

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

Original Application No.87/2020(CZ)

Surendra Kuamr Pandey & Ors.

Applicant (s)

Versus

State of Madhya Pradesh & Ors.

Respondent(s)

Date of hearing: **05.01.2022**

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

For Applicant(s):

Mr. Ayush Dev Bajpai, Adv.

For Respondent(s):

Mr. Sachin K.Verma, Adv.

Ms. Parul Bhadoria, Adv.

Mr. Mayank Pandey, Adv.

ORDER

1. Heard the Learned Counsel for the parties and perused the record.
2. The issue highlighted in the present application is that the Respondent no.6 has been taking the private land of the farmers on lease and is carrying out excavation of sand from the land belongings to the farmers. This is categorically prohibited in terms of Madhya Pradesh Minor Miner Rules and also in pursuance of the order passed by the Hon'ble National Green Tribunal. For carrying out any kind of excavation over any land, the requirement of obtaining Consent from State Pollution Contort Board and Environment Clearance from the State Government Impact Assessment Authority is a mandate, which the Respondent no.6 is by-passing by directly excavating mineral from the land of the farmers.

3. The Second issue that has been highlighted in this original application is with regard to the usage of heavy machineries by the Respondent No. 6 in order to excavate sand even during this period of monsoon ban imposed 2 during 1st July 2020 till 30th September 2020. By way of the evidence attached along with the original application in terms of the recent photographs, newspaper cuttings and video's it is evidently clear that even during the monsoon season the excavation of sand is going in the area in question.
4. The third issue that needs indulgence of the Hon'ble Tribunal here is the inaction on the part of the respondent authorities in initiating appropriate action against the Respondent No.6 who is blatantly violating the norms of environment and carrying out mining activities at such a massive scale.
5. Another issue raised in the present original application is with respect to the restitution of environment as approximately 50 meter deep pits have been dug by the Respondent no.6 at the properties belonging to the various farmers under the garb of leveling of land, which again is not permissible as per law. The consequence of digging 50 meters deep pits can certainly lead to depletion in the ground water as a result of which the villagers of the villages in question might be deprived of the portable water in near future.
6. Another significant issues raised in the present original application is with regard to the usage of pandubbi's i.e huge boats in order to excavate sand from the center of the river Ken. This type of activity is done more particularly to excavate the finest quality of sand from the center of the river bed, as a result of which the free flow of river is disturbed which can eventually lead to flooding or draught in the area in question.

7. The matter was taken up by this Tribunal on 01.10.2020 and notices were issued to the respondents for filing the reply. In compliance thereof the Respondent no. 1 & 2 have filed the reply, which is as follows :

“3. In compliance to the directions so passed by the Hon’ble NGT the joint committee members have conducted the site inspection on 12/11/2020 of land bearing Khasra No. 721/2, 744/2, 756,715/2, 848/2 and 161 situated at Village Bhanpur Tehsil Ajaygarh, District Panna and land bearing Khasra No. 325, 323 situated at village Chandora Tehsil Ajaygarh District Panna and land bearing Khasra No. 129/1, 443/7, 447/2, 280, 204/2, 220/2, 212/1 situated at Village Beera Tehsil Ajaygarh District Panna and land bearing Khasra No. 431, 432, 433,434 situated at village Ramnai Tehsil Ajaygarh District Panna, and land bearing Khasra No. 228/2 situated at Village Baldupurva Tehsil Ajaygarh District Panna was duly inspected by the joint committee members and has found that there is no mining activity being carried out at the subjective sites, and also no usage of heavy machineries like JCB is found at the spot further the joint committee has prepared the spot panchnama of the same.

4. It is also observed that being the highest successful bidder in the auction of Panna District total 27 sand quarry leases were sanctioned to Respondent No. 6 project proponent, Rashmeet Malhotra and out of those 27 sanctioned sand quarry leases 10 sand quarry leases are actually found operational after

obtaining prior Environmental clearance from SEIAA and valid consent to operate from MPPCB and 5 sand quarry leases are operating in the private land only after obtaining the valid requisite permissions from SEIAA and MPPCB and also after executing agreements with mutual consent of private land owners within the purview of rule 17 of the Sand Mining Rules 2019 and are not operating in any violation.

