

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

.....

**Original Application No.135/2015
(M.A No.1309/2015)**

In the matter of:

1. Narinder Kumar Shukla & Ors

S/o Late Sh. H.K Shukla
C-25, 2nd Floor, Paryavam complex Opp. Saket
New Delhi-110030

2. Sh. Satpal Sharma

S/o Late Sh. Bhagi Rath Sharma

3. Sh. Shashi Sharma

Sakoh, the Jaisingpur

.....Applicants

Verses

1. Sh. Jagish Saphiya

S/o Subedar Singh
Village Jagrup Nagar
P.O. Alampur
Teh:- Jai Singhpur, Dist: Kangra, H.P

2. Sh. Kapil Shapahya

S/o Sh. Jagdish Shapahya
Village Jagrup Nagar
P.O. Alampur
Teh:- Jai Singhpur, Dist: Kangra, H.P

3. Sh. Sanjay Patharia

S/o Not Known
MS Ashok Teal Stall
Sakoh (Village), Teh:- Jaisinghpar
District Kangra, H.P

4. The Secretary,

Department of Industries
Geological Wing, Udyog Bhawan,
Bemloe, Shimla-171001

5. The Secretary,

State Government of Himachal Pradesh,
Shimla, H.P

6. The Deputy Commissioner

Kangra at Dharamsala, H.P

7. The Director,

Mining Office
Dharamshal, Kangra, H.P

8. Ravi Sharma

Mining Guard of Beas River,
Lamba Gaon, Teh: Jaisinghpur
Himachal Pradesh

.....Respondents

Counsel for Applicant:

Mr. Amita Babbar, Mr. Rahul Sharma & Mr. Jitin, Advs

Counsel for Respondents :

Mr. S.C Rana, Adv for respondent no. 1 to 3

Mr. Suryanaryana Singh, AAG for respondent no. 4 to 8

ORDER/JUDGMENT

PRESENT:

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

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

Reserved on: 21st March, 2016

Pronounced on: 27th May, 2016

- 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 M.S Nambiar (Judicial Member)

1. The Application is filed under section 14, 15 and 17 of National Green Tribunal Act, 2010, seeking direction to the

respondents to remove the stone crusher from the bank of river Beas with its junction of Khad Bhariva at Village Sakoh, Tehsil Jaisinghpur, District Kangra (H.P.) and also to remove all the structures, transports and other connected items from the bank of river Beas where those are parked/installed/placed and to pay compensation to the applicants and other villagers who have been affected by the illegal activities.

2. The applicants are residents of village Sakoh and Alampur of Jai Singhpur holding properties therein. Respondent No. 4 is the Secretary, Department of Industries, respondent no. 5- Secretary, State Govt. of Himachal Pradesh, respondent no. 6- the Deputy Commissioner, Kangra, respondent no. 7-the Director, Mining Office, and respondent no. 8- the Mining Guard of Beas River. Respondent no. 1 is alleged to be an active political worker of the ruling party. It is alleged that using his political influence, he managed to install one stone crusher on the Bhariva Khad, at the meeting point of the Khad in the river Beas, in the name of his son- Mr. Kapil Saphia, the respondent no. 2. According to the applicants, to reach the meeting point of Bhariva Khad and the Beas River, Respondents nos. 1 and 2 illegally constructed a road along the properties of the villagers without their permission and they also cut hundreds of trees to lay the road. Operation of the crusher is yet to be started, but the foundation has been laid by respondent no. 1 to 3. They are digging sides of Beas River and Khad Bhariva for taking out hundreds of trucks of sand and small stones/pebbles everyday for selling in the market. In spite of intimating the mining

guard, who was personally brought at the site, no action was taken, though it was promised that they will be prosecuted. As per the latest rules framed by the State of Himachal Pradesh, no stone crusher can be installed within two kilometers from the residential area, whereas the disputed crusher has been installed just at a distance of half a kilometer from the village abadi. This causes air pollution and is a source of respiratory diseases. If the respondents are allowed to continue their illegal acts, it would cause environmental degradation. The Bulldozer and the JCB machines on work are shown in the photographs annexed to the application. Respondent no. 1 to 3 are continuing the work of excavation, sale of sand, Bajri and stones from the Beas River and Khad Bhariva. They work between 4 am to 9 am, taking advantage of the absence of the villagers, who would be sleeping. In spite of the complaints filed before the authorities, no action has been taken on these illegal activities. The applicants are therefore seek the reliefs stated earlier.

