

Item No.05

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

(By Virtual Mode)

Original Application No.34/2023(CZ)
(I.A. No. 24/2023)

Gajendra Rajput

Applicant(s)

Versus

State of Madhya Pradesh & Ors.

Respondent(s)

Date of hearing: 18.08.2023

**CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant(s) : Ms. Anisha Jain, Adv. for Applicant

For Respondent(s) : Mr. Sachin K. Verma, Adv. for Standing Counsel
State of M.P. (R-1 TO 5)
Mr. Om Shankar Shrivastava, Adv. for R-2

ORDER

1. Heard Ms. Anisha Jain, Advocate for the applicant, Mr. Sachin K. Verma, advocate for respondents 1 to 5.

2. This Original Application (hereinafter referred to as '**OA**') under Section 14 and 15 of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act, 2010**') has been filed by Gajendra Rajput claiming himself to be a resident of district Narmadapuram, State of Madhya Pradesh, and an environmentalist, interested to work for safeguard of environment and to ensure compliance of Environmental Norms etc.

3. Applicant has assailed notice inviting tenders (hereinafter referred to as '**NIT**') dated 21.04.2023 filed as annexure A-14 issued by Collector, (Mining Branch, District Narmadapuram), State of Madhya Pradesh.

4. NIT invites tenders for allotment of mining leases in Tehsil Mankan Nagar, Seoni, Malwa, Pipariya and Bankhedi. Challenge is on the ground that before issuing NIT dated 21.04.2023, District Survey Report (hereinafter referred to as '**DSR**') has not been prepared by competent body i.e. Sub-Divisional Committee, as per the directions of Supreme Court in its order dated 10.11.2021, in **State of Bihar vs Pawan Kumar and Ors. Civil Appeal nos. 3661-3662 of 2020** (copy whereof is placed on record as annexure A-8 at page 274).

5. In the aforesaid judgement, Supreme Court substituted the directions of this Tribunal, issued vide **order dated 14.10.2020 in O.A. 40 of 2020(EZ) in Pawan Kumar Vs. State of Bihar**, by different directions which are quoted as under:

"We therefore find it appropriate to substitute the directions issued by the Tribunal vide judgment and order dated 14 October 2020, with the following directions:-

- (i) The exercise of preparation of DSR for the purpose of mining in the State of Bihar in all the districts shall be undertaken afresh. The draft DRs shall be prepared by the sub-divisional committees consisting of the Sub-Divisional Magistrate, Officers from Irrigation Department, State Pollution Control Board or Committee, Forest Department, Geological or mining officer. The same shall be prepared by undertaking site visits and also by using modern technology. The said draft DRs shall be prepared within a period of 6 weeks from the date of this order. After the draft DSRs are prepared, the District Magistrate of the concerned District shall forward the same for examination and evaluation by the SEAC. The same shall be examined by the SEAC within a period of 6 weeks and its report shall be forwarded to the SEIAA within the aforesaid period of 6 weeks from the receipt of it. The SEIAA will thereafter consider the grant of approval to such DRs within a period of 6 weeks from the receipt thereon;*
- (ii) Needless to state that while preparing DRs and the appraisal thereof by SEAC and SEIAA, it should be ensured that a strict adherence to the procedure and parameters laid down in the policy of January 2020 should be followed;*

(iii) *Until further orders, we permit the State Government to carry on mining activities through Bihar State Mining Corporation for which it may employ the services of the contractors. However, while doing so, the State Government shall ensure that all environmental concerns are taken care of and no damage is caused to the environment.”*

6. The applicant contended that DSR in the present case has been prepared by District Mining Officer which is not competent to prepare the same and unless DSR is prepared as per directions given by Supreme Court in **State Of Bihar vs Pawan Kumar (Supra)**, no exercise for auction of grant of a lease deed including publication of NIT is permissible in law, particularly in the light of the procedure laid down in Sustainable Sand Mining Management Guidelines, 2016 (hereinafter referred to as ‘**SSMMG 2016**’) and Enforcement and Monitoring Guidelines for Sand Mining 2020 (hereinafter referred to as ‘**EMGSM 2020**’).

7. Applicant has stated in OA that vide NIT dated 21.04.2023, 9 sand ghats were made available for auction for mining purposes and details of the said sand ghats are as under:

S. No.	Block/Tehsil	Gram	Area (in Ha)	Quantity of Mineral (Pre-Monsoon)	Quantity of Mineral (Post-Monsoon)	% of Mineral Replenished	Quantity of Mineral Auctioned (60% of the available Quantity)
1.	Makhan Nagar	Aamkhedi	10	2,80,000	3,00,000	8%	1,21,500
2.	SivniMalwa	Gawadi	4.0	1,00,000	1,12,000	12%	67,200
3.	Pipariya	Sarrakishore	4.0	1,04,000	1,12,000	11%	67,200
4.		Markadhana	4.0	40,000	44,000	10%	26,400
5.	Bankhedi	Murgidhana	4.0	1,00,000	1,08,000	8%	64,800
6.		Kamti	5.0	1,25,000	1,40,000	12%	84,000
7.		Khapakhurd	4.0	1,00,000	1,12,000	12%	67,200
8.		Junheta	4.0	96,000	1,12,000	15%	67,200
9.		Vahravan	4.0	96,000	1,12,000	15%	67,200

