

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

Original Application No. 36/2023(CZ)

(I.A. No. 86/2023)

**(I.A. No. 113/2023), (I.A. No. 116/2023)
(I.A. No. 117/2023), (I.A. No. 119/2023)
(I.A. No. 121/2023), (I.A. No. 122/2023)
(I.A. No. 123/2023), (I.A. No. 125/2023)
(I.A. No. 126/2023), (I.A.No.127/2023)
(I.A.No.128/2023), (I.A.No.129/2023)
(I.A.No.130/2023), (I.A.No.131/2023)**

Brijendra Kumar Mala & Anr.

Applicant

Vs.

State of Madhya Pradesh & Ors.

Respondents

WITH

Original Application No.155/2023(CZ)

Bhilwara Mines Wa Pariyawaran Sudhar Samiti

Applicant

Vs.

Union of India & Ors.

Respondents

Date of Hearing: **06.11.2023**

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

For Applicant(s):	Mr. Atul Kumar Jain, Adv. Ms. Diksha Chaturvedi, Adv.
For Respondent(s):	Mr. Mehul Bhardwaj, Adv. Mr. Gaurvanvit Jain, Adv. Mr. Om Shankar Sharivastava, Adv. Mr. Rohit Sharma, Adv. Mr. Siddharth Seth, Adv. Mr. Yadvendra Yadav, Adv. Ms. Parul Bhadoria, Adv. Mr. Naman Nagrath, Sr. Adv. Mr. Himanshu Shukla, Adv. Mr. Ravi Kant Patidar, Adv. Mr. Kuldeep Raghuvanshi, Adv. Mr. Robin, Adv. Mr. Ayush Jain, Adv. Mr. Deepesh Shukla, Adv. Mr. Shubham Kumar Mishra, Adv Mr. Enosh George, Adv. Mr. Nishant Kesharwani, Adv. (for Mr. Shoeb Hasan Khan, Adv.)

ORDER

1. The main questions involved in these applications and I.As are:-

- i. Application and enforcement of notification dated 14.09.2006 issued by the Ministry of Environment, Forest, & Climate Change making it mandatory under Section 3, Sub-Section 2 of Environmental (Protection), Act 1986 for requirement of prior environmental clearance from the concerned regulatory authority as envisaged in Section 2, i.e. by Central Government in the Ministry of Environment, Forest, & Climate Change for matters falling under Category-A in the Schedule and at the State Level, the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category-B in the said Schedule before any construction work or preparation of land by the Project Management as specified in the Schedule.
 - ii. Section 3 and Section 4 provides the appraisal and recommendation by the Expert Appraisal Committee (EAC) and State Level Expert Appraisal Committee (SEAC) and SEIAA.
2. Enforcement of order of Hon'ble Supreme Court of India passed in *Deepak Kumar v. State of Haryana (2012)(4) SCC 629*, mandating and directing that all mining activities shall be appraised by the aforementioned Committee for the Environmental Impact Assessment Clearance.
3. Compliance of the order of this Tribunal passed in O.A. No. 186/2016 in *Satyendra Pandey v. Ministry of Environment, Forest and Climate Change and Ors.* requiring proper environmental clearance before grant of lease of minor minerals including sand mining by the SEIAA and holding that the notification dated 15.01.2016 issued by the MoEF&CC was not consistent with the mandate of Hon'ble Supreme Court of India passed in Deepak Kumar case (Supra).

4. Compliance of the order of Principal Bench of this Tribunal in Execution Application No. 55/2018 as observing that the action on the basis of direction (dated 15.01.2016) is clearly illegal and in violation of judgment of this Tribunal.
5. Compliance of the Notification dated 12.12.2018 issued by the MoEF&CC suspending the activities on the basis of DEIAA and to comply the order passed in O.A. No. 186/2016.
6. Compliance of the Office Memorandum dated 27.12.2018 issued by the State Environment Impact Assessment Authority, Bhopal, Madhya Pradesh.
7. Compliance of the Judgment of Hon'ble Supreme Court of India passed in Civil Appeal No. 8551/2022.
8. Compliance of the Notification dated 13.04.2022 issued by the SEIAA, MP, in compliance of the notification dated 25.07.2018 issued by the MoEF&CC.
9. Compliance of order dated 01.07.2022, passed by the Principal Bench of this Tribunal in *Dilip Singh Vs. State of Uttar Pradesh & Ors.*, in O.A. No. 319/2022 ("we direct that the environmental clearance granted in District Dattiya and Narsinghpur 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 & Ors. (2012) 4 SCC,6-9* and should have been revoked immediately and not to be acted upon.)"
10. Compliance of the Order dated 23.12.2022 passed in O.A. No. 90/2022 (CZ) *Sarvesh Sharma Vs. State of Madhya Pradesh & Ors.*
11. Compliance of the order of SEIAA, M.P. dated 21.06.2023 issued in light of the order dated 07.12.2022 passed in O.A. No. 142/2022 and the MoEF&CC Notification dated 28.04.2023 requiring the refilling of the forms in prescribed proforma to be appraised by the SEIAA.
12. Application moved in O.A. No. 155/2023 for compliance of the order dated 12.12.2018 issued by MoEF&CC, notification dated 28.04.2023 issued by MoEF&CC and the order dated 10.05.2023 issued by the State of