3. Respondent no. 4, 7 and 8 together filed a reply contending that as per the records, no person in the name of respondent no. 2 or 3 had applied for grant of mining lease for setting up of stone crusher. One Mr. Sanjay Pathania S/o Sh. Jagroop Singh has applied for grant of mining lease for excavation/ collection of sand, stone and bajri in Khasra No. 410 measuring 04-81-86 Hects of Govt. land Mauza Alampur for a period of 15 years for setting up of stone crusher. The joint inspection committee inspected the area applied for mining lease on 13.11.2013 and recommended the area

for granting the mining lease. On the recommendation, a letter of intent was issued on 17.06.2014, after completing all the formalities in favour of Sh. Sanjay Pathania for extraction/collection of sand, stone & bajri in Khasra no. 410 for setting up of stone crusher. The said Sanjay Pathania had applied for installation of stone crusher in Khasra no. 652/1 measuring 17-96 hecets of private land falling in Mauza Alampur, Mohal Sakoh and the site was inspected by the site appraisal committee on 13.11.2013. The committee found that the site comprising Khasra no. 652/1 measuring 15-58 is suitable for installation of stone crusher. The area has been approved as per notification dated 29.04.2003 as amended on 10.09.2004 by Department of Science and Technology. The Govt. of Himachal Pradesh vide notification dated 29.05.2014, has modified the earlier notification dated 29.04.2003 and the sitting parameters for installation of stone crushers have been changed and some are incorporated afresh. In view of the said notification, directions have been issued to the Mining Officer, Kangra on 17.06.2015 to get the site re-inspected as per notification dated 29.05.2014. There exist an approach road to the site approved for the proposed stone crusher, and applied for grant of mining lease by Sh. Sanjay Pathania, and this road was noticed even before the joint inspection of the said area by the joint inspection committee. The Assistant Mining Inspector, Palampur conducted spot inspection of the site on 07.05.2015 and during inspection the Pradhan of the Gram Panchayat certified that the said road is very old and stone crusher owner has neither cut any tree nor undertaken any excavation or mining. Some basic civil

work for installation of stone crusher has been undertaken by the Respondent No. 3 and no illegal activities were noticed by the concerned field staff. Though the photographs annexed show the JCB, it does not show the registration No. of the JCB. No land mark has been shown to fix the identity of the land or the owner of the JCB. Perusal of the photographs of the trucks show the registration nos. It was revealed that these trucks do not belong to Respondent No. 3 but to one Sh. Pradeep and Sh. Mohar Singh. The mining officer has reported that in the absence of land mark, it is not possible to identify the exact part of the land seen in the photographs. The mining officer has issued notices to the owners of the trucks and if they are found indulging in illegal mining, action will be taken against them in accordance with the law. Respondent No. 9, the mining guard inspected the site along with the applicant and assured them that in case of illegal mining the offenders will be prosecuted. Respondent no. 8 did not notice any illegal mining. The area applied for grant of mining lease, with respect to which letter of intent was issued in favour of Sh. Sanjay Pathania, forms part of bed of Beas River and the proposed mining activities involve only collection of minor mineral stone, bajri and sand from the river bed, therefore, apprehension made by the applicant with respect to the environmental degradation is without any basis. The status of the approach road leading towards the river bed was also got verified from the Pradhan of Gram Panchayat Sakoh. It was informed that it is a very old road and stone crusher owner has neither cut any tree nor undertook any excavation. The Gram Panchayat has also furnished a certificate to that effect. As there is no illegality or

environmental degradation, the applicants are not entitled to any relief sought for.

