

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONAL BENCH

CHENNAI

Application No. 104 of 2015 (SZ)

1. Mr. S. Dhanapal

S/o. Se. Perumal

Perumalai Post

Thittakudi Taluk

Cuddalore- 606 106

2. Mr. R. Dhanapal

S/o. (Late) Ramasamy

Neivasal, Mariamman Koil Street

Thittakudi Taluk

Cuddalore -606 106

....Applicants

Vs.

1. Union of India

Represented by its Secretary

Ministry of Environment Forest and Climate Change

New Delhi-110 003

2. Tamil Nadu State Level Environment Impact Assessment Authority

Represented by its Member Secretary

3rd floor, Panagal Maligai

No.1 Jeenis Road, Saidapet

Chennai- 600 015

3. Tamil Nadu Polluton Control Board

Represented by its Member Secretary

Anna Salai, Chennai- 600 002

4. The District Collector
Cuddalore District
Collectorate
Cuddalore- 607001

5. The Tahasildar
Thittakudi Taluk
Cuddalore- 606106

6. Revenue Divisional Officer
Thittakudi Taluk
Virudhachalam
Cuddalore District- 606001

7. The State of Tamil Nadu
Represented by its Secretary
Public Works Department
Fort St. George, Chennai- 600009

8. The Executive Engineer PWD/WRD
Vellar Basin Division
Virudhachalam
Cuddalore - 606001

.....Respondents

Counsel for the Applicants

Mr. T. Mohan for Mr. Kamalesh Kannan & Mr. S. Sai Sathya Jith

Counsel for the Respondents

Mrs. C. Sangamithirai

- Counsel for Respondent No.1

Smt. P. Mahalakshmi - Counsel for respondent No. 2
Smt. Yasmeen Ali - Counsel for respondent No. 3
M/s M.K. Subramanian &
Mr. Gokul Krishnan - Counsel for Respondent No. 4 to 6
Mr. A. L. Somayaji, Advocate General of State of Tamil Nadu for
M/S. Abdul Salim & Vidyalakshmi - Counsel for Respondent No. 7 and 8

ORDER

QUORAM

Hon'ble Justice Dr. P. Jyothimani (Judicial member)

Hon'ble Professor Dr. R. Nagendran (Expert member)

Delivered by Justice Dr. P. Jyothimani dated 20th November, 2015

- 1) Whether the judgement is allowed to be published on the internet ----- yes / no
2) Whether the judgement is to be published in the All India NGT Report ----yes / no

1. The applicants, an agriculturalist and environmentalist, respectively have filed this application praying for a direction against the second respondent, State Environment Impact Assessment Authority (SIEAA), Tamil Nadu State to revoke the Environmental Clearance (EC) dated 27-02-2014 granted to the eighth respondent for the proposal of quarrying of sand in 19.00.00 ha in River Vellar at S.F. No. 98(P) of Neivasal Village, Thittagudi Taluk, Cuddalore District. The complaint of the applicants is that against the conditions stipulated in the EC, the PWD is extracting abnormal quantities of sand by mechanised methods using a large number of JCB

machines extracting more than 500 lorry loads of sands per day and mining beyond a depth of 10 m. That apart, Savudu- Gravel road has been laid by the miscreants in the River itself to facilitate the movement of lorries. The villagers have protested against such indiscriminate mining which is illegal as the said activity affects their agriculture in the area.

2. It is stated in the grounds raised in support of the application that, while the EC conditions contemplate the maximum depth of 1m and the excavation is to be done manually, the actual quarrying is done up to 10 m using machines. It is also the case of the applicants that there are no clear boundary marking of the quarry apart from the depth of the quarry and the roads laid are unauthorised and illegal and against the terms of EC. The applicants have also narrated various instances to show that many of the conditions of the EC are violated. While the manual operations and transport operations are to be done by Bullock Carts as per the terms of EC, according to the applicant 12 JCBs and Hitachi machines are used in the River for 24 hours a day. That apart, it is stated that by such indiscriminate quarrying not only the terms of the consent have been violated but it has also affected the water table and polluted the ground water. It is also the case of the applicants that not only the mandatory conditions of EC but also the general conditions are violated and the Hon'ble Apex Court has heavily come down against such illegal mining activities in **Deepak Kumar v. State of Haryana**, (2012) 4 SCC 629. With the above averments the applicants have prayed for directions against the 2nd respondent, SEIAA to cancel the EC granted to the 8th respondent.
3. The Ministry of Environment, Forest and Climate Change (MoEF &CC) in reply has stated that sand being a minor mineral, the powers to make regulation lie with the State Governments which are expected to frame rules for mining of minor minerals.

