

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 123/2014

Himmat Singh Shekhawat V/s State of Rajasthan & Ors.

**CORAM: HON'BLE MR. JUSTICE M.S. NAMBIAR, JUDICIAL MEMBER
HON'BLE PROF. (DR.) R. NAGENDRAN, EXPERT MEMBER**

**Present: Applicant / Appellant : Mr. Raj Panjwani, Sr. Adv. with Mr. Anan Verma
and Mr. Sandeep Singh, Advs.
Respondent No. 3 : Mr. Vikas Malhotra, Adv.**

Date and Remarks	Orders of the Tribunal
Item No. 1 June 6, 2014	<p>We have heard the learned Sr. Counsel appearing for the applicant.</p> <p>Mr. Vikas Malhotra takes notice on behalf of respondent no. 3. Applicant to furnish copy of the application to the learned Counsel appearing for respondent no. 3, if not furnished.</p> <p>Admit. Issue Notice to the respondent nos. 1, 2 & 4 by registered post/acknowledgment due and Dasti as well.</p> <p>The Ministry of Environment & Forests (MoEF) issued an office memorandum on 24.12.2013 categorizing the original 'B' category provided under the 2006 Regulations, creating the category B-1 and B-2.</p> <p>The office memorandum dated 24.12.2013 provides that projects categorized as B-1 require EIA report for appraisal and has also to undergo public consultation process as applicable, while projects categorized as B-2 will be appraised based on the application in Form-1 accompanied by Pre-feasibility Report. Under clause 1(iii) no river sand mining project, with mine lease area less than 5 ha. may be considered for grant of environment clearance and river sand mining projects with mining lease area of 5 ha. but less than 25 ha. will be categorized as category B-2.</p>

In addition to the requirement as stated earlier, such projects will be considered subject to the stipulations shown therein.

The Hon'ble Supreme Court in the case of **"Deepak Kumar Vs State of Haryana" 2012 4 SCC 629** declared that lease of mine or minerals including their renewal for the area of less than 5 ha. also would be granted only after getting/granting environment clearance from MoEF. Evidently, the office memorandum was issued to wriggle-out of the said directions by creating category B-2 having an area of less than 25 ha and above 5 ha. This Tribunal by order dated 28.03.2014 considered the said office memorandum and held :

"the notification issued by the MoEF is an Act of subordinate legislation and was issued in exercise of statutory powers. The office memorandum is an administrative order and cannot frustrate the legislative act. In fact, it falls beyond the scope of administrative powers. Consequently, we stay the operation and effect of the order of office memorandum dated 24.12.2013."

The guidelines issued by the Government of Rajasthan on 08.01.2014 were following the office memorandum issued by the MoEF on 24.12.2013. Though, the said guidelines were issued prior to the order passed by this Tribunal staying the operation of the said office memorandum, further action cannot be legally initiated by the Government of Rajasthan, when the operation of the said office memorandum stood stayed by the order of this Tribunal. In such circumstances, the Government of Rajasthan cannot be permitted to proceed as provided under the office memorandum dated 24.12.2013, granting permission to mine. In such circumstances, the respondent nos. 1 and 2 are directed not to proceed further pursuant to the guidelines

issued by the Government of Rajasthan on 08.01.2014.

It is also clarified that even if any auction has been/or is to be conducted, no letter of intent shall be issued, without getting prior permission from this Tribunal.

List on 8th July, 2014.

....., JM
(M.S. Nambiar)

....., EM
(Prof. (Dr.) R. Nagendran)

