

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

Review Application No. 09/2023
IN
Appeal No. 39/2022

Deepak Kumar & Anr. Applicant(s)
Versus

State of Uttarakhand & Ors. Respondent(s)

M/s Balaji Stone Crusher ----- Review Applicant

WITH

Review Application No. 10/2023
IN
Appeal No. 39/2022

Deepak Kumar & Anr. Applicant(s)
Versus

State of Uttarakhand & Ors. Respondent(s)

State of Uttarakhand & Ors. ----- Review Applicant

Date of hearing: 15.03.2023

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

IN CHAMBER BY CIRCULATION

ORDER

1. This order will deal with Review Application Nos. 09/2023 and 10/2023 as both the application have been filed against common order of this Tribunal dated 30.01.2023 in Appeal No. 39/2022.

2. R.A. No. 09/2023 has been filed by M/s Balaji Stone Crusher, the Project Proponent {PP} who was granted EC which has been set aside by the Tribunal. R.A. No. 10/2023 has been filed by the Mining Department of the State supporting the PP and its action which was held to be illegal by this Tribunal.

3. Reference to order of the Tribunal dated 30.01.2023 shows that EC was granted for operation of stone crusher in District Dehradun which is a part of Eco-Sensitive Doon Valley Area. The area has been declared eco-sensitive vide Notification dated 01.02.1989 in pursuance of judgment of Hon'ble Supreme Court dated 30.8.1988 in *Rural Litigation & Entitlement Kendra v. State of U.P & Ors.*, (1989 Supp 1 SCC 504. The Hon'ble Supreme Court held that having regard to fragile ecology of the area where mining has devastating effect, such activities be prohibited in the area. Contrary to the judgment of the Hon'ble Supreme Court, stone crushing activity has been allowed by changing its category from 'red' to 'orange' without any study justifying such change. Notification dated 01.02.1989 requires impact assessment even for activities not covered by Notification dated 14.09.2006 on account of eco-sensitiveness of the area. Location of the site for stone crusher has to be in terms of norms laid down by the competent authority which is MoEF and not the mining department of the State in view of Notification dated 06.01.2020 issued by the MoEF&CC. Further, even the norms of Mining Department initially provided distance of 1 km from the river which was later reduced to 500 mtrs. vide policy dated 11.11.2021. Reduced distance is not applicable on the date of EC and in view of order of the Tribunal dated 07.12.2022 in OA No. 699/2022, *Sanjay Kumar vs. Union of India & Ors.* to the effect that there could not be any distinction in perennial and non-perennial rivers in view of Section 24 of the Water (Prevention and Control of Pollution) Act, 1974 and 'River Ganga

(Rejuvenation, Protection and Management) Authorities Order, 2016' dated 7.10.2016 issued by MoEF&CC under Section 3 of the EP Act and also earlier order of this Tribunal dated 29.10.2018 in OA No. 358/2016, *Bhag Singh vs. Union of India & Ors.* Limiting the distance to 50 mtrs was against the 'Sustainable Development' principle and also need for protection of the Flood Plain Zone. As per Revenue Record, the area was part of the submerged area of river and stand of PP that the distance was 600 mtrs from river was against record. The policy dated 11.11.2021 by which the distance was reduced was not applicable as EC had been granted on 12.08.2021 itself prior to the said policy. The Tribunal referred to the judgment of the Hon'ble Supreme Court in Doon Valley case and the observations are as follows:-

"22. We have already indicated that several expert Committees appointed by this Court have opined generally against continuing the mining activity in the Valley. The Second Working Group found in as late as 1987 that limited mining in the ongoing mines was not congenial to ecological and environmental discipline. This Court by its order on October 19, 1987¹, called upon the Union of India: (SCC p. 492, para 9)

"..... to place before the Court on affidavit the minimum total requirement of this grade of limestone for manufacture of quality steel and defence armaments. The affidavit should also specify as to how much of high grade ore is being imported into the country and as to whether other indigenous sources are available to meet such requirement. This Court would also require an affidavit from responsible authorities of the Union of India as to whether keeping the principles of ecology, environmental protection and safeguards and anti-pollution measures, it is in the interest of the Society that the requirements should be met by import or by tapping other alternate indigenous sources or mining activity in this area should be permitted to a limited extent. The Court expects the Union of India to balance these two aspects and place on record its stand not as a party to the litigation but as a protector of the environment in discharge of its statutory and social obligation for the purpose of consideration of the Court

