

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

Original Application No. 29/2014 (T_{HC}) (CZ)

CORAM:

**Hon'ble Mr. Justice Dalip Singh
(Judicial Member)**

**Hon'ble Mr. P.S. Rao
(Expert Member)**

BETWEEN:

Anurag Modi
S/o P.D. Modi,
Aged Approx 48 years,
R/o Joshi Colony, Near Railway Station,
At + P.O. - Harda (M.P.)

.....Applicant

1. State of Madhya Pradesh
Through the Principal Secretary,
Department of Mining,
Vallabh Bhawan, Bhopal (M.P.)
2. Principal Secretary
Department of Forests,
Vallabh Bhawan, Bhopal (M.P.)
3. Principal Secretary
Department of Revenue,
Vallabh Bhawan, Bhopal (M.P.)
4. M.P. State Pollution Control Board
E-5, Arera Colony, Paryavaran Parisar,
Bhopal (M.P.)
5. M.P. State Mining Corporation Ltd.
Through its' Managing Director,
Paryawas Bhawan, Block 'A', 2nd Floor,
Jail Road, Arera Hills, Bhopal (M.P.)

.....Respondents

Counsel for Applicant:

None

Counsel for Respondent No. 1, 2, 3:

Shri Sachin K. Verma, Advocate

Counsel for Respondent No.4:

Ms. Parul Bhadoria, Adv. for
Shri Purushaindra Kaurav, Advocate

Counsel for Respondent No.4:

None

Dated : February 18th , 2015

JUDGMENT

1. In compliance of the directions of the Hon'ble Supreme Court of India dated 9th August, 2012 issued in the case of *Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India & Others* (2012) 8 SCC 326 the

Hon'ble High Court of Madhya Pradesh at Jabalpur, in its order dated 19.02.2014, ordered transfer of Writ Petition No. 19452/2012 to the National Green Tribunal, Central Zone Bench. On receipt of the case from the Hon'ble High Court, it was registered as Original Application No. 29 of 2014 and vide order dated 03.03.2014, notices were ordered to be issued to the parties.

2. In the writ petition the Petitioner has stated that he is moving this as a Public Interest Litigation (PIL) after having noticed large scale illegal mining and loss of revenue to the State of Madhya Pradesh (in short 'MP'). He contended that the Comptroller and Auditor General of India (in short 'CAG') in its audit reports consecutively for the years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008 & 2008-2009 has reported loss of revenue to the exchequer amounting to Rs. 1594.59 Crores due to non-assessment of Royalty and dead rent, non/short realization of mineral area development cess, short payment of royalty etc. by the Mining Lease holders, and on account of various irregularities committed on the part of mining department of the State. He alleged that illegal mining in the State of MP enjoys the patronage and nexus of unholy alliance of the Miner-Politician-Bureaucrat making a severe dent on the State exchequer as well as leading to fast depletion of natural resources and consequent damage to the environment. In spite of various newspaper reports and the media highlighting the severe problem of illegal mining in the state from time to time the authorities have failed to curb the menace and in fact the officials of the concerned departments are hand in glove with the illegal mining barons. He quoted certain reports made by State Revenue and Forest Departments officials pointing out the irregularities in granting mining leases as well as illegal mining activities going on in various districts in the State. He stated that Sub

- Divisional Magistrate, Nasarullaganj of District Sehore had issued three notices to one big mining company by the name Shiva Corporation Ltd. which enjoys a monopolistic share with MP State Mining Corporation Ltd for illegal excavation of sand amounting to Rs. 500 Crores in March, 2012 and it also enjoys the political patronage. He also stated that certain reports submitted by the senior Forest officers have brought into limelight the illegal mining activities going on in the forest areas in the Gwalior division as well as in Katni-Satna-Rewa belt but inspite of all these reports no concrete action has been taken to arrest the trend of illegal mining. The Petitioner also quoted certain newspaper reports on killing and assaulting of Police and Revenue officials by the mining mafia which highlights the severity of the problem in the State. He also contended that the State Government is violating the orders of the Hon'ble Apex Court given in the judgment dated 27.02.2012 in the case of *Deepak Kumar Vs. State of Haryana* and is granting/renewing the mining leases for the areas below 5 hectares without taking into consideration the environmental impact of such mining. He further stated that the mining sector in the state has become a lucrative business breeding rampant corruption and with the support of corrupt politicians and conniving officials it assumed a gigantic proportion leading not only loss of revenue to the state exchequer but also causing irreversible damage to the ecology and environment. The extraction of the mineral is going on in such a high scale that it is not only not sustainable in the long run but is going to affect the future requirement of the minerals in the State.

