

Item No.2

**BEFORE THE NATIONAL GREEN TRIBUNAL  
CENTRAL ZONE BENCH, BHOPAL**  
(Through Video Conferencing)

**Original Application No. 96/2023(CZ)**

Yadram

Applicant(s)

Versus

State of Rajasthan & Ors.

Respondent(s)

Date of Hearing: **01.09.2023**

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. A SENTHIL VEL EXPERT MEMBER**

For Applicant(s):

Mr. Ajit Sharma, Adv.

For Respondent(s):

None.

**ORDER**

1. The grievance of the applicant is that the permissions to carry out sand stone mining in the Bharatpur District of Rajasthan of approx. 4 crore tons per annum of sand stone, by specifically de-notifying protected area of the Band-Baretha Wildlife Sanctuary. Currently, about 42 leases granted for 50 years, operate in contiguous mining blocks to mine sandstone is in violation of the specific conditions stipulated in the Environmental Clearance dt 24.03.2022 and generate enormous amounts of inhalable dust pollution.
2. Two blocks namely Bansi Pahadpur-A and Bansi Pahadpur-B were notified and declared as Sanctuary under Section 18 of the Wildlife Protection Act, 1972 and falls under the Taj Trapezium Zone. Main ground for challenge in the application is that the Expert Appraisal Committee (EAC) did not determine the question whether the project could be allowed in Taj Trapezium Zone (TTZ) area where adhoc moratorium on expansion and setting up of the new industries is in operation, as per decision of the MoEF&CC dated 08.09.2016. The project will affect Taj Mahal, which is a

World Heritage site. Even though the applicant has raised certain other objections, which are not necessary to be referred.

3. The contention of the applicant is that Hon'ble the Supreme Court of India vide order dated 17.11.2004 in *W.P. (C) No. 653 of 1994 Waseem Ahmed Saeed Vs. Union of India & Anr.* has ordered that no blasting operations are allowed within 10 Km. from Shrine of Darga Saleem Chisti, Fatehpur Sikri.
4. The matter of mine and minerals of District Bharatpur, Rajasthan was taken up by this Tribunal in Appeal No. 48/2018 and vide order dated 03.02.2021, the Tribunal observed as follows :-

1. *"Apart from the above, we are informed that the Hon'ble Supreme Court disposed of W.P. (C) No. 13381 of 1984, M.C. Mehta v. UOI & Ors. on the subject of activities in the TTZ area vide order dated 16.12.2019 with the following observations:-*

*"1 to 7....xxx.....xxx.....xxx*

*8.. As regards permission for establishing nonpolluting industrial units, it appears to us that only those small, micro and macro level industries which are both nonpolluting and eco-friendly and which have necessary clearances from all statutory authorities as well as concurrence of the Central Empowerment Committee and NEERI, can be setup within the notified industrial area.*

*9. We, thus, clarify that since the interim order dated 22<sup>nd</sup> March 2018 directing maintenance of status quo was passed to ensure timely submission of the Vision Plan by the State of U.P. and the said direction already stands complied with, there shall be no impediment for the authorities to consider pending environmental clearances which are necessary to secure essential amenities within TTZ. Simultaneously, the State and other statutory authorities are free to consider requests for relocating eco-friendly nonpolluting industrial units, subject to them meticulously complying with environmental laws and all norms/conditions laid down by this Court (including those in the main judgment of 30<sup>th</sup> December 1996). Concurrence with the Central Empowerment*

*Committee and opinion of NEERI shall also be necessary before according such permission.*

*8. There shall, however, be an embargo on granting clearances to and/or shifting of any heavy industry until a final decision is taken on the vision document. The interlocutory application is accordingly disposed in above terms.”*

5. And the Tribunal directed as follows :-

*“In view of order of the Hon’ble Supreme Court dated 16.12.2019, only small, micro and macro level industries which are both non- polluting and eco-friendly or which are necessary to secure essential amenities within TTZ can be allowed in TTZ. The project in question is a Red Category project involving blasting within 10 kms of TTZ which is not permissible. Thus, the impugned EC is liable to be set aside. However, in absence of any representation by the MoEF&CC and the project proponent, we direct that the MoEF&CC to pass an appropriate further order in the matter within two months from today and till such a decision is taken, the impugned EC may not be given effect and no mining in terms of the project may be carried out.”*

6. In the matter of *T.N. Godavarman Thirumulpad Vs. Union of India & Ors.* Hon’ble the Supreme Court of India considered the safety measures required to be taken for eco-sensitive zones around National Parks and Wildlife Sanctuaries and observed as follows :-

1. *“The second report of the CEC dated 20th September 2012 makes the following recommendations as regards identification and declaration of ESZ. This report entitled “Note regarding safety zones (Eco-sensitive zones) around National Parks and Wildlife Sanctuaries” makes the following recommendations:-*

*“10. After considering that during the last ten years no significant progress has been made regarding*

identification and declaration of Safety Zones around protected areas and considering the matter in its totality, an implementable scheme has been prepared by the CEC and which has been dealt with in subsequent paragraphs.

