

Item No. 2

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL**
(Through Video Conferencing)

Original Application No. 102/2020(CZ)

Prabhat Mohan Pandey

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: **16.12.2021**

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Appellant(s):

Mr. Rohit Sharma, Adv.

For Respondent(s):

Mr. Sachin K. Verma, Adv.

Mr. Om Shankar Shrivastava, Adv.

Ms. Parul Bhadoria, Adv.

ORDER

1. The application has prayed for following relief :-

1. Direct the Non-Applicant No 4 - MPSEIAA to not grant any further Environment Clearances to the Sand quarries where the District Survey Report has not been furnished as per Appendix X of the MOEF&CC Notification and the Scientific Annual Replenishment Study has not been conducted.
2. Direct the Non-Applicant No. 1 - MOEF&CC to take strict action against the other Non-Applicants for overlooking the environmental norms of preparation of DSR and conducting Annual Replenishment Study, despite having been categorically intimated about the same from the Applicant.
3. Direct the Non-Applicant No. 1 to formulate a policy on action against breach of the MOEF&CC guidelines pertaining to Environment.
4. Strict action be initiated against Non-Applicant No. 2, 3 and 4 for out rightly violating the environmental norms.
5. Directions be given to Non-Applicant No. 5 to 9 to ensure that no sand mining activities are permitted in their respective districts without obedience of Environmental norms.

2. Grievance in this application is against failure of the MP, SEIAA to follow the laid down norms of preparation of DSR and conducting Annual Replenishment Study before grant of EC. According to the applicant, the SEIAA is not following the MoEF&CC guidelines on the subject, issued in the year 2016 and 2020 and also Notification dated 25.07.2018 issued by MoEF&CC laying down procedures for preparation of DSR and replenishment study.
3. We may note that this aspect has also been considered in the recent order of the Tribunal dated 26.02.2021 in O.A. 360/2015, *NGT Bar Association v. Virender Singh (State of Gujarat) & Ors.* and if the averments are correct, the SEIAA has to take remedial action.
4. The matter was taken up by this Tribunal on 02.03.2021 and directions were issued to authorities concerned to file factual report in the following manner :-

“Accordingly, while directing the SEIAA to verify the factual position and take such remedial action as may be necessary, we also constitute a joint Committee of the CPCB, the SEIAA and the State PCB to give an independent report in the matter within two months by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF and also upload the same on website of State PCB simultaneously so that the concerned parties/Departments can access the same for further course of action. The State PCB will be nodal agency for compliance and coordination.”

5. In compliance thereof, the joint committee has submitted the report, as follows :-

Joint Committee Minutes dated 31.03.2021

“The grievance raised by the applicant in this case is that norms laid down for preparation of DSR and conducting Annual Replenishment study in the guidelines issued by MoEF&CC in the year 2016 & 2020 and also notification dated 25.07.2018 issued by MoEF&CC, have not been followed by SEIAA before grant of EC.

SUBMISSIONS BY SEIAA :-

1. *Being an authority constituted by the Central Government to decide the applications filed for obtaining Environmental Clearances, SEIAA follows the procedure laid down in the Environment impact Assessment Notification, 2006 dated 14.09.2006. The list of documents relied upon while deciding the EC applications are enclosed.*
2. *As decided by the committee in its first meeting dated 31.03.2021, the committee examined all the ECs issued / transferred by SEIAA from December 2019 to November 2020 (i.e. the date of filing of petition). A tabular chart was put up before the committee indicating the case-wise details whether the copy of the District survey Report [DSR] and replenishment plan was taken before granting EC.*
3. *The District survey Reports and Annual Replenishment plans are prepared by the District Administration (Mining Department) and are submitted before SEIAA along with the EC applications.*
4. *The notification dated 25.07.2018 issued by MoEF&CC pertains to the preparation of DSRs and it has been provided in the notification that :-*

"The District survey Report shall form the basis for application for Environment Clearance, preparation of reports and appraisal of projects."

It is clear from the above mentioned notification that the DSRs are required to be considered while appraisal of projects. As per the EIA Notification 2006, only the applications filed for obtaining fresh ECs are required to be sent for appraisal to SEAC, whereas there is no need for appraisal in the cases pertaining to transfer of EC.