3. It is the contention of the Petitioner that the State of MP exempted sand mining from Environmental Clearance (in short 'EC'), mining lease areas are not demarcated on the ground and therefore the mining lobby is indulging

illegal mining exceeding the limits of the allotted mining lease areas. He contends that sand mining is rampant in the Chambal, Betwa and Ken rivers.

4. With the above averments, the Petitioner made a prayer before the Hon'ble High Court to direct the Respondents to take action on the reports of the CAG and file Action Taken Report before the Hon'ble High Court and also direct the State to initiate action on the reports of Sub Divisional Magistrate, Nasrullaganj, District Sehore, Addl. Collector, Sehore as well as reports submitted by the senior forest officials and on the news items published in various print media. The Petitioner also prayed that State may be directed to follow the directions issued by the Hon'ble Supreme Court in the case of *Deepak Kumar Vs. State of Haryana* (supra) besides formulating an effective framework of mining policy to take care of all the environmental issues in the mining sector and also evolve a long term plan for the rational and sustainable use of the natural resources both for major minerals and minor minerals including the river sand mining and also direct the authorities to assess the impact of mining on environment and suggest effective mitigation measures.
5. Along with the petition he enclosed copies of the CAG reports for 7 successive years from 2002 to 2009 with a tabular statement showing the loss of revenue of Rs. 1594.59 Crores as assessed by the CAG and copies of various news reports highlighting the illegal mining activities in the State of MP and attacks/assaults made against the officials by the mining mafia.
6. The Respondent Nos. 1, 2 & 3 have filed a combined reply before the Hon'ble High Court on 27.06.2013 submitting that the CAG reports for the years from 2002 to 2009 have not been ignored by the State and in fact the

objections/points raised by the CAG were examined by the concerned government departments and necessary explanation has been submitted to the Public Accounts Committee (in short 'PAC') of the Legislative Assembly of the State of MP. It was also stated that the State Government has already framed rules while implementing the guidelines of Union of India on mining activities in the State with regard to alleged illegal excavation of sand. As regards the report of the Sub Divisional Magistrate, Nasrullaganj, Dist. Sehore is concerned, it was stated that the matter is pending before the court of Sub Divisional Magistrate. It was also stated in the reply that three offence cases have been registered against the Shiva Corporation Ltd. and the cases are pending before the Sub Divisional Magistrate, Nasrullaganj. It was further submitted that between 15.12.2011 to 15.01.2012 a special drive was undertaken for checking illegal mining and illegal transportation of mineral wherein licenses of 3 temporary mines were cancelled as they were found located within 250 mtrs. from the forest boundary in the Sehore District. However, no mining leases for major minerals have been sanctioned and the leases pertain only to minor minerals which are granted after due verification. Besides the above, regular inspection and checking is being taken up by the concerned authorities and wherever irregularities are noticed action is initiated and penalty imposed as per law against the defaulters. It was contended in the reply that newspaper reports quoted by the Petitioner cannot be taken cognizance and cannot be relied upon. A tabular statement showing the number of offence cases booked and penalty imposed against the defaulters for a period of 5 years from 2008-09 to 2012-13 has been furnished along with the reply. With regard to environmental issues highlighted by the Petitioner, it was submitted that the same can be dealt with by the National Green Tribunal.

7. During the course of hearing of the case before the Hon'ble High Court certain directions were issued by the Hon'ble High Court to the Respondent No. 1 Secretary, Mines Resources Department, government of MP. Accordingly the Respondent No. 1 submitted an affidavit dated 19.01.2014 before the Hon'ble High Court. The Hon'ble High Court has sought specific information from the State of MP on the recommendations made in the report of CAG for the year 2007-2008 in para 7.2.25. It was replied that the annual Audit Reports received from CAG are laid before the PAC of Legislative Assembly for deliberation and scrutiny and each of the audit Reports pertaining to the years 2002-03 to 2008-09 have been duly considered by the PAC and as per the recommendations and the aspects of mining operations specific information and data was collected from the Mineral Resources Department and information with regard to each and every recommendations have been submitted before the PAC. Copies of the year wise compliance reports have been enclosed with the affidavit. In the affidavit it was further brought out that certain steps have been taken by the State based on the observations made by the CAG pointing out the deficiencies and accordingly provisions under various rules such as Mineral (Concession) Rules, 1960, the Mineral Conservation and Development Rules, 1988 and MP Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2006 have been examined and necessary action has been taken based on the observations of the CAG. Therefore there are no merits in the petition and it deserves to be dismissed.
8. However, during the course of hearing of the case before this Tribunal only issues pertaining to the environment and forest and violation of environmental

