

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

(By Virtual Mode)

Original Application No.80/2023(CZ)
(O.A.No.221/2022 - PB)

Vimla Kol Applicant(s)

Versus

State of Madhya Pradesh & Ors. Respondent(s)

Date of hearing: 22.08.2023

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

For Applicant(s) : None through VC
For Respondent(s) : Ms. Parul Bhadoria, Adv. for MPPCB & State of
M.P.
Mr. Sanjeev Mehra, RO, MPPCB, Shahdol

ORDER

1. Entertaining *Suo Motu* a complaint through a letter petition dated 29.01.2022 sent by Vimla Kol, Sarpanch, Gram Panchayat Barach, district Shahdol, this original application (hereinafter referred to as '**OA**') was registered.
2. The grievance raised in the letter petition is that illegal sand mining is being carried out at river 'Jhanpar' resulting in soil erosion, damage to roads, depletion of ground water, damage to agricultural crops and deforestation in Sanjay National Park which is about 4 km from Jhanpar river.
3. Vide order dated 25.04.2022, Tribunal constituted a Joint Committee comprising SEIAA, State of Madhya Pradesh, State PCB, Director, Sanjay Nation Park and Collector, District Shahdol with a direction to submit a factual report.

4. Pursuant to order dated 25.04.2022, Joint Committee submitted a factual and action taken report dated 07.06.2022. The report contains observations (overview) and other details recorded by Committee as under:

“Overview:-

The Jhanpar River originated from Tagawar village which is about 24 km away from Tahsil Beohari. After originating from Tagawar village, river flows via Barachh village and meets to Banas River near Bhamraha. Jhanpar River is tributary of Son River. Total length of the Jhanpar river about 235 km. The sand mine situated at village. Barach, Tahsil-Jaysinghnagar, Dist. Shahdol (M.P.) on the riverbed of Jhanpar river. Jhanpar river is seasonal river and mostly remain dry in month of March to month of June. The sand mines are about 0.5 to 0.8 KM from the Barachh village. M/s Vanshika Construction Company, Deori Highway, District-Narsinghpur (M.P.) has been approved by State Mining, Corporation Limited (MP Govt. Undertakings) in accordance with the Madhya Pradesh Sand (Mining, Transport, Storage and Trade) Rules, 2019 has been declared on 28.01.2020 as the highest successful tenderer for these two mines of sand located in Shahdol district of the state. In accordance with the Madhya Pradesh Sand (Mining, Transport, Storage and Trade) Rules, 2019, under the sand mining policy set by the government for the allocation and operation of sand mines, the mines have obtained NOC from Gramsabha- Barachh (07/08/2020), Mining plan (Approved from Mining Dept. Shahdol), NOC from forest department with letter no-2115, Date.30.09.2019. After that, the mine management has applied for Environmental Clearance (EC) at SEIAA, Bhopal. Environmental Clearance is issued by SEIAA on the basis of recommendation by high level expert committee SEAC (State Level Expert Appraisal Committee).

Statutory Clearance

Sl. No.	Name of the Mine	Mining lease Order No., Date	Environment Clearance by SEIAA by No..., Date	Air & Water Consent Validity
01	Barachh-1	Letter No. 3226, Date. 16.07.2020	Order No. 1295/SEIAA/22, Dated 15.01.2022	17.01.2023
02	Barachh-2	Letter No. 3224, Date 16.07.2020	EC identification No. EC22B001MP152065 Dated. 17.01.2022	19.01.2023

Sl. No.	Name of the Mine	NOC from Forest Department	NOC from Gramsabha	Approval of Mining Plan
01	Barachh-1	Letter No. 342, Date: 24/01/2019	Date 07/08/2020	Sl No. 2326 Dt. 13/08/2020
02	Barachh-2	Letter No. 2115, Date: 30/09/2019	Date Not mentioned	Sl No. 2329, Dt. 13/08/2020