4. Respondent No. 3 in his reply contended that he had applied for grant of mining lease for extraction/collection of sand, stone and Bazri in Khasra No. 410 measuring 4.81.86 Hectare which is a Government land in Mauza Alampur for the period of 15 years for setting up of a stone crusher. The Joint Committee inspected the site on 13.11.2013 and recommended the area for grant of lease and letter of intent was issued in favour of the respondent on 17.06.2014 for the said period, in Khasra No. 410. Respondent applied for installation of stone crusher in Khasra No.652/1 measuring 17-96 hectares in the same Moza Mohal. The Site Appraisal Committee inspected the site on 13.11.2013 and found the site suitable for installation of the stone crusher as per the prescribed parameters. The earlier Notification dated 29.04.2003 was amended by fresh Notification dated 29.05.2014. It is known that directions have been issued to the Mining Officer to re-inspect the site as per the prescribed parameters as per amended Notification dated 29.05.2014 and no activity could take place till the matter is finally decided by the appropriate government. There exists an approach road from Alampur Jaisinghpur Harsipatan which was a very old one. For more than 70 years the villagers used to take cattle to the catchment areas of the banks of the said rivers for grazing, watering and washing their pets. The said road exist in the revenue records also. Respondent has not cut any tree or caused any damage to the environment. He has not used any

JCB or trucks and the photographs annexed to the application is not that of the respondent or used by him. The Applicant is not entitled to any relief sought for.

5. Respondent no.1 & 2 in their reply contended that the application is filed due to political rivalry. The respondent no.1 has not used any influence for granting of mining lease or permission to install the crusher. Respondent no. 1 & 2 have neither any interest in the crusher plant nor in the mining area. The policy relating to installation and working of crusher plant within the territory of Himachal Pradesh falls within the purview of geological wing of Department of Industries to the Govt. of Himachal Pradesh. Respondent No. 1 & 2 have nothing to do with the department or the crusher or the mining and the allegations against the respondents are false and the application is only to be dismissed.

6. The applicants filed rejoinders to the replies contending that the Committee formed for consideration of grant of lease must have been misguided by respondent no.3. The Joint Committee had not physically visited the site and instead inspected the records from the office. In spite of the contention in the reply that no activity could take place till the matter is finally decided, respondent no.1 to 3 are continuing their activities and on everyday hundreds of trucks loaded with sand and bajri are mined and sold. It is thus clear that respondent no.1 & 3 had violated the directions and indulged in illegal mining. Though there existed a road to the catchment area, it was blocked by the installation of the stone crusher in the grazing land. The respondents made a new road through the land which

was fraudulently purchased from the villagers. The Notification dated 29.05.2005 provides the prescribed distance where installation of stone crusher are permitted. No stone crusher can be installed within a distance of less than 500m from village abadi. The village Pratap Nagar of Alampur is only 200m away from the site of the stone crusher and village Sakoh Mauza abadi is about 300m from the site of crusher. The natural spring of village Pratap Nagar and Babli is only 100m away from the site of the stone crusher. Competent authorities have not taken these facts into consideration. As per the inspection report dated 12.05.2015 submitted by Assistant Mining Inspector, he visited Khasra No. 410 applied for lease for mining by Mr. Sanjay Pathania and found that no mining activities are being carried on. It is also stated that road from Harshipattan to Alampur is an old road and no new road has been constructed. If so, the crusher has to be on the road going from Harshipattan to Alampur, which is contrary to the notification dated 29.05.2014. Khasra No. 410 of Mohal Jagroop Nagar, Mauza Alampur is situated in River Beas, where no stone crusher can be installed in water. The report of the Joint Inspection Committee reveals that they have not visited the site, as mining lease granted in Khasra No. 410 is in the river. No mining lease could have been granted or any crusher could legally be installed in the river.