laws are examined as this Tribunal has got no mandate to go into the various aspects of the violation of various other laws including Mines and Minerals (Development and Regulation) Act, 1957, Mineral (Concession) Rules, 1960 and MP Land Revenue Code etc. which do not fall under the Schedule-I of the National Green Tribunal Act, 2010. Therefore, the Learned Counsel for the State was directed to submit specific reply of the State on the issues pertaining to environment and forests. Accordingly the Respondent No. 2, Principal Secretary, Forests filed a detailed reply before this Tribunal on 25.08.2014 mainly highlighting the issues pertaining to the alleged illegal mining activities in Gwalior forest division as made out in the report of Shri Azad Singh Dabas, Chief Conservator of Forests and illegal mining activities in the forest areas in Katni-Satna-Rewa belt as reported by Shri Jagdish Prasad Sharma, Addl. Principal Chief Conservator of Forests. It was replied that necessary teams were constituted to inspect and locate such illegal mining spots in forest areas and also assess and fix responsibility on the concerned officers. It was further contended that necessary action has been initiated against the concerned officers who were found indulging in dereliction of their duties leading to illegal mining activities in the forest areas and the State Government has adopted effective measures to curb and restrain the illegal mining activities in forest areas. Therefore, no specific grievance of the Petitioner has been left unattended and every possible action has been taken for stopping illegal mining in the forest areas and consequent damage to the environment in the State.

9. However, during the course of hearing on 27.11.2014 para no. 3.7 of the Petition highlighting the report of Shri Girish Sharma, the then Joint Collector of Sehore District on the alleged violation of the provisions of Forest

(Conservation) Act, 1980 and Environmental Regulations in granting mining leases and illegal mining the Respondent State of MP was directed to file an affidavit with full details so that this Tribunal can adjudicate the matter with regard to the averments made by the Petitioner on the alleged violation of environmental and forest laws and alleged damage caused to the environment and ecology. The para no. 3.7 reads as follows.

“3.7 That the illegal mining is going unabated in the State. The report submitted by the then Joint Collector Mr. Girish Sharma of Sehore District, In-charge of the mining department of the district in the report says that the mining activities in the district has been carried out in violation of the provisions of M.P. Land revenue Code; Forest Conservation Act (1980); Indian Forest Act; Environmental Regulations; M.P. Mines and Mineral Act; Sales Tax; Income Tax, etc. It is not known as to what action has been taken following the above notices by the Respondent Mining Department and the Mining Corporation Limited. The violations of various acts and provisions as cited in the report above mentioned are as under:

- (a) That illegal mining of minor mines and mineral is going unabated in the forest area in-violation of Apex Court order;*
- (b) The mining leases has been awarded without following due procedure of law;*
- (c) Crusher owners are not following regulations and provisions related to environment as directed by Honorable Apex Court in Ajay Dubey Vs. State of M.P. and others.*
- (d) Leaseholders have carried out large level excavation which either have not been assessed or under-assessed which resulted in loss of royalty; sales tax and income-tax;*
- (e) Crusher owners have used explosives which was not reported to the mining department as stipulated under rule 30 (24) of mining rules;*
- (f) As directed by the State Government, permission was not obtained from mining department prior to making final payment to construction contractor;*
- (g) The leaseholders of mining lease have not ensured demarcation of the leased mine area from the revenue department before taking possession which resulted into mining activities outside the leased area;*
- (h) Mining activities were found to be carried out even after expiry of lease;*

- (i) *Mining lease on private land was not reassessed by Revenue Department as desired by section 59 of M.P. Land Revenue Code, resulting into revenue loss to the State;*
- (j) *Dead Rents were not paid as specified under the Madhya Pradesh Minor Mineral les, 1996; and*
- (k) *The quarry lease holders did not submit the periodic report as stipulated under M.P. Minor Minerals Rules, 1996, yet the sanctioning authority, the Mining Corporation Limited did not impose the penalty on the lessee.”*