As per the Environment Impact Assessment Notification (EIA) 2006, the projects of mining of minor minerals including sand in the area equal to or greater than 50 ha are to be handled at the level of MoEF and CC for grant of EC. The projects with mining lease area less than 50 ha are dealt with by SEIAA at the State level. The mining projects also require EC irrespective of the size of the mine lease area. The prior EC even if it is less than 5 ha would be treated as category B and SEIAA is to grant EC.

4. The 3rd respondent Tamil Nadu State Pollution control Board (Board) in reply has stated that the sand quarry site is a Government leased area and EC has been obtained from SEIAA by the Executive Engineer PWD, WRD, Vellar Basin Division, Cuddalore District and Consent to Operate has been obtained from the Board on 12-04-2014 and renewed up to 17-04-2017. According to the Board, the quarry site was inspected on 15-07-2015 and it was found that 2 JCB machines were engaged in levelling the quarried site, 2 JCB machines were engaged in sand quarrying operation and 4 JCB machines were used for loading sand in the trucks to transport the sand to the stockyard and up to 1-2 m depth of quarrying operation were carried on. It is also stated that agricultural activities are done adjacent to the River bank and quarrying operations are being carried out at a buffer distance of about 50 m. According to the Board, quarrying is authorised, as prior EC has been obtained apart from the consent from the Board. It is stated by the Board that the depth of the sand quarrying operations are being monitored by PWD and the quarrying was not noticed up to 10 m apart from the fact that the boundary markings were done using stone pillars. It is further stated that the transportation through vehicles are made through temporary road laid in the River basin and a display board has been erected denoting the execution of work. There is no extraction of ground water illegally for mining activity. Even though the EC conditions state that quarrying should be manual and no machine

should be used and transportation of sand must be by bullock carts, during inspection it was found that JCB machines were used for quarrying sand and trucks for transportation. However, as per records of PWD excess quarrying was not found.

5. Even though the other respondents have not filed their replies, arguments were advanced on their behalf. The learned Advocate General of State of Tamil Nadu has made his submissions on behalf of the State Government represented by the PWD.
6. Simultaneous to the filing of this application, at request of the SEIAA, the Regional Committee for Sand has inspected the Neivasal sand quarry across Vellar River on 03-06-2015 and a copy of this report has been submitted to this Tribunal. In the report it is stated that the quarrying is being operated from 7.00 am to 5.00 pm as permitted by the District Collector and it was observed that 2 Poclains (Hitachi excavators) were deployed to quarry. It is further stated that due to flow from Chinnar River at the confluence point, there was heavy sand deposits to a height of 4-6 m on the shoals. The quarry operated at the shoal area appears as a deep cut till the River bed level. The quarrying is being carried out to reduce the shoal height and it is operated not more than 1.00 m below bed level of the River and the sand quarry area in the Neivasal quarry is 19.00 ha. It is also stated in the report that necessary boundary stones were laid along the boundary of the quarry site in the River. The Committee has also verified from the records that approximately 30-40 lorries/ Tippers are loaded every day and there was no damage to roads and environment of the area.
7. The report of the said Committee was objected to by the applicants stating that the report is by the PWD itself and that cannot be accepted. It is stated that illegal mining done against the conditions of the EC is justified by the Committee which is against the Judgment of Hon'ble Supreme Court in **Deepak Kumar's** case. However the admission by the Committee itself that Poclains are being used to carry on mining

activities itself is sufficient to cancel the EC. It is stated that even the photographs submitted by the Committee are against its own stand.

