

Item No. 6

(Court No. 2)

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

(Through Physical Hearing with Hybrid VC Option)

Original Application No.142/2022
(I.A. No.68/2022, I.A. No. 802/2023 & I.A. No. 803/2023, I.A No.
845/2023 and I.A. No. 848/2023)

Jayant Kumar

...Applicant

Versus

Ministry of Environment,
Forest and Climate Change & Ors.

...Respondents

Date of hearing: 04.12.2023

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER.
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER.**

Applicant: Mr. Vikas K. Singh, Advocate for Applicant.

Respondents: Ms. Suhasini Sen and Ms. Surbhi Advocates for
Respondent No.1-MoEF&CC.
Ms. Priyanka Swami Advocate for Respondent No.2
SEIAA (through VC)
Mr. Utkarsh Sharma, Mr. Sharad Chauhan and Mr.
Hem Chandra Advocates for Respondent No. 5 & 6-
Project Proponent.
Mr. Pradeep Misra and Mr. Daleep Dhyani Advocates
for UPPCB. (Through VC)
None for Respondents No.3 and 4.

Mr. Alex M. Scaria, Ms. Usha Nandini, Mr. Biju P.
Raman and Mr. John Thomas Arakal Advocates for
Applicants in I.A. No. 802/2023 & 803/2023
Mr. Rishabh Shukla Advocate for Applicant in I.A. No.
845/2023 & 848/2023.

Application under Section 18 of the National Green Tribunal Act, 2010 read with Rule 8 of the National Green Tribunal (Practice & Procedure) Rules, 2011

ORDER

1. I.A No. 802/2023 has been filed by K.T. Cyriac s/o Thomas resident of Neyyathumparambill House, Kaduthuruthy, Post Office, Kottayam, Kerala for impleadment and I.A No. 803/2023 has been filed by him for recalling of order dated 17.12.2022 and consequential orders passed in the present original application to the extent the same violate the order dated 31.01.2020 passed by Hon'ble Supreme Court of India in I.A No. 13951/2020 in Civil Appeal No. 3799-3800/2019 and to withhold all further proceedings in the present original application till the decision of above said appeal.

2. Learned counsel for respondent no.1-MoEF&CC has filed copy of I.A No. 13951/2020 in Civil Appeal No. 3799-3800/2019 filed before the Hon'ble Supreme Court of India.

3. We have heard Learned Counsel for the parties present on the above referred interim applications and gone through the relevant records.

4. Learned Counsel for Mr. K.T. Cyriac-the applicant in I.A No. 802/2023 has submitted that execution of order dated 13.09.2018 passed by this Tribunal in O.A. no. 186/2016 titled as *Satendra Pandey Vs. MoEF&CC & Anr.* was stayed by Hon'ble Supreme Court and Hon'ble Supreme Court also stayed coercive action against the officials of MoEF&CC in all execution proceedings till decision of the appeal.

5. This submission of Learned Counsel for the applicant in I.A No. 802/2023 is not substantiated and is, on the other hand, negated by the relevant record. For facility of reference the prayer in I.A No. 13951/2020 in Civil Appeal No. 3799-3800/2019 filed before the Hon'ble Supreme Court of India is reproduced as under:

"It is therefore most respectfully prayed that this Hon'ble Court may kindly be pleased to:-

- a) Stay operation of order dated 13.9.2018 passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi in OA No.200 of 2016, and/or;*
- b) Stay operation of order dated 16.12.2019 passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi in Execution Application No.55 of 2018 in O.A. No.520 of 2016, and/or,*
- c) Stay proceedings of Execution Application No.55 of 2018 in OA No.520 of 2016, and/or;*
- d) Pass any other or further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."*

6. The relevant part of order dated 16.12.2019 passed by this Tribunal in Execution Application No. 55 of 2018 in O.A. No. 520 of 2016 against which I.A. No. 13951/2020 in Civil Appeal No. 3799-3800/2019 was filed reads as under:

"In view of the above, let Joint Secretary, MoEF&CC concerned remain present in person to showcause why coercive measures may not be taken including stopping the salary of the concerned defaulters and directing their civil imprisonment under Section 25 of the National Green Tribunal Act, 2010 read with Section 51 of the Code of Civil Procedure, 1908"

7. I.A No. 13951/2020 in Civil Appeal No. 3799-3800/2019 was disposed of by Hon'ble Supreme Court of India vide order dated 31.01.2020 and the relevant part of the order reads as under:

"The appeals filed by the Union of India are likely to be listed for further hearing before this Court on 7 February 2020. Having regard to the fact that notice was issued on 8 April 2019 and the appeals are likely to be heard shortly hereafter, we are of the view that it would not be expedient in the interest of justice to pursue coercive action against the officials of the Ministry of Environment, Forest and Climate Change, at this stage. Hence, we request the National Green Tribunal to adjourn the proceedings in

execution as against the officials of MoEF&CC until the appeals by the Union of India are taken up by this court.

IA No 13951 of 2020 is accordingly disposed of. Pending applications for impleadment be also listed with the appeals on the next date of hearing.”

8. In the present case it is not disputed today that no order staying execution of order dated 13.09.2018 of this Tribunal was passed by Hon'ble Supreme Court. Since execution of order dated 13.09.2018 passed by this Tribunal not stayed by Hon'ble Supreme Court vide order dated 31.01.2020, order dated 07.12.2022 passed by this Tribunal directing respondent no. 1-MoEF&CC to revise the notification and to bring mining leases in which EC was granted by DEIAA in consonance with the directions given by Hon'ble Supreme Court in '*Deepak Kumar Vs. State of Haryana & Ors.* (2012), 4 SCC 629' and order dated 13.09.2018 of this Tribunal in O.A. no. 186/2016 titled as '*Satendra Pandey Vs. MoEF&CC & Anr.*' does not violate above referred order dated 31.01.2020 passed by Hon'ble Supreme Court. Therefore, no ground for recalling order dated 07.12.2022 and all consequential orders passed by this Tribunal and withhold all further proceedings in the present O.A. till the outcome of Civil Appeal No. 3799-3800/2019 pending before the Hon'ble Supreme Court of India is made out.

9. In the course of hearing, it has emerged that Mr. K.T. Cyriac is aggrieved by stoppage of mining for which EC was issued by DEIAA by the concerned authorities in the State of Kerala on the basis of order dated 07.12.2022 passed by this Tribunal but MoEF&CC has clarified vide affidavit dated 25.05.2023 filed before this Tribunal that EC granted by DEIAA from 15.01.2016 to 13.09.2018 will continue to be valid for one year as per the Ministry's OM dated 28.04.2023, subject to the compliance of the conditions prescribed therein and in view thereof, Mr.

K.T. Cyriac will be entitled to make appropriate representation to the concerned authorities for appropriate orders.

10. In the interim Application filed, Mr. K.T. Cyriac has referred to the order dated 18.10.2023 passed by Hon'ble Kerala High Court in WP(c) No. 34423/2023 but the interim applicant has not filed copy of writ petition to show that order dated 13.09.2018 passed by this Tribunal has been challenged in the above said case. Also, no direction requiring this Tribunal not to proceed any further in the present matter has been passed by Hon'ble Kerala High Court.

11. In view of the above, I.A. 802 of 2023 being devoid of any merit is dismissed without prejudice to availing of appropriate remedies by Mr. K.T. Cyriac.

12. Mr. Ram Bachan has filed I.A. No. 845 of 2023 for permitting the applicant to be impleaded in the present O.A. and I.A. No. 845 of 2023 for granting of ad-interim order/direction for staying all mining activities being carried out by Arun Kumar on the basis of Environmental Clearance dated 20.05.2016 issued by DEIAA/DEAC; and /or direct the Director of Mines & Geology, Government of U.P./District Magistrate Sonbhadra, Uttar Pradesh to cancel the Mining lease of Shri Arun Kumar dated 31.05.2016, or to take appropriate steps in accordance thereto.

