

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
.....

ORIGINAL APPLICATION NO. 34/2016

IN THE MATTER OF:

Naresh Zargar
S/o Late Sh. S.P. Zargar,
R/o 2235, Shaheed Gulab Singh Ward,
Indranagar, District Jabalpur, M.P.

.....Petitioner

Versus

1. State of Madhya Pradesh,
Through its Secretary,
Department of Mines and Minerals,
Vallabh Bhawan, Bhopal, M.P.
2. Directorate Geology of Mines,
(D.G.M.)
Bhopal, M.P.
3. M.P. State Mining Corporation,
Through its Managing Director,
Paryas Bhavan Bhopal, M.P.
4. Ministry of Environment & Forest,
Through its Secretary,
New Delhi.
5. State Environment Impact Assessment Authority,
SEIAA,
Bhopal.

.....Respondents

COUNSEL FOR APPLICANT :

Mr. Avi Singh and Mr. Harmeet Ruprah, Advocates.

COUNSEL FOR RESPONDENTS :

Mr. Ashok Bhasin, Sr. Advocate with Mr. V.K. Shukla, Advocate,
for Respondent No.1, 2 and 5.
Mr. Harsh Parashar, Advocate, for Respondent No.3
Mr. Divya Prakash Pande, Advocate, for Respondent No. 4.
Mr. Amit Singh, Advocate, in M.A. No. 122 of 2016.

REVIEW APPLICATION NO. 01 OF 2016

IN

ORIGINAL APPLICATION NO. 34/2016

IN THE MATTER OF:

Ramakant Gautam

.....Applicant

Versus

State of M.P. & Ors.

....Respondents

and

M.P. State Environmental Impact Assessment Authority
Through its Member Secretary
Paryavarn Parisar,
E-5, Arera Colony,
Bhopal - 462016.

....Review Applicant

COUNSEL FOR REVIEW APPLICANT:

Mr. V. K. Shukla, Advocate.

AND

**M.A. NO. 24 OF 2016, M.A. NO. 48 OF 2016 AND M.A. NO. 49
OF 2016**

IN

ORIGINAL APPLICATION NO. 123/2014

IN THE MATTER OF:

Himmat Singh Shekhawat

.....Applicant

Versus

State of Rajasthan and Ors.

.....Respondents

COUNSEL FOR APPLICANT:

Mr. Arvind Soni, Advocate.

COUNSEL FOR RESPONDENTS:

Mr. Tushar Mehta, ASG, Mr. Shiv Mangal Sharma, AAG, Mr. Saurabh Rajpal and Mr. Adhiraj Rajawat, Advocates, for Respondent No.4.

Mr. Vikas Malhotra and Mr. M.P. Sahay, Advocates, for Respondent No.5.

Mr. Divya Prakash Pande, Advocate, for Respondent No. 4.

Mr. Amit Singh, Advocate, in M.A. No. 122 of 2016.

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)

Hon'ble Mr. Justice Jawad Rahim (Judicial Member)

Hon'ble Mr. Justice Sonam Phintso Wangdi (Judicial Member)

Hon'ble Dr. D.K. Agrawal (Expert Member)

Hon'ble Mr. B.S. Sajwan (Expert Member)

Reserved on: 18th February, 2016

Pronounced on: 04th May, 2016

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?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

By this common judgment, we shall dispose of Original Application No. 34 of 2016 filed by Naresh Zargar under Section 14 read with Section 16 of the National Green Tribunal Act, 2010 (for short 'Act of 2010'), Review Application No. 1 of 2016 filed by Madhya Pradesh State Environment Impact Assessment Authority (for short "MPSEIAA") in Original Application No. 496/2015 which was filed by Ramakant Gautam, seeking extension of time for deciding applications pending before MPSEIAA in terms of the judgment of the Tribunal dated, 10th December, 2015 and Miscellaneous Application No. 24 of 2016 filed by the State of Rajasthan and SEIAA, Rajasthan, praying that the time for

implementation of directions contained in the judgment of the Tribunal dated 13th January, 2015 be extended by a period of 12 months.

2. Miscellaneous Application No. 49 of 2016 in Original Application No. 123 of 2014 has been filed by Mr. Ramesh Meena and Ors praying that the State Environment Assessment Committee (for short "SEAC"), Rajasthan should be directed to deal with the applications filed by them for grant of Environmental Clearance (for short 'EC') and time for that purpose may be extended in the interest of justice.

