

Item No.4

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

Original Application No.36/2023(CZ)
(I.A.No.53/2023) (I.A.No.76/2023) (I.A.No.83/2023) (I.A.No.86/2023)

Brijendra Kumar Mala & Anr.

Applicant(s)

Versus

State of Madhya Pradesh & Ors.

Respondent(s)

Date of Hearing : 13.09.2023

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

For Applicant(s):

Mr. Atul Jain, Adv.

For Respondent(s):

Mr. Prashant M. Harne, Adv.
Mr. Enosh George Carlo, Adv.
Ms. Parul Bhadoria, Addv.
Mr. Himanshu Shukla, Adv.
Mr. Kanishk Devesh, Adv.
Mr. Gaurvanit Jain, Adv.
Mr. Deepesh Shukla, Adv.

ORDER

I.A. No. 53/2023

1. This is an application by the intervener on the ground that the order passed in this application may directly or indirectly affect the right title of interest and being necessary and proper party he may be impleaded as party Respondent. The Applicant of I.A. No. 53/2023 being necessary and proper party is allowed to be implead as Respondent. Applicant is directed to take necessary steps within a week. Copy of the application and the relevant documents be provided to the newly added Respondent, who may in turn file the reply within 10 days. I.A No. 53 stands **disposed** of accordingly.

I.A. No. 76/2023

2. This is an application by the Respondent no. 38 with the request to direct the Respondent No. 5 /State Pollution Control Board to allow the Respondent no. 38 to operate. The grievance of the application is the order dated 07.06.2023 passed by the State Pollution Control Board and further order dated 21.07.2022 issued by the O/o the Collector (Mines), District Rewa (M.P.) or the State Counsel.
3. If the Applicant is aggrieved by any order of any authority, aggrieved have right to file the appeal or revision before the appropriate forum. Since the order was passed by the authorities concerned, thus the Applicant has alternate remedy to challenge those orders I.A No. 76/2023 stands **disposed** of.

I.A. No. 83/2023

4. On the request of the Learned Counsel for the Applicant, I.A. No. 83/2023 stands disposed of as withdrawn with liberty to file a separate application against the proposed respondents, being separate cause of action. I.A No. 83/2023 stands **disposed** of accordingly.

I.A. No. 86/2023

5. Learned Counsel for the State has submitted that according to Section 80 (C) of the CPC the suit or application against the State of Madhya Pradesh may be filed as State of Madhya Pradesh through Secretary or Collector concerned. Accordingly the Applicant is directed to follow the section 80 (C) of the CPC and name be corrected accordingly.

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6. Respondent Nos. 5, 6, 14, 17, 24, 25, 39 & 40 have filed reply today. A copy of the same be provided to the opposite parties on available e-mail. The perusal of the report with status of EC shows that the EC have been issued by the DEIAA in most of the cases and as per settled

law and guidelines issued by the MoEF&CC, the DEIAA is not authority to issue the EC.

7. Learned Counsel for the State Pollution Control Board has submitted that the matter of authority to issue the EC was considered in O.A No. 90/2022 (CZ) titled as *Sharvesh Sharma vs. State Of Madhya Pradesh & Ors* vide order dated 23.12.2022. The relevant paras are quoted below :

3. It is contended that the authority of the DEIAA was under consideration before Principal Bench of this Tribunal in Execution Application No. 55/2018 of Original Application No. 520/2016. Order dated 11.12.2018 runs as follows:

1. *Grievance in this application is that there is non-compliance of the judgment of this Tribunal dated 13.09.2018 in Original Application No. 186/2016, Satendra Pandey Vs. Ministry of Environment, Forest & Climate Change & Anr. The Hon'ble Supreme Court, vide judgment in Deepak Kumar Vs. State of Haryana & Ors.: (2012) 4 SCC 629, required proper Environmental Clearance before grant of lease of minor minerals, including sand mining. Vide Notification dated 15.01.2016 issued by MoEF&CC, environmental clearance was to be given by the District Environment Impact Assessment Authority (DEIAA) which defeat the direction of the Hon'ble Supreme Court.*