11. For the purpose of identification and declaration of the Safety Zones around National Parks/Wildlife Sanctuaries (hereinafter referred to as protected areas), the protected areas based on their areas, are classified into four categories:

- i) **CATEGORY-A** - the protected areas having an area of 500 sq. km. or more. The total number of such protected areas is 73 and their total area is about 1,01,389 sq. km (63.44 % of total area of protected areas);
- ii) **CATEGORY-B** - the protected areas having an area between 200 sq. km. to 500 sq. km. The total number of such protected areas is 115 and their total area is about 38942 sq. km. (24.37 % of total area of protected areas.
- iii) **CATEGORY-C** - the protected areas having an area between 100 sq. km. to 200 sq. km. The total number of such protected areas is 85 and their total area is about 12,066 sq. km (about 7.55 % of total area of protected areas); and
- iv) **CATEGORY-D** - the protected areas having an area up to 100 sq. km. The total number of such protected areas is 344 and their total area is about 7,422 sq. km (about 4.65 % of total area of all protected areas).

12. Wherever two or more protected areas are contiguous to each other, such protected areas will be placed in the appropriate category based on the sum total of their areas (and not on the basis of area of individual protected area). The details of some of the contiguous protected areas are given below:

- a) Corbett National Park (520 sq. km.) and Sonanadi Sanctuary (301 sq. km) - total area is 821 sq. km and therefore

*both will fall in Category-A;*

*b) Gir National Park (258 sq. km.) and Gir Sanctuary (1,153 sq. km.) - total area is 1,411 sq. km. and therefore both will fall in Category- A;*

*c) Periyar National Park (350 sq. km.) and Periyar Sanctuary (427 sq. km.) - total area is 777 sq. km. and therefore both will fall in Category-A;*

*d) Satpura National Park (585 sq. km.), Bori Sanctuary (485 sq. km.) and Pachmarhi Sanctuary (417 sq. km.) - total area is 1488 sq. km. and therefore all three will fall in Category-A;*

*e) Valmiki National Park (335 sq. km.) and Valmiki Sanctuary (545 sq. km.) - total area is 880 sq. km. and therefore both will fall in Category-A;*

*f) Tadoba National Park (116 sq. km.) and Andhari Wildlife Sanctuary (509 sq. km.) - total area is 625 sq. km. and therefore both will fall in Category-A; and*

*g) Sariska National Park (273 sq. km.) and Sariska Sanctuary (219 sq. km.) - total area is 492 sq. km. and therefore both will fall in Category-B;*

*13. The Safety Zone, in respect of protected areas falling in 'Category-A and Category-B, may comprise of all the areas including non-forest areas falling within a distance of two kilometers and one kilometer respectively from the boundaries of the protected area. Such distances, in respect of protected areas falling within Category-C and Category-D, may be kept at 500 meter and 100 meter respectively.*

*14. The grant/renewal of mining leases (excluding for collection of boulders, gravel and sand from river beds), setting up of hazardous industries, brick kilns, wood based industries (except MDF/Particle Boards Plants) will be treated as prohibited*

*activities within the Safety Zone (eco-sensitive zones). The activities such as setting up of industries (other than those included in the list of prohibited activities), hotels and restaurants including resorts, commercial helicopter services, hydel projects, irrigations projects, canals, laying of transmission lines and distribution lines above 33 KV, roads of more than five meter width and collection of boulders, gravel and sand from the river beds will be treated as regulated activities and which will be permissible only after obtaining environment clearance and clearance of the Standing Committee, National Board for Wildlife. All other activities which are not prescribed as prohibited activities or regulated activities will be treated as permissible activities.*

*15. The concerned State/UT will be at liberty to shift a protected area from a lower category to higher category (say from Category-C to Category-B) after considering the importance of the protected area on account of:*

- i. presence of flagship species/endangered species such as Tiger, Lion, Elephant, Rhino, Snow Leopard, Red Panda, Hangul, Musk deer, Great Indian Bustard, Lion Tailed Macaque, floricans;*
- ii. fragile eco-system such as Western Ghats, North Eastern States, areas having high altitude flora and fauna, rain forest, mangroves, marine eco-system;*
- iii. World Heritage sites; and*
- iv. Wetland eco-systems*