Chronology of Public Hearing process:-

On dated 25/01/2021 letter issued by the Head Office, Bhopal to Regional Office, Shahdol for conducting Public Hearing of these two mines. Before conducting the public hearing Regional Office, Shahadol published notice regarding public hearing 30 days before the public hearing date. Public hearing of these two mines Barachh-1 & Barachh-2 was conducted on Panchayat Bhavan, Barachh on dated 10.03.2021 in presence of Additional District Magistrate (ADM), Shandol Shri Arpit Verma(I. A.S) & Regional Officer, MPPCB, Shahdol. There were more than 200 people attended the public hearing. The opinion/suggestion of villagers and all writing complains were forwarded for the further process of Environmental Clearance to competent authority. Videorecording & photographs were also conducted during complete public hearing process. On recommendation by SEAC (State Level Expert Appraisal Committee), Environmental clearance were accorded by competent authority SEIAA during January 2022. EC is granted by competent authority on the basis of recommendation by SEAC(State Level Expert Appraisal Committee). Provision of screening, scoping and appraisal of sand mine project are made in section 5 of Environment Impact Assessment notification 2006, notified by government of India. In case of sand mine situated in Barachh village, procedure of screening, scoping and appraisal of sand mine is done taking note of all relevant issue related with-both sand mine located in Barachh village such as impact on ground water, impact on agricultural land, impact on soil erosion and impact on forest etc. Minutes of SEAC meeting dated 14/12/2021 and TOR issued by SEIAA is also enclosed for needy reference.

The sand mining operation basically carried out by both manual and semi mechanized method adopting a system of shallow pit in sand. Mining is done in layers of 1-meter depth to avoid ponding effect and after first layer is excavated, the process will be repeated for the next layers.

There are no use of water in the process of Sand mining. Hence, No waste water generates from the process. Because of no use of fossil fuel in sand mining process there are no gaseous pollution like CO2, NO, SO2 and other gaseous emission due to sand mining. Because in the sand mining process, the sand is removed from the river bed. The excavation of sand is restored due to replenishment process because during monsoon period sand particles are again deposited in excavated portion of river bed.

Factual Report of Grievances of the Applicants:-

Name/Address of the Complainant	Details of Complaint	Observation
All the villagers and officials of the Gram Panchayat, Village Panchayat, Barach, Janpad, Panchayat Jaisinghnagar, District-Shahdol (M.P.) and wrong.	1. The sand mine of Jhanpar river has been approved due to the proposal taken by Gram Panchayat Barach being fake and	The resolution of the Gram Sabha is also attached with the date 07/08/2020 of the meeting.

	wrong.	
	2. No proposal has been made by the Sarpanch, District Member and Deputy Sarpanch of Gram Panchayat Barach in relation to the ongoing sand mine of Gram Panchayat Barach.	A resolution passed in the meeting of the Gram Sabha is statutory.
	3. That is, the sand excavation of the Jhanpar river has had a huge impact on the water level.	There is no evidence of depletion of groundwater table.
	4. That is the water of the well has dried up due to the fall in the water level of the agricultural land situated on the banks of the river and the fields are becoming barren and due to lack of electricity and water, the people are longing for water.	After observing the wells and observing the fields, it was found that the field is not barren and there is water in the wells and pumps have also been found working. There may not be such depletion of ground water table due to short duration (7-10 days) mining of sand from river bed.
	5. The excavation of sand quarries is causing soil erosion of the river banks. All the villagers who depend on agriculture are facing the danger of starvation.	Excavation is completely closed since last 4 months. During field visit (inspection), no evidence of river bank erosion has been observed.
	6. No signature has been made in relation to the approved sand mine in the knowledge of the	The resolution passed unanimously in the meeting of the Gram Sabha is statutory under

	<i>sarpanch of the office of Gram Panchayat, Barachh or being a female uneducated tribal.</i>	<i>the Panchayat Act.</i>
	<i>7. Roads are getting damaged due to the transportation of overloaded trucks due to the commissioning of sand mines.</i>	<i>Excavation Completely closed since last 4 months. No prominent evidence of road cutting has been observed due to transportation.</i>
	<i>8.If the sand mine (lease) of Jhanpar River is not terminated, then the regional people will be compelled to hold indefinite dharna and hunger strike for which the entire responsibility will be of the government administration.</i>	<i>Excavation is completely closed since last 4 months. Committee finds it as an administrative issue which is beyond the scope of committee.</i>

Present Status of Mine:-

There is no mining activity occurring presently in mines and no mining activities will be possible up to 30.09.2022 due to restriction in sand mining during monsoon period by district administration. As per present scenario of mine, there are huge amount of sand deposited in the river Jhanpar. Villagers have informed that mining is only done for about 7-10 days in these mines initially during last weeks of January 2022. Few of Local people have done agitations, demonstration and Dharna in the month of February and March 2022 aimed at not allowing mining activities in Barachh village. From the point of view of law and order, mining activities are completely halted, since last 04 months.