2. *This Tribunal noted that the Notification dated 15.01.2016 issued by the Ministry of Environment, Forest and Climate Change (MoEF&CC) was not consistent with the mandate in Deepak Kumar (supra).*

3. *The District Expert Appraisal Committee (DEAC) comprised officers having no expertise or scientific knowledge to assess environment implications. Permitting DEAC to make assessment was also not consistent with the Sustainable Sand Mining Management Guidelines, 2016. Accordingly, MoEF&CC was directed to take steps to revise the procedure laid down in the Notification dated 15.01.2016.*

4. According to the applicant, the MoEF&CC failed to issue appropriate Notification. Moreover, the State of Uttar Pradesh vide the letter dated 25.10.2018 and State of Kerala vide the letter dated 29.10.2018 directed Environmental Clearance to be given in accordance with the Notification dated 15.01.2016 in violation of the judgment of this tribunal dated 13.09.2018 which in turn is to implement the direction of the Hon'ble Supreme Court in Deepak Kumar (supra).

5. Accordingly, we direct the MoEF&CC to comply with the order dated 13.09.2018 forthwith and furnish a report of compliance on or before 31.12.2018 failing which coercive measures may have to be taken. We also make it clear that till a fresh Notification is issued by the MoEF&CC, Notification dated 15.01.2016 will not be acted upon.

6. Since our attention has been drawn to letter dated 29.10.2018 issued by the State Environment Impact Assessment Authority, Kerala addressed to the District Environment Impact Assessment Authorities of various districts in Kerala that Notification dated 15.01.2016 having not being stayed, the same be followed. This interpretation is clearly contrary to the order of this Tribunal disapproving the Notification dated 15.01.2016 and requiring the same to be revised. The direction that 15.01.2016 should still be acted upon is clearly illegal and in violation of judgment of this Tribunal. The same will stand suspended till a fresh Notification is issued by the MoEF&CC as directed hereinabove.

7. This direction will apply to all the State Environment Impact Assessment Authorities/State Governments.

8. List for further consideration along with the report of the MoEF&CC on 14.01.2019.

4. The direction issued as above clearly provides that environmental clearance granted by the DEIAA stands suspended till the fresh notification issued by the MoEF & CC.

5. In compliance of the above, MPSEIAA vide order dated 27.12.20218 issued office memorandum as follows:

Hon'ble NGT(PB), New Delhi vide order dated 13-09-2018 in OA No. 186/2016 Satyendra Pandey V/s MoEF&CC, GoI and others has inter-alia directed as follows:-

- I. Providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling member category B-2 par with Category B-1 by SEAC/SEIAA as well as for cluster situation wherever it is not provided;*
- II. Form 1M by made more comprehensive for areas of 0 to 5 ha by dispending with the requirement for public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA;*
- III. If a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environment clearance;*
- IV. EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendation 6, 7 and 8 thereof;*
- V. Revise the procedure to also incomplete procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area;*
- VI. The MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining;*

As per above order of Hon'ble NGT(PB), Ministry of Environment, Forest & Climate Change (MoEF&CC), Govt. of India vide Office Memorandum F.No.L-11011/175/2018-IA-II (M) dated 12-12-2018, has directed to compliance the above direction of Hon'ble NGT. Besides this, Hon'ble NGT(PB) in its order dated 11.12.18 in OA 520/2016 has suspended the activities of issuing EC by DEIAA/DEAC for minor minerals as per MOEF&CC Notification dated 15.1.2016 till a fresh notification is issued by ministry. Therefore, in compliance of MoEF&CC, GoI, OM dated 12-12-2018, it is decided that all mining cases of minor minerals having 0 to 5 ha area will be appraised by MP-SEIAA for Environmental clearance and hence all concerned Project Proponent will apply in MP-SEIAA in Form-1 with other required supporting documents on online MoEF&CC website www.environmentclearance.nic.in for process of application for grant of prior environmental clearance with immediate effect till further order.

