

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

.....

**MISCELLANEOUS APPLICATION NO. 260 OF 2017**

**IN**

**ORIGINAL APPLICATION NO. 123 OF 2014**

**IN THE MATTER OF:**

Himmat Singh Shekhawat,  
98, Rooprajat Township, Phase-II,  
Pal Road, Jodhpur – 342008  
Rajasthan

..... Applicant

Versus

State of Rajasthan & Ors.

..... Respondents

**IN THE MATTER OF:**

The State of Tamil Nadu  
Rep. by its Principal Secretary  
To Government, Industries Deptt.,  
Government of Tamil Nadu,  
Secretariat, Fort St. George,  
Chennai-600-009, Tamil Nadu.

..... Applicant

**COUNSEL FOR APPLICANT:**

Mr. Pinaki Misra, Sr. Adv., Mr. Subramonium Prasad, AAG, Mr. R. Rakesh Sharma, Mr. S. Anand, Mr. Abhishek, Ms. Sneha, Advs.

**COUNSEL FOR RESPONDENTS :**

Ms. Divya Prakash Pande and Ms. Bhawana Pande, Advs. for MoEF&CC  
Mr. Raj Panjwani, Sr. Adv., Mr. Shiv Mangal Sharma, AAG, Mr. Saurabh Rajpal, Mr. Adhiraj Singh, Adv. for State of Rajasthan  
Mr. Ritesh Khatri, Advocate

## JUDGMENT

### PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)

Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

**Reserved on: 12<sup>th</sup> April, 2017**

**Pronounced on: 18<sup>th</sup> April, 2017**

---

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

### JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

The State of Tamil Nadu has filed the present application (M.A. No. 260 of 2017) with the prayer that the Tribunal may pass appropriate order/directions for extending the time for implementation of the directions contained in the judgment of the Tribunal dated 13<sup>th</sup> January, 2015 by one year or by any other reasonable period as the Tribunal may consider appropriate in the facts and circumstances of the case.

2. It is stated on behalf of the State Government that they are tendering unconditional apology for non-compliance of the directions within the stipulated time, in terms of the said judgment. It is further submitted that the delay occurred due to reasons beyond the control of the State Government. According to the applicant, there are 3881 leases in the State of Tamil Nadu having an area less than or equal to 5 hectare which provides raw material to various industries and numerous economic activities. It is the prime source of employment in rural and semi urban areas. These include both major and minor mineral quarries. The Government of India had issued a Notification

dated 12<sup>th</sup> December, 2015 in furtherance to which the Government of Tamil Nadu framed Rules 41-43 in the Tamil Nadu Minor Minerals Concession Rules, 1959 on 22<sup>nd</sup> April, 2016, to regularise the Minor Minerals which were originally under Major Minerals. It is stated that out of existing quarries, 825 minor minerals applied to State Environmental Impact Assessment Authority (for short, "SEIAA") Tamil Nadu for obtaining Environmental Clearance (for short, "EC"). 184 existing quarries were yet to submit their mining plan for approval. 318 major minerals now converted to minor minerals were also yet to submit their application to the concerned authority. 351 granite lease holders submitted their scheme of mining belatedly and beyond the period of 120 days. The Central Government has been moved for granting exemption, permitting such lessees to file application beyond the period of 120 days. 370 granite lessees were yet to submit their scheme of mining. In this regard, 2048 are mines which have not obtained EC as of now. Rule 42 stipulates that EC had to be obtained by the project proponent before grant/renewal of lease. The mining projects having an area of less than 50 hectares but equal to or greater than 5 hectares shall fall under the category 'B' and those equal to and more than 50 ha., would fall under the category 'A' in terms of the Notification dated 14<sup>th</sup> September, 2006.

3. According to the applicant, the closure of mines will bring cascading effect on the construction and allied activities. It would also affect employment adversely. Stoppage of mining activity would result in shortage of minerals for the development and industrial activities. Nearly one lakh people directly depend upon mining as a source of

livelihood and it would also affect the State revenue that is being collected as a result of mining activity. The State Government has taken some steps and require further time to complete the process in terms of the judgment of the Tribunal and the law in force. It is also stated that there was no Chairman of SEIAA, which further delayed the application for grant of EC being dealt with in accordance with law. It is on these grounds that the State of Tamil Nadu prays for extension of time by one year.