7. Subsequently, the applicants got amended the applications contending that the stone crusher is being installed about 50m away from the bank of River Beas and respondent no. 3 is the cousin of respondent no. 1. It was also contended that photographs

annexed to the application are in respect of Khasra no.650, 642, 651, 656 and 664. The reliefs sought for were also modified for a direction to remove the stone crusher being installed at Khasra No. 650, 642, 651, 656 and 664 from the bank of River Beas with its junction of Khad Bhariva.

8. Respondent no. 4 to 6 in their additional reply contended that respondent no. 3 had applied for installation of stone crusher in Khasra No. 652/1 and not in Khasra no. 650,642,651,656 and 664. It is also contended that there was physical inspection and there was no illegal mining activities and the mining lease was granted in compliance of the provision of notification dated 29.05.2014 and the crusher was also installed legally.

9. The learned counsel appearing for the applicant and respondents were heard. The arguments of the learned counsel appearing for the applicants is that, the mining lease granted in favour of respondent no. 3 are in violation of the guidelines issued by the State of Himachal Pradesh and as per the Notification no mining lease could be granted for the purpose of crusher, in respect of the Government land and in violation of the provision, lease was granted for mining in the Government land. The learned counsel also argued that no crusher could be installed or operated, in the area, though it is a private land, in violation of the parameters fixed. The learned counsel appearing for the respondent no. 3 and the Additional Advocate General appearing for the State of Himachal Pradesh argued that the guidelines relied on by the applicant, has no relevance in view of the promulgation of Himachal Pradesh,

Minor Mineral Concession and Minerals Prevention of illegal mining transportation and storage Rules, 2015. The learned counsel also pointed out that as per the 2015 rules, lease can be granted for mining in Government land and there is no violation. It is also argued that respondent no. 3 has obtained all the requisite licenses and permissions and there is no illegality and in such circumstances, the applicants are not entitled to the reliefs sought for.

10. The following points arise for consideration:

- i.) Whether there is any violation in granting of the mining lease in favour of respondent no. 3
- ii.) Whether the installation of the stone crusher by respondent no.3 is in violation of any law, rule or regulation.
- iii.) Whether the respondents 1 to 3 have caused any environmental degradation and if so, what are the directions to be issued for restoration/restitution of the environment and whether the applicants are entitled to any compensation.

11. Discussion on the points (i) to (iii)

Though the application was originally vague on the reliefs sought for, subsequently it was got amended and the relief sought for is for removal of the stone crusher from Khasra no. 650, 642, 651, 656 and 664 from the bank of River Beas with its junction of Khad Bhariva and to remove all the structures used for transporting sand, stone, bajri and pebbles from the said site.

Though there is no specific prayer with regard to the mining lease, the case of the applicant is that, a stone crusher could be permitted to be operated or installed, only if there is a valid lease for mining and no lease for mining can be granted in respect of Government land for and hence, no crusher could have been installed. The applicants are relying on the guidelines to establish their case. The guidelines relied on by the applicants is “River/stream bed mining policy guideline in the State of Himachal Pradesh”. Clause viii therein is the relevant provision of the guideline, relied on by the applicants. It reads as follows:-

“Extraction of minor minerals to be done in selected rivers/ streams or the river/ stream sections:

- 8.1 *Based on the action plan as mentioned the lease/contract shall be granted as per Himachal Pradesh Minor Mineral (Concession) Revised Rules, 1971 and by following the procedures as mentioned in the policy.*
- 8.2 *Extreme care and caution shall be taken to identify mining area in the perennial river/ streams so as to avoid mining activities in these areas.*
- 8.3 ***Permission for the extraction of sand, stone and bajri for open/free sale in the River/Stream Beds falling in the Government land shall be granted through auction/tender whereas mining lease for the same purpose shall be granted only in private land.***

Provided that neither auction shall be done nor mining lease for open sale of mineral shall be granted in border areas like Nalagarh Sub-Division and Kasauli Tehsil of District Solan, where there are chances of over exploitation of River/Stream beds and illegal transportation of mineral outside the State.

