

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, FINANCE CENTRE KOLKATA**

(By Video Conference)

M.A. No. 05/2023/EZ
In
Original Application no.10/2022/EZ

Alaya Samantary & ors. Applicant(s)

Versus

State of Odisha & ors. Respondent(s)

Date of hearing: 07.02.2023

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

Applicant: Mr. Sankar Prasad Pani, Advocate

ORDER

1. The matter has been posted today to consider compliance report filed by the State PCB on 22.12.2022 in pursuance of order of this Tribunal dated 21.9.2022.

2. Vide order dated 21.9.2022, the Tribunal dealt with the grievances in the Application against illegal mining by Respondent No. 13 & 14- M/s Brij Gopal Construction Pvt. Ltd and M/s BG Balasore- Bhadrak Highways Pvt. Ltd. in the course of construction of NH-16 Bhadrak- Balasore Highway Widening project at the instance of National Highway Authority of India (NHAI), the project proponents(PPs). In the course of the said project, use of different minor minerals like soil/earth/morrum, sand and stone aggregates was involved estimated at 10,50,000 CM (1.05

million) of soil/earth/morrum, sand of 44,523 CM, stone aggregates of 10,95,000 CM, 173142 CM of stone crusher dust. The PPs, executing the contract given by the NHAI, were procuring such minerals from suppliers who are noncompliant with norms and who undertook illegal mining, defeating the rule of law. Illegal mining was done at adjoining villages such as Markona, Talanagar, Jamujhadi, Khanjamahal, Dahisada, Bagudi, Bidu, Begunia, Gopalpur, Panpana, Khantapada, Khannagar, Sheragada, Kuruda, Gouduni Pokhari but the NHAI, the contractors who are their agents and the suppliers were avoiding accountability under the law for illegal mining.

3. The Tribunal considered the response of the State Authorities that no EC was obtained under the EP Act nor CTE/CTO obtained under the Water and Air Acts. The Tribunal held that without requisite EC and consents mining was not permissible as held inter alia in Deepak Kumar, (2012) 4 SCC 629 and Goa Foundation (2014) 6 SCC 590. Accordingly, the State PCB was directed to monitor compliance against illegal mining and also recover compensation in accordance with law. Operative part of the order is reproduced below:-

“1to8....xxx.....xxx.....xxx

9. *Having considered the rival submissions, we are of the view that exemption for linear project does not extend to mining. No mining can be undertaken without compliance of environmental norms – EC, mining lease, consents under the Water and Air Acts. Reference is made to Deepak Kumar, (2012) 4 SCC 629 and Goa Foundation (2014) 6 SCC 590. We thus reject the contention of the PP that no EC or other permissions are required for mining for supply of mined material for execution of the linear projects.*

10. *We also do not find any merit in the contention that NHAI has no accountability for compliance once contract is given. Contractor is agent of the principal and the principal remains responsible for unlawful action of a contractor. Environment law provides for absolute and strict liability as violations involve damage to public health and environment. Likewise, the contractors cannot disown accountability for illegal mining on the plea that they are not doing mining but procuring mined material. If mined material procured is*

illegally mined, the contractors cannot totally avoid their responsibility. Thus, liability of the NHAI, the contractors and suppliers is joint and several. This equitable common law principle is allowed to be invoked by victim of tort (wrongful act) caused as a result of several persons when victim is unable to identify precisely as to who caused the wrong. (see discussion of the principle in (2015) 9 SCC 273). If this principle is not invoked, the victims will be remediless and law will be defeated. On the other hand, no injustice will be caused to the joint operators inter-se. The NHAI can enforce liability of the contractor as per contract terms. The contractor can enforce liability of the supplier by taking necessary precautions, safeguarding its commercial interest. NHAI is under obligation to disclose particulars of the contractors and of the contractors have to disclose particulars of the suppliers to the regulators. With such disclosures, the State Authorities can verify genuineness of disclosures and make suppliers individually accountable for compliance of environmental norms without exoneration of contractors and the NHAI.

11. In view of above, the State PCB may monitor the compliance by verifying genuineness of the disclosures by the NHAI/Contractors and compliance by the suppliers. If it is not possible to enforce liability of the suppliers, regulators can certainly proceed against contractors or NHAI. It is not necessary to determine validity of the levy of royalty/penalty which is said to be pending consideration before the statutory authorities and which may be dealt with in accordance with law. However, if any violations are found, the environmental compensation may be determined on the laid down principles following due process of law for which it is not necessary to await the result of validity of royalty/penalty and compensation for environment violations is not covered thereby.

12. **The State PCB may file an action taken report in the matter within three months with the Registrar of NGT, Eastern Zone Bench by email at registrarngt-kolkata@gov.in. If found necessary, the Registrar may place the matter before the EZ Bench for further directions.”**

4. In pursuance of direction in para 12 above, report has been filed by the State PCB on 22.12.2022 as follows:-

“In compliance to the said direction, the Regional Officer of this Board at Balasore has carried out inspection of the site on 13.12.2022 and submitted a report by determining the environmental compensation in the following manner:

- i. *The Environmental Compensation determined towards illegal sourcing of Stone Boulders (Stone) is Rs.179063604/-.*
- ii. *The Environmental Compensation determined towards illegal sourcing of Stone Aggregates (Stone) is Rs.36416612/-*
- iii. *The Environmental Compensation determined towards illegal sourcing of Stone Dust (Stone) is Rs.1392813/-*

- iv. *The Environmental Compensation determined towards illegal sourcing of Sand) is Rs.8310394/-.*

In the report, it is also recommended for recovery of the environmental compensation by applying the equitable common law principle in terms of order dtd.7.3.2022 of this Hon'ble Tribunal passed in OA No.150/2017/EZ — Sasee Bhoosan Pattanayak vs. State of Odisha & Ors. Copy of the report forwarded by the Regional Officer, Balasore in his letter No.2808 dtd.17.12.2022 along with its annexures are enclosed for kind perusal and orders of the Hon'ble Tribunal.”

5. The Report is taken on record. Further action may be taken for recovery of assessed compensation in accordance with law. The recovered amount may be utilized for restoration of environment in accordance with the District Environment Plan of the area, supplemented by such other plan as may be found necessary, with the approval of the State PCB.

A copy of this order be forwarded to the State PCB and NHAI by email for compliance.

M.A. is disposed of.

Adarsh Kumar Goel, CP

SudhirAgarwal, JM

B. Amit Sthalekar, JM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

February 07, 2023

M.A. No. 05/2023/EZ in OA No.10/2022/EZ

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