

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

**ORIGINAL APPLICATION NO. 27 OF 2014
AND**

M.A. NOS. 92 OF 2014, 140 OF 2014, 314 OF 2014 & 752 OF 2014

IN THE MATTER OF:

1. Prem Chand Guleria
S/o Shri Roshan Lal
Village Balyali
P.O. Sandone
Teh. Sandone
District Mandi
Himachal Pradesh

2. Gain Chand
S/o Shri Sohan Singh
Village Sarori
P.O. Ropari
Teh. Sarkaghat
District Mandi
Himachal Pradesh

.....Applicants

Versus

1. Union of India
Through the Secretary
Minister of Environment and Forests
Government of India
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi – 110 003
2. State of Himachal Pradesh
Through Principal Secretary
Government of Himachal Pradesh
At Shimla, Tehsil and District Shimla,
H.P.-171 001
3. Himachal Pradesh Pollution Control Board
Through its Member Secretary
SDA Complex, Shimla-171 009
4. State Geologist
Department of Industries Himachal Pradesh
Shimla, H.P.-171 001
5. Rajat Stone Crushers
Through Rajat Thakur, Proprietor
Village Kachhali, Sub Tehsil Sandhol,
Tehsil Sarkaghat, District Mandi,
H.P.-175 001

6. M/s. Ruma Devi Stone Crusher,
Sarkaghat District Shimla,
H.P. 171 001

.....Respondents

Counsel for Applicant:

Mr. Rajesh Chhetri and Mr. Pawan Upadhyay, Advocates

Counsel for Respondents:

Mr. Vikas Malhotra and Mr. M.P. Sahay, Advocates for Respondent No.1

Mr. Suryanarayan Singh and Mr. Kanupriya Tiwari, Advocates for Respondent No.2 & 4

Mr. Anil Kumar Chandel, Advocate for Respondent No. 3

Mr. Deepak Kaushal and Mr. Vikrant T., Advocates for Respondent No. 5.

Ms. Sharmila Upadhyay, Advocate for Respondent no. 6.

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)

Hon'ble Dr. D.K. Agrawal (Expert Member)

Hon'ble Prof. A.R. Yousuf (Expert Member)

Reserved on: 8th December, 2014
Pronounced on: 13th January, 2015

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 applicant, who is a retired teacher, residing in village Balyali, District Mandi, Himachal Pradesh, has instituted this application under Section 18(1) read with Sections 14 and 15 of the National Green Tribunal Act, 2010 (for short 'the NGT Act'), praying

that the official respondents be directed to stop the illegal and unauthorised mining activity and stone crusher plant being run by private respondent no. 5. Further, the official respondents should also be directed to do an Environmental Impact Assessment and prepare proper plan in that regard. The private respondent should also be directed to pay damages and penalty for causing harm and damage to the environment, resulting from his illegal mining and stone crushing activity. These reliefs are prayed on the premise that the applicant is residing in the village at a distance of less than 1000 meters, from the site where the private respondent no. 5 is carrying the illegal mining and stone crushing activity. According to the applicant, it is polluting the ambient air quality in the area, thereby affecting the quality of life of the residents in neighbouring village where majority of residents are suffering from breathing and respiratory problems. It is averred by the applicant that the High Court of Himachal Pradesh at Shimla in Civil Writ Petition No. 228 of 2002, had declared the entire land of Himachal Pradesh to be a 'Forest Land' and, thus, directed a complete ban on stone crushing activities in the State. As a result thereof, only those stone crushers are permitted to operate which already had the necessary clearances and approvals, required under the law. Respondent no. 5, M/s. Rajat Stone Crusher, was also permitted to carry on such activity and was holding a valid licence till 30th December, 2003. Under this permission, the said respondent was permitted to carry on the activity in Khasra no. 1267/1 measuring 0-37-20 hectares. Thereafter, the land was declared as a forest area, thus, requiring