Rajasthan, Director of Mines, Geology directing all such mining leases to be appraised by the State Environment Impact Assessment Authority (SEIAA) within a time frame in compliance of the order of Deepak Kumar case, noted above.

13. Compliance of the MoEF&CC notification dated 28.04.2023 (main issue direction and interpretation).

14. We quote Para 3 of the notification dated 28.04.2023 issued by the MoEF&CC –

“Subsequently, Hon'ble NGT vide its order dated 07.12.2022 in O.A.142 of 2022 in the matter of Jayant Kumar vs. Ministry of Environment, Forests and Climate Change inter-alia observed that "mining lenses 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 Sutendra 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 lenses 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.”

15. Respondents as well as the applicant pressed these lines to clarify though this Tribunal is not meant to clarify but since the application has been placed, thus, we are quoting the lines as below:-

- i. *mining leases in which environmental clearance was granted by DEIAA in view of amendment notification dated 15.01.2016 are still continuing..... means “that it should not be continued.”*

- ii. *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 – means “it should not be continued after these orders and notification.”*
- iii. *without any re-appraisal by SEIAA – means “the mandatory provisions up EIA 14.09.2006 must be complied with and prior environmental clearance must be obtained and required by the SEIAA.”*
- iv. *An appropriate remedial action on the basis of such re-appraisal means “after the re-appraisal remedial action is required.”*
- v. *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 of India in Deepak Kumar (supra) and order dated 13.09.2018 by this Tribunal in Satendra Pandey (supra) by re-appraisal by SEIAA means “This must be in consonance with the Deepak Kumar Case and re-appraisal by SEIAA.”*
- vi. *And only such mining leases may be continued which have been on re-appraisal granted environmental clearance by SEIAA means “the matters in which the environmental clearance was not granted by SEIAA may not be continued and it also means only such mining activities leases may be continued which have been re-appraised granted environmental clearance by SEIAA.”*
- vii. *Para 4 of the notification says, “in view of the above, it is hereby directed that all concerned SEIAA shall re-appraised the issued by the DEIAA between 15.01.2016 and 13.09.2018 including both dates and all fresh ECs in this regard shall be granted only by SEIAAs based on such appraisal.” That means all such ECs should be appraised by SEIAA and fresh EC shall be issued.*

16. In view of the above lines used, it is mandatory provision that in all such cases fresh EC must be issued by the SEIAA and only such mining leases may be continued which have been on re-appraisal granted Environmental Clearance by SEIAA. In the matter where the EC has not been granted by the SEIAA must not be permitted to continue.
17. In view of the above facts, the notification issued by the MoEF&CC and subsequent orders issued by the State of Madhya Pradesh and State of Rajasthan are in consonance with EIA notification dated 14.09.2006 and in consonance with Deepak Kumar's case quoted above.
18. There is no ambiguity and no illegality in the order and are speaking orders. In light of the above facts, we direct the Chief Secretary & Member Secretary of State of Madhya Pradesh, Rajasthan and Chhattisgarh to strictly comply with the orders issued by the MoEF&CC and order passed by the Hon'ble Supreme Court of India in Deepak Kumar case and the orders of this Tribunal passed in Satyendra Pandey (Supra) in letter and spirit and only such mining leases may be continued which have been appraised and granted fresh Environmental Clearance by the SEIAA only.
19. Compliance report by all three States (Madhya Pradesh, Rajasthan and Chhattisgarh) /State Pollution Control Board be filed within 30 days.
20. Things and legal matters are to be interpreted in a following manner :-
 - i. Actions which are not permitted directly cannot be permitted indirectly.
 - ii. Actions and the things which are prohibited (prior environmental clearance by the SEIAA necessary) cannot be permitted.
 - iii. Actions and things are prohibited, if not permitted by law.
 - iv. Illegality cannot be legalised and irregularity cannot be regularised by the order.