6. The matter was again considered by the Principal Bench of this Tribunal in Original Application No. 319/2022 in I.A No. 152/2022 in the matter of Dileep Singh vs. State of Uttar Pradesh & Ors and vide order dated 01.07.2022 the Tribunal observed as follows:

1. *The applicant has filed the present application seeking setting aside/quashing of the impugned Environmental Clearance dated 31.03.2018 issued in respect of Sand Ghat/ Mine located at Khand No. 11/15 and 11/16 at Village- Diya Upahar, Tehsil, Manjhanpur, District- Kaushambi, Uttar Pradesh for an area admeasuring 24.28 hectares and restraining respondent no. 6 from transferring impugned environmental clearance in favor of respondent no. 7 on the grounds that the impugned environmental clearance is defective/invalid having been granted without EIA/EMP/Public Consultation and contrary to order dated 13.09.2018 passed by this Tribunal in **O.A No. 186/2016 titled as Satendra Pandey Vs. MoEF & CC and others.***

2. *The applicant has pleaded that the impugned environmental clearance for the said Sand/Morrum Mining Project was awarded on 31.03.2018 by SEIAA, Uttar Pradesh in favor of M/s Rishab Herbal Pvt. Ltd. At the time of awarding of the environmental clearance the Project being less than 25 hectares was categorized as Category – B2 Project in view of MoEF & CC Notification dated 15.01.2016 and was exempted from EIA study, EMP and Public consultation. Subsequently, the MoEF & CC Notification dated 15.01.2016 was partly quashed by this Tribunal vide order dated 13.09.2018 passed in **Satendra Pandey's case (supra)** and Category B-2 projects were brought at par with Category B-1 Projects and EIA/EMP and Public Consultation were made mandatory for all projects having area above 5 hectares. The MoEF & CC vide Office Memorandum dated 12.12.2018 communicated the Judgment passed in **Satendra Pandey's case (Supra)** to all State Chief Secretaries*

and SEIAAs for requisite compliance. The SEIAA/SEAC, Uttar Pradesh in compliance of the Judgment passed by this Tribunal in **Satendra Pandey's case (Supra)** and the MoEF & CC Office Memorandum dated 12.12.2018 treated all mining projects from 5 hectares to 25 hectares, earlier falling under Category B-2, as Category B-1 and decided to revoke 19 ECs granted without following the requisite procedure of EIA, EMP and Public Consultation. The mining lease was revoked and fresh E-auction notice was issued on 24.06.2021. Respondent no. 7 was granted LOI with liberty to get the existing environmental clearance transferred in his favour. Respondent no. 7, accordingly, submitted an application for transfer of the Impugned environmental clearance dated 31.08.2018 which was during pendency of the present application transferred in favour of respondent no. 7 vide transfer order dated 04/22.04.2022. Environmental clearance dated 31.03.2018, which was coterminous with mining lease granted in favour of M/s Rishab Herbal Pvt. Ltd. and had expired with revocation thereof, could not be transferred in favour of Respondent no. 7. Respondent no. 4- MoEF & CC had under SSMG, 2016 and EMGSM, 2020 made conducting of replenishment study necessary for river bed mining. This Tribunal quashed environmental clearance for sand ghats situated in the District Saharanpur, Uttar Pradesh granted without conducting a replenishment study. No replenishment study has been conducted for mining lease granted in favour of respondent no. 7. Environmental clearance for mining lease granted in favour of respondent no. 7 without EIA, EMP, Public Consultation and replenishment study is defective /invalid and liable to be set aside.