13. The applicant has submitted that the matter has similar facts and same connectivity regarding the issues involved with regard to issuance of the Environmental Clearance dated 20.05.2016 and the Mining lease of Arun Kumar dated 31.05.2016 as in the present original application and all the judgement and orders passed by the Hon'ble Supreme Court and this Hon'ble Tribunal squarely apply on all leases in operation within the District of Sonbhadra, Uttar Pradesh including that of Arun Kumar.

14. We have heard the learned counsel for the applicant and gone through the relevant record.

15. The mere fact that the matter which is being raised in I.A. No. 845 of 2023 by the interim applicant Ram Bachan has similar facts and same connectivity regarding the environmental issues involved does not by itself warrant impleading of the interim applicant Ram Bachan in the present case. In fact, impleading of interim applicant Ram Bachan in the present case will change the nature/widen the scope of present proceedings and will necessarily require impleading of other necessary parties, filing of replies and re-hearing qua them and will unnecessarily delay disposal of the present case. In these facts and circumstances, no ground for impleading interim applicant Ram Bachan in the present case is made out particularly so when he has the equally efficacious remedy of filing separate original application before this Tribunal. In view of the above I.A. No. 845 of 2023 is dismissed with consequent disposal of I.A. No. 848 of 2023 is disposed of as being not maintainable without prejudice to filing of separate application by interim applicant Ram Bachan, if so desired.

16. It may be observed here that this Tribunal vide order dated 13.09.2018 in *Satendra Pandey (Supra)* directed MoEF&CC to take appropriate steps to revise the procedure laid down in the impugned Notification dated 15th January, 2016 in terms of the above directions and observations so that it is in conformity with the letter and spirit of the directions passed by the Hon'ble Supreme Court in *Deepak Kumar (Supra)*. MoEF&CC issued O.M. dated 12.12.2018 in compliance thereof.

17. In compliance of orders passed by this Tribunal in the present case MoEF&CC has issued O.M. dated 28.04.2023.

18. Learned Counsel for the applicant Jayant Kumar has submitted that O.M. dated 28.04.2023 granted validity for period of one year to mining leases in which EC was granted by DEIAA during the period from 15.01.2016 to 13.09.2018 but in the present case ECs in favour of respondents no. 5 and 6 were issued after 13.09.2018 and the project proponents are not entitled to continue with the mining under O.M. dated 28.04.2023. Respondents no. 5 and 6 are carrying on illegal mining and appropriate orders be passed against them.

19. It may be observed here that after passing of order dated 13.09.2018 by this Tribunal O.M. was issued by MoEF&CC on 12.12.2018. Validity period of one year has been granted to mining leases for which EC was granted by DEIAA during the period from 15.01.2016 to 13.09.2018 which does not apply to leases for which EC was granted by DEIAA during the period from 13.09.2018 to 12.12.2018.

20. Learned Counsel for respondent no.1-MoEF&CC seek time to file affidavit to clarify the position in respect of mining leases for which EC was granted by DEIAA after 13.09.2018 before the orders were conveyed to all concerned by issuance of O.M. dated 12.12.2018.

21. Affidavit be filed within two weeks through efilng portal (not through email) in the form of searchable PDF/OCR Supported PDF (not in the form of Image PDF).

22. Learned Counsel for respondents no. 5 and 6 have submitted that respondent no. 6 has already surrendered the mining lease. He also submitted that respondent no. 5 has already approached SEIAA for

appraisal and accordingly, Public Hearing was also held and he seeks time to file documents in this regard.

23. Documents in this regard be filed by respondent no.6 within two weeks through efilng portal (not through email) in the form of searchable PDF/OCR Supported PDF (not in the form of Image PDF).

24. The District Magistrate is also directed to submit his report regarding surrender of mining lease by respondent no. 6 within two weeks through efilng portal (not through email) in the form of searchable PDF/OCR Supported PDF (not in the form of Image PDF).

25. List for further consideration on 03.01.2024.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

December 04th, 2023
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