respondent no. 5 to take Forest Clearance under the Forest (Conservation) Act, 1980 (for short 'the Act of 1980'). Despite the fact that the said clearance had not been granted, respondent no. 5 continued to operate till 15th September, 2009. It is the case of the applicant that respondent no. 5, in collusion with the official respondents has fabricated the records and the official respondents have helped respondent no. 5 in carrying on with the illegal mining. Even though, respondent no. 5 had requested for M-Forms on 30th October, 2006, but they appear to have been issued in backdate from April, 2004. The Forest Department conducted an inspection on 2nd September, 2003 on the land of respondent no. 5, which is different from the land on which the stone crushing activity of respondent no. 5 was going on. The land which was inspected was measuring only 0-8-10 hectares and the inspection was conducted without the presence of the Sub Divisional Magistrate (SDM) of the area, in violation of the Policy Guidelines for Registration, Location, Installation and Working of Stone Crushers in Himachal Pradesh dated 10th August, 2004 (for short 'Policy Guidelines'). Further, in accordance with these Policy Guidelines, a stone crusher should have a minimum working area ranging from 2-5 Bighas, depending upon the size of the stone crusher. This requirement was amended vide Notification dated 20th March, 2012. While maintaining the same area of 2 to 5 Bighas for locating a stone crusher, the amended Notification permitted that the location of the stone crusher could be at different places as well, in case the required land is not available at one place. It is the case of the applicant

that Respondent no. 5 has allegedly encroached upon the land of the government and the area illegally occupied is 00-37-27 hectares. Yet, the permission by the Forest Conservation Authority was taken for only 00-08-10 hectares. Further, according to the applicant, the permission granted to the private respondent was based on incorrect facts and the lease deed dated 18th June, 2011, was executed, with respect to private land in Khasra No. 25/1, which is a land where no mining activity has been ever carried out as the same is full of bushes and trees. All these facts have been ignored by the authorities. The stone crusher unit of respondent no. 5 is situated in Bakkar Khad (Gair Mumkin Khad) and the lease has been granted in relation to the same falling in Khasra No. 728/1 (Gair Mumkin Khad-Govt. land). On these facts, it is averred that the clearance/approval given to the said respondent is arbitrary and contrary to the actual facts existing on the site.

2. The respondent no. 3, Himachal Pradesh Pollution Control Board (HPPCB) filed a reply, where the stand taken was that the house of the applicant was at the arial distance of more than 1000 mtr and by road it is 5 kms from the crusher site. It was submitted that respondent no. 5 has provided air pollution control devices i.e. wind breaking wall and the hillocks around the stone crushers are a natural barrier. It was also stated that the said unit has also provided six water sprinklers. A separate reply on behalf of respondent no. 2 and 4, State of Himachal Pradesh and State Geologist, Department of Industries, Himachal Pradesh respectively, was filed, where it was averred that the Forest Department, while

issuing the Notification dated 24th August, 1998, excluded certain categories of Government land like Gair Mumkin and Charagah Bila Drakhtan, from the purview of waste land and thus, such land did not attract the provisions of the Act of 1980. According to them, respondent no. 5 had installed the stone crusher at Khasra no. 1267/1, after obtaining prior approval from the Competent Authority during the year, 1999. Referring to the Policy Guidelines dated 11th August, 2004, it was submitted by respondent nos. 2 & 4, that the said parameters have been provided in terms of distance and that the stone crusher site of respondent no. 5 is within the permissible limits. After the expiry of earlier mining lease, respondent no. 5 had applied for mining lease for private land having Khasra no. 25/1 and accordingly a mining lease which falls in district Hamirpur, was granted in favour of respondent no. 5 vide order dated 13th July, 2004. It is stated that in compliance of the order of the Tribunal dated 5th August, 2013 in OA No. 171/2013, *NGT Bar Association v. Union of India*, the above sanctioned mining leases of respondent no. 5 have been suspended and that respondent no. 5 was running stone crushing activity only on the basis of old stacked stocks. On these facts, it is prayed that this application deserves to be dismissed.