The two affidavits filed on behalf of the Union of India have been dealt with elsewhere in the judgment and it would be sufficient for the instant aspect to extract from the affidavit of Mr. Seshan, Secretary to the Government in the Ministry of Environment and Forests, where he has stated :

¹ (AIR 1987 SC 2426)

"5.1 Union of India submits that from the point of view of protection of the environment in the unique Doon Valley, it would be desirable that lime stone mining operations in the Valley are stopped completely."

Mr. Nariman questioned the value of this statement in view of the indication in the affidavit that it was the department's submission to the Court. We do not think that the Ministry Secretary's affidavit can be brushed aside that way. Read in the background of the directions in the Order of October 19, 1987, and in the sequence of the first affidavit not having been accepted by the Court as compliance, we must assume that Mr. Seshan has disclosed the stand of the Union of India with full authority and with the intention of binding the Union of India by his statement.

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39. *In our order dated October 19, 1987, we had categorically indicated that mining in this area has to be stopped but instead of outright closing down total mining operations we were of the view that mining activity may have to be permitted to the extent it was necessary in the interest of defence of the country as also by way of the safe-guarding of the foreign exchange position. Pursuant to our direction in the said order² the Union of India filed an affidavit on November 18, 1987, through Dr. S. Maudgal, Director in the Department of Environment, Forests & Wildlife in the Ministry of Environment and Forests. That affidavit inter alia stated:*

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40. *Adverting to the question as to whether mining activity in this area should be permitted to a limited extent, keeping the principles of ecology in view, the affidavit stated:*

"The Union Government has all along taken the stand that the Doon Valley is a fragile eco-system and is endowed by nature with perennial water streams, lush green forests and scenic beauty. All these factors have contributed to Mussoorie being called the queen of hill stations and Dehradun becoming an important place of tourist attraction as well as centre of education. The unscientific and uncontrolled limestone quarrying operations spread over the entire 40 km. belt on the Mussoorie slopes however, endangered the delicate ecological balance resulting in ugly scars, excessive debris flow, drying up of water streams and perennial streams and rivulets and deforestation.

Taking note of the disastrous ecological consequences, the technical group constituted by the State and Union Governments since 1979 have consistently recommended only controlled mining in this area. The Technical Expert Committee constituted by the Honourable Supreme Court under the Chairmanship of Shri D.N. Bhargav examined all the operating quarries and came to the conclusion that all of them, to a larger

² (AIR 1987 SC 2426)

of smaller extent, have violated the statutory provisions relating to mines. Conditions in some of the mines were considered to be so bad that 20 of these were closed immediately in 1983. The Committee, under the Chairmanship of Shri D. Bandyopadhyaya examined the Mining and Environmental Management Plans prepared by parties and came to the unanimous conclusions that none of these plans are satisfactory. **Therefore, the Bandyopadhyaya Committee strongly recommended that none of the mines reviewed by it should be allowed to operate. It is relevant to reiterate here that closure of these mines has been recommended by the Bandyopadhyaya Committee not just on the ground that they are located within the Mussoorie city limits but after due consideration of the environmental implications, status of preparedness of mining and Environmental Management Plans and capability of the lessee to under-take mining operations on a scientific basis so that the damage to life and property, apart from environmental degradation, is avoided. None of the mines already closed is, therefore, fit to be considered for operation.**

It is the view of Government that to prevent any further degradation of the ecology and environment in the area and to allow for rejuvenation, it is essential that limestone mining operations, if they are to continue, should be on a limited scale and completely regulated to ensure that they are done in an entirely scientific manner consistent with the imperatives of preservation and restoration of the ecology and environment in this area. In order to meet the essential requirements of steel industry, it would be necessary to maintain supply of low silica limestone from the Dehradun Mussoorie area. The State Government of U.P. also has brought to our notice that certain other vital industrial and agricultural operations are dependent on limestone supplies from this area. In view of these considerations, it is felt that limestone mining on a limited scale may have to continue under strict regulation."

