

Item No. 10

Court No. 1

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

Original Application No. 188/2023
(IA No. 386/2024, IA No. 92/2023, IA No
91/2023, IA No. 76/2023)

Gaurav Kumar

Applicant

Versus

State of Uttar Pradesh & Ors.

Respondent(s)

Date of completion of hearing and reserving of order: 20.08.2024
Date of Pronouncement of order: 02.09.2024

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Ajit Sharma & Mr. Kanchan Kumar, Advs. for Applicant

Respondent: Mr. Pinaki Misra, Senior Advocate with Mr. Ankit Verma, Adv.
for the State of Uttar Pradesh
Mr. Pradeep Misra & Mr. Daleep Dhyani, Advs. for UPPCB (Through VC)
Ms. Richa Kapoor & Ms. Atika Singh, Advs. for MoEF & CC
Mr. Vanshdeep Dalmia, Mr. Shubham Karnwal & Ms. Anisha Jain, Advs.
for R - 6 to 17

ORDER

1. In this Original Application, applicant has challenged the auction notice dated 13.02.2023 for auction of various sites identified for river bed sand mining in District Saharanpur, Uttar Pradesh on the ground that the District Survey Report (DSR) for District Saharanpur was prepared in the year 2017 which was valid for five years and has lapsed in 2022. Thereafter, no fresh DSR was prepared and without there being any final DSR, the impugned auction notices have been issued which cannot be sustained. The applicant has also challenged the draft DSR, Saharanpur dated 13.01.2023 on various grounds of procedural irregularity.

2. The Tribunal by order dated 13.03.2023 had constituted a joint Committee with a direction to the Committee to visit the site, collect relevant information and submit a factual report before the Tribunal. The joint Committee had submitted the report dated 10.07.2023 disclosing that all the proposed sites under challenge were auctioned for River Bed Mining (RBM). 11 sites are located on river Yamuna and remaining sites are located on Perennial River. It discloses that LOIs were issued in respect of the 14 sites. It was further found by the joint Committee that the mining activity cannot be started till necessary approval from all concerned Department such as Environmental Clearance, NOC from Ground Water Department, CTE, CTO from SPCB etc. is obtained.

3. The Tribunal had considered the report of the joint Committee on 06.11.2023 and had noted that the report did not disclose if the fresh DSR was prepared by SEIAA, UP.

4. The Tribunal on 08.11.2023 had found that LOIs were issued to 12 intending lease holders in May and August, 2023. Accordingly, these 12 intending lease holders were impleaded and applicant was directed to serve them. The Tribunal by interim order dated 08.11.2023 had also directed that ECs will not be issued to the newly added respondents by the competent authority without the leave of the Tribunal.

5. The order of the Tribunal dated 08.11.2023 was subject matter of challenge before the Hon'ble Supreme Court in Civil Appeal No. 4611/2024. The said Civil Appeal was disposed of by Hon'ble Supreme Court vide order dated 01.04.2024 noting that the Appellant's therein (M/s Doon Mines and Minerals and Ors.) had moved the Tribunal for clarification of the order dated 08.11.2023. While disposing of the Civil

Appeal, Hon'ble Supreme Court had required the Tribunal to take up the application for clarification expeditiously.

6. The Tribunal by order dated 25.04.2024 had disposed of the modification/clarification application by clarifying that it was implicit in the order dated 08.11.2023 that the proceedings for grant of EC can continue in the meanwhile.

7. The Tribunal on 07.05.2024 took note of the fact that the fresh DSR for District Saharanpur was considered and approved in the joint Committee meeting of SEAC-1 and SEAC-2 on 03.05.2024 and forwarded to SEIAA for approval and the meeting of SEIAA was fixed for 03.05.2024. Thus, the undisputed position before the Tribunal was that the impugned auction notice was issued before approval of the DSR Saharanpur by SEAC and SEIAA. Hence, the Tribunal by order dated 07.05.2024 had modified the earlier interim order and restrained the official respondents from taking any further action in furtherance to the impugned auction notice dated 13.02.2023 in favour of any of the respondent-Project Proponents.

8. The UPPCB on 07.11.2023 had filed certain documents unsupported by any application or reply. The applicant had filed objection to the report of the joint Committee. MoEF&CC has also filed the response placing on record the relevant notifications and orders. The Project Proponent-M/s Doon Mines and Minerals and the other Project proponents- respondent nos. 6 to 17 have also filed their replies placing on record their stand and opposing the prayer made in the OA.

9. A separate reply has been filed by respondent no. 3, SEIAA (UP) reiterating the legal position that DSR for sand mining shall be prepared

before auction/e-auction/granting mining lease/LOI by the Mining Department.