3. The respondent no. 1, Ministry of Environment, Forests & Climate Change (for short 'the MoEF'), have not dealt with the merits of the case and has only stated that the State of Himachal Pradesh had submitted a proposal, seeking diversion of 0.0810 hectares of forest land (Gair Mumkin Khud) under the Act of 1980,

vide letter dated 27th August, 2004, in favour of Sh. Rajat Thakur, proprietor M/s. Rajat Stone Industries, Bakkar Khud, Sandhol, District Mandi, Himachal Pradesh. While processing the proposal in the Regional Office of the MoEF at Chandigarh, it was found that violation of the provisions of the Act of 1980 was done in the present case. After clarification, the Chandigarh office accorded in-principal (Stage-I) approval for the proposal vide letter dated 14th June, 2006, with conditions.

4. Along with the main application, the applicant had also filed M.A. No. 140 of 2014 praying that the illegal activity of mining and running of stone crusher by respondent no. 5 should be immediately stopped. Along with this application, the applicant has filed certain photographs etc. to show that such activity was being carried on even during the pendency of this case. In fact, the applicant had filed two more applications, viz., M.A. No. 92 of 2014 and M.A. 314 of 2014, with similar prayers. After service, respondent no. 5 did not file a detailed reply, but filed M.A. No. 752 of 2014 and M.A. No. 398 of 2014. M.A. No. 398 of 2014 was for impleadment and was allowed by the order of the Tribunal dated 26th June, 2014. In M.A. No. 752 of 2014, after going through the facts, respondent no. 5 had stated that the illegal operation of the crusher was being done by one Smt. Ruma Devi. According to him the photographs and the sketches filed on record related to the site, where Smt. Ruma Devi was carrying on the business of stone crusher. She was found to be carrying on this activity illegally and in an unauthorised manner. Resultantly, the State Government

had imposed a penalty against Smt. Ruma Devi for a sum of Rs. 3,29,35,000/-. According to respondent no. 5, Smt. Ruma Devi purchased the land comprising Khasra no. 752/3 measuring about 0-28-21 hectares in Mauza Chudu-Ra-Balah Logani of one Sh. Katku Ram, who had got the land under natour Scheme for the landless person. This land is “Bagicha Varani Aval”, meaning ‘Forest land’, but was being used for carrying on stone crushing activity in an unauthorised and illegal manner. According to respondent no. 5 there is a bridge at 300 mtr downstream and a bridge at a distance of 100 mtr upstream from the mining lease area of Smt. Ruma Devi. In the entire application respondent no. 5 placed complete emphasis upon the unauthorised activity being carried on by Smt. Ruma Devi and did not even whisper about his own activity. Respondent no. 5 has really not disputed specifically the contentions in the main application, however, filed M.A. No. 752/2014, alleging that illegal operation of the crusher was being carried on by respondent no. 6.

5. From the above referred facts, it is clear that the activity being carried on by both respondents no. 5 and 6 are not beyond the shadow of doubt and on the contrary, there is sufficient documentary evidence placed on record, showing that the activity of mining and stone crushing by respondent no. 5 and by respondent no. 6, at the land in question as afore-noticed, is illegal and contrary to law. Vide order dated 3rd November, 2014, Smt. Ruma Devi was directed to be impleaded as respondent no. 6 in the main application.

6. Respondent No. 5 has not placed any documents on record showing that he has been granted consent to establish and operate by the HPPCB and that he holds a mining lease for the area in question. The permissions from the Forest Department have also not been placed on record. After the arguments were over, the learned Counsel appearing for respondent no. 5 mentioned the matter and placed a copy of the order dated 15th November, 2014, by which the HPPCB had renewed the consent for functioning of stone crusher at the premise in question. As we would discuss, this does not even advance the case of the applicant any further. Similarly, respondent no. 6, despite grant of opportunity, did not file any proper reply. It is only at the time of final arguments on 8th December, 2014, that certain documents were placed on record, showing her interest in the land in question. A report of inspection conducted by a joint inspection team, under the Chairmanship of the SDM, Sarkaghat, had been placed on record, which does not help the case of the respondent no. 6 any further. Vide order dated 3rd November, 2014, Smt. Ruma Devi was directed to be impleaded as respondent no. 6 in the main application and was also directed to inform whether such penalty had been imposed upon the said respondent and if she had paid the entire amount or not. A copy of the affidavit sworn by Smt. Ruma Devi was placed on record on 20th September, 2014 stating that in furtherance to penalty notice dated 28th August, 2014, an amount of Rs. 2,61,74,300/- had been deposited and the balance sum of Rs. 39,26,145 is due. She claims to have filed a Special Leave Petition, SLP No. 409 of 2014 before

