

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL**

(Through Video Conferencing)

Appeal No. 17/2022 (CZ)

M/s Jawan Rock Movers Pvt. Ltd.

Appellant(s)

Versus

State of Rajasthan & Ors.

Respondent(s)

Date of Completion of Hearing and Reserving of Order : 29.09.2022

Date of Uploading of Order on the Website : 12.10.2022

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Appellant(s):

Dr. Surender Singh Hooda, Adv.

For Respondent(s):

Mr. Sandeep Singh Baghel, Adv.
Mr. Shoeb Hasan Khan, Adv.

ORDER

1. Challenge in this appeal is the order dated 23.06.2022, whereby and where under the State Level Environment Impact Assessment Authority Rajasthan considered the ToR for Masonry Stone and Granite Minor Mineral Mining Project area M.L. No. 172/89 in district Jhunjhunu, Rajasthan proposal no. 71377 and was discussed in 5.29th meeting on 23.06.2022 and the proposal was rejected.
2. Grounds of appeal are that the order of Hon'ble Supreme Court dated 08.04.2022 refers to the grant of mining lease and not grant of ToR or Environmental Clearance or that the appellant's mining lease was in existence prior to the order and that when ToR has been granted to other similarly situated other mining lease holders, the appellant should have been permitted and allowed the mining lease. Further contention of the learned counsel for the appellant is that rule 9, 28(1)(XIV) of RMMC Rule, 2017 has not been complied with and the matter of considering the mining lease/ToR in favor of the appellant was in violation of equality of law.

3. The matter was taken up by this Tribunal on 19.07.2022 and notices were issued to the respondents for filing the reply. In compliance thereof, Respondent Nos. 4 & 5 have submitted the reply with the fact that the present appellant had applied for Environment Clearance on the Parivesh Portal (online) on 23.03.2022 and received in SEAC on 01.04.2022, Member Secretary, SEIAA letter dated 30.03.2022. The project was called for presentation in 5B.17th meeting of SEAC dated 30th, 31st May, & 01st June 2022. The proposal was appraised by the committee and the SEAC, noted that the present appellant has not obtained Environment Clearance (EC) earlier for the existing mine and also is in violation of the EIA Notification with respect to the Common Cause Judgement pronounced by the Hon'ble Supreme Court. Apart from it, the present appellant has been sanctioned LOI for inclusion of mineral by DMG Udaipur vide letter dated 30.09.2021 which attract the requirement of fresh EC as well as fresh agreement with Department of Mines, thus to be treated as fresh application for mining covered under ambit of the embargo stipulated by Hon'ble Supreme Court.

Regarding mining in Aravalli hills the Hon'ble Supreme Court in the matter of W.P. (civil) No. 202/1995 T.N. Govdavarman V/s Union of India & Ors. By order dated 06.12.2002, inter alia, had passed the following order:-

“We have heard learned counsel. On 29th/30th October, 2002 this Court prohibited and banned the mining activities in the entire Aravalli hills. This ban, it was directed, is not limited only to the hills encircling Kote and Alampur villages but extends to the entire hill range of Aravalli from Haryana to Rajasthan. The Chief Secretary, State of Haryana and State of Rajasthan were directed to ensure that no mining activity in the Aravalli hills is carried out, especially in that part which has been regarded as Forest Area or protected under the Environment (Protection) Act”.

4. It is pertinent to mention here that the Hon'ble Supreme Court again on 08.04.2005, made it clear that no mining work will take place in the forest area. Further, the Hon'ble Supreme Court restrains all the mining work on any area of Aravali hills. The Hon'ble Supreme Court in the said matter

passed the following directions: “ ... pending further directions, we restraint any kind of mining in Forest Area. Further, we restrained mining in any area in Aravalli hills falling in the State of Rajasthan, where permission may have been accorded after 16.12.2002”.

