

Item No. 8

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

Original Application No.06/2023 (CZ)
(I.A. No. 05/2023)
(I.A. No. 30/2023)

Dinesh Bothra

Applicant(s)

Versus

Union of India & Ors

Respondent(s)

Date of Hearing: **29.05.2023**

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

For Applicant(s):

Ms. Ranu Purohit, Adv
Mr. Sanjeet Purohit, Adv

For Respondent(s):

Mr. Om Shankar Shrivastava, Adv
Mr. Sandeep Singh Bhagel, Adv
Mr. Ravikant Patidar, Adv
Mr. Siddharth Singh, Adv

ORDER

I.A No. 11/2023

1. An application has been moved by the intervener for impleading as a party under order 1 Rule 10 of CPC on the ground that intervener is a successful bidder of the impugned "NIB" and consequentially the work has been awarded to the intervener with direction to execute the contract agreement therefore the intervenor is a proper and necessary party. No objection has been filed. In view of the facts above, the I.A is allowed. The intervenor is impleaded as a Respondent. The application stands disposed of accordingly.

I.A No. 30 /2023

2. An application by the intervener for taking reply on record – reply be taken on record. I.A stands disposed of accordingly.
3. The matter was listed on 24.05.2023 and on the request of one of the parties, due to urgency of the matter it was listed today. Replies of R-1, 4 and 5 are on record. Rests of the respondents have not filed their replies till date. Respondents, who have not filed their replies, are directed to file the reply within fortnight.

4. Vide order dated 03.02.2023, this Tribunal constituted a Committee consisting (i) District Collector, Tonk, Rajasthan One representative from Central Pollution Control Board, (Rajasthan), (ii) One representative from State Pollution Control Board and (iii) One representative from Secretary, Irrigation, State of Rajasthan to submit the factual and Action Taken Report. In light of the above order a Joint Committee submitted the report. During the course of hearing, the learned counsel Sh. Ajay Gupta has submitted that in light of the Joint Committee report the work has not started. The issues as raised by the learned counsel for the Applicant is that:

1. Eastern Rajasthan Canal Project Corporation Limited (ERCPCL), Respondent No.5 on behalf of State of Rajasthan, Department of Mines issued online bids and invited tender for reclamation of storage capacity of Bisalpur Dam by desilting in District Tonk, Rajasthan. The contention of the applicant is that the scope of work defined at page 73 of the tender document, work is principally of sand mining and worded as removal of silt / sand / gravel mixed overburden deposited in the submergence of Bisalpur Dam, District Tonk, Rajasthan (herein after referred as "Dam in question") with mechanical means like dredgers, etc.

2. The tender in question for removal of sand from the dam in question has been issued for a contract period of 240 months i.e. 20 Years. However, the respondent State Authorities have issued the said tender in question for removal by excavation of Minor Mineral i.e. Sand without preparing the District Survey Report, and classifying the same as work of de-silting.

5. Learned counsel for the MoEF & CC has submitted that in accordance with the EIA notification S.O. 1224 (E) vide dated 28.03.2020, as per the Appendix IX of the aforesaid notification following are exempted from the purview of Environmental clearance (EC).

- (i) *Community works like de-silting of village ponds or tanks construction of village roads, ponds, bunds undertaken in Mahatama Gandhi National Rural Employment and Guarantee Schemes other Government sponsored schemes and community efforts.*
- (ii) *Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purposes of their maintenance, upkeep and disaster management.*

6. If the dredging of rivers, canals, is done for the purposes of maintaining the canals, etc would not require Environmental clearance. If, however, mining is done for the purpose of earning profits and is undertaken as a commercial venture as it involves dredging and de-silting then all the provisions of Environment Impact Notification of 2006 and its subsequent amendments shall be applied the said project. The same was reiterated in the Judgment passed by the Hon'ble High Court in the matter of Writ Petition (PIL) no 93 of 2015 of Jai Prakash Badoni vs. Union of India & Ors and another connected writ petition (PIL) no 95 of 2015, Shakti Sangh Priya vs State of Uttrakhand & Ors.

7. Judgment quoted above held by Hon'ble Supreme Court of India is as follows:

There is also reference made to The Disaster Management Act, 2005 by the learned Advocate General in support of the contention that despite the requirement of the Environment (Protection) Act and the Notifications made thereunder, there is power with the State to carry out dredging in terms of Sections 33 and 34 of The Disaster Management Act, 2005, which read as follows:

“33. Requisition by the District Authority.-The District Authority may by order require any officer or any Department at the district level or any local authority to take such measures for the prevention or mitigation of disaster, or to effectively respond

to it, as may be necessary, and such officer or department shall be bound to carry out such order.