the Supreme Court, which is stated to be pending in that regard. The HPPCB has even issued an order dated 27th October, 2014, to respondent no. 6, granting renewal of the consent, on the conditions specified in the said order. It is strange that even this order, does not spell out as to for which activity and in relation to what land, the renewal of consent was being granted. The consent is stated to be valid till 23rd December, 2014, the period which in any case has since lapsed. Presently, respondent no. 6 is operating without any valid consent. The bare reading of the order dated 27th October, 2014, shows that it suffers from the infirmity of non application of mind.

7. Of course, both respondents no. 5 and 6 have exposed the irregularities and illegalities committed by each one of them in relation to carrying on of mining and stone crushing activities. Whatever be the truth in the rival allegations made by respondent nos. 5 and 6, respectively, against each other, the fact of the matter remains that the concerned authorities have failed to discharge their duties efficaciously and in accordance with law. The environmental laws and the Act of 1980, imposes statutory obligations upon the HPPCB and other concerned authorities to regulate these activities strictly in accordance with law. It is not only an obligation upon them, but their duty to ensure that mining activity was being carried on strictly in accordance with the State Policy on mining and the judgment of the Supreme Court in the case of *Deepak Kumar v. State of Haryana*, (2012) 4 SCC 629. Keeping in view the rampant illegal mining being carried on by

different licensees/persons in various states of the country, the Hon'ble Supreme Court had passed directions in *Deepak Kumar's* case (supra), directing the State Governments to implement the recommendations of the MoEF or the guidelines issued by the Ministry of Mining, to prepare mining plans and also to amend the respective regulations in force in their respective States. The Supreme Court, while taking notice of the fact that mining rules and laws were being undermined and compliance thereto was being avoided by taking mining leases in areas of less than 5 hectares, had directed that where the mining activity was being carried on areas less than 5 hectares, the same would also require Environmental Clearance. The law declared by the Supreme Court has still not been followed by a large number of States, including the State of Himachal Pradesh.

8. In the present case, we are concerned with the fact, whether the units run by respondent nos. 5 and 6, including their mining activity, are operating in accordance with law or not? Are they complying with the provisions of Air (Prevention and Control of Pollution) Act, 1981, Noise Pollution (Regulation and Control) Rules, 2000 and other mining laws, policies of the State and the judgment of the Supreme Court in *Deepak Kumar's* case (supra)? We have already noticed that not even a single document has been placed on record by respondent nos. 5 and 6, to show that they are complying with the requirements of law and are, therefore, carrying on their respective activity in accordance with law. Firstly, there is no reason stated by respondent no. 5, as to why this document was

not placed on record on an earlier occasion, despite the fact that it was in the power and possession of respondent no. 5.

9. We have to notice the inconsistent terms of this consent order dated 15th November, 2014 issued by the HPPCB. As per condition no. 1 of the recital of the order, renewal of consent is valid till 29th December, 2014 or till available stocks are exhausted, whichever is earlier. Further, condition no. 10 states that the unit upon complying with the conditions imposed by the State Geologist, vide its letter dated 30th September, 2014, can carry out production only with the permission of the mining department. These conditions in terms are contradictory, if the unit has to only be permitted to deal with the stocks lying on the site, there could be no question of the unit carrying on production activity. Furthermore, this document lost its significance as the consent is already over on 29th December, 2014 and currently the unit is operating without consent of the HPPCB and permissions from other authorities. Case of respondent no. 6 is even on a worst footing, as the State Government had imposed heavy penalty upon her for carrying on illegal and unauthorised mining and stone crushing activity. Onus lies on both these respondents to show that they are carrying on their respective business activities in accordance with the provisions of law and only after obtaining the requisite consent of the HPPCB and permissions from the concerned authorities of the State. All these consents or permissions in favour of these parties are conspicuous by absence of any document in that behalf on record.