About the Village-Barachh:-

Shahdol district is situated in north-eastern part of the Madhya Pradesh, India. Village Barachh is situated in Tahsil-laysingnagar of the district shahdol about 13 Km away from nearest city Nagar Parisad Beohari with total 1112 families residing. The Barachh village has population of 4552 consist of 2213. males and 2339 are females as per Population Census 2011. In Barachh village population of children with age 0-6 is 704 which makes up 15.47% of total population of village. This village has lower literacy rate compared to Madhya Pradesh. In 2011, literacy rate of this village was 63.33% compared to 69.32 % of Madhya Pradesh. In Barachh

Male literacy stands at 75.61 % while female literacy rate was 51.72- %. Population density is 197.09 persons per square kilometer.

Total area of Barachh is 2309.63 Hectares as per the data available for the year 2009. Total sown/agricultural area is 806.62 ha. About 636.4 ha is un-irrigated area.

Joint Inspection as per the Hon'ble NGT Order (Date-25.04.2022)

To find out facts as well as present actual status of the complaint mentioned in NGT order. The Joint committee has visited the site on 07.06.2022, discussed with villagers and seen nearby agricultural field, Open well, streams and Hand pumps also.

Present Status of Sand Mining :-

M/s Vanshika Construction Company, Deori Highway, District-Narsinghpur (M.P.) has been approved by State Mining Corporation Limited (MP Govt. Undertakings) in accordance with the Madhya Pradesh Sand (Mining, Transport, Storage and Trade) Rules, 2019 has been declared on 28.01.2020 as the highest successful tenderer for Shahdol district of the state. Presently there are no sand mining activity occurs in the village Barachh since more than 04-month period. These two sand mines are allocated to M/S Vansika Construction Company. Mining Department comprising of Mining Officer, Mining Inspector and Mining Surveyor along with Revenue Department of Sub Divisional Officer, Tahsildar and Naib Tahsildar monitors the mining activities in the district. Mining activities by M/S Vansika Construction Company is legally permitted in view of valid mining lease, Environmental Clearance and valid Consent under Air & Water Act.

Status of Soil Erosion:-

Soil erosion in general occurs when rains are heavy and flow of water through the field with high velocity. Short duration rains (7-10 days) in the month of January 2022 (Non monsoon season) where no rain happened does not impact soil erosion. At the time of joint inspection, it is found that there are no soil erosion being happening neither any condition of soil erosion is found happened. And the mining activity is not functioning during inspection. The river bed of Jhanpar river is full of sands. Photographs enclosed.

Status of The Roads :-

The mining activity is not occurring during visit, mining activities have just happened for few days. No damage is seen on connected road leading to mine site due to mining activities. No machinery, no vehicles for transportation are found in the area during inspection.

Status of Ground Water :-

As per the Ground Water Year Book, Madhya Pradesh (2020-21) by the Central Ground Water Board, Govt. Of India, District Shahdol has received highest post monsoon rainfall, 41% above normal and also received normal to excess post monsoon rainfall. It has been found that in the month of August (rainiest month) maximum number of rainy days lays in the range of 18 to 20 days in shahdol district. In

Barachh village, about 22 hand pumps, about 60 open well and about 50 bores well are presently functional. Jhappar river, which is also important source of water supply for agricultural requirement of barachh village. Basically, this Jhanpar river is a seasonal river. Presently, the Jhanpar river is completely dry. The water availability scenario in Barachh village is also very similar to other villages in nearby areas. No depletion of ground water table has been observed.

Status of Agricultural Crops:-

The agriculture crops in the village Barachh area mainly categorized as Khariff and Rabi Crops. Rice, wheat, is the main agricultural food crop and mustard, gram, dal, peas also cultivated. The sediment in the form of river bed material ie sand has deposited in the last many years as a process of sedimentation. Sand beds have been formed at various places hindering the flow of water and excess deposition had changed the shape of river. Because of this, during monsoon season, the water may rise above the high flood level causing water from river Jhanpar to enter into nearby agricultural fields. Such disasters may damage large tracts of land laying on the banks of the river especially the agricultural land. No adverse impact on agriculture field due to mining is envisaged.