3. On similar lines, Miscellaneous Application No. 48 of 2016 in Original Application No. 123 of 2014 has been filed on behalf of Mr. Suresh Kumar Agrawal and Ors. Therefore, all these original application, review application and miscellaneous applications, being based on a common premise, can be disposed of together by this judgment.

4. Illegal and unauthorized mining has been a matter of concern for all concerned stakeholders. Besides carrying on illegal and unauthorized mining, various mine lessees/miners had successfully frustrated the laws in force by bringing down the area of the mine lease to less than five hectares, even in adjoining areas with the object and purpose of escaping the requirement of obtaining EC in accordance with the provisions of the Environmental (Protection) Act, 1986 (for short 'Act of 1986') and Environment Clearance Regulations, 2006 (for short 'Notification of 2006'). Keeping in view

the large-scale avoidance of law and serious degradation of environment and ecology, the Supreme Court in the case of *Deepak Kumar v. State of Haryana* (2014) 4 SCC 629 mandated that all mine owners, even if carrying on mining operations below five hectares, would be liable to seek EC from the competent authority. The dictum of the Supreme Court was not followed by various States in its true spirit and substance. While some of the States did not enforce the directions, there are some other States which have issued Notifications/Government Orders to overreach the directions given by the Supreme Court in exercise of their executive powers. These directions/Office Memorandums were contrary to the orders of the Supreme Court and in fact, some of them were even set aside by the Tribunal.

5. Following the judgment of the Supreme Court in *Deepak Kumar's* case (supra), various cases, particularly in relation to the States of Haryana and Rajasthan were decided by the Tribunal where all concerned were mandated to comply with the judgment of the Supreme Court and it was also stated that even the existing units did not have any right to continue to pollute. The Tribunal dealt with all the issues raised before it in the case of *Himmat Singh Shekhawat v. State of Rajasthan* and passed a detailed judgment dated 13th January, 2015 in Original Application No. 123 of 2014.

6. In this Judgment the Tribunal held that the existing mining lease holders should have complied with the requirements of obtaining EC from the Competent Authority in accordance with law. They were provided reasonable time of 3 months to make

applications for obtaining the EC, which applications were directed to be disposed of within 6 months from 13th January, 2015.

7. These directions were passed even in relation to disposal of the applications of the private respondents or other persons seeking EC, expeditiously and not later than 3 months from the date of the Judgment. The authorities, including SEIAA, were directed to dispose of the applications for obtaining EC for mining purposes within the stipulated period in accordance with law and more particularly in light of the observations and directions stated in the Judgment.

8. Thereafter various Original Applications as well as Miscellaneous Applications were filed by different parties in different proceedings and even independent Original Applications were filed, which were dealt with by the Tribunal vide its different orders. It will be useful to refer to those orders which would have a bearing on the matter in issue before us now.

9. M.A. No. 680 of 2015 was filed in Original Application No. 123 of 2014 by State of Rajasthan seeking extension of time which was granted for a period of 6 months by way of last opportunity vide order dated 15th July, 2015. Review Application 18 of 2015 was also filed in Original Application No. 123 of 2014 by State of Madhya Pradesh seeking a review of the Judgment dated 13th January, 2015. Vide order dated 24th July, 2015 the Tribunal directed MPSEIAA to deal with all the applications and clear the entire backlog within 3 months from the date of the order. It was held that at

that time the mining units which had applied for obtaining EC could continue to operate. Obviously the intention was that all of them would be granted EC within 3 months.

10. M.A. 1065 of 2015, M.A. No. 1104 of 2015 and M.A. No. 1105 of 2015 were filed in Original Application No. 171 of 2013 titled as *National Green Tribunal Bar Association v. MoEF & Ors.* by State of Madhya Pradesh. Vide Judgment dated 10th December, 2015 three weeks time was granted to MPSEIAA by way of final opportunity. However, it was made clear that no further time would be given and all effective steps should be taken by the concerned authorities. On the same date, vide Judgment of the Tribunal in the case of *National Green Tribunal Bar Association v. MoEF & Ors.* being Original Application No. 364 of 2015 in relation to State of Karnataka, SEIAA was directed to dispose of the applications that were pending before it as on 1st September, 2015 by 31st December, 2015. It may be noticed that only 88 applications were stated to be pending at that time. It was also pointed out that applicants who had filed applications for grant of EC without providing complete particulars or documents, and as a result thereof their applications were pending before SEIAA, those applicants were directed to furnish information within 2 weeks from the date of the order.