*This affidavit of Dr. Maudgal was not accepted by this Court as it did not fulfil the requirements of the directions given in this Court's order dated October 19, 1987. **Then came another affidavit dated February 24, 1988, by Shri T.N. Seshan, Secretary in the Ministry of Environment and Forests.** This affidavit indicated that 90 per cent of the low silica high grade limestone was supplied by the Rajasthan mines to the Steel Authority of India Ltd. and 10 per cent of supplies came from the Dehradun quarries. Tata Iron and Steel Company at Jamshedpur, however, received a sizeable supply from the Dehradun quarries. According to this affidavit, in 1986, the total production of high grade limestone in the Dehradun-Mussoorie area was 6.02 lakh tonnes. The affidavit indicated availability of such limestone in several other parts of the country. In regard to import of limestone and foreign exchange components, this affidavit indicated that as low silica high grade limestone is available from indigenous sources, import thereof could be dispensed with. In paragraph 5 of this affidavit, the question as to whether keeping in view the principles of ecology, mining activity in the Dehradun-Mussoorie area could be*

permitted to a limited extent, perhaps as pleaded in the earlier affidavit, has been dealt with. This affidavit stated:

*"5.2 Now that high grade low silica limestone is also available in the extensive deposits covering large areas in the State of Rajasthan which can meet the requirements of the steel industry which also includes Defence requirements, **there is justification for discontinuance of the existing mining operation in the Dehradun-Mussoorie area and, in fact, complete closure of the said mines in this area.**"*

*It is fact that while in the first affidavit, controlled and limited mining was suggested, in the second affidavit filed after a gap of about three months total stoppage of mining activity in this area has been stressed. Counsel appearing on behalf of the State of Uttar Pradesh and UPSMDC offered serious criticism against this changed stance and we were called upon to reject the second affidavit also. We do not find any justification in this plea for rejection of the affidavit. This Court in its order of October 19, 1987, had in clear terms indicated what aspects were exactly required to be answered by the affidavit of the Union of India. Since the first affidavit did not answer those points it was rejected and a further affidavit was directed to be filed. **There can be no two opinions that both the affidavits pleaded for banning of mining; but the first affidavit suggested controlled and limited mining in view of the demands while the second affidavit, on consideration of the fact that alternate sources were available for supply of the limestone of the desired quality, asked for total stoppage of mining operations.** As we have already indicated in another part of this judgment, awareness of the environmental problem has been gradually increasing and though in the first affidavit, the Union of India had expressed its view that limited and controlled mining could be permitted, on a reconsideration of the matter and taking into account the relevant aspects for reaching its conclusion, **the Union of India has come to adopt the view that there should be no mining in this area.** We can well gather why the UPSMDC would feel aggrieved by the second affidavit but so far as the State of Uttar Pradesh is concerned, we do not see any justification in its critical stand against the second affidavit on the plea that the stand accepted in the first affidavit has been given a go by. Maintenance of the environment and ecological balance is the obligation of the State and the Central Governments and unless there was any real objection to the opinion of the Union of India as to continuing or closing down of mining activity, it should have been taken in the proper light and the little modified stand adopted in the second affidavit should have been welcomed."*

4. In the Review Applications, reliance has been placed on policy dated 11.11.2021 which has been already held to be inapplicable, being after the date of EC. Further reliance has been placed on reduced distance applicable to sub category of non-perennial river which has already been struck down by this Tribunal on the ground that distinction between

perennial and non-perennial river was not justified. Further contention is that entry revenue record is not correct. Prohibited area being upto 1 km., the contention that the distance is 570 kms which is permissible cannot be accepted. Further, location criteria has to be laid down by the MoEF&CC under the EP Rules and not by the Mining Department, as already observed. Permissible activity in the area has to be consistent with the eco-sensitiveness of the area in terms of the judgment of the Hon'ble Supreme Court in Doon Valley case.

5. Plea has also been raised about limitation, which issue has already been dealt with by this Tribunal and rehearing on merits is not within the scope of review.

6. In the RA filed by the Mining Department, there is no further contention.

Both the applications will stand dismissed.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

March 15, 2023
Review Application No. 09/2023 &
Review Application No. 10/2023 In
Appeal No. 39/2022
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