8. It is said that under the provisions of SSMMG 2016, preparation of DSR was a mandatory condition and DSR should have contained the following information:

- “1. Introduction
- 2. Overview of Mining Activity in the District
- 3 The List of Mining Leases in the District with location, area and period of validity
- 4. Details of Royalty or Revenue received in last three years
- 5. Detail of Production of Sand or Bajari or minor mineral in last three years
- 6. Process of Deposition of Sediments in the rivers of the District
- 7. General Profile of the District
- 8. Land Utilization Pattern in the district: Forest, Agriculture, Horticulture, Mining etc.
- 9. Physiography of the District
- 10. Rainfall: month-wise
- 11. Geology and Mineral Wealth
- 12. Drainage System with description of main rivers.**

Sl. No.	Name of River	Area Drained (Sq. Km)	% Area Drained

13. Salient Features of Important Rivers and Streams:

Sl. No.	Name of the River/ Stream	Total length in the District (in Km)	Place of Origin	Altitude at Origin

14. Methodology Adopted for Calculating of Mineral Potential

The mineral potential is calculated based on field investigation and geology of the catchment area of the river/ streams. As per the policy of the State and location, depth of minable mineral is defined. The area for removal of mineral in a river or stream can be decided depending on geo-morphology and other factors, it can be 50% to 60% of the area of a particular river/stream, e.g. in Himachal Pradesh mineral constituents like boulders, river born bajari, sand up to a depth of one meter are considered as resource mineral. Other constituents like clay and silt are excluded as waste while calculating the mineral potential of particular river/ stream.

The specific gravity of each mineral constituent is different. While calculating the mineral potential, the average specific gravity is taken as 2.25. The percent of mineral constituent like boulder, river bajari, sand also varies for different river and streams. While calculating the mineral potential the percentage of each mineral constituent is taken as, Boulders 35-40%, Bajari - 30-35%, Sand 25- 30% and 5-10% for silt and clay.

The quantum of deposition varies from stream to stream depending upon factors like catchment lithology, discharge, river profile and geomorphology of the river course. There are certain geomorphological features developed in the river beds such as channel bar, point bar etc. where annual deposition is more even two to three meters.”

9. Under the provisions of EMGSM 2020 it has been stated in para 4.1.1 that preparation of DSR is an important initial step before grant of mining lease/letter of intent. In para 4.1.1(a) of EMGSM it has been

mentioned that DSR for sand mining shall be prepared before auction/E auction/grant of mining lease/letter of intent(LOI) by Mining Department or Department dealing with mining activity in respective State. It is also said that no replenishment study was conducted for the year 2021-22 before issue of impugned NIT and therefore the entire exercise is illegal.

10. The above grievance of applicant was noticed by Tribunal in its order dated 22.05.2023. Thereafter notices were issued to respondents giving then time to file their responses.

11. Pursuant to order dated 22.05.2023, respondents 2,3 and 4 have filed collectively their response dated 26.07.2023. The claim of applicant that DSR was not prepared by competent Sub Committee but District Mining Officer has been denied. It is said that DSR was prepared as per the directions issued by Supreme Court vide order dated 10.11.2021 passed in ***State Of Bihar and Ors. vs Pawan Kumar and Ors. (Supra)***. Given details of steps taken for preparation of DSR respondents 2, 3 and 4 have said that Director, Geology and Mines, State of Madhya Pradesh vide order dated 03.03.2022 (annexure R1 to the reply) constituted Sub Divisional Committee's in all district of State of Madhya Pradesh comprising:

1. Sub-divisional officer (revenue)
2. Officer from water resources department
3. Nominated officer of mppcb
4. Officer from forest department
5. District mining officer/officer posted by directorate of geology and mines

12. Pursuant to order dated 20.06.2022 (Annexure R-2 to the reply) District Narmadapuram, Collector, District Narmadapuram constituted Sub Divisional Committee comprising:

1. Sub-Divisional Officer (Revenue), Circle Narmadapuram (M.P.)
2. Executive Engineer, Water Resources Department, Narmadapuram (M.P.)
3. Regional Officer, Mppcb Regional Office, Mandideep District Raisen (M.P.)
4. Sub-Divisional Officer (Forest Department) Circle Narmadapuram (M.P.)
5. Mining Officer (District Narmadapuram)

13. Sub Divisional Committee convened meeting on 29.06.2022 for preparation of DSR in accordance with SSMMG 2016 and EMGSM 2020. DSR prepared by Sub Divisional Committee for district Narmadapuram was uploaded on district portal <https://narmadapuram.nic.in> on 06.07.2022 inviting objections and suggestions within 21 days i.e. till 28.07.2022.