3. Vide order dated 09.05.2022, considering the above, the Tribunal sought response of the respondents and also directed that no illegal mining should be carried out by Respondent No. 7 –M/s

Manali Vintrend Pvt. Ltd. Though the matter was scheduled to be listed for hearing on 28.07.2022, Respondent No. 7 filed applications for early hearing being IA No. 152/2022 and also IA No. 153/2022 for vacation of ex parte order. The said respondent has also filed counter affidavit. At the instance of Respondent No.7, the matter has been listed today. Though IA Nos. 152 and 153 of 2022 are shown to be listed for hearing, since the same also involves consideration of the entire matter, instead of piecemeal consideration of the said IAs, we have heard learned Counsel for the parties with reference to the issue raised in the main application also, preponing the hearing to today.

4. Main contention of the applicant is that grant of EC without EIA, EMP and replenishment study is not permissible in view of judgment of the Hon'ble Supreme Court in Deepak Kumar Vs. State of Haryana & Ors.¹ following which this Tribunal passed order dated 13.09.2018 in Satendra Pandey's case (supra). In Deepak Kumar (supra), the Hon'ble Supreme Court observed:

“xxxxxxxxx

11. We find that it is without conducting any study on the possible environmental impact on/in the river beds and elsewhere the auction notices have been issued. We are of the considered view that when we are faced with a situation where extraction of alluvial material within or near a riverbed has an impact on the rivers physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that the extraction is in blocks of less than 5 hectares, separated by 1 km, because their collective impact may be significant, hence the necessity of a proper environmental assessment plan.”

5. The Tribunal held in Satendra Pandey's case

(supra) that the directions in Deepak Kumar (supra) cannot be diluted by any administrative orders or notifications and laid down procedures have to meet the mandate of judgment of the Hon'ble Supreme Court. Observations of this Tribunal are as follows:

“xxxxxx..... xxx

22. For all these reasons, we direct that the procedure laid down in the impugned Notification be brought in consonance and in accord with the directions passed in the case of Deepak Kumar (supra) by (i) providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling under Category B-2 at par with Category B-1 by SEAC/ SIEAA as well as for cluster situation (2012) 4 SCC 629 wherever it is not provided; (ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA; (iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance; (iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof; (v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area; (vi) the MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining.”

6. In the light of above, the MoEF&CC has issued revised procedure in terms of Enforcement and Monitoring Guidelines for Sand Mining 2020 (EMGSM-2020) inter-alia requiring replenishment study by way of para 5 and preparation of mining plan by way of para 4.3.

7. According to the applicant, EC already granted could also not be enforced being in conflict with the judgment of the Hon'ble Supreme Court in Deepak Kumar (supra) and should have been revoked.

8. In view of above undisputed facts, we direct SEIAA, UP to revisit the EC and related issues as per law, including the SSMG-2016 and EMGSM-2020, within two months. It will be open to the parties to put forwarded their viewpoint, if any, before SEIAA, UP. Pending such consideration, the interim order will continue.”

8. The MoEF&CC issued OM No. F.No. L-11011/175/2018-IA-II(M) dated 12.12.2018, the relevant part of which reads as under:-

“ **Office Memorandum**

Sub: Order dated 04th September, 2018 & 13th September, 2018 passed by the Hon'ble National Green Tribunal, New Delhi in O.A.No. 173 of 2018 & O.A. No. 186 of 2016 in the matters titled “Sudarshan Das Vs. State of West Bengal & Ors.” & “Satendra Pandey Vs. Ministry of Environment Forest & Climate Change & Anr.” respectively-regarding.

This is with reference to the recent order of the Hon'ble NGT dated 04th September, 2018 in the matter titled as Sudarshan Das Vs. State of West Bengal & Ors. and order dated 13th September, 2018 in the matter titled as Satendra Pandey Vs. Ministry of Environment Forest & Climate Change & Anr. Copy of the orders are enclosed herewith for ready reference.

2. The Hon'ble NGT vide order dated 13th September, 2018 (Satendra Pandey Vs. Ministry of

Environment Forest & Climate Change & Anr.) has inter-alia directed as follows:-

- “(i) Providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling member Category B-2 at par with Category B-1 by SEAC/SEIAA as well as for cluster situation wherever it is not provided.*
- (ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA;*
- (iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance;*
- (iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof;*
- (v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area;*
- (vi) The MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining.”*

3. *In view of the above, the undersigned is directed to forward the copy of the aforementioned orders for necessary compliance and inform the Ministry about the*

action taken. A copy of the same has been sent to the Chief Secretaries of all the States/UTs.”