10. The Pollution Control Boards and other State authorities are vested with wide powers, for the purposes of preventing and controlling the pollution of environment resulting from such activities and regulation of mining activity. Greater the power, higher is the responsibility upon these authorities to act consciously and in accordance with law. Breach of their duty or statutory obligation would normally result in serious consequences, prejudicial to the environment and human health. This may also cause serious revenue losses to the State. Carrying on of indiscriminate mining activity is an assault on natural resources and, thus, its regulation in accordance with law is mandatory. In the present case, in our considered opinion, the authorities have failed to perform their functions according to law, requiring the Tribunal to pass certain directions for their strict compliance.

11. In light of the above controversial facts and since no clear stand had been taken either by the HPPCB or the State Government in regard to these activities, while expressing displeasure to the manner in which these cases have been dealt with by the HPPCB and the State authorities, we dispose of this Original Application with the following directions:

- a. We direct for the constitution of a Special Committee which will inspect the sites of mining and stone crushing activities of both respondent nos. 5 and 6.
- b. The Committee shall consist of a Senior Environmental Engineer, of the HPPCB (not in-charge of the area in question),

an officer from the Department of Mining, State of Himachal Pradesh, SDM of the concerned area and a Senior Officer from the Forest Department, preferably the Conservator of Forest. This Committee shall conduct a joint inspection, without notice to either respondent nos. 5 or 6 and submit a report on the following:

- i. Based on their surprise inspection, verify whether the stone crushers are operating or not.
- ii. Whether respondent nos. 5 and 6 are operating under a valid and operative consent from the HPPCB. It shall also report whether these units are adhering to the conditions of consent, prescribed parameters and are compliant and non-polluting units.
- iii. Have these units obtained permission of the concerned Department or Authority and hold mining lease for carrying on such activity?
- iv. Capacity of the stone crusher, its source of raw material, water supply and electricity etc.
- v. Are these stone crushers offending any prescribed distances or limits and are violating any of the conditions or requirements of the mining policy of the State and/or the judgment of the Supreme Court in *Deepak Kumar's* case and/or orders of the National Green Tribunal.

vi. Whether respondent no. 5 and/or 6 have obtained mining licences, and if so, for which area and have they restricted their mining activity to that area alone.

c. As we have already held that the orders dated 27th October, 2014 and 15th November, 2014 passed by the HPPCB, have not been passed upon proper application of mind and suffer from infirmity of self contradiction and that the period of consent mentioned in these orders has already lapsed, we direct that no consent shall be granted and/or renewed in relation to these units, without taking into consideration the inspection report that is to be prepared by the Special Committee appointed under this order.