10. With consent, we have heard Learned Counsel for all the parties at length.

11. The undisputed factual position on record is that the DSR for District Saharanpur was prepared in the year 2017 which has been placed on record as Annexure-A to the OA. This DSR was valid for a period of five years and it has lapsed in the year 2022. Fresh DSR for District Saharanpur was not prepared and finalized immediately after lapse of earlier DSR in 2022. A draft DSR for District Saharanpur was prepared on 13.01.2023. The draft DSR was approved in the joint meeting of SEAC-1 and SEAC-2 on 03.05.2024 and it was sent for approval to SEIAA. During the course of hearing, we have been informed that SEIAA has approved the DSR in its 814th Meeting dated 24.05.2024. Meaning thereby, undisputedly, no final DSR with due approval of SEAC and SEIAA was available when the impugned auction notice dated 13.02.2023 was issued. At that stage, only the draft DSR of District Saharanpur dated 13.01.2023 was issued which was yet to be considered and approved by SEAC and SEIAA and finalized by SEIAA.

12. In the aforesaid undisputed factual background, the question which arise for consideration is if impugned auction notice dated 13.02.2023 could be issued by the District Magistrate, Saharanpur for auctioning the sand mines in question without there being any final DSR for the District Saharanpur.

13. It is not in dispute that the DSR is mandatorily required for the purpose of sand mining in a District. MoEF&CC has issued "Enforcement

and Monitoring Guidelines for Sand Mining, 2020” which in clear terms provides that:

“Considering the importance of district survey report, the Ministry of Environment Forest and climate change, after consultation with experts dealing with mining-related matters, formulated the following guidelines for the preparation of comprehensive District Survey Report for sand mining.

a) District Survey Report for sand mining shall be prepared before the auction/e-auction/grant of the mining lease/Letter of Intent (LoI) by Mining department or department dealing the mining activity in respective states.”

14. MoEF&CC exercising the powers conferred by Section 3 (2) (v) (i) of the Environment (Protection) Act, 1986 had issued the Notification dated 15.01.2016 amending earlier Notification dated 14.09.2006 providing for the procedure for the preparation of the DSR and making it clear that –
“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.”

15. Hon’ble Supreme Court while considering the issue of preparation of DSR for District Banka in *Civil Appeal No. 3661-3662/2020* in the matter of *State of Bihar & Ors. vs. Pawan Kumar and Ors.* by order dated 10.11.2021 had taken note of the Sand Mining Guidelines, 2020 and held as under:-

“10. It could thus be seen that in accordance with the 2020 guidelines, the DSR is required to be prepared before the auction/e-auction/grant of mining lease by Mining Department or Department dealing with mining activity in the respective States. It is further provided that the potential site for mining having its impact on the forest, protected area, habitation and bridges should be avoided. For this, a sub-divisional committee is required to be formed which, after the site visit, is required to decide regarding the suitability of the sites for mining. The sub-divisional committee is further required to record its reasons for selecting the mining lease in the patta land. Various details are required to be given in the annexures appended to the said policy.”

16. In the matter of Pawan Kumar (Supra), the Hon'ble Supreme Court had directed preparation of the fresh DSR in all the District of Bihar for the purpose of mining and had also directed appraisal of SEAC and SEIAA while preparing the DSR by holding as under:-

“(ii) Needless to state that while preparing DSRs and the appraisal thereof by SEAC and SEJAA, it should be ensured that a strict adherence to the procedure and parameters laid down in the policy of January 2020 should be followed;”

17. Hence, in view of the Sand Mining Guidelines, 2020 and the judgment of the Hon'ble Supreme Court in the matter of Pawan Kumar (Supra), it is clear that before finalizing the DSR, appraisal of SEAC and SEIAA is necessary and the procedure and parameters prescribed in the policy of 2020 is required to be strictly adhered to and that the DSR in accordance with Sand Mining Guidelines, 2020 is necessary before auctioning/e-auctioning/granting mining lease by the Mining Department.

18. The Tribunal had also considered this issue in the matter of *Dinesh Kumar vs. Mining Officer, Seoni & Ors. in O.A. No. 41/2022 (CZ)* decided on 13.09.2022 wherein the Tribunal after taking note of the Sand Mining Guidelines, 2020 had held as under:-

“20. State of Madhya Pradesh in its rules named Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rules, 2019 has provided the procedure for procurement of mining leases in State with the statutory permissions in accordance with the environmental rules as contained in Chapter-6 Section 12 which has been quoted above. In addition to above, the MoEF & CC, in supplement and addition to the Sustainable Sand Mining Management Guidelines, 2016 issued the Sustainable Sand Mining Management Guidelines, 2020 giving importance to the DSR and monitoring mechanism. The guidelines issued in 2020 in point no.4.1.1 (A) requires that DSR for sand mining shall be prepared before the auction/e-auction/ grant of the mining lease/ Letter of Intent (LOI) by Mining Department or department dealing in the mining activity in the respective state. The DSR is to be prepared in such a way that it not only identified the

mineral bearing area but also define the mining and no mining zones considering various environmental and social factors. The State Government shall issue Letter of Intent as per procedure laid down in there Mine and Mineral Concession Rules with due consideration of final DSR and that all districts have been required to prepare a comprehensive mining plan as per the provisions of District Survey Report and these report shall be put on the website of district administration. No mining shall be allowed in the area which had not been identified in the comprehensive mining plan of the district.”