5. As per the directions passed by the Hon'ble NGT the district administration has imposed a blanket ban from 29.06.2020 to 01.10.2020 on all the sand mining activities in entire Panna district vide order No. 827/11/SM/3/6/2020 dated 29.06.2020 and has stopped the mining activities in its entirety.

6. The District Mining Branch has initiated drive against illegal mining and has registered 140 cases of illegal transportation, 12 cases of illegal mining and 13 cases of illegal storage and further the District Mining Branch is specially keeping vigilant eve upon all type of illegal sand mining activities and further it cannot be concluded that the District Mining Branch is not initiating any action against the illegality.

7. The approval of Mining plan, prior Environmental Clearance and valid Air /Water Consent are obtained by the project Proponent/ Contractor, therefore the project proponent / contractor only after obtaining a, the statutory permission required under the rules of

2019 has proceed to carry out the mining activities on private lands.”

8. Respondent no. 6 has also filed the reply, which is as follows :

“6. Applicants are part of the dreaded sand mafia which is active in the district Panna and is involved in rampant sand mining causing extreme damage to the environment and loss of revenue. The Applicants have in the past profited from illegal uncontrolled sand mining in the area. The Applicants have no regard for law and carry on their illegal activities with impunity. The Applicants have even threatened the state government and its officials when the efforts were made to stop the Applicant's illegal activities. An evidence to this effect is an FIR dated 16.5.2019 lodged on written complaint of SDM Ajaygarh, District Panna. The FIR dated 16.05.2019 was lodged against Applicant No. 2 for offence committed under Section 186 and 353 of the Indian Penal Code. The FIR related to an event dated 16.5.2019, when SDM Ajaygarh, district Panna were trying to stop a truck which was carrying illegally mined sand. Applicant No. 2 obstructed SDM Ajaygarh, district Panna in discharge of her official duties. Applicant No. 2 reached at the spot and while claiming that the truck and sand was owned by him, forcefully took away the truck while openly threatening and challenging the SDM Ajaygarh, district Panna to do whatever she can. The FIR also mentioned that the truck owned by Applicant No. 2 even tried to hit the car of SDM Ajaygarh, district Panna, with an objective of causing them bodily harm.

7. The person/entity holding a valid mining lease granted by way of e-auction along with all the statutory permissions can conduct sand mining. This has seriously hampered and damaged the business of sand mafias like the Applicants. Once the Respondent No.6 was granted valid mining lease(s) for sand mining in the district Panna, the Applicants could no longer conduct their illegal business.

8. The Applicants approached Respondent No. 6 and threatened that it will not be allowed to carry out mining operations in Panna if Applicants illegal demands were not met by Respondent No. 6. Applicants demanded that their truck should be loaded with sand mined from mines allotted to Respondent No. 6 free of cost. In addition, Applicants demanded weekly extortion money of 1 .5 lakhs to allow Respondent No.6 to carry on their business. When the Respondent No. 6 refused to submit to the incessant threats and demand of Applicants, it was subjected to a deadly attack by the Applicants and their men on 19.07.2020. The Applicants attacked the premises and staff of Respondent No. 6 with guns and sticks and threatened them of graver consequences if the demands of the Applicants were not met by Respondent No. 6. An FIR was lodged with the local authorities by Respondent No. 6 seeking necessary investigation and prosecution of the Applicants and their men for offences under the relevant provision of Indian Penal Code, 1860. A copy of the FIR dated 21.07.2020 is annexed.

9. The attack of 19.7.2020 by the Applicant on the men and property of Respondent No. 6 was even reported widely by the local and national newspapers.

10. It is humbly submitted that since the violent and illegal acts of Applicants could not get them the desired result of intimidating Respondent No. 6, the Applicants, fraudulently, through this OA, have tried to use Hon'ble NGT for its illegal objectives. The OA is replete with baseless and false allegations and is only instituted with an objective of intimidating Respondent No. 6 to accept illegal demands of the Applicants.