4. Following the dictum of the Hon'ble Supreme Court of India laid down in the case of *'Deepak Kumar & Ors. vs. State of Haryana & Ors.'* (2012) 4 SCC 629, the Tribunal had passed a detailed judgment in the case of *'Himmat Singh Shekhawat vs. State of Rajasthan & Ors.'* decided on 13<sup>th</sup> January, 2015. *Vide* this judgment, the Tribunal had issued large number of directions in paragraph 83 of the judgment. The Tribunal had quashed the Notification issued by the Union of India dated 9<sup>th</sup> September, 2013 enunciating that the prescribed procedure was contrary to law and, therefore, liable to be quashed. Along with this, even the Office Memorandums issued on 24<sup>th</sup> June, 2013 and 24<sup>th</sup> December, 2013 were held to be invalid and inoperative, being beyond the power of delegated legislation. It was specifically directed that in light of the judgment of the Hon'ble Supreme Court of India and the order of the Tribunal, mine holders would be required to obtain EC irrespective of the fact that whether the area involved is more than or less than 5 ha. Certain other directions were also issued permitting the existing mine operators to

go on till the specified time and subject to the conditions stated in the judgment.

5. The State Governments, SEIAA and other agencies involved in the process of granting EC were provided with a time bound programme under the said judgment. In terms of clause-9 of the said judgment, the applications were required to be dealt with and appropriate orders passed thereupon as early as possible and not later than six months from the date of pronouncement of the judgment. After pronouncement of the said judgment, which as per the submissions made at the bar has already attained finality, certain applications had been filed for extension of time for compliance of these conditions. Vide order dated 24<sup>th</sup> July, 2015 the extension of time was granted, keeping in view the peculiar facts and circumstances stated before the Tribunal, particularly that there were large number of applications to be dealt with by the agencies and they require further time. After the grant of the extension in terms of these orders, applications were again moved seeking further extension of time for compliance of the directions contained in the judgment. These applications were dismissed by order of the Tribunal dated 4<sup>th</sup> May, 2016 & 26<sup>th</sup> May, 2016. The Tribunal had passed reasoned orders while declining further extension of time, as the stakeholders had failed to take requisite steps in accordance with the judgment and the law in force.

6. The judgment of the Tribunal was pronounced on 13<sup>th</sup> January, 2015 and now, more than a period of two years has already been



passed, but the State of Tamil Nadu still has to take primary steps in accordance with the judgment of the Tribunal and the mandate of the Hon'ble Supreme Court of India laid down in 'Deepak Kumar's case'. Inaction on the part of the State and its instrumentalities cannot be taken as a ground for extending the period for compliance. This, in fact, tantamounts to taking benefit of one's own wrong. There is nothing stated in the application as to what steps the State Government and its authorities and instrumentalities have taken in the provided period of two years. No explained circumstances have been stated in the application which would justify the ground of extension of time to the State as opposed to the application filed by other States and mine holders, which were rejected by the Tribunal *vide* its orders dated 4<sup>th</sup> May, 2016 & 26<sup>th</sup> May, 2016. *Vide* these orders a clear deadline of 31<sup>st</sup> December, 2015 was provided and we see no reason to grant any further relaxation thereto. We may also notice that the grounds of unemployment or loss of revenue to the State were within the notice of the State as back as on 13<sup>th</sup> January, 2015. Nothing prevented the State and its agencies from taking all requisite steps within the time provided in the judgment and in any case by December 2016. Sufficient time has been granted for compliance and such non-compliance remains entirely unexplained, much less justified by proper grounds and reasoning. Economic reasons cannot entirely frustrate the environmental protection. The Principle of Sustainable Development requires a balanced approach. We cannot, therefore, permit that mining activities should continue to cause irretrievable damage to the environment and ecology, just for

economic reasons. Grant of prior EC to carry on mining activity is not only the requirement of the judgment of the Hon'ble Supreme Court of India and this Tribunal but even Rule 42 referred (supra). The State Government's rules also mandate that the prior EC should be taken before commencement of such activity. The contentions raised on behalf of the State Government are devoid of any merit and they only exhibit inaction and apathy on the part of the State to comply with the judgment and the law that it has itself enacted for the protection of environment and ecology.

7. We direct the State Government again to expedite the compliance to the law as expeditiously as possible and to ensure that no mining activity is permitted to be carried on without obtaining prior EC. Nothing prevents the State from considering such applications with priority.

8. For these reasons, we dismiss the Miscellaneous Application No. 260 of 2017 further without any order as to cost.

**Swatanter Kumar**  
**Chairperson**

**Raghuvendra S. Rathore**  
**Judicial Member**

**Bikram Singh Sajwan**  
**Expert Member**

New Delhi  
18<sup>th</sup> April, 2017