9. Further, this Tribunal has observed that mining leases in which environmental clearance was granted by DEIAA in view of amendment notification dated 15.01.2016 are still continuing even after passing of order dated 13.09.2018 by this Tribunal in **Satendra Pandey** (supra) and issuance of OM dated 12.12.2018 by MoEF&CC without any re-appraisal by SEIAA and appropriate remedial action on the basis of such re-appraisal. All such mining leases in which environmental clearance was granted by DEIAA need to be brought in consonance with the directions given by Hon'ble Supreme Court in **Deepak Kumar** (supra) and order dated 13.09.2018 by this Tribunal in **Satendra Pandey** (supra) by re-appraisal by SEIAA and only such mining leases may be continued which have been on re-appraisal granted environmental clearance by SEIAA. MoEF&CC is, therefore, directed to take appropriate steps for compliance in this regard by issuance of requisite directions in exercise of the statutory powers under the Environment (Protection) Act, 1986. For this purpose, MoEF&CC is directed to collect information regarding such mining leases in which environmental clearance was granted by DEIAA and the period of which has not yet expired and are still continuing in all the States and Union Territories and by issuing appropriate directions for compliance with directions given by Hon'ble Supreme Court in **Deepak Kumar** (supra) and order dated 13.09.2018 passed by this Tribunal in **Satendra Pandey** (supra) by re-appraisal for grant of EC by SEIAA.

10. Admittedly, the DEIAA has no authority and MP SEIAA has issued office memorandum clarifying the position that in compliance of the MoEF & CC, Government of India O.M dated 12.12.2018, it has **been decided that all mining cases of minor minerals having 0 to 5 ha area will be appraised by MP-SEIAA for Environmental clearance and hence all concerned Project Proponent will apply in MP-SEIAA in Form-1 with other required supporting documents for process of application for grant of prior environmental clearance with immediate effect.**
11. Thus, the orders as quoted above and the chart submitted reveals that **orders and actions initiated on the basis of the EC issued by DEIAA in void-ab-initio having no force of law and thus against the provision of Sustainable Mining Management** Guidelines, 2016 and Sustainable Sand Mining Management Guidelines, 2020, and against the orders of Hon'ble Supreme Court of India and orders passed by this Tribunal quoted above.
12. Accordingly, in light of the order dated 01.07.2022 passed by Principal Bench of this Tribunal in Dilip Singh vs. State of Uttar Pradesh & Ors in O.A. No. 319/2022, we direct that the Environment Clearances granted by the DEIAA could not be enforced, being in contravention with the judgment of the Hon'ble Supreme Court of India in Deepak Kumar vs. State of Haryana and Ors (2012) 4 SCC, 629 and should have been revoked immediately and not to be acted upon.
13. In view of the above undisputed facts, we direct MPSEIAA to revisit the EC's and related issues as per law including the SSMG, 2016 and EMGS, 2020 within 15 days and decide afresh in accordance with lawful procedure and in view of the orders/directions quoted above

and also of the office memorandum dated 27.12.2018 passed by MPSEIAA.

14. It may be open to the parties to put forward their view points if any before MP SEIAA and pending such consideration, no mining lease can be permitted on the basis of transferred EC granted by DEIAA.
15. The SEIAA is directed to reconsider all the issues of the Environmental Clearances issued by DEIAA and take appropriate decision. In the meantime, the Project Proponents operating on the basis of orders and EC issued by the DEIAA shall be kept in abeyance. SEIAA may reconsider it after giving an opportunity of hearing to all affected and submit the personal reply and affidavit.

List it on **5th October,2023.**

Sheo Kumar Singh, JM

Dr. A Senthil Vel, EM

13th September, 2023
O.A No.36/2023(CZ)
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