Item No. 04 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 423/2022
(IA No 143/2022)

Mohinder Pal & Anr. Applicant(s)

Versus

State of Haryana & Ors. Respondent(s)

Date of hearing: 18.12.2024

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

Applicant: Mr. Ajit Sharma, Mr. Kanchan Kumar Singh & Mr. Yuvraj Sinh Solanki, Advs.

Respondents: Mr. Rahul Khurana, Adv. for R - 1 to 6
Mr. Anshul Mangla & Mr. Mohd. Fuzail Khan, Advs. for R – 7 & 8

ORDER

1. In this original application, Applicant has made a prayer to direct the Pollution Control Board and SEIAA, Haryana to recover the environmental compensation from private respondents for mining boulder and gravel illegally without any environmental clearance or consent for mining.

2. The plea of the Applicant is that the private respondents were granted clearance and lease for the mining of sand only in 2015-2017, but in the garb of the said permission/lease, they have carried out the mining of boulders and gravel from the riverbed for which no environmental impact assessment was done nor any environmental clearance or consent was obtained, neither these minor minerals were auctioned.

3. In respect of his submission for the imposition of environmental compensation upon Respondent No. 7, learned Counsel for the Applicant has submitted that admittedly Respondent No. 7 has carried out mining of the boulder and gravel without any permission from 2017 to 2020, therefore, he has exposed himself for imposition of the environmental compensation. In support of this submission, he has placed reliance upon para 7 to 9 of the reply affidavit of Respondent No. 7 dated 14.02.2024 which reads as under:

> *"xxx ....xxx......................................xxx*
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> *7. That after obtaining the necessary clearance from respondent No. 3 in terms of the provisions of Water (Prevention and Control of Pollution) Act, 1974 as well as Air (Prevention and Control of Pollution) Act, 1981, the answering respondent had commenced the mining operations in the year 2017.*
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> *8. That it shall be imperative to state that the answering respondent was granted the mining contract for the aforesaid mining blocks for extraction of sand minor mineral. After the commencement of the mining operations, the answering respondent was extracting sand minor mineral from the mining lease areas of the aforesaid mining blocks and was selling the same.*
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> *9. That after the extraction of sand minor mineral from the upper layers of the mining lease area comprised in the aforesaid mining blocks, the answering respondent came across minor quantities of boulder and gravel that were inextricably mixed with sand. Immediately, the answering respondent submitted an application dated 25.09.2020 to respondent No. 1 seeking permission to dispose boulder and gravel mined alongwith sand from the aforesaid mining blocks. A copy of the application dated 25.09.2020 is attached herewith as Annexure R-7/6."*

4. He has further referred to the Transit Passes filed as Annexure A-17 in support of the submission that the Transit Passes to Respondent No. 7 were issued for boulder, gravel and sand. Referring to Annexure A-8, the order of the Director, Mines and Geology, Haryana, he has submitted that Respondent No. 7 was awarded mines in Village Mandi Ghaggar (Mandoli Ghaggar West Block-4 and Mandoli Ghaggar East Block-3) wherein the boulder/gravel was 27.45% of the overall material

and Respondent No. 8 was granted lease for Kanalsi mine (Block-5) which has 34.95% boulder and gravel out of total material. Referring to the order dated 26.11.2020, he has submitted that by this order, permission for mining boulders and gravel was granted by the Mining Department subject to payment of additional royalty for the past period. The relevant part of the order dated 05.02.2021 granting permission to mine boulder and gravel to Respondents No. 7 and 8 reads as under:

"xxx ………………………………….xxx………………………………….xxx

5. Upon seeking detailed reports about the availability of new mineral (which was not part of existing grant) by a team of officers it was revealed that mixed material/BGS was found in the contracted area of said contractor as also in the nearby upstream area held by M/s JSM foods Pvt. Ltd, in Mandoli Ghaggar (West) Block 4 and other area held by JSM foods Pvt. Ltd, in Mandoli Ghaggar (East) Block 3.

The areas held by M/s P.S Buildtech, Kanalsi mine / Block 5 had 34.95% Boulder gravel out of total mineral. In the case of mines in the village Mandli Ghaggar [Mandoli Ghaggar (West) Hlock-4 and Mandoli Ghaggar (East) Block-3] it was found that Boulder/Gravel was 27.45% of overall mineral.