11. That during the monsoon period i.e., 01.07.2020 to 30.9.2020 the Respondent No. 6 is permitted to sell sand which has been excavated from its mining lease and stored at its sand stockyard. However, it is incorrect to state that it is the only source of sand available to Respondent No. 6 during the monsoon period. The Respondent No. 6 has been awarded contracts by the State Government to collect and sell the sand which was illegally mined, unclaimed and confiscated by the State Government. The Respondent No. 6 obtained a contract on 16.09.2020 to collect and sell 4140.00 cubic meters of sand from village Laulas and Ramnai which was illegally mined, unclaimed and confiscated by the State Government. The Respondent No. 6 obtained a contract on 21.09.2020 to collect and sell 9000.00 cubic meters of sand from village Beera and Bhanpur which was illegally mined, unclaimed and confiscated by the State Government. The Respondent No.6 obtained a contract on 30.6.2020 to

collect and sell 27649.700 cubic meters of sand from village Barkola, Majhgaay, Chandora, Amarchi, Farswaahaa, Barauli and Udala which was illegally mined, unclaimed and confiscated by the State Government. A copy of the contract dated 16.9.2020 to collect and sell 4140.00 cubic meters of sand from village Laulas and Ramnal which was illegally mined, unclaimed and confiscated by the State Government is annexed. A copy of the contract dated 21.09.2020 to collect and sell 9000.00 cubic meters of sand from village Beera and Bhanpur which was illegally mined, unclaimed and confiscated by the State Government is annexed herewith and marked as Annexure R-5. A copy of the contract dated contract 30.6.2020 to collect and sell 27649.700 cubic meters of sand from village Barkola, Majhgaay, Chandora, Amarchi, Farswaahaa, Barauli and Udala which was illegally mined, unclaimed and confiscated by the State Government is annexed.

12. The Respondent No.6 did not lure or persuade any farmer to permit Respondent No. 6 to excavate the sand from their agricultural field. To begin with, it needs to be clarified that Respondent No. 6 has not illegally excavated any private land of any farmer for sand. It is a totally baseless allegation that Respondent No.6 has dug the fertile soil to the tune of 40-50 meters from the private land of the farmers. Of the 23 lease agreements annexed with the OA, 8 do not relate to Respondent No.6. Further, the lease deeds mentioned at Serial no, 4, 12,21 ,22, and 23 are

entered into with the private persons for the construction of road for transportation of sand or for storage purposes and have no relation whatsoever with sand mining. Thus, out of 23 lease deeds annexed by the Applicants only 10 relate to sand mining. The Applicants have made prima facie false allegations in the OA with the sole objective of misleading this Hon'ble Tribunal.

13. That the Applicant has deliberately mentioned only irrelevant provision of the Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rule, 2019 (MP Rules) so as to paint a false picture that the sand mining from the land belonging to the farmers is illegal per se. Rule 17 of the MP Rules specifically provides that the person or entity which holds a valid mining lease can obtain a license/permission for excavation of additional quantity of sand on private land. Rule 17 further provides that the Collector on an application after making necessary enquiry may grant permission for mining and sale of sand on payment of applicable royalty. Rule, 17 specifically provides that the private landowner shall not be given direct permission for mining and sale of land. Thus, it is absolutely incorrect to state that as per the MP Rules, sand can be excavated only and only from the places which have been declared and demarcated by the District Collector and that no excavation can be done from the private land. A copy of the Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rule, 2019 is annexed. It is reiterated that till date the

Respondent No. 6 has not commenced mining operation at any of the private land it has acquired on lease and for which it has not obtained necessary statutory permissions. Respondent No. 6 has not used heavy machineries for excavation of sand on private lands of farmers. Photographs of the private land obtained by lease by Respondent No. 6 is annexed.

It needs to be clarified that mere acquiring of private land by lease does not mean that the mining operation has commenced on that land. The decision of undertaking mining operation on any land is subject to relevant scientific and physical inspection. It may be a case that the Respondent No.6 may not undertake mining operation on any land which it has acquired by way of lease for the purposes of sand mining after relevant inspections. Therefore, it is premature and incorrect to allege that the Respondent No.6 has entered into lease with the farmers in order to avoid the liability of obtaining relevant statutory permissions. Further, Respondent No.6 is aware of its obligations to obtain necessary statutory permissions before commencing mining operations on private lands and has duly discharged them in the applicable cases. Respondent no.6 has obtained prior Environmental Clearances for the private lands on which it proposes to commence mining operations. A copy of the Environmental Clearances obtained by Respondent No.6 for mining operations on private lands is annexed.

14. That the Respondent No. 6 conducts mining in the allotted area strictly in compliance with the environmental clearance granted to them. It does not employ heavy machinery for their mining operation. Use of the machinery at the Respondent No.6 mining site is strictly restricted to the loading of the mined material on the transporting vehicles or construction of pathways. The aforementioned limited use of the machines is not prohibited under the environmental clearance. The Applicants have made false assertion based on witness of some imaginary village residents and government officials. No document or statement of any of the said village resident or government officials supporting the allegation made by the Applicants in the OA has been placed on record before this Tribunal.

