

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

Original Application No. 57/2013(CZ)

CORAM:

**Hon'ble Mr. Justice Dalip Singh
(Judicial Member)**

**Hon'ble Mr. P.S.Rao
(Expert Member)**

BETWEEN:

Shree 1008 Kunwar Raj Rajeshwari
Beti Baiju Maharani Kunwar Maharaj,
Hidayala Darbar Sarvajanik Dev Shthal,
Lok Niyas Trust, Patwari Halka No. 07,
Bilua, Tehsil Dabra, District Gwalior
Through its sansthapak Shri Hari Baba

.....Applicant

Versus

1. Shri Sunil Sharma
Prop. Of Stone Crusher,
R/o Gram Bilua,
Tehsil Dabra, District Gwalior (M.P.)
2. The District Collector
Gwalior (M.P.)
3. M.P. State Pollution Control Board,
Dindayal Nagar, Housing Board Colony,
Gwalior, through its Regional Officer,

.....Respondents

Counsel for Applicant : None appeared

Counsel for Respondents No.2 : Shri Sachin K.Verma, Advocate with
Shri Ayush Dev Bajpai, Advocate

Counsel for Respondents No. 3 : Shri Ayush Dev Bajpai, Advocate for
Shri Purushaindra Kaurav, Advocate

Counsel for Respondents No.4: Shri Sandeep Singh, Adv. for CPCB

Intervener: Shri Om S. Shrivastav, Advocate

Intervener : Shri Ajay Gupta, Advocate with
Shri Nishant Goel, Advocate

Delivered by the Hon'ble Mr. Justice Dalip Singh, Judicial Member

1. Heard Learned Counsels for the parties. Perused the record.
2. This application was filed by the Sansthapak of a public trust which manages the religious institution of the Applicant with the allegations that the aforesaid temple and the building of the trust is situated in the Village Bilua, Tehsil Dabra, District Gwalior. It was submitted that the aforesaid temple is visited by large number of people for offering prayers. It was further stated that a large number of Stone Crushing Units are carrying out operations at Village Bilua which generates lot of dust and noise pollution and thereby cause pollution to the environment and also cause hardships as a result thereof to the devotees and the residents and the nearby settlements. It was submitted that due to location of such large number of Stone Crushing Units nearer to the residential localities there is a constant fear of injury to the residents and the children and as such the Stone Crushing Units should be directed to be closed and shifted elsewhere and the MP State Pollution Control Board (MPPCB) Respondent No. 3 be directed to enforce conditions of the permission and the guidelines issued in this regard against the Stone Crushing Units.
3. Notice of the aforesaid application was issued after admitting the petition vide order dtd. 21st August, 2013. Subsequently, it was also considered necessary on the applications submitted and the prayer made by the Applicant, to implead the Central Pollution Control Board (CPCB) as party vide order dtd. 18th September, 2013. Replies were filed and also during the course of hearing Miscellaneous Applications along with

documents came to be filed by various parties which were ordered to be taken on record. During the course of hearing it was revealed on 26th September, 2013 that this matter had previously come up for consideration before the Principal Bench, National Green Tribunal at New Delhi in Original Application No. 85/2012 and the Principal Bench after hearing the matter in its order observed that out of the 44 Stone Crushing Units in the area only 18 Stone Crushing Units are operating, 18 Stone Crushing Units which were found to be non polluting units had installed anti pollution devices and were allowed to continue operations under the directions of the Principal Bench, National Green Tribunal at New Delhi. It was however, alleged before us that despite the aforesaid order several other units had also started operations. As such at the request of the parties a joint inspection of the entire area where the Stone Crushing Units were located in Bilua was ordered to be carried out by a team of CPCB as well as MPPCB officials to determine whether the units were complying with the conditions of consent and also the parameters fixed for their operation and impact which was being felt as a result of the operation of the entire cluster of Stone Crushing Units. The inspection team was also directed to record the noise pollution levels and the ambient air quality. It was directed that the inspection shall be carried under notice to the units.

4. The matter was taken up on 30th September, 2013 and it was submitted by the Learned Counsel appearing for the MPPCB & CPCB that during the inspection 3 Stone Crushing Units were found to be non compliant and accordingly notices had been issued to the aforesaid 3 units by the MPPCB. The Bench accordingly directed that the defaulting units cannot

be allowed to operate and directed their closure, more particularly since the Principal Bench had already directed that the Crushing Units which do not comply with the conditions, shall not be permitted to operate.