8. Mr. T. Mohan learned Counsel appearing for the applicants has made it clear that he is not questioning the validity of EC but by virtue of non-implementation of the conditions of EC and violation of mandatory conditions the 2nd respondent has a legal duty to cancel the EC. It is his submission that on the sole admitted ground even by the Regional Committee and the reply of the Board that JCBs are used for quarrying and removing sand itself is sufficient for the 2nd respondent to cancel the EC. It is his submission that in spite of the complaint made by the applicants especially on 07-02-2015, the 2nd respondent has not taken any action except giving some futile directions. He has submitted that when the EC conditions contemplate that when the project proponent fails to comply with any of the conditions of EC, the clearance will be withdrawn, there is no purpose for the 2nd respondent SEIAA to delegate its powers to someone else for monitoring. He has submitted that when once the EC conditions dated 27-02-2014 prohibit use of any machines, the District Collector has no right or jurisdiction to permit any mechanised quarrying activity. Mere putting of flags will not amount to marking the quarrying area. He has also submitted that the Government order dated 20-02-2014 issued by the Department of Industries authorising the District Collector to permit minimum number of Poclains is not incorporated in the specific conditions issued by the 2nd respondent in EC dated 27-02-2014. In any event, he has submitted that in the light of the judgement of the Hon'ble supreme Court in **Deepak Kumar v. State of Haryana and Others** reported in (2012) 4 SCC 629 it is clear that the unscrupulous way of mining of sand will affect the environment and ecology.

9. *Per contra*, it is the contention of the learned Advocate General of State of Tamil Nadu Mr. A. L Somayaji that pursuant to the EC granted by the 2nd respondent, mining was started on 29-12-2014 and the mining has never been done beyond 1m from natural bed level and therefore taking of the accumulated sand is only to preserve the River and while carrying out the mining operations there is no disturbance to the turbidity, velocity and flow pattern of the River water which are the terms of special conditions with which EC was granted. He also submitted that the quarrying was never being done below water table at any circumstance. He has also submitted that as considered in the judgment of the Hon' ble Division Bench of the Madurai Bench of Madras High Court dated 03-08-2012, that as per the Rule 36 A of the Tamil Nadu Minor Mineral Concession Rules, Government has passed a G.O.Ms. No. 19 Industries (MMC1) dated 19-04-2004 to amend Sub- rule 6 of Rule 36 A of the said Rules enabling the Government to obtain permission of the Secretary to Government, Industries Department or any other authority as may be authorised, for using machineries for quarrying if it will not be detrimental to ecology. Therefore, it cannot be said that use of 2 Poclains is illegal. He also would rely upon the observation made by the Division Bench in paragraphs 50 and 51 of the said judgement to support his contention that the sand is required for construction activities and infrastructural developments including welfare schemes of the Government and therefore by applying the principle of Sustainable Development, a balance has to be struck. He has submitted that in furtherance of such observation of the Hon' ble Madurai Bench of Madras High Court, the Government has issued G.O dated 20-02-2014 wherein the Government has permitted the District Collector to pass orders for restricted and judicious use of minimum number of Poclains and not more than 2 Poclains in each of the quarry sites in the State. He has referred to

another judgement of Madurai Bench of Madras High Court dated 30-04-2014 passed in M. P (M D) No. 2 of 2014 in WP (M.D) No 7146 of 2014 wherein by way of interim order, the High Court has directed that there shall be no instream mining and in fact such instream mining are not being carried out by the Government. As against the refusal to permit instream mining by the Bench, appeal was filed before the Hon'ble Supreme Court and there was a direction on 9th May 2014 that the main Writ Petitions should be disposed. Pursuant to that, the Division Bench on 06-08-2014 has dismissed the Writ Petitions. It was against the said final order of the Division Bench, Supreme Court in the order dated 08-09-2014 has extended the time granted by the Southern Zonal Bench of National Green Tribunal to carry on mining operations as per the permission of SEIAA to use mechanised operations till 05-09-2014 and the said order in respect of mechanised mining still continues. According to the learned Advocate General the matter is seized of by Supreme Court. His submission is that it is not as if the mechanised mining is totally prohibited and the same is allowed depending upon the urgency of the requirement of sand for infrastructural development and other activities. He has relied upon the judgement of the Hon' ble Supreme Court in **Syndicate Bank v. Ramachandran Pillai and Ors**, (2011)15 SCC 398 to substantiate his contention that the statutory rules should prevail. Therefore, he has contended that there is no merit in the application and it is for the urgent requirement for the infrastructural development, the respondent Department of the Government namely PWD is only mining thereby preventing unauthorised and illegal quarrying to take place in the area.

