advocate, Mr. Alok Sangwan,
Advocate, Mr. Ashok Prasad, Advocate, Respondent No.7

ORDER

PRESENT:

Hon'ble Mr. Justice S.P. Wangdi, Judicial Member
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

Reserved on : 12.08.2016
Pronounced on : 22.08.2016

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

Yes

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

Yes

Hon'ble Mr.Justice S.P.Wangdi, JM :

This appeal under section 16 of the National Green Tribunal Act, 2010 is directed against Environmental Clearances (ECs) dated 04/03/2016 granted by the Respondent No.3, the State Environment Impact Assessment Authority, Bihar, (SEIAA) for 19 Sand Mining Projects in favour of the Respondent No.7, M/S Mahadev Enclave Private Limited on the rivers Chandan, Badua, Cheer, Sukhiya and Odhni in Banka District of the State of Bihar. The primary grounds for assailing the ECs are that (i) 41 ECs were granted by SEIAA to several project proponents throughout the State including the Respondent No. 7 on 04/03/2016 and 31/03/2016; (ii) that all the ECs were granted in a mechanical manner as those were issued on a single day with identical conditions; (iii) that no scoping or screening or Environment Impact Assessment (EIA) were carried out; (iv) that mining lease area of 284 hectares of the Respondent No. 7 was split into smaller units to bring within the scope of the EIA Notification as amended on 15/01/2016; (v) that the smaller

units thus created did not contain the area within which mining activities could be carried out and, (vi) that there was undue haste in allowing 41 applications seeking ECs in a single sitting on 01/03/2016 and that too without even mentioning the coordinates.

2. It is of relevance to record that in view of the Caveat Application No. 05/2016/EZ having been filed by the Respondent No. 7, notice had been issued to the Caveator/ respondent No. 7 informing of the date of hearing in response to which they had put in appearance on the date so fixed on 12.08.2016 through Mr. Brijender Chahar, Senior Advocate assisted by Mr. Alok Sangwan, and Mr. Ashok Prasad, Advocates.

3. Pertinently, there being an apparent delay in filing the appeal, M.A. No. 1085 of 2016 was filed by the Appellant seeking for the delay being condoned. The application, having not been opposed, was allowed leaving only the Appeal and the application for stay being M.A. No. 1086 of 2016, for being heard.

4. Heard the Appellant and Mr. Brijender Chahar, Learned Senior Counsel for the Respondent No.7.

5. Mr. Chahar would seriously oppose the Appeal as being not maintainable which as per him would be

apparent from the very pleadings contained in the memo of Appeal and the documents filed in support thereof. The thresh-hold argument in support of this contention was that the very credential of the Appellant as being a public spirited person was questionable in as much as the pleadings were bereft of any material on his antecedents in proof of such claim except the fact that he had filed cases before this Tribunal against this very Respondent. Next, as a corollary to the first contention, was that the Appeal was filed with mala fide intentions. He would argue that the present Appeal being in the nature of public interest litigation, the Appellant ought to come with clean hands. Admittedly when all the 41 ECs granted to different persons for different areas spread over 38 districts of the State Bihar were alleged to be illegal, it was expected of the Appellant to question the entire lot but, instead he had chosen to question only the ones issued in favour of the Respondent No. 7. Even in the previous rounds of litigation before this Tribunal being OA No. 7 of 2016 and OA No. 19 of 2016, it was only the case of the Respondent No. 7 that was targeted. From this, as per the Learned Senior Counsel, it can reasonably be inferred that the case is a proxy litigation sponsored by an unsuccessful rival of the Respondent No.7. Relying upon ***State of Uttaranchal Versus Balwant Singh Chaufal and Others:(2010) 3 SCC 402***, it

was submitted that the Appeal deserves to be dismissed on these grounds alone.

6. It was then argued that even on merits the Appellant has failed to make out any case for interference by this Tribunal. It was contended that, except to state that the ECs were granted to the Respondent on the same day, the Appellant had failed to give any reason as to how those were bad in law. It was next contended that quite contrary to the case of the Appellant, ECs granted to the Respondent No.7 are for different areas of the rivers Chandan, Badua, Cheer, Sukhiya and Odhni located in different villages in the District of Banka as would be evident on the face of the impugned ECs being Annexure 9-A to 9-S. That each EC is for a different bank and were granted after complying with all the requisite conditions as required under MOEF & CC Notification dated 15th January, 2016.

7. In reply, the appellant while denying the allegation of mala fide, submitted that the ECs pertaining to the Respondent No.7 was being assailed by him, as in the previous litigation being Original Application Nos.7/2016 and 19/2016, it was the action of the Respondent No.7 that was challenged. It was argued that vide order dated 20/05/2016, the appellant has been allowed to withdraw Original Application No.7/2016 with a liberty to file a fresh one. It was

for this reason that the other ECs were not assailed. The appellant further argued that it was not permissible for the Respondent No.7 to have approached the State Environment Impact Assessment Authority (SEIAA) for ECs when the earlier application for the purpose filed before the Ministry of Environment and Forest and Climate Change (MoEF & CC) was pending. The total lease area of Sand Mining for which EC sought for was 284 hectares which fall under category A under EIA Notification 2006, and it was only the MoEF & CC which has the authority to grant EC in respect of such category.