5. *Para 11 of the notification pertains to "Transferability of Environmental Clearance (EC) and it reads as under :-*

"A prior environmental clearance granted for a specific project or activity to an applicant may be transferred during its validity to another legal

person entitled to undertake the project or activity on application by the transferor, or by the transferee with a written, “no objection”, by the transferor, to, and by the regulatory authority concerned, on the same terms and conditions under which the prior environmental clearance was initially granted, and for the same validity period. No reference to the Expert Appraisal committee or State Level Expert Appraisal Committee concerned is necessary in such cases.”

THE FINDINGS OF THE COMMITTEE :-

1. *All fresh applications appraised in SEIAA had supporting documents including approved mining plan with replenishment plan and DSR as mandatory; document in compliance of MOEF&CC notification dated 15.01.2016 and Office Memorandum of SEIAA dated 20.06.2019 and 14.01.2020. It was found that, no fresh application for obtaining EC has been appraised by SEIAA/SEAC without considering approved mining plan with replenishment plan and DSR.*
2. *In all fresh cases, the technical committee i.e. SEAC has also appraised the cases after considering the annual replenishment plan and DSR in light of above mentioned notification and OMs. This observation has also been made by SEAC in their minutes of meetings.*
3. *It was found that, a mandatory condition has been given in all the ECs issued by SEIAA wherein it has been provided that –*

“District Authority should annually record the deposition of sand in the lease area (at an interval of 100meters for leases 10 hac > 10.00 hac. and at an interval of 50 meters for leases < 10 hac.) before monsoon & in the last week of September and maintain the records in RL (Reduce Level) Measurement Book. Accordingly, authority shall allow lease holder to excavate only the replenished quantity of sand in the subsequent year.”

The copy of sample EC Letter has been enclosed.

4. *In transfer of EC cases approved/ revised mining plan with Annual Replenishment Plan is a mandatory document for transfer of EC along with other supporting documents and no EC has been transferred by SEIAA without considering approved Mining Plan with Annual Replenishment plan. However, DSR has not been taken by SEIAA while dealing with the transfer of EC cases relying upon the MoEF&CC Notification dated 25.07.2018.*

As per the above notification, DSRs are required to be considered while appraisal of projects. As per the EIA Notification 2006, only the applications filed for obtaining fresh ECs are required to be sent for appraisal to SEAC, whereas there is no need for appraisal in the cases pertaining to transfer of EC.

The committee concluded that all the EC transferred/issued by SEIAA was in compliance of the MoEF&CC Notification 2006 & its amendments notification dated 25.07.2018, Office Memorandum of MP SEIAA dtd. 20.06.2019 & 14.01.2020 and the M.P. Sand (Mining, Transportation, Storage and Trading) Rules, 2019 and perusal of the information submitted by PP.”

Joint Committee Minutes dated 02.06.2021

“In compliance of the order of Hon'ble NGT, the second meeting of Joint Committee comprising of members of CPCB, MPPCB & MPSEIAA was convened on 02.06.2021 at the SEIAA's Office in Environmental Planning and Co-Ordination Organization (EPCO), Paryavaran Parisar, Bhopal. The meeting was scheduled to be held on 30.04.2021 but due to the outbreak of second wave of Covid-19 pandemic and consequent lockdown, the meeting was held on 02.06.2021.”

The following members attended the meeting:-

- 1. Mr. Sunil Meena Scientist 'D', CPCB, Bhopal.*
- 2. Mr. Sudhir Shrivastava Legal Officer, MPPCB*
- 3. Mr. Alok Nayak Senior Scientific Officer & OIC,
SEIAA*

The main issue raised by the applicant in the present case is that norms laid down for preparation of DSR and conducting Annual Replenishment Study in the guidelines issued by MoEF&CC in the year 2016 & 2020 and also notification dated 25.07.2018 issued by MoEF&CC, have not been followed by SEIAA before grant of EC. Detailed explanation was given by SEIAA regarding the procedure followed while dealing with the EC applications and the list of documents that are replied upon.