6. The permission for mining and disposal of newly found mineral (BG) was accorded on 26.11.2020 to M/s P.S. Buildtech subject to condition that the contractor shall pay, an additional amount of Royalty for 35% of the total production and also additional amount of 10% of the same towards 'Mines and Minerals Development, Restoration and Rehabilitation Fund for Boulder/ Gravel at the rate prescribe in the First Schedule of the State Rules, 2012. The same is to be paid over and above the contract money and other dues as applicable under contract. Further the overall quantity of mineral production [Boulder, Gravel and Sand shall not exceed the maximum annual production of 11,91,000 MT allowed under Environmental Clearance grant by the Competent authority. Keeping in view that they were disposing of the mineral as such along with Boulder gravel and were also issued a notice dated 14.08.2020 in this behalf- they were directed to pay additional royalty on the same proportional basis for the mineral excavated and disposed of from Jan, 2020 itself.

7. In the case of M/s JSM Foods Private Limited, though no application was submitted earlier, however, they vide letter dated 25.09.2020 submitted application for the grant of mineral concession for said newly discovered mineral for which they will pay all applicable dues/ royalty i.e. for mining and disposal of boulder and gravel mineral.

8. It is also relevant to state here that in the past it was found with the help of e-Rawaana portal that a number of sand *contractors (not having permission for BG) had been supplying/ selling sand to the Crushers and. Screening plants. The sand found in river Yamuna being fine sand is not the raw material of the screening plants/ crushers. All such contractors including applicant M/s JSM Foods Private Limited were issued notices to explain their position for disposing of BG without permission or providing e-Rawaana to be used to legitimize processing of BG illegally mined from other sources by the Screening Plant/ crushers. M/s JSM Foods Private Limited sold a total 10,34,788 MT during the period from 01.01.2020 to 21.07.2020 out of which 4,01,132 MT was sold to screening plants/ crushers.*

xxx ……………………………….xxx………………………………xxx

11. After having considered all related facts of the case it has been established that in the area granted on contract to M/s JSM Foods Private Limited over an area of 25.56 hectares of land in village. Mandoli Ghaggar i.e. for 'Mandoli Ghaggar West Block/YNR B-4' 27.45% of mineral is Boulder and Gravel which is inextricably mixed with sand. The contractor company being entitled for grant of permission for addition of the mineral, as per the provisions of Rule 56(17) of the State Rules, 2012 is hereby granted the permission /mining contract for the period co-terminus with contract of existing mining contract granted for sand mineral subject to condition that:

A. The contractor shall pay for 27.45 % of the total production, as additional amount of Royalty and additional amount of 10% of the same towards "Mines and Minerals Development, Restoration and Rehabilitation Fund' for Boulder/ Gravel at the rate prescribed in the First Schedule of the State Rules, 2012 i.e. over and above the contract money and other dues as applicable under contract.

***Note:** To clarify the above they shall pay Royalty = total production of mineral during preceding month X 0.27.45 X applicable Rate of Royalty by 7th of each month along other applicable dues. Further 10% of total amount of additional royalty shall also be deposited as R&R Fund for newly, discovered mineral.*

B. The period of permission/contract for Boulder gravel shall be co terminus with original contract granted for sand mineral;

C. The overall quantity of mineral production (Boulder, gravel and sand) shall not exceed the maximum annual production of 11,91,000 MT allowed under Environmental Clearance grant by the Competent authority and shall obtain separate EC for newly added mineral from competent authority.

D. The contractor shall execute a supplementary deed for additional mineral namely Boulder gravel.

12. Further, it is clear that M/s ISM Foods Private Limited had been disposing of the Boulder Gravel along with sand on e-Rawaana / bills issued for sand. The contention that mineral was being disposed of from sites not having BG was not found justified as it is not the case that BG was available only in part of the total area. It is clear beyond doubt that the BG is inextricably mixed with sand and sand alone could have been disposed off only after screening. It is admitted fact that within mining area no screening is/ was being carried out, so along with sand the mineral BG was disposed off.

To file the show cause notice dated 14.08.2020 it was decided and was also agreed by the contractor during the course of the hearing that firm shall pay royalty at the rate of Rs 50 per MT and Rs 5 per MT towards R&R Fund for 27.45% of the mineral production since from 01.01.2020 to 31.01.2021. The amount of additional royalty and R& R fund for above period shall be deposited in 03 equal monthly installments. The first installment on this account shall be paid on or before 07.03.2021. Further, payment of additional royalty for February, 2021 shall be paid on regular basis from 7th March, 2021 onward. The show cause notice dated 14.08.2020 shall stand filed on payment of first installment."