34. Powers and functions of District Authority in the event of any threatening disaster situation or disaster.-*For the purpose of assisting, protecting or providing relief to the community, in response to any threatening disaster situation or disaster, the District Authority may-*

- a. give directions for the release and use of resources available with any Department of the Government and the local authority in the district;*
- b. control and restrict vehicular traffic to, from and within, the vulnerable or affected area;*
- c. control and restrict the entry of any person into, his movement within and departure from, a vulnerable or affected area;*
- d. remove debris, conduct search and carry out rescue operations;*
- e. provide shelter, food, drinking water and essential provisions, healthcare and services;*
- f. establish emergency communication systems in the affected area;*
- g. make arrangements for the disposal of the unclaimed dead bodies;*
- h. recommend to any Department of the Government of the State or any authority or body under that Government at the district level to take such measures as are necessary in its opinion;*
- i. require experts and consultants in the relevant fields to advise and assist as it may deem necessary;*
- j. procure exclusive or preferential use of amenities from any authority or person;*

- k. construct temporary bridges or other necessary structures and demolish structures which may be hazardous to public or aggravate the effects of the disaster;*
- l. ensure that the non-governmental organizations carry out their activities in an equitable and non-discriminatory manner;*
- m. take such other steps as may be required or warranted to be taken in such a situation.”*

8. It is further argued by the learned counsel for the Eastern Rajasthan Canal Project Corporation Limited that a Committee called Mittal Committee was constituted to submit the report on the point of de-silting of reservoir, dredging for up-keep and maintenance of structures, channels and averting natural disasters. The copy of the report has been filed, the relevant paragraphs is extracted as below:

The de-silting of reservoir, dredging for upkeep and maintenance of structures, channels and averting natural disasters will not be treated as mining for the purpose of environmental clearance. The Ministry of Water Resources (MoWR) view on desiltation from flood control point of view is as follows:

A multidisciplinary Committee (Mittal Committee) under the chairmanship of Dr. B.K. Mittal, former Chairman, Central Water Commission was constituted by MoWR, vide letter dated 08.10.2001 to identify cause and extent of siltations in rivers, suggest measures to minimize siltation, examine as to whether desilting is a technically feasible means to minimize magnitude of flood in rivers, suggest appropriate technology/ methods of desilting of rivers, propose a realistic operational programme in a time bound manner and other related aspects. The committee studied in respect of few sites on Ganga, Brahmaputra, Godavari, Krishna etc., and inter-alia concluded that:

- (i) Siltation in river is not pronounced and alarming;*

- (ii) *Desilting of rivers for flood control is not an economically viable solution;*
- (iii) *Dredging in general has been found to be inadequate and should not be resorted to, particularly in major rivers;*
- (iv) *There are, of course, some locations such as tidal rivers, confluence points with narrow constrictions and the like which can be tackled by desilting after thorough examination and techno-economic justification;*
- (v) *Selective dredging is suggested depending upon local conditions; and*
- (vi) *Desilting of rivers can marginally minimize the magnitude of floods and be effective only for a short period.*

Thus, desilting in general is not feasible technically, due to several reasons like non-sustainability, non-availability of vast land required for disposal of dredged material etc. This cannot be viewed in isolation of other approaches to manage floods. Desilting of rivers in vulnerable reaches may be suggested based on model study, if it is found techno-economically viable. For navigation purposes the river reaches in the water ways path may be dredged to have minimum depth of water.

9. Appendix-9 of Exemption of certain cases from requirement of environmental clearance under paragraph 7 (i) (B) contains the following facts exempting the Environmental clearance in.....

.....3. Removal of sand deposits on agricultural field after flood by farmers.

6. Dredging and de-silting of dams, reservoirs, weirs, barrages, rivers and canals for the purpose of their maintenance, upkeep and disaster management.

10. Learned counsel for the Applicant has submitted that it is a commercial activity and requires environmental clearance while learned counsel for the MoEF & CC and all other respondents has submitted that it is

not a commercial activity and EC is not required. It is mixed question of facts, laws, economy and ecology and requires replies of all respondents with detailed arguments.

11. Learned counsel for the Eastern Rajasthan Canal Project Corporation Limited has submitted that after June due to rainy season de-silting will not be possible, which may adversely affect the storage capacity of the dam and which may directly or indirectly further affect the public in general and result into shortage of availability of water for drinking purposes as well as for irrigation purposes. In this regard, it is made clear that this Tribunal has not passed any order with regard to the injunction on any work by the department concerned.

12. Learned counsel for the Eastern Rajasthan Canal Project Corporation Limited has drawn our attention towards the Joint Committee report, where it was observed that no work of de-silting has been initiated by M/s Eastern Rajasthan Canal Project Corporation Limited and any other agency till date and further drawn our attention that Joint Committee report has observed that no installation of machinery for de-silting purpose has been done so far. This is internal working of the agency and the Eastern Rajasthan Canal Project Corporation Limited and this Tribunal has not passed any order in this respect. In light of the rainy season and urgency of the matter, the department is at liberty to proceed in accordance with law subject to final decision of this Tribunal.

13. I.A No. 05/2023 stands disposed of.

List it on 21st July, 2023

Sheo Kumar Singh, JM

Dr. Arun Kumar Verma, EM

29th May, 2023
O.A No. 06/2023 (CZ)
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