

THE STATE OF BIHAR AND OTHERS

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v.

PAWAN KUMAR AND OTHERS ETC.

(Civil Appeal Nos. 3661-3662 of 2020)

NOVEMBER 10, 2021

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**[L. NAGESWARA RAO, SANJIV KHANNA AND
B. R. GAVAI JJ.]**

Mine and Minerals: Mining of sand in Banka District, Bihar – Auction/e-auction/grant of mining lease – Invitation of tender – Direction of the tribunal that unless the State Expert Appraisal Committee-SEAC and the State Environment Impact Assessment Authority-SEIAA grants approval to the District Survey Report-DSR for the purpose of mining of sand, the same cannot be carried out; and that the invitation of the tenders without preparing the DSR in accordance with the judgment of the Tribunal in Satendra Pandey's case, could not have been done – Said directions, challenged to – On appeal, held: There is a need for balanced approach of sustainable development ensuring environmental safeguards – When legal mining is banned, it gives rise to mushroom growth of illegal mining, resulting into clashes between sand mafias, criminalization and at times, loss of human lives – Total ban on legal mining, also causes huge loss to the public exchequer – Also, sand is required for construction of public infrastructural projects as well as public and private construction activities – In view thereof, directions issued by the tribunal are modified with the following directions, that the exercise of preparation of DSR for the purpose of mining in the State of Bihar in all the districts shall be undertaken afresh; that the draft DSRs to be prepared by the sub-divisional committees; that the draft DSRs to be approved by SEAC and SEIAA; and that for preparation of draft DSR's and appraisal by SEAC and SEIAA, procedure and parameters laid down in the policy of January 2020 to be followed – Until the DSRs are finalized and granted approval by SEAC and SEIAA, the State is permitted to continue with legal mining activities through Bihar State Mining Corporation with necessary arrangements – Furthermore, apart from preventing illegal mining activities, to ensure that the public exchequer is not

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A *deprived of its share in legalized mining – Enforcement and Monitoring Guidelines for Sand Mining.*

Deepak Kumar v. State of Haryana and Others (2012)
4 SCC 629 – referred to.

Case Law Reference

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(2012) 4 SCC 629 referred to Para 9

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.3661-3662 of 2020.

C From the Judgment and Order dated 14.10.2020 of the National Green Tribunal, Principal Bench New Delhi in Original Application Nos.40 of 2020 (EZ) and 57 of 2020 (EZ).

Atmaram Nadkarni, Sr. Adv., Azmat Hayat Amanullah, Rishi K. Awasthi, Piyush Vatsa, Ms. Arzu Paul, Salvador Santosh Rebello, Ms. Deepti Arya, Adiraj Bali, Advs. for the Appellants.

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Ms. Aishwarya Bhati, ASG, P. S. Patwalia, Brijendra Chahar, Bimal Roy Jad, V. Giri, Pinaki Mishra, Sr. Advs., Vanshdeep Dalmia, Ms. Natasha Dalmia, Ms. Shevali Chaudhary, G. S. Patwalia, Ms. Harshika Verma, Alok Sangwan, Rajiv Shankar Dvivedi, Rishabh Jain, S. K. Sarkar, Gurmeet Singh Makker, Anish Kr. Gupta, Ms. Archana Pathak Dave, Ms. Archana Preeti Gupta, Ms. Sadapurna Mukherjee, Arvind Kumar, Aditya Singh, Shubham Singh, Pankaj Bhagat, Kripa Shankar Prasad, Ms. Ritu Rajkumari, Prashant Bhushan, Anand Varma, Ms. Apoorva Pandey, Rohit Kumar Singh, Sadapuran Mukherjee, Ms. Aditi Shahi, Rahul Kumar Gupta, Ms. Chandni Arora, Dharmendra Kumar Sinha, Ajit Upadhyay, Raju Sonkar, Onkar Prasad, Advs. for the Respondents.