6. *As per direction of the Hon’ble Supreme Court in the order dated 08.04.2005, in the opinion of SEAC, not merely grant of lease but also includes all permission or clearances or approvals, all consents required under the statutory provision, in the absence of which no mining activity can be legally carried out. This view of SEAC is strengthened by the observation of the Hon’ble Supreme Court in the judgment dated 18.03.2004 in the matter of M.C. Mehta V/s. UOI & Ors. The Hon’ble Supreme Court in this matter observed that grant of permission for mining and approving mining plan and the scheme by the Ministry of Mines, Government of India by itself does not mean that mining operation can commence. Therefore, the Hon’ble Supreme Court observed that a mining lease holder is also required to comply with other statutory provisions such as Environment (protection) Act, 1986, Air (Prevention and control of Pollution) Act, 1981, The Water (Prevention and Control of Pollution) Act, 1974, Forest (Conservation) Act, 1980. That Mere approval of the mining plan by Government of India, Ministry of Mines would not absolve the lease holder from complying with the other provisions. The Hon’ble Supreme Court in this matter reiterated that it is settled law that the grant of renewal is a fresh grant and must be consistent with law. This, in the view of the guidelines issued by the Hon’ble Supreme Court made it clear that for fresh mining, fresh EC and fresh agreement is required and without fresh EC the Department of Mines cannot proceed for the agreement.*

7. *That, the SEAC, observed that the present appellant has not obtained fresh EC earlier for the existing mines and also is in violation of the EIA Notification with respect to the Common Cause Judgment pronounced by the Hon’ble Supreme Court. Apart from it the present appellant has been sanctioned letter of LOI for inclusion of mineral which attracts the requirement of fresh EC as well as fresh agreement with Department of Mines thus to be treated as fresh application for mining covered under the ambit of the embargo stipulated by Hon’ble Supreme Court.*

8. *That, however, before firming its view, the SEAC, in view of the facts decided to seek legal opinion from SEIAA with respect to the coverage of inclusion of mineral, expansion mines (operating without*

prior EC), in the ambit of the orders of the Hon'ble Supreme Court in Aravalli matter.

9. That, the Proposal was considered in 5B.17th meeting dated 30th, 31st May, and 01st June, 2022. The SEAC, in view of the facts decided to seek legal opinion from SEIAA with respect to the coverage of inclusion of mineral, expansion of mines (operating without prior EC), in the ambit of the orders of the Hon'ble Supreme Court in Aravalli Matter. As per the 5.29 the meeting of the State Level Environment Impact Assessment Authority which was held on 23rd June, 2022 the authority decided to reject this proposal.

10. That, the SEIAA vide letter dated 23.06.2022 decided to reject this proposal as per the direction of the Hon'ble Supreme Court in the matter of W.P. (Civil) No. 202/1995 T.N. Godavarman V/s Union of India & Ors., order dated 16.12.2002. The application of the present appellant is thus not pending with SEIAA/SEAC.

11. That, it is mandatory to bring in the Notice of the Hon'ble Tribunal that the present appellant got transferred the lease from Shri Ram Prakash on 15.02.2007 and was continuing the mining work on the above mentioned mine. However, it is important to mention here that the present appellant continuing the mining work without the EC and also well aware about the requirement of fresh application and fresh EC under the ambit of embargo stipulated by the Hon'ble Supreme Court. The SEIAA before finalizing the application filed by the present appellant discovered that the mine was operating without EC which is a violation of the settled law for operating the mines. The Hon'ble Supreme Court also banned the mining activities in Aravalli Hills in the State of Rajasthan where mining permission were taken after 16.12.2002. Therefore, as per the direction issued by the Hon'ble Supreme Court the SEIAA rejects the application of the present appellant on the ground that not EC was taken for the mining activity and ban was imposed in the Aravalli Hills in the State of Rajasthan.

12. That, it is relevant to mention here that the Government of India, Ministry of Environment & Forest in the Office Memorandum dated 12.12.2021 bearing no. J-11013/41/2006-IA.II(I) held a meeting for consideration of proposals for TORs/Environment Clearance/ CRZ Clearance involving violation of the Environment(Protection) Act, 1986/ Environment Impact Assessment (EIA) Notification, 2006 / Coastal Regulation Zone (CRZ) Notification, 2011 observed that many of the new projects or activities or expansion and modernization of existing projects or activities are running without obtaining fresh EC which is a

clear violation of the Environment (Protection) Act, 1986 / Environment Impact Assessment (EIA) Notification, 2006 / Coastal Regulation Zone (CRZ) Notification, 2011. As soon as the violation comes/ is brought to the notice of the Ministry, the Ministry verified such violation and directed to the state government to take critical action against such violator.