5. The Learned Counsel for the MPPCB & CPCB submitted that the air pollution levels and ambient air quality with regard to SPM and other parameters got aggravated due to large scale vehicular traffic consisting heavy vehicles which move from the mines to the Stone Crushing Units and from the Stone Crushing Units to the designated destination points where the material was being transported and it was submitted that these *kachha* roads were not paved and as such the vehicles were running up to the junction of NH- 75 on such unmetalled roads which was generating lot of dust, as roughly about 300 heavy vehicles were said to be plying in this region. It was submitted by the Learned Counsels that despite measures having been put in to place to check the pollution levels in the Stone Crushing Units still there was lot of air pollution as a result of the heavy vehicular traffic movement in the area which was the major cause for air pollution.
6. It was accordingly suggested that in case metalled roads or concrete roads are constructed the air pollution levels as a result of plying of heavy vehicular traffic to the Crushing Units from the mines and thereafter to the NH-75, would be considerably reduced.
7. Another grievance which was raised is with regard to the safety of the children going to nearby school who were allegedly being adversely affected with pollution as a result of the proximity of the location of the school to the site of Stone Crushing Units and mines. The Learned

Counsel appearing for the Association of Stone Crushing Units submitted that they had several times written to the District Administration even while the site for the construction of the school building was being selected and also during its construction for shifting of the same to another suitable site but despite several such letters and reminders the District Administration insisted upon the site and proceeded with the construction of the school.

8. During the course of hearing on 30th September, 2013 the Learned Counsel appearing for the Association of the Stone Crushing Units submitted that apart from the site at Village Bilua there is no other available site for excavation of stone and the aforesaid stone crushers are the only ones existing in the area and from which the material is sent for various developmental works such as road construction including State and National Highways and other construction and infrastructure works including canals etc. As such the question of closing down the operations and shifting of the Stone Crushing Units to a different site would not be a workable solution which may hamper developmental works and therefore strict conditions may be imposed and they were agreeable to be put to reasonable conditions and also that they would be willing to participate jointly and share the responsibility for carrying out such works as may be necessary for reducing the pollution and also ensuring safety and wellbeing of the school children and the residents of the area. In this behalf the Learned Counsel submitted that they would be willing to undertake extensive tree plantation as well as contribute towards the construction of Metalled / CC roads and also ensuring

protection and survival of trees so planted by providing for their watering etc and engaging man power for the same along with water tankers.

9. On 30th September, 2013 the Learned Counsel for the MPPCB, Respondent No. 3 submitted that on inspection, 3 Stone Crushing units were found to be operating in contravention of the terms of the license and were non-complying with the conditions and as such they were ordered to be closed down. It was further submitted that the plantation of the trees which has been done in the area was inadequate and more number of trees are required to be planted. The matter with regard to plantation of trees, their protection and survival had already been raised earlier and the Learned Counsel for the Association of the Stone Crushing Units had submitted that the Association would abide by any conditions to this effect.
10. During the course of hearing on 12th November, 2013 Misc. Application No. 126/2013 was filed on behalf of the Councillor, Ward No. 6, Nagar Palika, Bilua stating that as a result of the consumption of water by the Stone Crushing Units ground water level in the area has considerably gone down. Copy of this application was given to the Learned Counsel for the Respondents who were directed to submit their response to the same.
11. On 2nd December, 2013 the Learned Counsel appearing for the MPPCB submitted that the information regarding availability and no. of trees to be planted by each of the 32 Stone Crushing Units located at Bilua area, had been furnished and filed before this Tribunal. The said report was taken on record, copy of which was given to the Learned Counsel

appearing for the Association of the Stone Crushing Units who submitted that they would be willing to abide by the directions of the Tribunal and carry out the plantation work with the species identified and as provided by the Forest Department, Govt. of MP and it was agreed that they would maintain the same and ensure their survival and growth and provide protection for a minimum of 3 to 5 years. The Learned Counsel, Shri Sachin K. Verma appearing for the State of MP submitted that necessary number of tall plants / saplings of local species shall be made available by the Forest Department, Govt. of MP.

12. As regards the question of construction of *Pucca* roads in and around the Bilua area the Learned Counsel appearing for the Association of Stone Crushing Units submitted that they would make available their contribution for the construction of roads within 15 days. Earlier the Learned Counsel for the State of MP pointed out that the 2 major roads in the area that are required to be constructed fall within the jurisdiction of 2 separate agencies namely the Public Works Department (PWD), Govt. of MP and the MP Rural Road Development Authority (MPRRDA).