10. Accordingly, the Respondent State of MP filed additional reply on 11.01.2015 on the issues raised by the then Joint Collector, Sehore on the alleged violation of M.P. Land Revenue Code, Forest (Conservation) Act, 1980, Indian Forest Act 1927, Environmental Regulations, MP Mines & Mineral Act, Sales Tax Act, Income tax; etc. It was submitted in the reply that the District Collector, Sehore has taken cognizance of the report submitted by Shri Girish Sharma, the then Joint Collector, Sehore and thereafter inspection of mining leases was carried out by the District Administration, Sehore and penal action was initiated against the violators by registering 49 cases against the offenders out of which 4 cases were finalized and penalty imposed against the errant mining lease holders and rest of the 45 cases are still pending for adjudication before the Sub-Judicial Magistrate, District Sehore. At present 13 mining leases are not under operation wherein in most of the cases the lease period has already expired and for the violation of MP Minor Mineral Rules, 1996, 8 cases were registered against mining lease holders out of which penalty was imposed in 7 cases. It was finally concluded in the reply that Respondent State of MP has taken all necessary action against the offenders.

11. The Respondent No. 4 Madhya Pradesh State Pollution Control Board (in

short 'MPPCB') in their reply stated that no relief has been sought by the Petitioner against the Board and the averments made in the petition have got nothing to do with the Board and the Board has got no role to play in the matter of formulation of mining plan or policy. It was further submitted by the MPPCB that it is for the Respondent State of MP to take necessary action in curbing the illegal mining as per law as the MPPCB is concerned only with advisory functions pertaining to implementation of Air & Water Acts.

12. The Respondent No. 5 MP State Mining Corporation submitted that it agrees with the stand taken by the Respondent No.1 State of MP in its return filed on 27.06.2013 and it may be permitted to adopt the same reply.

Discussion and Conclusion

13. From the above it is clear that the petition is basically filed by the Petitioner as PIL highlighting various irregularities and illegal mining activities allegedly going on in the State of MP and prayed the Hon'ble High Court to deal with the action taken by the State on the annual audit reports of CAG made for successive years which mainly made observations on loss of revenue to the State exchequer in the form of non collection of royalty etc. from the lease holders. The Petitioner has quoted various reports that appeared in print media on the illegal mining activities in the State as well as attacks/assaults made against the officials of the various state government departments over a period of time alleging that the Respondent State failed to discharge duties and failed in controlling the illegal mining activities and also failed in plugging the loopholes in collection of royalty leading to loss of revenue to the State Government and also not strictly enforcing the mining laws and also not framing and implementing an effective mining policy.

Though, he has mentioned the alleged damage to the environment and ecology particularly with regard to the sand mining in the river beds, the averments are general in nature. He has not brought out any specific case of damage to the environment and forest. The Tribunal is constrained to observe that the alleged irregularities on implementation of various Rules, Regulations and Acts other than Environmental and Forest laws and loss of revenue to the state exchequer do not fall under the ambit of National Green Tribunal Act, 2010 and therefore no observations are made on those issues by this Tribunal.

14. However, with regard to the averments made by the Petitioner in Para No. 3.7 of the petition quoting the report of the then Joint Collector, District Sehore alleging violation of Forest (Conservation) Act, 1980 in sanctioning the leases, the Respondent State has filed a detailed reply. With regard to alleged illegal mining activities in the forest areas in Gwalior division as well as in Katni-Satna-Rewa belt it was replied by the Respondent No.1 that action has been initiated against the officers concerned based on the report of Chief Conservator of Forests and Addl. Principal Chief Conservator of Forests. This Tribunal has already dealt the issue and delivered combined judgment dtd. 30.10.2014 in Original Application No. 14/2014 (*Ram Saroj Kushwaha Vs. State of M.P. & 6 Ors*) and Original Application No. 45/2014 (*Gorelal Tamrakar Vs. State of M.P. & 6 Ors.*) which deals with the alleged illegal mining activities in the forest areas particularly in the forests of Satna Forest Circle in Satna-Katni-Rewa belt. Having examined the contents of the Applications as well as the replies and having heard the parties in the aforesaid two cases, this Tribunal has concluded and issued directions to the Respondents in its aforesaid judgment dated 30.10.2014 for identifying and quantifying the damage caused to the environment and forests as a result of

illegal mining in forest areas and for taking necessary follow up action.