10. We have considered the contentions of the applicants as well as the respondents particularly the learned Advocate General of Tamil Nadu, referred to the pleadings, documents and judgements relied upon by both sides and given our anxious thought

to the issue involved in this case. After such deliberation, we are of the view that the issue to be decided in the case is as to whether on the factual matrix of the case the 2nd respondent should be directed to revoke the EC dated 27-02-2014 granted to the Executive Engineer PWD/WRD, Vellar Basin Division for the violations of the conditions and to direct remediation action in Vellar River at Neivasal Village, Cuddalore District.

11. The admitted fact is that the 8th respondent PWD has been granted EC by the 2nd respondent SEIAA for quarrying sand on the River beds of River Vellar in the extent of 19.00.00 ha at S.F. No. 98 (P) of Neivasal village. Such granting of prior EC is a condition in respect of the mining projects as per EIA Notification 2006 as substituted on 01-02-2009. As far as the powers of the Regulatory Authority, here the 2nd respondent about post EC monitoring, Clause 10 of EIA notification, 2006 stipulates that it is mandatory for the project management to submit half yearly compliance report in respect of the stipulated prior EC terms and conditions in hard and soft copies to the Regulatory Authority on 1st June and 1st December of every completed year. The said Clause further stipulates that such compliance report shall be displayed on the website of the concerned Regulatory Authority. This means that the Regulatory Authority has to monitor that the project management follows and implements the conditions with which EC has been granted. It is a natural consequence that in the event of non-compliance, it shall always be open to the Regulatory Authority to pass appropriate orders including the cancellation of EC after giving opportunities to the project management. That apart, under Clause 8 of the EIA Notification 2006, for deliberate concealment or submission of misleading information, the prior EC granted can be cancelled after giving personal hearing to the project management and

following the principles of natural justice. This is enunciated in Clause 8 (vi) of EIA Notification, 2006 which is as follows:

“(vi) Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice.”

12. These are the Clauses which can be construed to empower the Regulatory Authority to deal with the situation in post EC period. In fact in the EC granted to the 8th respondent in the present case the 2nd respondent has stated in one of the general conditions that failure to comply with the conditions mentioned in the EC may result in withdrawal of the clearance. Condition No. xxxvi of the general condition of the EIA is as follows:

“Failure to comply with any of the conditions mentioned above may result in withdrawal of this clearance and attract action under the provisions of the Environment (Protection) Act, 1986.”

13. While it is true that the issue involved in this case do not relate to any deliberate suppression and therefore Clause 8 (vi) of the EIA Notification, 2006 has no application, by construction of Clause 10(ii) and 10(iii) of the EIA Notification, 2006 in consonance with the above said condition No. xxxvi of the general conditions of EC, the 2nd respondent being the Regulatory Authority is certainly entitled to

withdraw the clearance if it is found that there are breach of conditions contemplated under the EC granted.

14. It is true that in respect of Tamil Nadu Minor Mineral Concession Rules 1959, Rule 36 A (6) which was substituted on 19-04-2004 states as follows:

“no machinery shall be used for quarrying sand from River beds, except with the permission of the Secretary to Government, Industries Department or any other authority or officer, as may be authorised by him in this behalf, who may grant such permission if use of such machinery will not be detrimental to ecology”,

and that the Government in G.O. (D) No 22 dated 20-02-2014 has also permitted the District Collector for restricted and judicious use of minimum number of Poclains and not more than 2 Poclains in each of the quarry sites in the States in accordance with the powers conferred under Rule 36 A (6) of the Tamil Nadu Minor Mineral Concession Rules. It remains a fact that in the EC granted by the 2nd respondent in accordance with the provisions of the EIA Notification 2006 it is clearly stated in the special conditions 5(iv) and 5(v) as follows:

“5(iv).the proponent shall do the sand quarrying only manually and no machineries should be used to quarrying sand within the River.