Status Regarding Deforestation in Sanjay Tiger Reserve:-

Sanjay Tiger Reserve is a tiger reserve in Sidhi and some part in Shahdol districts of Madhya Pradesh state, India. Downstream of Jhanpar river with respect to Barachh mine does not flow through/ along Sanjay Tiger Reserve, hence adverse effect of sand mining on Sanjay tiger reserve does not seem probable in light of existing Geographical structure. It was declared as Tiger Reserve in the year of 2007. Total area of the park is 1675 km². The park is known for its rich and varied flora and fauna comprising rare and endangered species/like Tiger, Leopard, sloth bear, elephants, Sambar Deer, Wild boar, Nilgai, Chinkara, Civet, Porcupine, Monitor Lizard etc. Most attractive birds are Golden Hooded Oriole, Racket-tailed drongos, Indian Pitta, Rufus-Treeple, Egyptian vulture, Indian white-rumped vulture, Nightjars and many other species. It is a sal forest which is strictly reserved for the betterment of the wildlife & biodiversity, and where activities like developmental, forestry, poaching, hunting and grazing on cultivation are not permitted.

The village Barachh is situated in Shahdol district in state Madhya Pradesh. As per NOC issued by Shahdol Forest Department nearest forest pillar is situated about 4.61 KM from the sand mine site. On Google map, the aerial distance of Sanjay Tiger Reserve from Barachh village is about 4.7 KM. Also, the mining area during inspection is surrounded by villages. Hence, there would not be any disturbance and nuisance to free movement of wild animal within Tiger Reserve boundary in the forest situation. Similarly sand mining activities in Barachh village not likely to create ancillary activities such as transportation of sand as it is neither planned nor legally permitted through Sanjay Tiger Reserve.

Noise Monitoring related to Sand mine site:-

Noise monitoring of the mining area has been done by MPPCB and result shows that there is no noise level beyond permissible limit.

Ambient Air Monitoring related to Sand mine site:-

Ambient air monitoring of the mining area has been done by MPPCB and result shows that there is no ambient air quality level beyond permissible limit.

Conclusion:-

Mining lease holder has got all necessary permission and valid approval from competent authorities, but they could not able to do sand mining activities due to some unavoidable circumstances. It seems that matter raised in complaint are based on possibilities and unfounded assumption and faculty notion. Many points mentioned in complaint are very frivolous and exaggerated in nature. Presently, mining activities in these mines have been stopped just after commencement in the month of January 2022 and could not be possible up to September 2022 due to monsoon season. Hence, complaint seems to be non-relevant in present context.”

5. Applicant has filed an affidavit dated 26.11.2022 (at page 207) stating that she has submitted application for want of proper information of law and she wants to withdraw the application.

6. Respondent 5 i.e. Madhya Pradesh State Environment Impact Assessment Authority (hereinafter referred to as ‘SEIAAMP’) has filed its reply dated 07.01.2023 stating that the Project Proponent i.e. M/s Vanshika Construction Company was issued environment clearance and thereafter it has proceeded accordingly and there is no illegality on its part. The reply given by Respondent 5 in para 4 of its response reads as under:

“4. At the onset it is pertinent to mention that the Answering Respondent has issued two Environmental Clearances (hereinafter referred to as "EC") in the village of Barachh, Distrot Shahdol, and the details of the same are as follows:

a. EC dated 02.02.2022 issued by the answering respondent in favor of one M/s Vanshika Construction (hereinafter referred as "Project Proponent"), wherein EC was granted for a Production Capacity of 23,640 sq. m. per annum over an area of 4.734 ha. at Khasara No. 2524, Village - Barachh-1, Tehsil - Jaisinghnagar, District - Shahdol (hereinafter referred as "Barachh-1"). A copy of EC dated 02.02.2022 is attached herewith as Annexure R-1.

b. EC dated 17.01.2022 issued by the answering respondent in favor of the Project Proponent, wherein EC was granted for a Production Capacity of 48,000 sq. m. per annum over an area of 8 ha. at Khasara No. 2126/ 1, 2490, 2491, Village - Barachh-2, Tehsil - Jaisinghnagar, District - Shahdol (hereinafter referred as "Barachh-2"). A copy of EC dated 02.02.2022 is attached herewith as Annexure R-2.