*16. The concerned State/UT Governments may after detailed examination of the status of habitation, existing industries and other activities and other relevant factors, and, if found desirable and in public interest forward the proposal(s) for shifting a protected area from a higher category to a lower category. They may also forward the proposal(s) for exclusion of the areas of cities falling within the Safety Zone. The MoEF thereafter will examine*

*such proposals and place such proposals before the Standing Committee of the National Board for Wildlife for its consideration. The proposals cleared by the Standing Committee of the NBWL will be placed before this Hon'ble Court for seeking its permission. It is only after obtaining the permission of this Hon'ble Court that a protected area may be shifted from a higher category to a lower category.*

*17. The Safety Zones (eco-sensitive zones) around National Parks and Wildlife Sanctuaries will be in addition to the following eco-sensitive zones notified by the MoEF (and by other notifications, if any):*

*i) S.O. 20(E), (6/1/1989) - Prohibiting industries on Murud- Janijira, District Raigadh, Maharashtra;*

*ii) S.O. 102(E), (1/2/1989) - Restricting location of industries, mining & other activities in Doon Valley (UP);*

*iii) S.O. 416(E), (20/6/1991) - Dahanu Taluka, District Thane (Maharashtra) to declare as Ecologically Fragile Area, amended 1999;*

*iv) S.O.319(E), (7/5/1992) - Restricting certain activities causing environmental degradation at Aravalli Range;*

*v) S.O. 481 (E), (5/7/1996) - No Development Zone at Numaligarh, East of Kaziranga; vi) S.O. 884(E), (19/12/1996) - Dahanu Taluka Environment Protection Authority, 1996, amended 2001 ;*

*vii) S.O. 350(E), (13/5/1998) - Order constituting the Taj Trapezium Zone Pollution (Prevent and Control) Authority;*

*viii) S.O. 825(E), (17.9.1998) - Pachmarhi Region as an Eco- Sensitive Zone;*

*ix) S.O. 52(E), (17/1/2001) Mahabaleswar Panchgani Region as an Eco-Sensitive Zone;*

*x) S.O. 133 (E), (4/2/2003) - Matheran and surrounding region as an Eco-Sensitive Zone*  
*1. S.O. 83 (E), (16/01/2004) - Amendments to S.O. 133(E) dated 4/2/2003;*

*xi) S.O. 1545(E), (25/06/2009), Mount Abu as Eco- Sensitive Zone.*

*xii) S.O. 1260(E), (31/05/2012) - Girnar Reserve Forest as Eco-Sensitive Zone.*

7. In [(1997) 2 SCC 267] it has been observed by the Hon'ble Supreme Court :-

*“4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word “forest” must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term “forest land”, occurring in Section 2, will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works v. State of Gujarat* [(1987) 1 SCC 213], *Rural Litigation and Entitlement Kendra v. State of U.P.* [1989 Supp (1) SCC 504] and recently in the order dated 29-11-1996 (*Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority* [ WP (C) No 749 of 1995 decided on 29-11-1996] ). The earlier decision of this Court in *State of Bihar v. Banshi Ram Modi* [(1985) 3 SCC 643] has, therefore, to be understood in the light of these subsequent*

*decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.”*

8. The role of the State cannot be confined to that of a facilitator or generator of economic activities for immediate upliftment of the fortunes of the State. The State also has to act as a trustee for the benefit of the general public in relation to the natural resources so that sustainable development can be achieved in the long term. Such role of the State is more relevant today, than, possibly, at any point of time in history with the threat of climate catastrophe resulting from global warming looming large. This Court has highlighted the Public Trust Doctrine in the case of *M.C. Mehta v. Kamal Nath and Others* [(1997) 1 SCC 388] and opined that the Public Trust Doctrine is part of the law of land. In Paragraph 25 of the said judgment, as reported, this doctrine has been explained with reference to writings of Joseph L. Sax, Professor of Law, University of Michigan, the proponent of Modern Public Trust Doctrine:-

*“25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public*

Trust Doctrine imposes the following restrictions on governmental authority:

*“Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses.”*

9. And finally in para 44 the Hon’ble Supreme Court directed as follows :-

- a) Each protected forest, that is national park or wildlife sanctuary must have an ESZ of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 9th February 2011 shall be strictly adhered to. For Jamua Ramgarh wildlife sanctuary, it shall be 500 metres so far as subsisting activities are concerned.*
- b) In the event, however, the ESZ is already prescribed as per law that goes beyond one kilometre buffer zone, the wider margin as ESZ shall prevail. If such wider buffer zone beyond one kilometre is proposed under any statutory instrument for a particular national park or wildlife sanctuary awaiting final decision in that regard, then till such final decision is taken, the ESZ covering the area beyond one kilometre as proposed shall be maintained.*
- c) The Principal Chief Conservator of Forests as also the Home Secretary of each State and Union Territory shall remain responsible for proper compliance of the said Guidelines as regards nature of use within the ESZ of all national parks and sanctuaries within a particular State or Union Territory. The Principal Chief Conservator of Forests for each State and Union Territory shall also arrange to make a list of subsisting structures and other relevant details within the respective ESZs forthwith and a report shall be furnished before this Court by the Principal Chief Conservator of Forests of each State and Union Territory within a period of three months. For this purpose, such authority shall be entitled to take assistance of any governmental agency for satellite imaging or photography using drones.*

- d) *Mining within the national parks and wildlife sanctuaries shall not be permitted.*
- e) *In the event any activity is already being undertaken within the one kilometre or extended buffer zone (ESZ), as the case may be, of any wildlife sanctuary or national park which does not come within the ambit of prohibited activities as per the 9th February 2011 Guidelines, such activities may continue with permission of the Principal Chief Conservator of Forests of each State or Union Territory and the person responsible for such activities in such a situation shall obtain necessary permission within a period of six months. Such permission shall be given once the Principal Chief Conservator of Forests is satisfied that the activities concerned do not come within the prohibited list and were continuing prior to passing of this order in a legitimate manner. No new permanent structure shall be permitted to come up for whatsoever purpose within the ESZ.*
- f) *The minimum width of the ESZ may be diluted in overwhelming public interest but for that purpose the State or Union Territory concerned shall approach the CEC and MoEF&CC and both these bodies shall give their respective opinions/recommendations before this Court. On that basis, this Court shall pass appropriate order.*
- g) *In the event the CEC, MoEF&CC, the Standing Committee of National Board of Wildlife or any other body of persons or individual having special interest in environmental issues consider it necessary for maintaining a wider or larger ESZ in respect of any national park or wildlife sanctuary, such body or individual shall approach the CEC. In such a situation the CEC shall be at liberty to examine the need of a wider ESZ in respect of any national park or wildlife sanctuary in consultation with all the stakeholders including the State or Union Territory concerned, MoEF&CC as also the Standing Committee of National Board of Wildlife and then approach this Court with its recommendations.”*

10. It is further contended by the learned counsel for the applicant that the specific conditions for –

- i. Robust dust free road
- ii. Designated parking facility
- iii. Roads should be metalled and maintained

- iv. Continuous ambient air quality monitoring station
  - v. Registration of mining lease and execution after public hearing were not complied with by the respondents.
11. A substantial issue of environment and compliance of environmental rules and conditions are required to be considered.
12. Issue notice to the respondents, returnable within four weeks. Respondents are directed to submit their reply within four weeks through E-filing portal, preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.
13. Applicant is directed to take necessary steps for service to the respondents by both ways and also on available email.
14. We deem it just and proper to call a report on the matter in issue in present Original Application, from a Joint Committee consisting of:-
- (i) One representative from MoEF&CC.
  - (ii) One representative from Central Pollution Control Board.
  - (iii) One representative from Taz Trapezium Zone Pollution (Prevention and Control) Authority, Jaipur House, Agra
  - (iv) One representative from State Pollution Control Board
15. We further direct the Committee to visit the place and submit the factual and action taken report within four weeks. The State PCB will be the nodal agency for coordination and logistic support.
16. In case mining is found in violation of environmental rules, EC conditions and order of Hon'ble Supreme Court of India with regard to Taz Trapezium Zone, necessary actions must be initiated immediately and further action taken report be filed before this Tribunal.
17. Applicant is directed to supply the copy of the application and relevant documents to the Committee and Respondent(s) within a week and after compliance of service, the applicant has to submit an affidavit that the notice and copy of the application have been served upon the Committee and respondent(s).

18. The report in the matter be filed by the Committee through email at [ngtczbbho-mp@gov.in](mailto:ngtczbbho-mp@gov.in) preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.

List it on **04<sup>th</sup> October, 2023**.

**Sheo Kumar Singh, JM**

**Dr. A Senthil Vel, EM**

01<sup>st</sup> September, 2023  
O.A No.96/2023(CZ)  
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