5. He has submitted that initial clearance was only for mining the sand and SEIAA on 07.10.2022 in respect of Respondent No. 7 had added boulders and gravel only on 07.10.2022 while extending the EC period. He has submitted that in respect of Respondent No. 8, the issue is still pending before the SEIAA for adding boulders and gravel in the environmental clearance.

6. Based on the above, a submission has been raised by Counsel for the Applicant that environmental compensation is required to be levied on Respondents No. 7 and 8 for the period from 2017 to 2020/2022 when the permission for mining the boulder and gravel was granted by the Mining Department and boulder and gravel were included in the environmental clearance. He submits that Respondents No. 7 and 8 have carried out mining of boulders and gravel during this period without any permission, therefore, they have caused damage to the environment and are liable to pay the environmental compensation.

7. Learned Counsel for Respondents No. 7 and 8 has opposed the OA and has placed reliance upon Rule-56 of the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 and has submitted that in terms of sub-rule 17 of Rule 56, the minerals concession holder is required to report the discovery of the mineral not specified in the concession to the Director without any delay which the Applicant had reported. He has further relied upon sub-rule-19 and has submitted that the said rule permits payment of additional royalty and regularisation. Sub-rules 17 and 19 relied upon by Respondents No. 7 and 8 read as follows:

> *"xxx ....xxx...xxx*
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> *(17) The mineral concession holder shall report the discovery of any such minor mineral which is not specified in the concession to the Director or an officer authorised by him without any delay and shall not win or dispose off the same without obtaining a separate mineral concession from the Director;*
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> *xxx ....xxx...xxx*
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> *(19) Where the newly discovered minor mineral is not available in sufficient quantity and the grant of a separate mining lease/ contract is not found justified, the Director may allow the lessee/ contractor to excavate and dispose of such newly discovered mineral by issuing a separate permit in Form 'PIM8' on payment of advance royalty at the rates prescribed in the First Schedule. The royalty payable for the newly discovered minor mineral and prorated contribution to the R & R Fund shall be in addition to the dead rent/ contract money/ contribution to the R & R Fund for the mineral already granted on mining lease/ contract/ permit. The mineral concession holder shall also be liable to pay all other sums as prescribed for disposal of the mineral as if the same had been allowed under a regular mineral concession;"*

8. Referring to Clause 2 and 7(ii) of the EIA Notification, 2006, he has submitted that the extraction of minor minerals is a project and since there was no increase in the lease area or quantity of the minor mineral to be extracted only the composition of sand, gravel and boulder had changed, therefore, it does not fall within the meaning of expansion, modernization or change of product mix. Hence, no fresh EC or

amendment in EC was required. He has denied that any illegal mining of sand and gravel has been done by Respondents No. 7 and 8 between the period 2017 till 2020/22.

9. The issue raised in this OA concerning the illegal mining of boulder and gravel required factual enquiry especially an examination of the record relating to the mining done by Respondents No. 7 and 8 from 2017 to 2020/22, which may include the Transit Passes issued to them for different periods when the illegal mining of boulder and gravel may have been done with some intervals. The quantity of such illegally mined boulders and gravel is also required to be ascertained.

10. Hence, at this stage, we dispose of the OA directing the Haryana State Pollution Control Board (HSPCB) to give an opportunity to Respondents No. 7 and 8 to produce all the material relating to the mining of boulders and gravel between 2017 to 2020/22. If the need arises, the Member Secretary, HSPCB can get the record of Respondents No. 7 and 8 inspected through his representative or proper agency. In this process, an opportunity may also be given to the Applicant to produce the material available with him in support of the plea that Respondents No. 7 and 8 have done illegal mining of boulders and gravel during the relevant period in the garb of the permission for sand mining. The Respondent, Member Secretary, HSPCB will conduct an enquiry in this regard by following the principles of natural justice and will ascertain the extent of illegal mining of boulders and gravel by Respondents No. 7 and 8 during the concerned period and will leavy environmental compensation in accordance with law. Let this exercise be completed by the Member Secretary, HSPCB within a period of four months.

11. The OA is accordingly disposed of. Pending IA, if any, also stands disposed of.

Prakash Shrivastava, CP

Dr. A. Senthil Vel, EM

December 18, 2024
Original Application No. 423/2022
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