

Item No.08

Court No. 1

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

Original Application No.188/2023
(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 hearing: 07.05.2024

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

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

Respondent: Mr. Pradeep Misra & Mr. Daleep Dhyani, Advs. for UPPCB (Through VC)
Ms. Priyanka Swami, Adv. for the State of UP & SEIAA, UP
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 questioned the auction notice dated 13.02.2023 on the ground that DSR for Saharanpur District has not been prepared and without there being any District Survey Report (DSR), auction notice dated 13.02.2023 for auction of various areas for river bed sand mining in District Saharanpur, UP has been issued.
2. Plea of the applicant is that old DSR for District Saharanpur was prepared in 2017 which lapsed after five years in 2022 and thereafter, there was no fresh DSR prepared. Hence, auction notices cannot be sustained

3. Tribunal on 08.11.2023 had impleaded twelve affected project proponents and directed issuance of notice to them.

4. Reply filed by respondent no.3-SEIAA dated 04.05.2024 clearly reflects that joint meeting of SEAC-1 and SEAC-2 was scheduled on 03.05.2024 and minutes of the joint meeting are under preparation. This is also reflected in annexure-5 filed along with that report.

5. Reply on behalf of respondent nos. 1 and 4 dated 04.05.2024 mentions that after following all the procedures the SEAC has considered the DSR of Saharanpur District and sent for SEIAA's approval which is fixed for 3rd May, 2024.

6. Learned Counsel appearing for SEIAA on instructions has informed that though in the joint committee meeting of SEAC-1 and SEAC-2 on 03.05.2024 fresh DSR has been approved but it is yet to be approved by SEIAA, UP.

7. From the above response and stand of the concerned authorities, it is clear that after the earlier DSR had expired in the year 2022, fresh DSR for District Saharanpur has not been approved by SEIAA till now.

8. Law relating to validity of any auction notice for auctioning the mining site without preparation of DSR has already been settled by Tribunal in the matter of *Ajit Kumar v. State of Madhya Pradesh & Ors.* in OA No.38/2022 by order dated 17.10.2022 wherein Tribunal has held as under:-

“45.The main questions raised in this petition are as follows:-

*i. **Question No. 1 :** Requirement of DSR and its finality.*

***Answer:** The Sustainable Sand Mining Management Guideline, 2016 & 2020 provides for the preparation of DSR and MoEF has issued necessary directions. It is settled*

Law that District Survey Report for Sand Mining shall be prepared before the auction/eauction/grant of mining lease by the Mining Department or department dealing with the mining activities in the respective States. DSR is to be approved at the level of SEIAA with the help of SEAC. The DSR becomes final on the date when it is approved by the SEIAA. With regard to the DSR relating to the district Raisen it was approved on 23.05.2022. Thus, the valid DSR/approved DSR came into existence on 23.05.2022 district Raisen, the question is replied accordingly.

- ii. **Question no. 2:** Sanctity of NIT in absence of DSR or DSR duly approved by SEIAA.

Answer: *In view of the discussion made above and in view of Prabhat Mohan Pandey case (Supra) and the direction issued in the Pawan Kumar Case, the action of NIT in absence of valid DSR is in violation of Sand Mining Guidelines issued in 2016 & 2020, it becomes final only after the approval of the SEIAA. Any NIT before the date of approval of DSR by SEIAA is in contravention of the Rules, Guidelines and the directions issued by the Hon^{ble} Supreme Court. The question is replied accordingly.*

- iii. **Question no. 3:** Continuance of mining operation, in absence of valid environment clearance or after expiry of the term.

Answer: *Any mining activities on the basis of environmental clearance which was expired w.e.f. 31.03.2021 & 31.03.2022 ceased to be in accordance with law and the mining activities and EC granted in violation of category is also against the provisions of law and against the Sustainable Sand Mining Rules, 2020.”*

9. Tribunal in that matter had held as under:-

“47. In view of the above facts, the summary of the conclusions and directions are as follows :-

- i. *The DSR in the district Raisen was finalized/approved by the MPSEIAA on 23.05.2022. Any action taken on the basis of NIT issued prior to 23.05.2022 including (26.11.2021) is irregular, void, having no effect and, in violation of guidelines and stands cancelled. The respondents may initiate exercise as*

fresh on the basis of approved DSR i.e. dated 23.05.2022 in the district of Raisen.

- ii. The environment clearance whose terms has expired either on 31.03.2021 & 31.03.2022 stands canceled and Madhya Pradesh State Environmental Impact Assessment Authority is directed to cancel the remaining matters, where the matter is under scrutinization before the authorities concerned and take appropriate decision within 15 days. Till the Final decision is taken by the appropriate authority/ MPSEIAA, no mining activities are permitted in the concerned districts under question where the EC has been expired on the basis of expired ECs.*
- iii. We direct the Madhya Pradesh State Mining Corporation and the MPSEIAA to rectify the EC in accordance with law and in light of the judgment and orders passed by this Tribunal in Prabhat Mohan Pandey vs. State of MP & Ors. (Supra).*
- iv. Issue of electronic traffic passes by the MPSMC portal from the mines whose EC has expired is illegal, irregular and in contravention of Sand Management Guidelines and the respondents are directed to take necessary actions to control the illegal mining in accordance with law”*

10. At this stage, Learned Counsel appearing for respondent-project proponent has sought time to file reply. Though, notice was issued by the Tribunal on 08.11.2023 yet till now reply has not been filed.

11. On the instances of Counsel for project proponent, original application is adjourned, giving one last opportunity to the project proponents to file their reply.

12. We take note of the fact that in the connected matter listed today i.e OA No. 98/2024 relating to District Pilibhit, same issue was involved and when the legal position came to the knowledge to the District Magistrate, he had withdrawn the auction notice and had taken the stand before the Tribunal that fresh auction notice will be issued only after

preparation of DSR and its approval by SEIAA. Today, we have disposed of the said original application by recording the stand of District Magistrate, Pilibhit.

13. In the above circumstances, today we were inclined to dispose of the original application but taking the technical plea an adjournment has been sought by respondent. Hence, in order to ensure full compliance of Principles of Natural Justice, we grant four weeks time to respondent/private project proponents to file reply.

14. In the circumstances mentioned above, we modify earlier Interim order dated 08.11.2023 and restrain 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 respondents-project proponents.

15. List on 20.08.2024.

Prakash Shrivastava, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

May 07, 2024
Original Application No.188/2023
(IA No. 92/2023, IA No. 91/2023 & IA No. 76/2023)
JG.