13. In view of the above, it was directed that the District Collector, Gwalior shall arrange for the meeting of the concerned officers of the PWD and MPRRDA along with members of the Association and draw out an estimate and programme for the construction of the roads and arranging necessary financial allocation from the Government / concerned Authorities

14. Since one of the issues related is the ambient air quality and the air & noise pollution levels as well as the impact on the school going children and the residents of the localities it was directed that the MPPCB shall constitute a team to visit the area and study various aspects including maintenance of the standards by the Stone Crushing units under various parameters contained in Schedule-I, entries 11 & 37 of the Environment (Protection) Rules, 1986 with regard to the air and noise pollution and also looking to the fact that closure of units is leading to shortage of raw material for infrastructural and development works in the area as was submitted, during the course of hearing, the Learned Counsel for the parties were directed to give suggestions in the light of the principle of sustainable development and the precautionary principle to find out ways and means by which the environment in the area does not get deteriorated and at the same time air pollution levels are also reduced and the health and welfare of the children particularly those who are go to school and their right to education is not compromised and mining and Stone Crushing activity may also be allowed to continue.
15. On 29th January, 2014 the District Collector, Gwalior appeared before the Tribunal, during the course of hearing. The Learned Counsel appearing for the Association of the Stone Crushing Units submitted that an amount of Rs. 25,00,000/- (Rupees Twenty Five Lakh) had already been handed over by the Association to the District Collector and during the course of hearing on 29.01.2014 further amount of Rs. 25,00,000/- (Rupees Twenty Five Lakh) was handed over to the District Collector, Gwalior by the Learned Counsel on behalf of the Association. Thus, it was submitted that an amount of Rs. 50,00,000/- (Rupees fifty Lakh) in all

had been contributed by the Association towards their commitment for improvement of the roads in the area for preventing pollution and thereby protecting the environment. The District Collector, Gwalior informed us that the plans for the construction of the road by the PWD from the 'T' junction at National Highway-75 to the site has been prepared and the MPRRDA has also been contacted for the construction of the road falling in their jurisdiction. The Learned Counsel for the parties were generally in agreement that air pollution levels would be considerably reduced if proper Metalled roads / CC roads are constructed for plying of the heavy vehicles instead of existing *Kachha* roads which generate lot of dust. The District Collector, Gwalior assured us that the work with regard to construction of the roads would start at the earliest by the PWD. Today, during the course of hearing, it was submitted that the estimates for the road to be constructed by the PWD had already been prepared and the work order has been issued. The amount of Rs. 50,00,000/- (Rupees fifty lakh) which has been contributed by the Association for the aforesaid purpose may be utilized by the District Administration for the aforesaid purpose as also for the maintenance of the roads. It was stated that steps for releasing the amount by the PWD and MPRRDA at the earliest for construction of their respective roads, preferably in the present financial year 2013-2014 itself, shall be taken up by the Collector, Gwalior as it is the general consensus of all that if proper roads are built then air pollution levels particularly with regard to SPM shall be reduced considerably in the area as it was being caused by heavy vehicular traffic. The Collector however submitted that there was no

identification or information regarding lowering of water levels due to the operation of the Stone Crushers in the area.

16. Another issue which came up before the Tribunal during the course of hearing was the existence of a school newly constructed under the '*Sarvashiksha Abhiyan*' by the State Government at the 'T' -junction known as "Nakta pata" which was in close proximity of less than 500 mtrs. from the Stone Crushing Units. It is not in dispute that the mines and the Stone Crushing Units at their existing locations had been sanctioned much before the identification of the site for locating the school near "Nakta pata" and subsequent construction over the same. In spite of objections the above school had been constructed on the aforesaid site only because, as explained by the District Collector, the requirement under the '*Sarvashiksha Abhiyan*' Scheme was that the school should not be situated more than 1 Km. away from the residential area or basti. Whether the aforesaid ground should hold good for identifying such sites in constructing new school buildings, need not detain us in view of all the positive approach which the Association of Stone Crushing Units and their owners have adopted during the course of hearing.

17. It was pointed out that 8 Stone Crushing Units were located at a distance of within 500 mtrs from the newly built school at "Nakta pata". As such this Tribunal vide its order dtd. 11th February, 2014 being aware about the guidelines and the Rules relating to establishment of Stone Crushing Units and mines in close proximity of school which make it impermissible for the establishment of any Stone Crushing Unit at a distance of less than 500 mtrs as per the guidelines issued by the MPPCB

in the year 2004 in consonance with the orders of the Hon'ble Supreme Court in Civil Appeal No. 10732/1995 dtd. 25.04.1996 Stone Crushing Units were identified at Bilua and were ordered to be closed as they were situated at a distance of less than 500 mtrs. from the school. Therefore, a situation has cropped up that if the school is shifted, the units may be allowed to be operated as requested by the Association of Stone Crushing Units.