Other border areas shall also be included on the basis of study to be conducted.

8.4 *Leases for free sale up to area measuring 5 hectare for a period up to 5 years in areas other than as specified in para 9.2 above shall be granted in private land subject to the condition that no boulders/cobbles/hand broken road ballast shall be allowed to be transported outside State.*

8.5 *Priority shall be given to Government Departments, i.e., PWD, IPH, etc. if mineral is required for departmental bonafide use, by engaging departmental labour.*

12. It is the argument of the learned counsel appearing for the applicants that in view of clause 8.3, no mining lease could be granted in respect of Government land, as it could only be granted in respect of private land and admittedly respondent no. 3 was granted mining lease in respect of Government land and, therefore, it is illegal.

13. As rightly pointed out by Additional Advocate General, in the light of the Himachal Pradesh, Minor Mineral Concession and Minerals Prevention of illegal mining transportation and storage Rules, 2015 (in short "Rules 2015"), provides a complete procedure for granting of lease in respect of minor minerals. In case of any contradiction in the guidelines and the Rules, the provisions of the Rules would prevail. Chapter II of Rules 2015 deals with grant of mineral concession and conditions grant of mining lease. Rule 6 provides the restriction on grant of mining lease. Rule 6 reads:-

"6. Restriction on grant of mining lease-

(1) No mining lease shall be granted in respect of land within a distance of two kilometers from the immediate outer limits of Municipal Corporation/Municipal Committee., one kilometer from the immediate outer limits of Nagar Panchayat, except under special circumstances by the Competent Authority.

(2) No mining lease shall be granted up to 100 meters from the edge of National Highway/Express way, 25 meters from the roads except on special exemption by the Joint Inspection Committee.

(3) No mining operation shall be permitted within a distance stipulated by the Joint Inspection Committee from public utilities.

(4) No mineral concession shall be granted to a person who does not hold a Certificate of Approval.

(5) No mining lease shall be granted to a person who is not a citizen of India.

(6) No mining lease and installation of stone crusher shall be granted to a person in a Scheduled area without the prior recommendation of the concerned Gram Sabha.

(7) In areas other than Scheduled area for granting mining lease and permission for installation of stone crusher, the concerned Gram Panchayat shall be consulted and it shall be incumbent upon the Gram Panchayat to convey its approval or refusal within a period of three months failing which it shall be deemed that the Gram Panchayat has no objection. In case of refusal or any objection raised by the concerned Gram Panchayat, sufficient reasons for such refusal/objection shall be recorded in writing. The objection shall be reviewed/decided by the granting authority after taking input/opinion from the Joint Inspection Committee:

Provided that for grant of mining lease of brick earth and ordinary earth clay in private lands having an area less than 500 hectares, no consultation and approval of the Gram Panchayat concerned shall be required.

(8) No mining lease shall be granted in the forest area without forest clearance from the Central Government in accordance with the provisions of the Forest Conservation Act, 1980 and the rules made thereunder.

(9) No mining lease shall be granted in respect of any such minor mineral as the Government may notify in this behalf from time to time.”

14. Rule 9 deals with priority for granting of mining lease. The said rule reads:

“Priority for grant of mining lease:-

(1) Priority in granting mining lease shall be given to the following:-

(a) First priority shall be given to all agencies concerned with the implementation of infrastructure projects in the department of Multi-purpose Projects and Power and National Highway Authority of India and other departments like Himachal Pradesh Public Works Department, Irrigation and Public Health Department etc and projects of State importance and their authorized agents or contractors to whom works have been awarded on the recommendation of concerned Department.

