

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

Original Application No. 07/2023(WZ)
I.A. No. 37/2023(WZ)

Mr. Dattatraya Phalke & Anr.

.....Applicant(s)

Versus

Union of India & Ors.

....Respondent(s)

Date of hearing: 30.01.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Applicant-in-Person
Respondent(s) : Mr. Mr. Rahul Garg, Advocate for R-1/MoEF&CC
Mr. Anuruddha Kulkarni, Advocate for R-2/SEIAA
Mr. Saurabh Kulkarni, Advocate for R-9/PP

ORDER

1. From the side of Respondent No. 1/MoEF&CC, learned Counsel Mr. Rahul Garg has appeared; from the side of Respondent No. 2/SEIAA, learned Counsel Mr. Anuruddha Kulkarni has appeared; and from the side of Respondent No. 9/PP, learned Counsel Mr. Saurabh Kulkarni has appeared.

2. By this application, the Applicant has brought to our notice that the Respondent No. 9/PP is carrying out the illegal mining in Gat Nos. 80 & 95, Village Jadhewadi, Taluka- Ajara, District- Kolhapur and Gat No. 113, Village- Bhosi, Taluka- Kalamnuri, District- Hingoli (Hingoli appears to be wrongly mentioned as it should be Kolhapur) and it is prayed that these illegal mining activities need to be stopped forth-with and a Committee of experts needs to be constituted to assess the grave and

irreparable damage and degradation caused to the environment and ecology. Huge penalty be also imposed against the Respondent No. 9/PP.

3. We find that the permit under which the mining, alleged to be illegal is going, is annexed at page nos. 43 to 47 of the paper book, which has been issued by the Additional Collector, Kolhapur in favour of the Project Proponent (PP) by which they will carry out levelling of the Gat No. 83, Area 3.20, H.R. and also carry out the excavation and transportation of 10,000 brass of minor minerals (Murum, Stone) in the said land, which will be used for construction of national highway at Amboli- Ajara-Sankeshwar.

4. The Applicant-in-person says that this kind of temporary permit cannot be issued in violation of the Judgment of Hon'ble Apex Court in *Deepak Kumar Case vs. State of Haryana [(2012) SCC 629]*, though he has also cited the Judgment of Hon'ble High Court of Bombay at Nagpur Bench passed in Writ Petition No. 2153 of 2022, where-in following is stated:-

"30. The above discussion would lead us to find that no executive instruction which is contrary to the requirements of Rules 59 and 61 of Rules, 2013 could have been issued by the State Government, as it has done vide its impugned communication dated 24th March, 2022, in the name of issuing of a clarification. If any clarification was to be issued, it must have been by following the well settled principles of law stated in the judgment of the coordinate Division Bench of this Court in the case of Rashtriya Shikshan Sangh (Supra) and by suitable amending Rules 59 and 61 Rules, 2013, if thought fit. The direction issued by National Green Tribunal appears to have been misconstrued by the State Government and the result is of issuance of the impugned communication in the name of clarification which is contrary to the Rules of 59 and 61 of Rules, 2013 and which violates the settled principles of law. Such a communication, therefore, cannot stand the scrutiny of law and is required to be quashed and set aside as being illegal."

5. When we enquired from the Applicant-in-person as to how, in view of the order of the Hon'ble Bombay High Court cited above, this application is maintainable, he states that even if there is violation of Rules 59 & 61 of Rules, 2013 being made by the Applicant in the present case, the PP cannot be approved to do mining work but he could not specifically convince us on this point and has prayed for time.

6. From the side of the Respondent No. 9/PP, our attention is drawn to the Judgment of this Tribunal passed in Original Application No. 54/2022 (WZ) by which we have directed the MoEF&CC to place before us the position of law. We deem it appropriate to take up this matter along-with Original Application No. 54/2022 (WZ) [Dattatray Phalke vs. Union of India and Ors.] for admission on 06.02.2023.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

January 30, 2023
Original Application No. 07/2023(WZ)
I.A. No. 37/2023(WZ)
P.Kr