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The following Order of the Court was passed

ORDER

Per Court

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1. The present appeals challenge the judgment and order dated 14th October 2020, passed by the National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as “the Tribunal”) in O.A. No. 40/2020/EZ with O.A. No. 57/2020/EZ, thereby issuing the following directions:-

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- (i) “Having regard to the findings at (a), (b) and (c) above, we direct the State to undertake further exercise for preparation of a fresh DSR for the Banka district. A
- (ii) As the DEIAA is not functioning as a consequence of the decision of the Tribunal in *Satendra Pandey* (supra), the DSR shall be prepared through a consultant(s) accredited by the National Accreditation Board of Education and Training/Quality Control Council of India in terms of O.M. of MoEF & CC dated 16.03.2010. B
- (iii) The DSR so prepared shall be submitted to the District Magistrate who shall verify the DSR only in respect of the relevant facts pertaining to the physical and geographical features of the district which shall be distinct from the scientific findings based on the parameters prescribed in the SSMMG- 2016. After such verification, the District Magistrate shall forward the DSR for examination and evaluation by the State Expert Appraisal Committee (SEAC) having regarding to the fact that the SEIAA comprises of technical/scientific experts. The SEAC after appraisal of the report shall forward it to the SEIAA for consideration and approval if it meets all scientific/technical requirements. C D
- (iv) While preparing the DSR, the MoEF & CC Accredited Agency/Consultant shall scrupulously follow the procedure and the parameters laid down under the SSMMG-2016 and EMGSM-2020 read in sync with each other.” E

2. The appellant-State of Bihar has assailed the said judgment and order dated 14th October 2020, on various grounds. F

3. Shri Atmaram Nadkarni, learned Senior Counsel appearing on behalf of the State of Bihar submitted that the Tribunal has grossly erred in holding that unless the State Expert Appraisal Committee (hereinafter referred to as “SEAC”) and the State Environment Impact Assessment Authority (hereinafter referred to as “SEIAA”) grants approval to the District Survey Report (hereinafter referred to as “DSR”) for the purpose of mining of sand, the same cannot be carried out. He submitted that the Tribunal has further held that the very invitation of the tenders without preparing the DSR in accordance with the judgment of the Tribunal in the case of *Satendra Pandey v. Ministry of Environment, Forestand* G H

- A *Climate Change and Another*¹ could not have been done. He submitted that after the tenders are invited in accordance with the DSR prepared by the District Level Committee, the successful bidder will be required to prepare a mining plan and unless such a mining plan is approved by SEAC and SEIAA, the Environmental Clearance would not be granted and in turn, mining activities cannot be carried out. He submitted that the
- B finding of the Tribunal is like putting the cart before the horse. He further submitted that the Tribunal has also grossly erred in holding that the DSRs prepared by the State were without following the requisite procedure and without considering the relevant factors. He submitted that not only the procedure as prescribed under the relevant rules and
- C regulations was complied with, but the voluminous material in support of the same was also placed on record before the Tribunal. He submitted that the Tribunal has not taken into consideration the said material. He therefore submitted that the judgment and order passed by the Tribunal dated 14th October 2020, needs to be set aside and the State needs to be
- D permitted to finalize the tenders received by it.

4. Shri Nadkarni further submitted that on account of the orders passed by the Tribunal, the old lessees are continuing with the mining activities by paying a meagre amount to the State Government. He therefore submitted that on account of this, a huge loss would be caused to the public exchequer. In the alternative, he submitted that the State, at
- E least, needs to be permitted to undertake mining activities through Bihar State Mining Corporation until the DSRs are finalized in accordance with the judgment of the Tribunal.

5. Shri P.S. Patwalia, learned Senior Counsel appearing on behalf of the original applicant vehemently opposed the appeals. He submitted
- F that the Tribunal has rightly held that the DSRs are not prepared in accordance with the relevant rules as well as policy guidelines. He submitted that it is apparently clear that the State has taken into consideration only financial enrichment without considering the environmental aspects.

- G 6. Though, we have heard the learned counsel for both the parties at length on merits, we find that it will be appropriate that the appeals are kept pending for further consideration and till then, certain interim orders are passed.