15. That the Respondent No. 6 has not carried out any mining operation at any land during the monsoon period. The allegation made by the Applicants is completely baseless and not supported by any evidence on record. It is submitted that the Respondent No. 6 had a good stock of sand which was stored after mining from the premonsoon period. In addition to its own stock, Respondent No. 6 also obtained the permission to collect and sell approximately 40,789.70 cubic meters of sand which was illegally mined, unclaimed and confiscated by the State Government. The Respondent No. 6 has only sold the sand which was stocked up with it or the sand which it had permission to sell off. It is reiterated that the Respondent No. 6 has conducted the mining in their

allotted area strictly in compliance with the environmental clearance granted to them. The Respondent No. 6 had not indulged into any mining during the monsoon period. The aforementioned is evident from the chart which shows the average quantity of sand mined during the pre-monsoon season, during the monsoon season and post monsoon season. A chart showing the average mining operation is annexed.

17. Rule 68 of the MP Minor Mineral Rules, 1986 have no application to the facts of the case. As explained above, Rule 17 of the MP Rules are applicable to the facts of this case. Rule 17 of the MP Rules specifically provides that the person or entity which holds a valid mining lease can obtain a license/permission for excavation of additional quantity of sand on private land. Respondent No. 6 is in complete compliance of the order dated 16.02.2016 passed by this Hon'ble Tribunal. Respondent No. 6 has obtained prior Environmental Clearances for the private lands on which it proposes to commence mining operations.

18. That till date the Respondent No. 6 has not commenced mining operation at any of the private land it has acquired on lease and for which it has not obtained necessary statutory permissions. Respondent No. 6 has not used heavy machineries for excavation of sand on private lands of farmers. It is pertinent to note that the mining activity of the Respondent No. 6 is subject to frequent inspections by the concerned government authorities. As per the General Conditions

of the environmental clearance granted to the Respondents the concerned District Mining Officer is mandated to monitor the compliances of the Respondents mining with the environmental clearance granted to it on quarterly basis and in case of default, report it to SEIAA. It is submitted that none of the government authorities have found or reported the Respondents to be non-compliant with the conditions of their environmental clearance. ”

9. The Learned Counsel for the applicant has argued that no statutory permission has been taken from the authorities concerned and the respondent is involved in illegal mining. In response thereof, the Learned Counsel for the respondent no. 6 has submitted that the respondent no. 6 has not commenced the mining operation at any of the private land, it has acquired on lease and for which it has not obtained the necessary statutory permission. Respondent no. 6 further argued that they have not used heavy machinery for excavation of sand on private of lands of farmers. The mining activities of Respondent no.6 is subject to frequent inspection by the concerned government authorities and as per general condition of environmental clearance granted to the respondents, the District Mining Officer is mandated to monitor the compliance of the respondents mining with the EC granted on quarterly basis and in case of default report to free for taking necessary action.
10. Learned Counsel for the State has argued that the District Administration has imposed a blanket ban from 29.06.2020 to 01.10.2020 on all the sand mining activities in district Panna vide order issued by the Collector dated 29.06.2020 and has stopped the mining activities in its entirety. In a drive against the illegal mining

140 cases of illegal transportation have been registered, 12 cases of illegal mining and 13 cases of illegal storage have been taken and mining branch is keeping vigilant eye upon all type of mining activities. Accordingly, as per version submitted by the State and the reply submitted by the State, no violation of environment norms has been found. Accordingly, no further action is required to be taken by this Tribunal at this level.

11. We make it clear that the primary duty to control the illegal sand mining is of the mining department and state pollution control board, thus we direct the State Pollution Control Board to periodically monitor the activities of sand mining and in case, if it is found that there are illegal sand mining or sand mining without any EC or violation of any condition of Environmental Clearance, the State Pollution Control Board is at liberty and duty bound to proceed in accordance with law and take necessary legal action as well as imposition of environmental compensation as per Rule.

The Original Application No. 87/2020 is **disposed** of accordingly.

Sheo Kumar Singh, JM

Arun Kumar Verma, EM

5th January, 2022
O.A. No. 87/2020(CZ)
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