15. With regard to implementation of directions issued by the Hon'ble Apex Court in the case of *Deepak Kuamar Vs. State of Haryana and Ors.* (supra) as well as sanctioning of mining leases for the minor minerals for the areas below 5 hectares taking into consideration of the environmental aspects the Hon'ble Principal Bench of National Green Tribunal at New Delhi in it's combined judgment dated 13.01.2015 in the case of *Himmat Singh Shekhawat Vs. State of Rajasthan & Ors.* (OA No. 123/2014) has given elaborate directions wherein the state of MP itself is one of the parties in the case and therefore the State of MP shall have to take care of mining activities in the State without causing damage to the environment and ecology and implement the environmental laws as directed in the judgment of the Hon'ble Principal Bench at New Delhi. The relevant extract of the aforesaid judgment of the Principal Bench is reproduced below for ready reference.

“ 83. In light of the above discussion and particularly keeping in view the persistent conflict between the State Regulations and the Central Notifications, it is imperative for us to issue directions specially to provide for an interim period, during which appropriate steps should be taken to comply with the Judgment of the Hon'ble Supreme Court and to issue Notifications which are necessary in that regard. Therefore, we pass the following order and directions:

"I. XXXXXXXXXXXX

II. XXXXXXXXXXXX

III. All the Office Memorandums and Notifications issued by MoEF i.e. 1st December, 2009, 18th May, 2012 and 24th June, 2013 and 24th December, 2013(except to the extent afore-stated) are operative and would apply to the lease mine holders irrespective of the fact that whether the area involved is more or less than 5 hectares.

IV. We further hold that the existing mining lease right holders would also have to comply with the requirement of obtaining Environmental Clearance from the competent authorities in accordance with law. However, all of them, if not already granted Environmental Clearance would be entitled to a reasonable period (say three months) to submit

their applications for obtaining the same, which shall be disposed of expeditiously and in any case not later than six months from pronouncement of this judgment.

V. All the States and the Ministry of Environment and Forest shall ensure strict compliance to the directions issued by the Hon'ble Supreme Court in the case of Deepak Kumar (supra). We direct Secretary, Ministry of Environment and Forest to hold a meeting with the State of Rajasthan, Himachal Pradesh and Karnataka to bring complete uniformity in application of the above referred Notifications and Office Memorandums including the Notification of 2006.

VI. We direct that in the meeting it shall also disused and appropriate recommendations be made and placed before the Tribunal, as to whether riverbed mining covering an area of less than 5 hectares can be permitted, if so, the conditions and regulatory measures that need to be adopted in that behalf.

VII. We direct that the District Environmental Committees constituted by the respective State Governments shall not discharge any functions and grant approval as contemplated under the Notification of 2006.

VIII. Secretary, Ministry of Environment and Forest along with such experts and the States afore-referred will also consider the possibility of constituting the branches of SEIAA at the district or at least, division levels, to ensure easy accessibility to encourage the mine holders to take Environmental Clearance expeditiously.

IX. XXXXXXXXXXXX

X. XXXXXXXXXXXX

XI. We dispose of Original Application No. 123/13 with a direction that SEIAA shall consider the applications filed for seeking Environmental Clearance in accordance with law and observations made in this judgment, expeditiously, and in any case within a period of three months from today.

XII. In the meanwhile, no State shall permit carrying on of sand mining or minor mineral extraction on riverbed or otherwise without the concerned person obtaining Environmental Clearance from the competent authority.

XIII. We direct the Ministry of Environment and Forest to issue comprehensive but self-contained Notification relating to all minor mineral activity on the riverbed or otherwise, to avoid unnecessary confusion, ambiguities and practical difficulties in implementation of the environmental laws.

XIV. In light of the judgment of the Supreme Court and what has emerged from the various cases that are subject matter of this Judgment, we direct the Ministry of Environment and Forest to formulate a uniform cluster policy in consultation with the States for permitting minor mineral mining activity including, its regulatory regime, in accordance with law."

16. With the above observations, we feel that with regard to framing mining policy, taking necessary follow up action on the observations of the CAG in its annual reports for successive years between 2002-03 to 2008-09 and taking necessary legal action against the defaulting mining lease holders under Mines and Mineral (Concession) Rules, 1960 and MP Land Revenue Code etc. this Tribunal will not be able to issue any directions as they do not fall under the purview of this Tribunal. However the Petitioner is at liberty to approach appropriate forum for obtaining such relief.

17. **This Original Application No. 29/2014 accordingly stands disposed of.**
No order as to costs.

(Mr. Justice Dalip Singh)
Judicial Member

(Mr. P.S.Rao)
Expert Member

Bhopal:
February 18th, 2015

NGT