13. That, the Government of India, Ministry of Environment & Forests clearly stated that if any such violator is being found and if for such violation the person is liable then, by invoking powers under Section 19 of the Environment (Protection) Act, 1986 to take legal action against such violator under Section 15 for the period for which the violation has been taken place. The relevant clause 5(ii) of the office memorandum of the Government of India, Ministry of Environment & Forest dated 12.12.2012 is as follows:-

ii. The State Government will need to initiate credible action on the violation by invoking powers under Section 19 of the Environment (Protection) Act, 1986 for taking necessary legal action under section 15 of the Act for the period for which the violation has been taken place and evidence provided to MoEF of the credible action taken.”

5. The copy of the notification dated 12.12.2012 issued by the MoEF&CC has been attached with the reply, which provides to initiate action on the violation by invoking powers under Section 19 of Environment (Protection) Act, 1986 for taking necessary legal action under Section 15 of the Act for the period for which the violation has taken place and evidence provided to MoEF&CC of the credible action taken. There was a further clarification that the consideration of proposals for giving ToR/ environment clearance/CRZ clearance for violation cases will not be a matter of right for the project proponent. In cases of serious violation the Ministry reserves the right to outrightly reject such proposals and not consider the same at all.
6. The contention of the Learned Counsel for the appellant is that the rejection of the application by respondent no. 4 without any recommendation by the respondent no. 5 is bad in law and in contravention of provisions of para 7(II)(iii) of the EIA Notification, 2006 which provides :-

“(iii) Applications for prior environmental clearance may be rejected by the regulatory authority concerned on the recommendation of the EAC or SEAC concerned at this stage itself. In case of such rejection, the decision together with reasons for the same shall be communicated to the appellant in writing within sixty days of the receipt of the application.”

7. It is further argued that :-

- b. The term ‘permission’ can only mean all permissions required as on the cutoff date of 16.12.2002. The requirement of EC was not even existing on the statute book as on the cutoff date prescribed by the Hon’ble Supreme Court and therefore cannot be used to invite the bar imposed by the Hon’ble Supreme Court as the same could not have been envisaged by the Hon’ble Supreme Court while passing the order. If requirement of EC is considered as a permission in terms of order of Hon’ble Supreme Court, then all mining activity in State of Rajasthan would be banned as none of the mines had EC as on the cutoff date of 16.12.2002 because EIA Notification, 2006 itself did not exist as on the cutoff date.*
- c. Discovery of a new mineral in an existing lease cannot be interpreted as a fresh mining permission, especially in view of the provisions of Rule 28(1)(xiv) of the Rules, 2017. Rule 28(1)(xiv) of the Rules, 2017 provides that in case a new mineral is discovered, the lease holder is liable to report the same to the Mining Engineer within a period of 30 days. Noteworthily, nothing contained in Rule 28(1)(xiv) specifically or in the Rules, 2017 generally indicates that inclusion of a new mineral in an existing lease can be considered as a new mining permission. Rule 28(1)(xiv) of the Rules, 2017 is as under:*

*“(xiv) The lessee or the licensee shall report to the Mining Engineer or Assistant Mining Engineer concerned the discovery of any mineral not specified in the lease or license within thirty days of such discovery. If lessee or licensee **does not apply for inclusion of such mineral**, lease or license may be terminated and new lease or license shall be granted through e-auction.”*

The deliberate use of the word ‘inclusion of such mineral’ in Rule 28(1)(xiv) by the legislature negates any ambiguity and concludes that a new mineral may be included in an existing lease,

as opposed to a fresh lease/ agreement.