8. SEIAA, Bihar, Respondent No.3, could not have issued the ECs by splitting 284 hectares into smaller areas. As per the Appellant, this has been done by the SEIAA in collusion with the Respondent No.7 to circumvent the provision of the EIA Notification. Further, it was urged that EC for such smaller areas could not have been granted by the SEIAA in view of the categorical stand of the State of Bihar before the Hon'ble Supreme Court in IA No.13 of 2011 in Writ Petition (C) No.19628- 19629 in the matter of the Deepak Kumar & Ors. Vs. State of Harayana & Ors., that in Bihar, all the Sands Ghat are more than 50 hectares in area. That even the concept of cluster could not have been applied as no such proposal has been made in state rule

when the state Mining & Mineral Rules were amended in 2014 and that the grant of the impugned ECs were also in violation of the Sustainable Sand and Mining Guidelines, 2016.

9. We have considered the oral submission of the Ld. Counsel, perused the appeal and documents applied thereto.

10. Although, sustained efforts were made by the appellant to convince us that there was sufficient material to admit the appeal, we are not convinced enough to be persuaded to do so for the reasons as shall follow hereafter.

11. In the first instance, we rather find it quite curious that the appellant should be persistent in pursuing with the cases pertaining to Respondent No.7 alone, when it is the very case of the appellant that all the 41 ECs granted suffered from the vice of non-application of mind having been issued on a single day, i.e., on 04/03/2016. The record also reveals that it was only the case of the Respondent No.7 which had been sought to be assailed by the Appellant even in the earlier litigations, i.e., OA Nos. 7/2016 and 19/2016.

12. On a perusal of the 19 impugned ECs granted to the appellant, we find that those are based upon appraisals made by the State Environment Assessment

Committee (SEAC) in its meeting held on 21/02/2016 as required under EIA Notification 2006 as amended from time to time. On such recommendations SEIAA accorded Environmental Clearance (EC) in its meeting held on 01/03/2016 under specific terms and conditions. We do not find anything which is contrary to law in the grant of the 19 ECs which was conveyed vide letter dated 04/03/2016 as would appear from a bare reading of the ECs filed as Annexures 9-A to 9-S.

13. The 19 ECs undeniably have been granted in respect of 19 different lease areas for sand mining on the banks of rivers Chandan, Badua, Cheer, Sukhiya and Odhni. It is quite evident from the ECs that these areas fall in different villages lying along the rivers. The total area of the lease granted is found to be 135.39 hectares and not 284 hectares as stated by the Appellant. It is not the case of the Respondent No.7 that they were granted lease in cluster but rather each EC was for a different area and were granted after having complying with all the conditions required for the purpose. The affidavit filed before the Hon'ble Supreme Court referred to by the Appellant appears to be of no relevance for the present case as the affidavit which is dated 11.01.2013 was filed by the State of Bihar seeking modification of Order of the Hon'ble Supreme Court dated 27/02/2012 passed in IA

No.12-13 of 2011 in WP (C) No.19628-19629 of 2009 by which prior clearance from the MoEF & CC had been directed to be obtained for grant of lease of Mining of Sand, and instead to permit the State of Bihar to grant such clearance. Concededly, the EIA Notification 2006 has been amended to give effect to Order dated 27/02/2012 passed in Deepak Kumar's case by MoEF & CC by Notification dated 15/01/2016 filed as Annexure-8 to the appeal. Most importantly, District Level Environmental Impact Assessment Authority has been introduced to deal with the matters falling under Category B2 for mining of minor minerals.

14. On a careful examination of the 19 ECs in question granted in favour of the Respondent No.7, we find these have been issued in due compliance of the procedure prescribed under EIA Notification 2006 as amended from time to time. It no doubt appears to be true that the ECs were issued on the same day but, that per se cannot be a proof of mala fide. It is trite that onus of proof is heavy on the one who alleges mala fide. Such vague and sweeping allegation against the entire SEIAA would not be sufficient to establish mala fide. In ***E.P.Royappa vs. State of Tamil Nadu & Another: (1974) 4 SCC 3***, it has been stated that “ we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of

mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility.”

15. For the aforesaid reasons, we find no infirmity in the questioned ECs and no case has been made out by the Appellant for us to interfere.

In the result, the Appeal is dismissed *in limine*.
Consequently M.A No. 1086/2016/EZ also stands dismissed.

No order as to cost.

.....
Mr. Justice S.P.Wangdi , JM

.....
Prof.(Dr.) P.C.Mishra, EM

Kolkata,
Dated 22nd August, 2016

NGT