11. Original Application No. 496 of 2015 titled as *Ramakant Gautam & Ors V. State of Madhya Pradesh & Ors* related to extension of time on behalf of MPSEIAA. This application was disposed of vide order dated 10th December, 2015 with the direction to MPSEIAA that all the applications pending before it should be

disposed of by 31st December, 2015. The applicants who have not furnished requisite documents were required to furnish them within two weeks from the date of the order. Upon furnishing the information, the applications were required to be disposed of by 31st December, 2015. It was further stated that if they failed to furnish the documents and their applications were not disposed of within the stipulated time they would be shut down as per the Judgment.

12. Now we will be comprehensively dealing with the various applications as already noticed in the opening part of this Judgment. From the bare reading of the above order, it is clear that the outer limit for disposal of the applications was 31st December, 2015. It was more particularly in relation to the applications that were pending as on 1st September, 2015. Some of the applicants as well as the authorities have taken undue advantage of the order passed by the Tribunal on 24th July, 2015 in the case of *M.P. State Mining Corporation Vs. Ministry of Environment & Forest & Ors. In Himmat Singh Shekhawat Vs. State of Rajasthan & Ors.* being Review Application No. 18 of 2015 and have continued to operate indefinitely even till date.

13. It is unfortunate that it is to be recorded that this order has been misconstrued by the authorities as well as by the applicants. The purpose of this order was not to grant indefinite period for operation of mines but within the outer limit, i.e., 31st December, 2015. Even as on date, the applications have not been disposed of and the mining activity is still going on. As already noticed, some applications are for extension of time while others are for

clarification that mining activity can be carried on even when the EC has not been granted. Strangely, the State of Madhya Pradesh on 14th December, 2015, on the basis of an opinion sought, issued a circular to all its collectors in relation to order dated 10th December, 2015 stating that applicants who have already moved an application for EC prior to 31st December, 2015, their applications would be considered immediately and till decisions the mine owners can operate their mines if their application is errorless.

14. This circular issued by the State of Madhya Pradesh dated 14th December, 2015, is contrary to laws in force and the order of the Tribunal. As already noticed, the intention of the Tribunal's order dated 24th July, 2015 was to give time not beyond 31st December, 2015 but it has been misconstrued by the State of Madhya Pradesh. In fact, this circular is primarily intended to overreach the laws in force and is contrary to the Judgment of the Supreme Court and of the Tribunal. There was no ambiguity in the Judgment of the Tribunal dated 13th January, 2015 that no mining activity including that of the existing units would be permitted to go on without taking the ECs. The circular is a clear attempt to overreach the Judgment and in fact act prejudicially to the environment and ecology in the State of Madhya Pradesh. The inbuilt infirmity in this Circular would be that on the one hand SIEAA and other Governmental authorities would not decide the applications pending before them for a long period, while on the other hand, the mining operators would continue mining under the protection of

this Circular. The obvious consequence would be that unregulated, unscientific and unauthorized mining would continue rampantly.

15. Let us look into the statistics given by the State of Madhya Pradesh vide their affidavit dated 19th February, 2016. According to this affidavit, as on 31st December, 2015, there were 1576 applications of minor minerals and 157 applications of major minerals for grant of EC pending with the MPSEIAA while as on 16th February, 2016, there were 1658 applications of minor minerals and 163 applications of major minerals pending for grant of EC before the said authority. It is nowhere stated in this affidavit as to how many applications have been disposed of or whether the applications have been granted or refused by the authorities concerned. This statement only shows increase in pendency of the applications with the authorities. Despite the fact that more than a year has passed, the authorities have taken no effective step to deal with these applications. All it has stated is that the applications are going to be decided. It is unfortunate that on the one hand the State and its authorities are not implementing the directions of the Tribunal as laid down vide Judgment dated 13th January, 2015 while on the other hand it is permitting the mining units to continue in an unauthorized and illegal manner which is seriously prejudicial to the environment and ecology.