(b) Second priority shall be given to discoverer of new mineral; and

*(c) **Third priority shall be given to a person who intends to set up a mineral based industry in the State:***

Provided that where two or more persons of the same category have applied for a mining lease in respect of the same land, the applicant whose application is received earlier shall have a preferential right for the grant of the lease over an applicant whose application is received later: Provided further that where such application are received on the same day, the Government after taking into consideration the following factors, may grant mining lease to such one of the applicants as it may deem fit:-

(a) Experience of the applicant in mining:

(b) Financial soundness, stability and special knowledge in the field of geology and mining of the applicant;

(c) Special knowledge of geology and mining of the technical staff already employed or to be employed for the work:

(d) Clearance of Government dues and royalties where the applicant or his/her family member has been engaged in the mining business previously; and

(e) Satisfactory performance of the applicant where he has been engaged in the mining industry previously.

(2) The Government may for special reasons to be recorded in writing, grant a mining lease to an applicant whose application is received later in preference to an applicant whose application is received earlier.

(3) The State Government may, for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or over a part of the area applied for.

(4) A priority register of mining lease application(s) shall be maintained.

(5) The Applicant, for reasons to be recorded in writing can withdraw the priority at any stage.”

15. Therefore, as against the provisions of the guidelines, the Rules 2015, enables the State to grant mining lease in respect of Government land, to a person who intends to set up a mineral based industry in the State. The stone crusher as defined under rule 2(ZM) means “stone crusher to be registered under these rules and shall include a machine which use metal surface to break rock/ minerals or compress material to reduce particles size for the manufacturing of grit/ bajri or further reduce to finer size to to be used as a raw material for manufacturing reinforced or pre-stressed cement concrete products or building material or for

construction purpose, except pulverizing or grinding and crushing of rock for reducing size in a cement plant for the production of clinker/cement: and converting rock fragments into sand without using conveyor belts.”

16. Therefore, stone crusher would come within ambit of a mineral based industry. As rightly argued by the Additional Advocate General, if a person intends to set up a mineral based industry in the State, the Rules 2015, provides for granting mining lease to such person for that purpose. Therefore, the grant of mining lease in favour of respondent no.3 is not bad in law. In any case it cannot be challenged based on the guideline referred to earlier. Moreover the mining lease as such was not challenged. Therefore, we find no merit in the contention of the Applicants that the grant of mining lease was illegal and due to the said illegality no crusher could be permitted to be installed.

17. Vide order dated 22.09.2015, the State Level Environment Impact Assessment Authority (in short SEIAA), Himachal Pradesh, granted the environmental clearance to the respondent no.3 for mining in Khasra No. 4-81-86 hectares of Government land in Khasra No.410 falling in Mauza Alampur. The said environmental clearance shows that the State Environment Impact Assessment Authority examined the proposal in its 23rd meeting held on 17.08.2015 and considered the recommendations made by SEAC in its 40th meeting held on 07.09.2015 and considering the recommendations of the State Level Expert Appraisal Committee, environmental clearance was granted to the project as per the EIA

Notification of 2006 providing specific and general conditions enumerated therein. Therefore, respondent no.3 has the necessary environmental clearance for mining in 4-81-86 land in Khasra no.410 in Mauza Alampur. Though the environmental clearance is subject to an appeal, appellants have not preferred any appeal and therefore they are not entitled to challenge the environment clearance in the application filed under section 14 of the NGT Act, 2010, without filing an appeal under section 16.

18. Vide order dated 02.11.2015, the Himachal Pradesh State Pollution Control Board has accorded consent to establish the stone crusher in favour of respondent no.3. The said consent establishes that respondent no.3 has approached the Board for issuing consent to establish under the Water Act, 1974 and Air Act, 1981 for establishment of the stone crusher and extraction of stone, bajri and sand and the Assistant Environment Engineer has recommended the case for consent to establish the stone crusher. The consent was finally granted on the conditions stipulated. Vide order dated 22.01.2016 the Pollution Control Board has also granted consent to operate for extraction, collection of sand, stone and bajri at VPO, Sakho in favour of respondent no.3. Therefore, it is clear that respondent no.3 has got the legal Authority and permission for installation of the stone crusher.