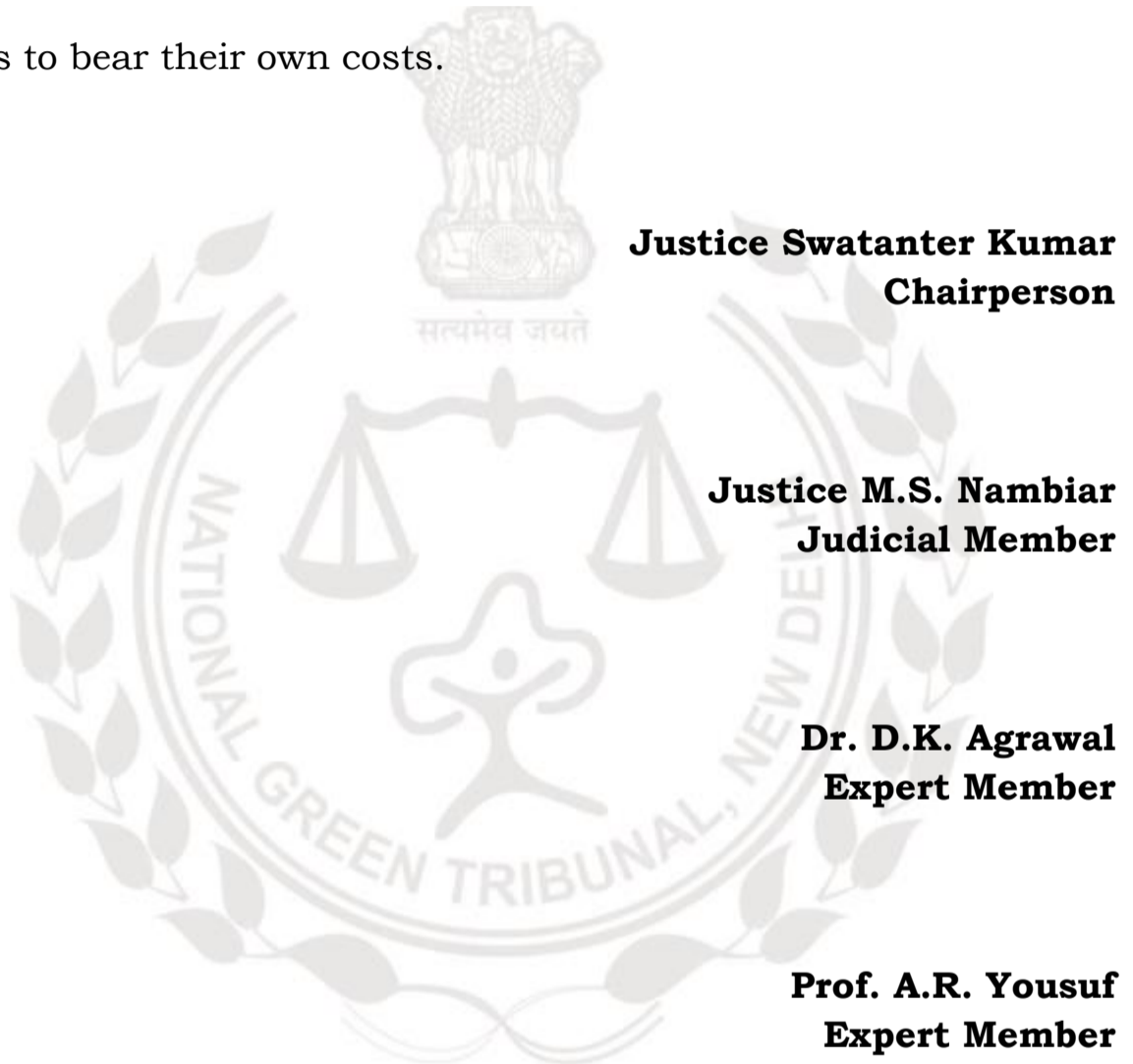
It is evident that stone crushers of both respondent nos. 5 and 6 are violating the norms and are causing environmental pollution. After submission of the report, if the HPPCB grants consent to these units, such consent would be placed before the Tribunal and would become operative only after the order of the Tribunal.

d. The Special Committee shall observe whether both these crushers have provided all requisite anti-pollution devices and will also collect samples of stack and ambient air quality and place the analysis reports before the Tribunal along with its final report.

12. Liberty is granted to the parties to approach the Tribunal, if they require any clarification or modification of this order. As the

main application, being O.A. No. 27 of 2014 stands disposed of, the four Miscellaneous Applications, being M.A. No. 92 of 2014, 140 of 2014, 314 of 2014 and 752 of 2014, also stand disposed of in terms of the above order.

13. The applications are accordingly disposed of, while leaving the parties to bear their own costs.



Justice Swatanter Kumar
Chairperson

Justice M.S. Nambiar
Judicial Member

Dr. D.K. Agrawal
Expert Member

Prof. A.R. Yousuf
Expert Member

New Delhi

13th January, 2015

NGT