18. Shri Ajay Gupta, Learned Counsel appearing for the Association of the Stone Crushing Units submitted that the Association would be willing to purchase private land if no Government land is available within the prescribed parameters of locating the school within 1 km. from the village / basti under 'Sarvashiksha Abhiyan' Scheme and also construct the school building of the same specifications and design as was constructed at "Nakta pata" T-junction by the Government so that the existing school at "Nakta pata" can be closed and the Stone Crushing units are permitted to be operated. In that view of the matter the District Collector, Gwalior was directed to constitute a team for consideration of the site as proposed by the Association of the Stone Crushing Units with regard to construction of new school building with the same specifications and designs as that of the Government school at "Nakta pata" for the benefit of the children of 'Nathon Ki Basti'.

19. The District Collector, Gwalior accordingly constituted a team of officials headed by SDO, Dabra consisting Tehsildar Dabra, Asst. Mining Officer, Gwalior and District In-charge Gwalior Regional Office of the MPPCB to inspect the proposed alternate site at the instance of the Association of the Stone Crushing Units.

20. Initially the site that was proposed was not found suitable but subsequently the land bearing Khasra No. 3562 measuring 0.073 hectares and Khasra No. 3563 measuring 0.115 hectares making a total of 0.188 hectares for which the Association had entered into agreement of sale with private land owners i.e., Shri Ramcharan S/o Shri Vedar Singh, Shri Sumer Singh S/o Shri Vedar Singh, Shri Ramsingh S/o Shri Ramlakhan Singh, and Shri Ashok Singh Kushwah S/o Shri Shivnarayan Singh, was approved by the said committee. On 18th March, 2014 the District Collector, Gwalior submitted report dtd. 16th March, 2014 in which it has been stated that the land which is proposed of Khasra No. 3562 & 3563 with a total area of 0.188 hectares is 800 mtrs away from the Stone Crushing Units and less than 1 km. from the 'Natho Ki Basti' which is also the requirement under the 'Sarvashiksha Abhiyan' and the nearest residential area is also more than 300 mtrs. away from the mines and more than 500 mtrs. from the Stone Crushers. Accordingly the proposed site at Khasra No. 3562 & 3563 may be approved for the construction of the school, in place of the existing school at "Nakta pata" by the Association.

21. In view of the above stand of the District Collector, Gwalior and since all the parameters make the alternate site at Khasra No. 3562 & 3563 permissible for the location of the school, the Association of the Stone Crushing Units shall provide the aforesaid 0.188 hectares of land with the boundary wall and construct the school out of their own funds. The District Collector, Gwalior shall forward to the Secretary of the Association the blue prints of the existing school to be imposed on the map of the 0.188 hectares land on Khasra No. 3562 & 3563 for

construction of the school building. Shri Ajay Gupta, Learned Counsel, appearing for the Association submitted that the construction shall be carried out by the Association immediately. However it is directed that the Association shall deposit an amount of Rs. 20,00,000/- (Rupees Twenty Lakhs) in the Treasury with the District Collector, Gwalior for the aforesaid purpose by way of guarantee within two weeks of this order to be utilized for the construction of the school building and its boundary wall.

22. It was also submitted that with a view to ensure maintenance of quality and standards in the construction of the school building the District Collector may appoint an officer to supervise the construction and ensure quality of the material and construction. It is therefore directed that while issuing the blue prints the District Collector, Gwalior shall pass necessary orders deputing an officer for the aforesaid purpose. The said officer shall be responsible for maintenance of the quality and for supervising the construction. It shall also be the responsibility of the District Collector, Gwalior to release the funds out of the amount of Rs. 20,00,000/- at different stages of construction such as laying foundation, construction upto plinth level, laying roof, construction of walls, plastering etc. Shri Ajay Gupta, Learned Counsel who appears on behalf of the Association has also undertaken that the Association shall dig a tube well to meet the requirement of water in the school which may also be utilized for watering the plants to be planted in the school compound by the Association. The District Collector, Gwalior shall ensure that necessary directions are issued to the Electricity Department for

providing electricity connection to the school building including to the tube well without any delay.

23. The construction of the school shall be completed, as was given out before us, within a period of 6 months. Therefore, the existing school building may be put to use for any other purpose as deemed fit by the District Administration duly meeting the requirement given in the guidelines issued by the MPPCB in the year 2004.

