

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

Original Application No. 702/2022
(I.A. No. 229/2022)

Deepak Kumar & Anr.

Applicant(s)

Versus

State of Uttarakhand & Ors.

Respondent(s)

Date of hearing: 01.03.2023

**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**

Applicant: Mr. Ajit Sharma, Advocate

Respondent: Mr. Rahul Verma, AAG for the State of Uttarakhand

ORDER

1. Grievance in this application is against violation of judgment of the Hon'ble Supreme Court dated 30.8.1988 in *Rural Litigation & Entitlement Kendra v. State of U.P & Ors.*, (1989) Supp 1 SCC 504 directing preventive and remedial measures in the light of eco sensitiveness of the Doon Valley area and devastating effect of mining on its fragile ecology, considering the reports of the Expert Committees and the stand of the Ministry of Environment, Forest and Climate Change (MoEF&CC).

2. We note that the application was earlier considered alongwith Appeal No. 39/2022, *Deepak Kumar & Anr. vs. State of Uttarakhand & Ors.* filed by the same applicant vide order dated 30.01.2023 and while disposing of the appeal, it was directed that OA be listed separately after serving set of papers on MoEF&CC, CPCB, State PCB, State of

Uttarakhand and SEIAA, Uttarakhand to enable them to furnish their response, if any, before the next date by email and file an affidavit of service within one week. Scope of OA was noted as follows:

“2. OA seeks quashing of Notification dated 06.01.2020 issued by MoEF&CC, order dated 15.01.2021 passed by the Uttarakhand State Pollution Control Board by which screening plants have been recategorized from ‘red’ to ‘orange’ category and siting criteria as per notifications of the Uttarakhand Government under the provisions of Mines and Minerals Act 1957 - Uttarakhand Stone Crusher, Screening Plant, Mobile Stone Crusher, Pulveriser Plant, Hot Mix Plant, Readymix Plant Anugya Niti, 2020 (2020 policy), replaced by Uttarakhand Stone Crusher, Screening Plant, Mobile Stone Crusher, Pulveriser Plant, Hot Mix Plant, Readymix Plant Anugya Niti, 2021 (2021 policy) with consequential directions against operation of stone crushers by virtue of said provisions.”

3. Learned Counsel for the applicant has drawn our attention to the pleadings in the application and order of the Tribunal in Appeal No. 39/2022 dated 30.1.2023.

4. The record shows that as per notification dated 01.02.1989, under Section 3 of the Environment (Protection) Act, 1986 (EP Act), issued in the wake of judgment of the Hon’ble Supreme Court in Rural Litigation and Entitlement Kendra, supra, only specified activities are permissible subject to aid down restrictions. Mining and stone crushing activities are not permitted as they fall in red category and are not in the annexure listing permissible activities. Vide Notification dated 13.12.2007, under Section 5 of the EP Act, it was directed that even permitted activities will have to follow impact assessment procedure laid down in EIA Notification dated 14.09.2006, even if they do not fall in the EIA Notification as such. CPCB vide order dated 07.03.2016 under Section 18(1)(b) of the Water (Prevention and Control of Pollution) Act, 1974 modified earlier categorisation and placed stone crushing activity in orange category. Thereafter, vide notification of MoEF dated 06.01.2020, earlier Notification dated 01.02.1989 was amended replacing Annexure to notification dated 1.2.1989 listing permissible activities in terms of CPCB

order dated 07.03.2016 under Section 18(1)(b) of the Water (Prevention and Control of Pollution) Act, 1974 and the Air Water (Prevention and Control of Pollution) Act, 1981 for harmonization of classification of industries under 'red', 'orange', 'green' and 'white' categories. It may be noted that though CPCB categorisation is general, the same has been made applicable to eco sensitive zone for which, according to the petitioners, no particular study has been conducted. Thus, stone crushing is taken as orange category and in view of general categorisation by CPCB taken as permissible in eco sensitive zone also as per notification dated 6.1.2020.