19. The argument advanced by the learned counsel appearing for the applicant as against the consent granted for establishment of the stone crusher by respondent no.3 is that it does not satisfy the parameters fixed. The Notification dated 29.05.2014 was issued by

the Government of Himachal Pradesh, in supersession of the earlier Notification no. STE-E(4)-1/2003 dated 29.04.2003 and amendments carried out therein from time to time, regarding setting up of stone crusher units in the State of Himachal Pradesh, in exercise of the powers conferred by section 5 of Environment (Protection) Act, 1986 read with the Notification S.O 152 (E) dated 10.02.1988 of Ministry of Environment and Forest, in pursuance of the provisions of section 7 of the Environment (Protection) Act, 1986, the directions of the High Court of H.P in *CWP No. 7949/2011, Deshraj Vs. State of Himachal Pradesh & Ors* and in *CWP No. 7951/2011, Yograj Vs. State of Himachal Pradesh & Ors*. Regarding setting up of stone crusher units on the site suitability provides the criteria of minimum distance from village abadi-deh as 500 m, though earlier to the Notification of 2014, it was only 250 m. The argument is that though the Site Appraisal Report in respect of the mining lease, granted to respondent no.3 shows the distance as 700 m, the Performa for the joint inspection of the area applied for grant of mining lease, shows that the area applied for grant of mining lease is bed of river Beas and therefore, granting of consent for the stone crusher is bad and the respondents are to be directed to dismantle and remove the machineries of the stone crusher. Though the said Performa for the joint inspection of area applied for grant of mining lease shows that the area applied is river bed of Beas, the exact distance of the stone crusher from the village abadi has been specifically shown in the Site Appraisal Report based on the inspection by Sub-Divisional level Site Appraisal Committee on 30.09.2015. It shows that the stone crusher site satisfies all the criterions provided under the rules. The Site

Appraisal Report itself shows that the inspection by the Committee on 30.09.2015 was to verify whether the sites identified for proposed crusher unit fulfils the conditions. The relevant part of the report reads:

“It is also further observed that there exist a natural barrier in the shape of valley behind and in the front of the crusher site, it will further minimize the adverse effect on the environment by the crusher.

During the course of inspection of above said site, it was observed by the committee that the area under reference identified for installation of proposed crusher unit fulfill the condition at Sr. No. 14 of Notification No. STE-E(3)-17/2012 dated 29.05.2014 and the committee recommended the Kh. No. 652/1 measuring to 0-15-58 Hect., which is 700 meters from secondary course of river Beas and fulfill the condition at Sr. No. 14 of Notification No. STE-E(3)-17/2012 dated 29.05.2014.

The condition at Sr. No. -8, the committee observed that no, spring, Canal, reservoir or functional water supply, percolation well, sewerage treatment plant, water infiltration exists near the area. The other conditions except condition No. -8 and 14 mentioned in the notification has already been recommended by the Site Appraisal Committee inspected on 13/11/2013 and same has also been mentioned in this report.

During the course of site appraisal inspection, the Mining Officer appraised the committee that if the stone crusher is to be installed on the basis of mining activities of minor minerals from mining lease, then possession of valid mining lease is pre-requisite for according permission for installation of stone crusher unit, whereas the mining lease of the area applied for, is yet to be granted by the competent authority which will be granted only after the applicant obtains the Environmental clearance from the competent authority of Ministry of Environment and Forest (MoEF).