- v. Things unless permitted by rule of law are in the category of prohibited.

21. During the course of hearing learned counsel for the applicant has submitted the detail objections copy of the same be provided to the opposite party. Another application has been moved with the particular of the parties amended memo which is kept on record.

22. Learned counsel for the SEIAA Ms. Parul Bhadoria has submitted that for the consideration of the matter by the SEIAA, the form in prescribed proforma is required to be filed by the applicant and it is being not filled up thus SEIAA is facing the problem. The office memorandum dated 28.04.2023 provides the procedure for apprising the proposals based on the checklist to have a uniform approach across the country which is quoted below :-

- i. Completely filled up Form-2 as per Ministry's OM dated 15.12.2021.*
- ii. Pre-Feasibility Report (PFR) as per MoEF Guidelines dated 30.12.2010.*
- iii. Valid Mine Lease Document.*
- iv. Approved Mining Plan from the concerned Authorities.*
- v. District Survey Report approved by SELAA as per Ministry's Notification S.O 3611(E) dated 25.07.2018.*
- vi. Implementation of "Sustainable Sand Mining Management Guidelines, 2016" and Enforcement & Monitoring Guidelines for Sand Mining, 2020" in case of sand mining proposals.*
- vii. Details of forest land involved in the mine lease area and availability of Stage-I/II Forest Clearance (FC) for diversion of forest land for non-forestry purpose.*
- viii. Details of Eco Sensitive Zones (ESZ) and Eco Sensitive Areas (ESAs), National Parks, Wildlife Sanctuary, Coastal Zone, Water bodies and other ecological sensitive areas within/in the vicinity of the mine lease area and if so details of NOC/Clearances obtained.*

- ix. *If any Schedule-I species is present in the study area, proof of submission of Wildlife Conservation Plan to the Forest Department.*
- x. *Cluster Certificate from State Mines and Geology Department.*
- xi. *Compliance of Hon'ble Supreme Court judgment dated 02.08.2017 passed in Common Cause vs Union of India Writ Petition (C) 114 of 2014.*
- xii. *Proposal of re-grassing the mining area and any other area which may have been disturbed due to their mining activities and restore the land to a condition which is fit for growth of fodder, flora, fauna etc. in compliance to the direction dated 8th January, 2030 of Hon'ble Supreme Court in Writ Petition Cell No. 114/2014. Common Cause vs Union of India & Or*

The provisions of this OM shall be operational subject to the outcome of Civil Appeal No. 379-3800 of 2019 titled Union of India vs Rajiv Suri filed by Ministry before the Hon'ble Supreme Court of India against the order dated 13 September, 20118 passed in O.A. Nis. 200 if 2016 (Rajiv Suri Vs UOI & order dated 21 December. 2018 passed in RA No 47 of 2018 (UOI Vs Rajiv Suri).

- 23. The question is replied by the MoEF&CC in the office memorandum quoted above and SEIAA is directed to comply in accordance with the directions issued by the MoEF&CC.
- 24. Learned counsel for the respondent Mr. Om Shankar Shrivastava has raised the issue of socio-economic aspect, employment, management and the number of affected families involved in the mining process. Vide interpreting the rule of law the court/tribunal are to enforce the law and it is for the policy maker and the of Govt. to consider/reconsider the above facts.
- 25. Learned counsel for the respondent Mr. Siddharth Seth has submitted that the SEIAA should be directed to expedite the matter. It is further argued that the another notification dated 03.11.2023 has been issued by the

MoEF&CC for compliance to the SEIAA. SEIAA is directed to act in accordance with the rule, EIA Notification dated 14.09.2006 the directions issued by Hon'ble Supreme Court of India in Deepak Kumar case (Supra) and to take the independent decision in the individual matter according to the rules.

26. Learned counsel for the State has submitted a list of the minings which is unsigned and be kept on record.
27. In the matter of O.A. No. 155/2023, learned counsel for the applicant Ms. Diksha Chaturvedi has filed some additional documents and requested that the notice should be issued to the respondent so that the matter should be clarified. Notices be issued to the respondent. Applicant is directed to take necessary steps for service to the respondents by both ways and also on available email. Respondents are directed to submit their reply before the next date of listing.

List it on **18th January, 2024.**

Sheo Kumar Singh, JM

Dr. A. Senthil Vel, EM

06th November, 2023
O.A. No. 36/2023 (CZ)
O.A. No. 155/2023 (CZ)
PN