24. During the aforesaid period of the construction of the new school building the aforesaid 8 Stone Crushing Units which were ordered to be closed down in our order dtd. 24th February, 2014 shall be permitted to resume operations on fulfilling the following conditions.

(i) That the Association of Stone Crushing Units shall deposit with the District Collector the amount of Rs. 20,00,000/- (Rupees Twenty Lakhs) for the construction of the school building within two weeks of this order.

(ii) The Stone Crushing Units shall not operate between 8 am. to 2 pm as was suggested in the list of precautions proposed to be adopted if the units are allowed to operate as submitted before us by the committee constituted by the District Collector. The aforesaid condition of non operation of the Stone Crushing Units from 8 am to 2 pm shall stand waived during the summer vacations for the school on permission of the District Collector after the dates are notified. However if the new building is not completed and the school does not shift to the new location by the end of the summer vacations, the condition of non operation by the Stone Crushing Units between the 8 am to 2 pm shall be re-imposed and shall remain in force till completion of the school building and its shifting.

(iii) The Association of the Stone Crushing Units shall undertake planting of trees duly ensuring their protection and

maintenance including watering on regular basis in accordance with the guidelines issued by the MPPCB regarding the total number of trees to be planted with the local species and engaging required man power for the purpose.

- (iv) Till such time the construction of *Pucca* roads by the PWD and MPSRRDA is not completed vehicles shall be allowed to ply only to and from the crushers on such *Kachha* roads and such country tracks as identified by the District Collector in consultation with the Regional Officer of the MP State Pollution Control Board, Gwalior and the norms shall be strictly followed. These identified routes shall be regularly sprinkled with water through tankers to be operated by the Association of the Stone Crushing Units so as to minimize the air pollution in the area. In no case shall any vehicle be allowed to ply from the mines to the crushers or from crushers to the National Highway on any route other than those identified and maintained for this purpose.
- (v) Apart from the above conditions the Mines and Stone Crushing Units are required to have valid permissions and licenses and shall also abide by the norms and conditions contained in the 'Consent to Establish' 'Consent to Operate' and Environmental Clearance as the case may be.
- (vi) Each of the Stone Crushing Units shall submit an undertaking before this Tribunal within two weeks of this order that they shall abide by the aforesaid conditions in addition to the ones already in force and in case violation of any of the conditions is reported they shall not be permitted to operate and even the electricity connection shall be liable to be disconnected.
- (vii) The Stone Crushing Units which are operating with the help of Diesel Generator (DG) Sets, such DG sets are required to be of the specifications as provided under Environment (Protection) Rules, 1986 and the MPPCB shall carry out inspection of such sets on a regular basis, and also monitor the

air and noise pollution levels as well as the ambient air quality on a periodical basis and submit the report before this Tribunal on all issues and points which have been mentioned herein above.

25. In case it is found that despite the aforesaid measures air pollution and noise pollution levels are not reduced and ambient air quality does not improve, the MPPCB shall be free to suggest additional measures for being applied and adopted in this area, particularly in view of the fact that the area in dispute has a large cluster of mines and Stone Crushing Units which may require the MPPCB to take into consideration the cumulative effect also. The MPPCB and any of the parties shall be at liberty to approach this Tribunal in case any difficulty arises in the implementation of the above directions or any modification or clarification is necessary.
26. With the aforesaid directions this application stands disposed of. We may however point out that in the event of non observance or non compliance of any of the conditions, the Applicant or the Respondents i.e. State of MP MPPCB & CPCB would be at liberty to approach this Tribunal for seeking any further directions or orders.
27. While disposing of this application it is made clear that since the Respondent Association of the Stone Crushing Units has sought 6 months time for the completion of the new school building at the alternate site and since the District Collector, Gwalior has also submitted that it may take some time for the construction of *Pucca* roads, with a view to ensure compliance of our order, we direct that the matter be listed in Court on **13th October, 2014** for recording compliance. It shall be the

duty of the District Collector, Gwalior to ensure the construction of good quality roads and the new school building at the earliest and take all necessary steps for the aforesaid purpose. We would while disposing of this application like to record the appreciation of the Bench towards the positive approach adopted by all the parties so that an order beneficial to all could be passed.

This application stands disposed of as above. There shall be no order as to costs.

(Mr. Justice Dalip Singh)
Judicial Member

(Mr. P.S.Rao)
Expert Member

Bhopal:
March 18th, 2014

NGT