5. That the aforementioned ECs issued by the Answering Respondent, i.e., Barachh-1 and Barachh-2, were in accordance of the recommendation of the State Environment Appraisal Committee (hereinafter referred as "SEAC"), in 533 Meeting dated 14.12.2021. The relevant extract from the Minute of 533rd Meeting dated 14.12.2021 is attached herewith as Annexure R-3.

6. That the Project Proponent submitted the application for Environmental Clearance vide application numbers SIA/MP/MIN/56331/2020 'dated 02.12.2021 and SIA/MP/MIN/56332/2020 dated 02.12.2020, wherein the Project Proponent submitted all the requisite documents, including Mining Lease, Approved Mining Plan, NOC from Forest Department and NOC from Gram Panchayat. A copy of Mining Lease, Approved Mining Plan, NOC from Forest Department and NOC from Gram Panchayat is attached herewith as Annexure R-4 (COLLY).

7. Therefore, it is apparent from the face of the record, from the aforementioned

facts that ECs issued by the Answering Respondent for Sand Mining in Village Barachh, District Shahdol is in accordance to Environment Impact Assessment Notification dated 14.09.2006 and that there is no irregularity or illegality while issuing EC by the Answering Respondent.

8. It is pertinent to note that the answering respondent is not a competent authority to deal with the issue of illegal sand mining. The concerned departments will be in a better position to submit on the said issue."

7. Learned counsel for the MPPCB has also brought before us a copy of notification dated 28.08.2017 published in Gazette of India (Extraordinary) dated 29.08.2017 publishing notification under Section 3(1)(2)(v)(xiv)(3) of Environment (Protection) Act, 1986 read Rule 5(3) Environment (Protection) Rules, 1986, notifying an area upto an extent of 2 kilometers from the boundary of **Sanjay National Park** and **Sanjay Dubri Wildlife Sanctuary**, which together constitute the Core Area of '**Sanjay Dubri Tiger Reserve**', as the **Sanjay National Park and Sanjay Dubri Wildlife Sanctuary Eco-sensitive Zone** (herein after referred to as the Eco-sensitive Zone), which is spread over the States of Madhya Pradesh and Chhattisgarh, details whereof, in para 1 of the notification are as under:

"1. *Extent and boundaries of Eco-sensitive Zone-* (1) *The extent of Eco-Sensitive Zone is up to 2 kilometers from the boundary of Sanjay National Park and Sanjay Dubri Wildlife Sanctuary, which together constitute the Core Area of the Sanjay Dubri Tiger Reserve.*

(2) *The Eco-sensitive Zone is spread over an area of 1053.243 square kilometres which includes 861.931 square kilometres Buffer Area of*

Sanjay Dubri Tiger Reserve and includes 32.759 square kilometres area of Chhattisgarh State.

(3) The map of the Eco-sensitive Zone along with co-ordinates of prominent points is appended as Annexure I.

(4) The Eco-sensitive Zone includes 98 villages in three Districts viz. Shahdol, Sidhi and Singrauli of Madhya Pradesh and 3 villages of Manendragarh District of Chhattisgarh.

(5) The list of the villages falling within the Eco-sensitive Zone is appended as Annexure II.

(6) The area of the Eco-sensitive Zone is appended as Annexure-III.”

8. It is stated that the EC has been granted keeping in mind sufficient and safe distance from the eco sensitive zone and Tiger reserve and therefore there is illegality in the matter.

9. In the absence of any material on record to show that the stand of the respondents is contrary to the environmental norms, we do not find any justification but to accept the stand taken by the respondents. We also accept joint committee's report. Since no illegality in the activities of M/s Vanshika Construction Company has been found, in our view no further order is required in this matter.

10. The OA is disposed of accordingly.

Sudhir Agarwal, JM

Dr. Afroz Ahmad, EM

August 22, 2023
Original Application No.80/2023(CZ)
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