During the meeting, SEIAA briefed the committee about the complete procedure followed by SEIAA while issuing transferring including the details of all supporting documents submitted by PP along with the EC application as per EIA notification and other Office Memorandums. The committee also checked some files, randomly. After detailed discussion and gone through the files, it was decided by the committee that re-examine the all concerned files especially for DSR and replenishment study as directed by Hon'ble NGT in order dtd. 02.03.2021.

It was decided by the committee that next meeting will be held on 30.04.2021”

6. The Joint Committee has further annexed the process to grant EC alongwith list of required documents, transfer of EC alongwith list of required documents notification dated 14.09.2006 and the connected papers with regard to the Government of Madhya Pradesh.
7. Respondent no. 9 has submitted the reply that the E-Auction tender was floated on 11.06.2020 for 11 sand quarries of Agar Malwa District thereafter being the highest bidder in the E-Auction tender process the tender was awarded in favour of the applicant and that the applicant had deposited EMD amount to the tune of Rs. 18 Lakh 75 Thousand in favour of Madhya Pradesh State Mining Corporation and the competent authority vide order dated 24.11.2020 and 04.02.2021 had issued the orders accordingly.
8. Learned counsel for the State and Pollution Control Board have submitted that the rules are strictly enforced and guidelines issued by the MoEF&CC in

accordance with the Notification 2006 the certain amendments issued from time to time are strictly enforced by the authorities concerned.

9. Learned counsel of the State and Pollution Control Board has submitted that the guidelines issued by the MoEF&CC has been strictly followed and enforced.
10. Learned Counsel for the applicant has submitted that the MoEF&CC had issued a notification on 25.07.2018 for DSR preparation. Accordingly, we are of the view to direct that the points as raised by the applicant and contained in the said notification, should also be strictly enforced by the concerned authorities. The part of notification are as follows -

1. *A survey shall be carried out by the District Environment Impact Assessment Authority with the assistance of Geology Department or Irrigation Department or Forest Department or Public Works Department or Ground Water Boards or Remote Sensing Department or Mining Department etc. in the district.*

A sub-Divisional committee comprising of (i) Sub-Divisional Magistrate (ii) Officers from (a) Irrigation Department (b) State Pollution Control Board or Committee (c) Forest Department (d) Geology or Mining Officer shall visit each site for which environmental clearance has been applied and make recommendation on suitability of site for mining or prohibition thereof.

Methodology adopted for calculation of Mineral Potential :

2. *The mineral potential is calculated based on field investigation and geology of the catchment area of the river or streams. As per the site conditions and location, depth of minable mineral is defined. The area for removal of the mineral in a river or stream can be decided depending on geo-morphology and other factors. It can be 50% to 60% of the area of a particular river or stream. For example, in some hill State mineral constituents like boulders, river born Bajri, sand up to depth of one meter are considered as resource mineral. Other constituents like clay and silt are excluded as waste while calculating the mineral potential of particular river or stream.*

The District Survey Report shall be prepared in the district and its draft shall be placed in the public domain by keeping its copy in Collectorate and posting it on the district's website for twenty-one days. The comments received shall be considered and if found correct, shall be incorporated in the final Report to be finalized within six months by the District Environment Impact Assessment Authority.

The District Survey Report shall form the basis for application for environmental clearance, preparation of reports and appraisal of projects. The Report shall be updated once every five years.

3. Procedure for preparation of district survey report of minor minerals other than sand mining or river bed mining

The District Survey Report shall be prepared for each minor mineral in the district separately and its draft shall be placed in the public domain by keeping its copy in Collectorate and posting it on district's website for twenty-one days. The comments received shall be considered and if found fit, shall be incorporated in the final report to be finalized within six months by the DEIAA.

11. We direct the authorities concerned that in addition to the guidelines issued by the MoEF&CC, the above points raised by the applicant, which is a part of the notification should also be strictly enforced by the authorities concerned.

Original Application No. 102/2020 is finally disposed of, in above terms.

Sheo Kumar Singh, JM

Arun Kumar Verma, EM

16th December, 2021
O.A. No. 102/2020(CZ)
PN