5. The said notification puts restrictions and makes the amendment subject to compliance of siting criteria approved by the 'competent authority' as shown by the operative part of the said notification as follows:

"In the said notification, for clauses (i), (ii), (iii), (iv), (v) and ANNEXURE, the following shall be substituted, namely:-

*"(i) **Location/siting of industrial units** - It has to be as per modified directions issued by the Central Pollution Control Board (CPCB) vide letter No. B-29012/ESS(CPA)/2015-16, dated the 7th March, 2016 under section 18(1)(b) of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 regarding harmonization of classification of industrial sectors under red/orange/green/white categories and as may be amended from time to time by the CPCB and the Ministry of Environment, Forest and Climate Change.*

*(ii) **Mining** - Approval of the Union Ministry of Environment, Forest and Climate Change must be obtained before starting any mining activity.*

*(iii) **Tourism** - It should as per Tourism Development Plan (TDP), to be prepared by the State Department Tourism and duly approved by the Union Ministry of Environment, Forest and Climate Change.*

*(iv) **Grazing** - As per the plan to be prepared by the State Government and duly approved by the Union Ministry of Environment, Forest and Climate Change.*

*(v) **Land Use** - As per Master Plan of development and Land Use Plan of the entire area, to be prepared by the State*

Government and approved by the Union Ministry of Environment, Forest and Climate Change.

Note:

- (a) **Red categories of industries shall not be permitted in Doon Valley;**
- (b) The total number of fuel burning industries that shall be permitted in the Doon Valley shall be limited by 8 tonnes per day of Sulphur Dioxide from all sources. (This corresponds to 400 tonnes per day Coal with 1 % Sulphur);
- (c) **Siting of Industrial areas shall be based on the prescribed criterion and with prior approval of Competent Authority;**
- (d) Existing orange categories industries, which are now in the red categories of industries shall be continued, however, no expansion shall be allowed."

6. Under section 6(2)(e) of the EP Act and Rule 5(3)(a) of the EP Rules, authority to lay down siting criteria is Central Government. The said provision is reproduced below:

“6. Rules to Regulate environmental pollution.

- (1) *The Central Government may, by notification in the Official Gazette, make rules in respect of all or any of the matters referred to in section 3.*
- (2) *In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--*

- (a) to (d) *xx.....xx.....xx*
- (e) **the prohibition and restrictions on the location of industries and the carrying on of processes and operations in different areas;”**

xxx.....xxx.....xxx

“5. Prohibitions and restrictions on the location of industries and the carrying on processes and operations in different areas–

- (1) *xxx.....xxx.....xxx*
- (2) *xxx.....xxx.....xxx*
- (3) (a) **Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the locations of an industry or the carrying on of processes and operations in an area, it may, by notification in the**

Official Gazette and in such other manner as the Central government may deem necessary from time to time, give notice of its intention to do so.”

7. Under rule 3, standards of emission from stone crushing units are laid down as per Entry 37 of Schedule I to the EP Rules but no siting criteria has been laid down by it so far. In absence thereof, it is doubtful that stone crushing activity can be taken as permitted in terms of notification dated 6.1.2020. Siting criteria laid down by the State Government under the provisions of the Mines and Minerals Act cannot be taken as substitute for criteria to be prescribed with reference to EP Act and the Rules as State is not competent authority to do so. Even as per the said criteria laid down by the State under Mining law, on the date of grant of EC as per 2020 policy, distance from river has to be one km for perennial river. For non perennial, such distance is 500 meters. Said distinction has been struck down by this Tribunal and longer distance has thus to be taken as prescribed distance. Further, as per 2021 policy dated 11.11.2021, such distance has been further reduced as follows:

“

Sl. No.	Place	Minimum Distance of Stone Crusher and Screening Plant
1.	Government Forest	100 meter
2.	(A) From the bank of Ganga River District Haridwar	1 Km.
	(B) From the bank of perennial river in other plains	500 meter
	(C) From the bank of non-Perennial river	50 meter
5.	Religious places (Temple, Mosque, Gurudwara & Church etc.)	300 meter
6.	School, Educational Institute, Hospital, Nursing Home etc.	300 meter
7.	Distance from Population	300 meter

”

8. Vide order dated 07.12.2022 in OA No. 699/2022, *Sanjay Kumar vs. Union of India & Ors.*, this Tribunal considered the issue of validity of classification of streams into perennial and non-perennial for siting criteria for stone crushers. Referring to the said criteria not being

consistent with Section 24 of the Water Act 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.*, the Tribunal held that distinction of perennial and non-perennial for location of stone crushers was against the sustainable development principle. **It was further held that permitting such establishments within 50 meters of the river will be inconsistent with the need for protection of flood plain zones** as held by the Tribunal vide order dated 15.12.2020 in O.A. No. 22/2020(EZ), *Dilip Kumar Samantaray vs. State of Odisha Board & Ors.* No activity is permissible within 100 meters from the river which is taken as flood plain zone till it is demarcated. Nature of activity permissible beyond 100 meters depends on such activity and its impact on environment. In violation of judgment of the Hon'ble Supreme Court based on Expert Committee reports requiring protection of Doon Valley from unscientific and uncontrolled limestone mining, the stone crushing which is as hazardous as mining has been allowed in the eco sensitive zone. Notification dated 06.01.2020 does not meet the sustainable development requirement.

9. Apart from above, there is challenge to the CPCB order dated 07.03.2016 under Section 18(1)(b) of the Water (Prevention and Control of Pollution) Act, 1974 changing stone crushing activity from red, which is prohibited in Doon valley area, to orange category. Further challenge is to order issued by the State PCB dated 15.01.2021 recategorizing screening plants from 'red' to 'orange' category, thereby allowing such plants to be set up without any impact assessment. Further challenge is to declare the Uttarakhand Stone Crusher, Screening Plant, Mobile Stone Crusher, Pulveriser Plant, Hot Mix Plant, Readymix Plant Anugya Niti, 2021

permitting location of such plants close to environmentally sensitive locations thereby resulting in damage to environment.

10. We have heard learned Counsel for the applicant. He submits that prayers in the application be allowed.

11. However, there is no response by any of the contesting parties and we are of the view that one more opportunity needs to be given before passing final order in the matter. We may note that while disposing of Appeal No.39/2022 vide order dated 30.1.2023, the Tribunal delinked the present application, which was earlier directed to be listed alongwith the said appeal as follows:

“.....The OA be listed separately on 01.03.2023. The applicant may serve a set of papers on MoEF&CC, CPCB, State PCB, State of Uttarakhand and SEIAA, Uttarakhand to enable them to furnish their response, if any, before the next date by email and file an affidavit of service within one week. The response may specifically explain how in violation of judgment of the Hon’ble Supreme Court mining permissions are being granted in doon valley area.”

12. In pursuance of above, proof of service has been filed by the applicant on 6.2.2023 but still no response has been filed though the State is represented by Counsel. We see no reason for such failure on the part of the contesting respondents. However, having regard to the significance of the issue raised in the application including the compliance of earlier judgment of Hon’ble Supreme Court in *Rural Litigation & Entitlement Kendra*¹ (supra), we give last opportunity to respondents, particularly Respondents No. 1, 2, 5 and 9 – State of Uttarakhand, MoEF&CC, State PCB and CPCB respectively to file their response, if any, within four weeks from today by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF. If no response is filed, the Tribunal will take decision on merits.

¹ (1989 Supp 1 SCC 504

List for further consideration on 19.04.2023.

A copy of this order be forwarded to State of Uttarakhand, MoEF&CC, State PCB and CPCB by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

March 01, 2023
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