- e. *That since provisions of the EIA Notification, 2006 were made applicable by the State of Rajasthan only in 2013 and no mining activity has been carried on in the lease area since 2010 (as is stated in application form of Appellant), the Appellant cannot be said to have been carrying on mining activity in violation of EIA Notification. No site visit has been done by Respondent No.5 and no other material has been considered to arrive at the perverse finding that Appellant was acting in violation. Be that as it may, grant of EC to units operating without EC is not barred by law. In fact, Notification dated 08.03.2018 issued by Ministry of Environment, Forest and Climate Change specifically provides the mechanism for grant of EC to units operating without prior EC (copy enclosed). The averment of Respondent No. 4 & 5 in their counter affidavit to the effect that application of the Appellant was rejected on account of appellant being in violation of EIA Notification is not sustainable in view of the notification dated 08.03.2018. If the Appellant is acting or has acted in violation of the EIA Notification, appropriate steps may be taken by the Respondents, however, the same cannot be made the basis for rejection of the application of the Appellant.”*

8. Further argument of the appellant is based on the reporting and observation of the State Level Expert Appraisal Committee (SEAC) held on 30th & 31st May, 2022 and 01.06.2022, wherein it was observed that :-

“The SEAC observed that the PP made an application for renewal and surrender of 50.71 ha., from the original lease area of 92.309 ha., which was accepted by the Department of the Mines and the lease was auto renewed from 26.12.2009 to 31.03.2025. The lease agreement was thus renewed after 16.12.2002. The SEAC also noted that the PP has obtained LOI for inclusion of mineral Granite in the mining lease agreement was thus renewed after 16.12.2002. The SEAC also noted that the PP has obtained LOI for inclusion of mineral Granite in the mining lease.

Regarding mining in Aravalli hills the Hon’ble Supreme Court in the matter of W.P. (Civil) No.202/1995 T.N. Godavarman V/s UOI & Oth., by order dated 16.12.2002, inter-alia, had passed the following order:

“We have heard learned council on 29th/30th Oct, 2002. This Court prohibited and banned the mining activities in the entire Aravalli hills. This ban, it was directed, is not limited only to the hills encircling Kote and Alampur Villages but extends to the entire hill range of Aravalli from Haryana to Rajasthan. The Chief Secretary, State of Haryana and State of Rajasthan were directed to ensure that no mining activity in the Aravalli hills is carried out, especially in that part which has been regarded as forest area or protected under the Environment (Protection) Act”.

The Hon’ble Supreme Court again on 08.04.2005, in the said matter passed the following directions:

“...pending further directions, we restrain any kind of mining in Forest area. Further, we restrain mining in any area in Aravalli hills falling in the State of Rajasthan, where permission may have been accorded after 16.12.2002”

The SEAC, noted that the PP has not obtained EC earlier for the existing mines and also is in violation of the EIA Notification with respect to the Common Cause Judgment pronounced by the Hon’ble Supreme Court. Apart from it the PP has been sanctioned letter of LOI for inclusion of mineral which attract the requirement of fresh EC as well as fresh agreement with Department of Mines, thus to be treated as fresh application for mining covered under ambit of the embargo stipulated by Hon’ble Supreme court.

However, before firming its view, the SEAC, in view of the facts decided to seek legal opinion from SEIAA with respect to the coverage of inclusion of mineral, expansion of mines (operating without prior EC), in the ambit of the orders of the Hon’ble Supreme Court in Aravalli matter..

9. In reply to the above contention Learned Counsel for the respondent/counsel for the respondent nos. 4 & 5 have submitted that since Project Proponent has not obtained EC earlier of the existing mines and Hon’ble Supreme Court of India has passed an order restraining mining activity in any area in Aravali hills falling in the State of Rajasthan, the authorities have taken a proper decision in accordance with and in light of the observation and direction issued by the Hon’ble Supreme Court of India. Copy of the order in I.A. No. 1300 in W.P.(C) No.

202/1995 T.N. Godaverman Thirumulpad vs. Union of India has been attached as annexure-A/9, where there is a clear direction from Hon'ble Supreme Court of India refraining the mining activities in Aravali Hills in region falling in the State of Rajasthan.

10. It is admitted fact that the area under question falls under the Aravali Hills thus the order passed by the respondents, is in light of the order and observation made by the Hon'ble Supreme Court of India and in compliance of the order and there is no irregularity or illegality in the order impugned. The **Appeal No. 17/2022** has no merit and deserves to be dismissed and **accordingly dismissed.**

Sheo Kumar Singh, JM

Dr. Arun Kumar Verma, EM

12th October, 2022
Appeal No. 17/2022(CZ)
PN