19. Hence, we find that in view of Sand Mining Guidelines of 2020 and the judgment of the Hon’ble Supreme Court in the case of Pawan Kumar (Supra) the auction of the sand mines cannot be done in the absence of the valid DSR, therefore, an auction notice issued without there being a valid DSR is bad in law and cannot be sustained.

20. A plea has been raised by the Counsel for the respondent that the auction notice was issued on the basis of the draft DSR which has subsequently been approved by SEAC and SEIAA, therefore, such auction notice should be upheld. In the present case undisputedly on the date of issuance of the auction notice, there was no valid DSR. Only draft DSR was existing which was not approved by SEAC or SEIAA when the auction notice was issued. SEAC and SEIAA are required to duly consider the draft DSR and they can appropriately modify it to ensure that it is in line with the Environmental requirements and it does not result in damage to environment, or river ecology by permitting improper sand mining. Therefore, merely on the basis of the draft DSR, before its approval by the SEAC and SEIAA, the District Authorities cannot be permitted to auction the sand mines.

21. A plea has also been raised that respondent-Project Proponent may be allowed to do the sand mining on the basis of the LOI issued to them to ensure regular supply of sand in the market. A similar situation had arisen before the Hon’ble Supreme Court in the matter of Pawan Kumar

(Supra) wherein Hon'ble Supreme Court in order to mitigate the difficulty had permitted the State Government to carry on the mining activity through the State Mining Corporation by directing as under:-

“(iii) Until further orders, we permit the State Government to carry on mining activities through Bihar State Mining Corporation for which it may employ the services of the contractors. However, while doing so, the State Government shall ensure that all environmental concerns are taken care of and no damage is caused to the environment.”

22. Somewhat, similar situation prevails in the present case also.

23. At this stage, it is worth noting that another OA No. 98/2024, *Vivek Pandey vs. Ministry of Environment Forest and Climate Change through its Secretary* relating to District Pilibhit of UP involving the same issue was connected with this OA and when the legal position in respect of unsustainability of the auction notice before finalization of the DSR was brought on record, the District Magistrate, Pilibhit had withdrawn the auction notice and taken the stand before the Tribunal that fresh auction notice will be issued after preparation of DSR and its approval. Therefore, on 07.05.2024, that OA was disposed of recording the stand of the District Magistrate, Pilibhit but in this OA, adjournment was sought by taking the technical plea seeking opportunity to file the reply and this OA remained pending.

24. We also take note of the fact that the fresh DSR has been titled as “Updated District Survey Report(DSR)- Saharanpur (River Bed Mining)- Year 2022” which is a misleading title because after the expiry of the DSR of 2017, the draft DSR was published on 13.01.2023 and the said draft DSR has been approved by SEIAA on 24.05.2024. Therefore, there was no continuity between old expired DSR and new subsequent DSR. Thus, it appears that to artificially fill in the gap, when no DSR for District

Saharanpur was existing after expiry of the earlier DSR in 2022, the misleading title to the fresh DSR has been given. Hence, respondents are expected to correct the title of new DSR-Saharanpur.

25. In view of the above analysis, we hold as under:-

- (i) The e-auction notice dated 13.02.2023 and the consequential action of issuance of LOI etc. in pursuance thereto is bad in law having been issued without there being any valid and final DSR for the District. Hence, the e-action notice dated 13.02.2023 and the consequential action is set aside. The concerned District Magistrate is permitted to take fresh steps for e-auction of the sand mining based upon the final DSR as approved by SEIAA.
- (ii) Since, it is a monsoon season at present, therefore, normally no sand mining activity is carried out in this season. However, if the sand mining season starts before the finalization of the fresh auction, to maintain continuous supply of sand, the State of UP through its agency such as UP State Mining Corporation is permitted to carry out the sand mining activity in the sites concerned. For this purpose, it may employ the services of the contractor by ensuring that all environmental concerns are taken care of and no damage is caused to the environment.
- (iii). The applicant has also challenged the draft DSR dated 13.01.2023 but in the meanwhile, the final DSR has been approved by SEIAA on 24.05.2024, therefore, challenge to the draft DSR does not survive. It will be open to the

applicant to challenge the final DSR for Saharanpur in accordance with law, if he so desires.

26. The OA is accordingly dismissed.

27. All pending IAs will stand disposed of accordingly. I.A. No. 386/2024 filed by District Magistrate, Saharanpur seeking modification of the order dated 07.05.2024 also does not survive which is accordingly rejected.

Prakash Shrivastava, CP

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

September 02, 2024
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