14. District Collector, Narmadapuram vide letter dated 01.08.2022 forwarded draft DSR prepared by Sub Divisional Committee to Madhya Pradesh State Environment Appraisal Committee (hereinafter referred to as '**MPSEAC**') for examination and evaluation. The draft DSR was considered by MPSEAC in its 594th meeting held on 21.09.2022 and it recommended draft DSR to State Environment Impact Assessment Authority, State of Madhya Pradesh (hereinafter referred to as '**SEIAAMP**') for grant of approval. SEIAAMP considered draft DSR as forwarded by MPSEAC for approval in 751st meeting held on 14.10.2022 and approved the same as contemplated in Environment Impact Assessment 2006 (hereinafter referred to as '**EIA 2006**'); SSMMG 2016 and EMGSM 2020. Vide letter dated 20.10.2022 SEIAAMP communicated its approval to draft DSR to Collector, District Narmadapuram and copy of the said letter is placed on record as annexure R 8 page 584.

15. With regard to replenishment study, respondents 2,3 and 4 have stated that an order was passed in ***Appeal no. 53 of 2015 Rajmal Vs.***

SIAAMP and Ors. dated 06.01.2016, relevant extract whereof reads as under:

"In the reply that has been submitted on behalf of the MP SEIAA it has been submitted that based upon the Office Memorandum dated 24.12.2013 issued by the MoEF, the SEIAA has considered the Applications taking into account the annual replenishment of the sand in the leased areas also. It has however been submitted that independently of what has been provided by way of information by the Project Proponent which in turn has been obtained from the Director Geology and Mines, and no independent appraisal has been carried out by SEIAA itself. We feel that under the scheme of appraisal, of SEAC needs to carry out the appraisal of all available material and data and not merely what has been provided by the Director Geology and Mines. Since this has not been done so far, we would direct that in each of these cases this needs to be reviewed by SEAC. At the same time, fresh Applications which are pending and are under consideration shall be dealt with in accordance with the above."

16. In furtherance of the above direction of Tribunal, SEIAAMP took a policy decision pertaining to appraisal and evaluation of replenishment study report on 23.01.2016 and the relevant extract of the above policy decision reads as under:

"In response to the above directives, all cases pertaining to Sand Mining, the mining plan to be submitted by Director Geology & Mining should include details about annual replenishment of sand in the leased area and the normal water level prevalent in the lean season. The cases recommended by SEAC and under process in SEIAA will be considered only after the revised mining plan duly incorporating the additional chapters as directed above by the Hon'ble NGT is submitted by the PP and duly approved by the competent authority. The cases will be reappraised by SEAC on the basis of revised mining plan and in accordance with the directives of the Hon'ble NGT Copy of the Hon'ble NGT order in Appeal No. 53/2015 dated. 08.01.2016 should be sent to SEAC for compliance in the cases being dealt at their level."

17. For updation of replenishment study for the year 2022-23, meeting of Sub Divisional Committee was convened on 17.07.2023. It is specifically said in para 13 of the reply that there was no sand mining at all from 01.06.2021 till date i.e. the date of filing reply (i.e. 26.07.2023).

18. District Collector vide letter dated 21.07.2023 has forwarded the request for updation of replenishment study report for the year 2022-23 in the approved DSR to MPSEAC for its appraisal.

19. Respondent 5 has also filed a separate reply dated 27.07.2023, contents whereof are similar to the reply of respondents 2, 3 and 4.

20. Applicant has filed a rejoinder affidavit dated 16.08.2023 in response to the reply of respondents 2, 3, 4 and 5, collectively. It is stated therein that Sub Divisional Committee was constituted for District Narmdapuram on 20.06.2022 and draft DRS was uploaded by Sub Divisional Committee on 06.07.2022 i.e. within 16 days which shows that there is extra ordinary hurry and the entire aspects which are supposed to be considered for DSR could not have been considered by Sub Divisional Committee in the said short period.

21. However, to demonstrate that the relevant aspects have not been considered nothing has been placed before us and challenge based on non consideration of various aspects is only conjectural and without any factual backdrop or substance based on record.

22. In fact, we find from rejoinder that preparation of DSR, duly approved by MPSEIAA, as a matter of fact has not been disputed. Therefore the basic premise for challenging NIT has not been substantiated by applicant. In fact, from the reply of respondents, it is evident that the ground of non preparation of DSR by the competent authority is not correct since appropriate DSR by competent body i.e. Sub Divisional Committee was prepared and has been duly approved by

SEIAAMP. Therefore, we do not find any legal infirmity in the NIT dated 21.04.2023 and any subsequent action taken pursuant to the said NIT.

23. Application lacks merit, and is dismissed accordingly.

Sudhir Agarwal, JM

Dr. Afroz Ahmad, EM

August 18, 2023
Original Application No.34/2023(CZ)
(I.A. No. 24/2023)
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