16. The official and private respondents have violated the orders of the Supreme Court and the Tribunal which has caused damage and degradation of the environment. We would have normally invoked the "Polluter Pays Principle" but for the fact that there is no data

before the Tribunal. There is no information as to what is the extent and period of illegal mining or mining without obtaining the EC and what are its effects on environment. At the same time, we have to direct the concerned respondents to take proper steps without further delay and that they should not permit mining without ECs any further.

17. The Precautionary Principle casts a specific and statutory obligation upon the official respondents to enforce the orders and the law to prevent any further damage or degradation of the environment because of indiscriminate, unregulated and uncontrolled mining.

18. In light of our above discussion, we have no hesitation in quashing the circular dated 14th December, 2015 which we do hereby quash and direct the State of Madhya Pradesh and all other concerned States including Rajasthan not to issue such circulars and any other circular in variation and/or in derogation of the orders of the Tribunal.

19. It is stated in the Affidavit filed by the State of Madhya Pradesh on 18th February, 2016 that the Central Government vide its Notification dated 15th January, 2016 amended its earlier Notification dated 14th September, 2006 and constituted District Level Environment Impact Assessment Authority (for short 'DEIAA') and District Level Environment Appraisal Committee (for short 'DEAC') for matters falling under B2 category for mining of minor minerals. Vide the Notification dated 20th January, 2016 the

Central Government actually constituted the DEIAA and provided its structure and scope of implementation. The State Government in furtherance thereto issued a Notification dated 25th January, 2016 constituting the DEIAA. Copy of this Notification has been placed on record. On 8th February, 2016 Dy. Secretary, Urban Development and Environment has issued letters to all the Divisional Commissioners and Collectors in the State for constitution of DEIAA and DEAC. Such letters have also been issued to the regional heads. It is then stated that the applications are going to be decided expeditiously without any further delay. Ministry of Environment, Forests and Climate Change (for short 'MoEF') has also taken the similar stand and it is stated that they would be able to dispose of the applications now at the earliest.

20. All the above applications are primarily intended to seek extension of time either by way of review or clarification and/or on various other grounds. We find that all these applications are without any substance and merit. It is expected of every State Government, SEIAA and MoEF to ensure implementation of all the Directions contained in the Judgment of the Supreme Court and orders of the Tribunal without any further delay.

21. They have been delaying the disposal of the applications on one pretext or the other. This undue delay in disposal of applications seeking EC has twin adverse effects. On the one hand, it leads to illegal and unauthorized mining while on the other hand it causes irreparable damage to the environment and ecology of the area. In addition to this, there is revenue loss to the State which it

should be quite concerned with. We have been granting time again and again, and we have even granted them last and final opportunity but this has taken more than a year for the authorities to wake up and take proper and effective steps in the light of the Judgment of the Tribunal.

22. Therefore, we dispose of this application in relation to minor minerals with the following directions:-

1. We hereby quash and direct the State of Madhya Pradesh and all other concerned States including Rajasthan not to issue such circulars and any other circular in variation and/or in derogation of the orders of the Tribunal.

2. All the district level authorities, DEIAA and DEAC, are directed to dispose of all the applications pending with them by 31st May, 2016 positively. We will not grant any extension of time for this purpose hereafter.

3. All the mines owners which of them have not submitted the applications as on 31st March, 2016 to SEIAA, DEIAA and DEAC, shall be shut down forthwith and will not be permitted to carry on any mining activity in any manner whatsoever.

4. The applications which are deficient and where the applicants have not submitted all requisite documents, such applicants are hereby granted last opportunity of 1 week (one week) to submit the documents. In the event they fail to submit such document and make applications complete and errorless in all respects then after the stated period of 1 week they shall also be liable to be shut

down without any further notice. If they comply with this direction, they would also be entitled to the advantage up to 31st May, 2016.

5. All the State Authorities are directed to upload on their respective websites, details of the applications pending before them as on 31st March, 2016. They will also separately classify the applications which are deficient in any respect whatsoever.

With the above directions this application is hereby disposed. However, there shall be no order as to costs.

Swatanter Kumar
Chairperson

M.S. Nambiar
Judicial Member

Jawad Rahim
Judicial Member

Sonam Phintso Wangdi
Judicial Member

D.K. Agrawal
Expert Member

B.S. Sajwan
Expert Member

New Delhi
4th May, 2016