Keeping the above in view, it was found by the Site Appraisal Committee that the site over an area comprising of Kh. No. 652/1 measuring to 0-15-58 Hect. in Mohal Sakoh Mauja Alampur The. Jaisingpur, Distt. Kangra identified for installation of proposed stone crusher unit by the applicant fulfills the sitting parameters framed vide notification No. STE-E(3)-17/2012 dated 29.05.2014. The committee found suitable the above said site, subject to following conditions:

- *That the installation of stone crusher unit can only be allowed whenever the applicant shall hold a valid mining lease/ source.*
- *Issuance of NOC by the Tourism department and other stipulations made above.”*

20. During the course of the inspection of the above said site, it was observed by the Committee that the area identified for installation of proposed crusher unit fulfils the conditions at serial no. 14 of the Notification STE-E(3-17/2012) dated 29.05.2014 and the Committee recommended Khasra No. 652/1 measuring 0.15-58 hectares, which is 700 mtrs from the course of the river and hence fulfils condition no. 14 of the Notification dated 29.05.2014. Based on the inspection it was recorded that “it was found by the Site Appraisal Committee that the site was an area comprising of Khasra No. 652/1 measuring 20.15-58 hectares in Mohal, Sakho, Mauza, Alampur, The-Jaisinghpur of Dist: Kangra indentified for installation of the proposed stone crusher unit by the applicant fulfils the site parameters fixed by Notification dated 29.05.2014.”

21. We have already found that the respondent no.3 is having a valid mining lease and the mining lease so granted is perfectly in order. Though the learned counsel appearing for the applicant, based on the Site Appraisal Report prepared on the basis of the inspection dated 13.11.2013 and 30.09.2015 respectively argued that as the distance from the village abadi is only 300m and as per the notification dated 29.05.2014 referred to earlier, the minimum distance from village abadi-deh should be 500m, the notes 1.2.2 specifically provide that the distance are relaxable in the case of any

natural barrier between site of the unit. The relevant note to the site suitability provided under the notification reads:

“1.2.2 In the guidelines distances are relaxable in the case of any natural barrier between the site of the unit and any of the features indicated in the guidelines natural barrier may be defined as ‘any natural physical entity except any kind of river/khad/natural stream/tree canopy which obstructs the physical view and/or prevents the movement of air and noise so as to keep air and noise pollution within prescribed limits”.

The Government may relax the guidelines for a limited period in specific cases wherein setting up of stone crushing unit is necessary in public interest but it is not practically feasible to adhere to any or all of the guidelines, provided that such relaxation will be considered only on the recommendation of the Joint Inspection Committee as proposed in para 1.3.2.”

22. The Site Appraisal Reports show that though the minimum distance from the village abadi is only 300 mtrs, the site is surrounded by hills, which serve as a natural barrier and therefore, the minimum distance of 500 mtr is not applicable. Therefore on that basis, it cannot be said that consent granted for the establishment and operation of the stone crusher is bad.

23. We therefore, find no substance in the contentions of the applicants on violation of the site parameters.

28. Even otherwise, it is seen from the records produced that the receipt of application for mining lease was submitted by respondent no.3 on 12.10.2014. The State Level Environment Impact Assessment Authority (SEIAA), accorded environment clearance for the project on the specific and general conditions provided therein.

That clearance was granted based on the application submitted seeking prior environmental clearance for extraction/collection of sand/stone and bajri by respondent no.3. As the E.C was granted as early as 22.09.2015, the applicant could not have preferred an appeal under Section 16 of NGT Act, 2010 challenging the EC on 23.04.2015, the day when the application was filed before the Tribunal. When the order granting E.C, is an appealable order, and the applicant failed to challenge the E.C within the statutory period, or the period provided for condonation of delay, the same cannot be challenged in the guise of an application under section 14 of the National Green Tribunal Act, 2010.

24. In such circumstances, the application can only be dismissed as there is no violation of the relevant rules or the parameters. The application is therefore dismissed but without any order as to cost.

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As the main application is dismissed the miscellaneous applications itself are dismissed.

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

Hon'ble Prof. A.R Yousuf
Expert Member

New Delhi,
May, 2016