5 (v).The transportation of the quarried mineral will be by bullock cart as proposed by the proponent.”

Therefore it is clear that the conditions with which EC was granted are certainly binding on the 8th respondent who cannot in our view rely upon G.O.No 20-02 -2014 issued by the State Government.

15. While the admitted fact is so, the 8th respondent has been using 2 Poclains for quarrying sand which according to the 8th respondent is based on the above said G.O dated 20-02-2014 which itself came to be passed as approved by the Madurai Bench of Madras High Court. In such event nothing prevented the 8th respondent in approaching 2nd respondent seeking such permission. At the same time, it is pertinent to note that the Hon' ble Division Bench of Madurai Bench of Madras High Court in the order dated 02-12-2010 in W.P. (MD) No. 11182 Of 2010 etc., batch while dealing with the River quarrying at Thamaraparani River, Tuticorin has, directed constitution of a Monitoring Committee to adhere to the directions issued under the Tamil Nadu Minor Mineral Concession Rules, 1959.
16. In another judgement, the Division Bench of Madurai Bench of Madras High Court dated 06-08-2014, which relates to sand mining in Cauvery Basin, while dealing with an order of SEIAA permitting mechanised mining, which was challenged before it, there was a direction to carry on operation up to 28-08-2014. However the Hon'ble High Court has ultimately dismissed the Writ Petition holding that there is no point in setting aside the EC granted by SEIAA.
17. Now, coming to the facts of the present case, in so far as it relates to the conditions relating to manual mining and transportation by bullock cart, in the light of the Interim Order passed by the Hon'ble Supreme Court in respect of the mining in Cauvery Basin, permitting the Government to proceed with mechanised mining with conditions of using only 2 Poclains which order continues as on date, we are of the view that it is for the 2nd respondent SEIAA to pass appropriate order if necessary after referring to State Level Expert Appraisal Committee (SEAC) and visit by its Subcommittee. In so far as it relates to other allegations relating to violations particularly about the allegation that mining are effected to 10 m as against the

permissible 1 m depth, there is factual contradiction, as the case of PWD is that it has only removed the accumulated sand above the River bed and from the River bed the mining is only up to 1m. This factual matrix as well as other alleged contradictions are to be considered by the 2nd respondent SEIAA in their proper perspectives after a thorough enquiry if necessary on sending to SEAC and a visit by Sub Committee for inspection and pass appropriate orders. We are reiterating that the 2nd respondent itself in the letter dated 16-02-2015 has stated as follows:

“it will not be out of place to mention here that, if any irregularities are found out during inspection, you will have to take immediate action to stop and rectify them.”

Apparently inspite of such direction the 2nd respondent has not taken any follow up action. Therefore, we are of the view that the matter must be remanded to the 2nd respondent for a time bound action.

18. Accordingly the application stands ordered by remanding the matter to the 2nd respondent with the following directions.

- i. The 2nd respondent shall pass appropriate orders regarding the use of mechanised mining as well as transportation of sand on the admitted factual matrix that such Poclains and Lorries are used for quarrying and transporting and in the light of the Interim Order of the Hon'ble Supreme Court in respect of the Cauvery Basin within a period of 2 weeks from the date of receipt of the copy of the order.
- ii. In respect of the complaints about the extent of quarrying as well as the other breach of conditions 2nd respondent shall refer the matter to SEAC which after inspection shall report to the 2nd respondent who shall pass appropriate orders after giving notice to 8th respondent

expeditiously, in any event within a period of 8 weeks from the date of receipt of the copy of the order.

- iii. Pending passing of such order the Interim Order passed by this Tribunal on 29-05-2015 shall continue. The said arrangement shall stand terminated on the expiry of the period mentioned in the Order or passing of appropriate Orders by the 2nd respondent, whichever is earlier.

The application stands disposed of in the above terms.

There shall be no order as to cost.

Dated 20th November 2015

Chennai

Justice Dr. P. Jyothimani
Judicial Member

Prof. Dr. R. Nagendran
Expert Member

NGT