

Item No. 2

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

Original Application No. 174/2023(CZ)

Suo Moto Action on the News Paper Article
Published in Dainik Bhaskar Daily, Dated
27.11.2023 regarding illegal sand mining and
killing of official on duty in Sahdol District of
Madhya Pradesh

Vs

State of Madhya Pradesh & Ors.

Respondent(s)

Date of Hearing: **09.02.2024**

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

For Applicant(s):

For Respondent(s): Mr. Prashant M. Harne Adv.
 Ms. Parul Bhadoria, Adv.

ORDER

1. Joint committee report has been filed. Respondent no. 4 has filed the reply. The records reveals that the nothing have been done by the Mining Department with regard to seizer of the vehicle involved in the illegal mining, causing death of an official on duty.

2. The issues with regard to the seizure and the release of vehicles involved in the illegal mining and parameter for assessment of environmental compensation was taken up by Principle Bench of this Tribunal in Original Application No. 360 of 2015. Relevant paras are quoted below:

“Seizure and Release of vehicles involved in illegal mining

“8. Another issue bearing on the enforcement mechanism is the action against the vehicles used in illegal sand mining. Seizure of such vehicles is required and release of seized vehicles lightly defeats the purpose of the coercive

measures. Since the vehicles are in a way weapon of offence, the same cannot be dealt with in the manner disputed property is dealt with under section 451 Cr.PC. by releasing the same in favour of the ostensible owner by taking an entrustment/indemnity bond/sapurdginama. In *Sujit Kumar Rana*, (2004) 4 SCC 129 and order dated 26.03.2019 in Cr. A. 524/2019, State of Madhya Pradesh v. Uday Singh, it was held that special procedure for seizure and release of such vehicles prevails over the procedure under Section 451 Cr.P.C. This Tribunal earlier directed, in the case of illegal mining in Meghalaya that such vehicles should be released only on the payment of 50% of the showroom value. The same was affirmed by the Hon'ble Supreme Court in 2019 (8) SCC 177. Similar order was passed by the Tribunal on 10.01.2019 in O.A. No. 670/2018, *Atul Chouhan v. State of U.P.*, which stands affirmed by the Hon'ble Supreme Court vide order dated 07.05.2019 in C.A. No. 1590/2019. Thus, the procedure under Cr.P.C. for release of vehicles on superdari without stringent conditions would not apply in respect of action taken for enforcement of Sustainable Guidelines issued under the Environment (Protection) Act, 1986 (EP Act) and for enforcement of orders of this Tribunal under Section 15 of the National Green Tribunal Act, 2010 (NGT Act). However, having regard to the difficulty expressed by the State that requirement to pay 50% of the showroom value of the vehicle was resulting in vehicles not being released at all, the earlier order was modified on 19.02.2020 to the effect that following scale of amount be recovered for release of the seized vehicles:-

Sr. No.	Category of Vehicle	Penalty Amount
1	Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and less than 5 years old.	Rs. 4 lacs
2	Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and more than 5 years but less than 10 years old.	Rs. 3 lacs
3	For the remaining Vehicles older than 10 years/Equipments/Excavators which are otherwise legally permissible to be operated and not covered by Serial No. 1 and 2.	Rs. 2 lacs
Note – I: On repetition of the offence by the same vehicle/ equipment, Order dated 05.04.2019 will be applicable. Note – II: The option of release may be available for a period of one month from the date of seizure and thereafter, the vehicles may be confiscated and auctioned.		

9. Following further directions were issued :-

“6. The State may issue an appropriate Office Order/Rule to the above effect and publish the same. Needless to say that any private contract between a financier and a debtor cannot affect the States’ sovereign power to protect the environment and take incidental coercive measure for enforcement of rule of law. Lien of the State will override any private interest. The above compensation regime will be over and above any existing Rules or provisions. The amount collected may be remitted to the State PCBs/PCCs for being utilized for restoration of the environment.

7. The above course of action will be permissible to all the States at their option.”

Scale of compensation for violations on polluter pays principle

10. Vide order dated 17.08.2020, the Tribunal considered the CPCB report dated 30.01.2020, in pursuance of earlier orders on scale of compensation to be recovered for violation of norms for mining on polluter pays principle and the matter was deferred for further consideration of such scale and further orders in the light of the EMGSM 2020. On the issue of scale of compensation for violations, the Tribunal held that the same has to be calculated having regard to the polluter pays principle and not mere loss of royalty. This requires taking into account value of the illegally mined material and cost of restoration of the environment. CPCB did the exercise by constituting an expert Committee.

Interaction for Effective enforcement

25. The above discussion shows that the problem has defied solution and unless tackled seriously, damage to the environment will continue. Clear road map is thus required with effective monitoring mechanism. Report of the Oversight Committee for UP and affidavit of the State of MP, the report from Rajasthan and some other States also show that effective mechanism is lacking. For clarity on all issues, periodic interaction of stake holders, particularly the enforcement authorities is required. This will also facilitate engagement of accredited agencies/experts for preparing DSRs/replenishment studies. In the Central Government, the concerned authorities include Mining Ministry, Environment Ministry, Jalshakti Ministry and CPCB. In States, Departments of Mining, Environment, SEIAA, PCB and District Magistrates.

3. Respondents are directed to proceed in accordance with the above provision. Since it is a matter of death of one of the official on duty thus, for proper adjudication of the matter the presence of any representative of the SSP and the Collector on the next date is required for proper hearing.

List it on **8th April, 2024.**

Sheo Kumar Singh, JM

Dr. Afroz Ahmad, EM

09th February, 2024
O.A. No. 174/2023 (CZ)
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