H ¹ O.A. No. 186 of 2016 (M.A. No. 350/2016)

7. It cannot be in dispute that though the developmental activities are not stalled, the environmental issues are also required to be addressed. A balanced approach of sustainable development ensuring environmental safeguards, needs to be resorted to. At the same time, it also cannot be ignored that when legal mining is banned, it gives rise to mushroom growth of illegal mining, resulting into clashes between sand mafias, criminalization and at times, loss of human lives. It also cannot be disputed that sand is required for construction of public infrastructural projects as well as public and private construction activities. A total ban on legal mining, apart from giving rise to illegal mining, also causes huge loss to the public exchequer.

8. Taking into consideration these aspects of the matter, we propose to issue certain interim directions.

9. The Tribunal, in the case of *Satendra Pandey* (supra), has found that the notification dated 15th January 2016, which provided Environmental Clearance to be given by the District Environment Impact Assessment Authority (hereinafter referred to as the “DEIAA”) was not in consonance with the judgment of this Court in the case of *Deepak Kumar v. State of Haryana and Others*². The Tribunal therefore in *Satendra Pandey* (supra), had directed Ministry of Environment, Forest and Climate Change (hereinafter referred to as “MoEF and CC) to take steps to revise the procedure laid down in the notification dated 15th January 2016. It is to be noted that MoEF and CC, in accordance with the directions of the Tribunal, had issued Enforcement and Monitoring Guidelines for Sand Mining (hereinafter to referred to as “the 2020 guidelines”) in the month of January 2020. Chapter 4 of the 2020 guidelines deals with identification of possible sand mining sources and preparation of DSR. It will be relevant to refer to Clause 4.1.1 (a), (o) and (p) of the 2020 guidelines:-

“4.1 Identification of possible sand mining sources and preparation of District Survey Report (DSR)

4.1.1 Preparation of District Survey Report.

a) District Survey Report for sand mining shall be prepared before the auction/e-auction/grant of the mining lease/Letter of Intent (Loi) by Mining department or department dealing the mining activity in respective states.

² (2012) 4 SCC 629

- A o) Potential site for mining having its impact on the forest, protected area, habitation, bridges etc, shall be avoided. For this, a sub-divisional committee may be formed which after the site visit shall decide its suitability for mining. The list of mining lease after the recommendation of the Committee needs to be defined in the following format given in as **Annexure-II**. The Sub-Divisional Committee after the site visit shall make a recommendation on the site for its suitability of mining and also records the reason for selecting the mining lease in the Patta land. The details regarding cluster and contiguous cluster needs to be provided as in **Annexure-III**. The details of the transportation need to be provided as in **Annexure IV**.
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- C p) **Public consultation**-The Comments of the various stakeholders may be sought on the list of mining lease to be auctioned. The State Government shall give an advertisement in the local and national newspaper for seeking comments of the general public on the list of mining' lease included in the DSR. The DSR should be placed in the public domain for at least one month from the date of publication of the advertisement for obtaining comments of the general public. The comments so received shall be placed before the sub-divisional committee for active consideration. The final list of sand mining areas [leases to be granted on riverbed & Patta land/Khatedari land, de-siltation location (ponds/lakes/dams), M-Sand Plants (alternate source of sand)] after the public hearing needs to be defined in the final DSR in the format as per **Annexure-V**. The details regarding cluster and contiguous cluster needs to be provided in **Annexure-VI**. The details of the transportation need to be provided in **Annexure-VII**."
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10. It could thus be seen that in accordance with the 2020 guidelines, the DSR is required to be prepared before the auction/e-auction/grant of mining lease by Mining Department or Department dealing with mining activity in the respective States. It is further provided that the potential site for mining having its impact on the forest, protected area, habitation and bridges should be avoided. For this, a sub-divisional committee is required to be formed which, after the site visit, is required to decide regarding the suitability of the sites for mining. The sub-divisional committee is further required to record its reasons for selecting the mining lease in the patta land. Various details are required to be given in the annexures appended to the said policy.
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11. It is further to be noted that Appendix-X of the notification dated 15th January 2016, issued by MoEF and CC also provides for composition of the sub-divisional committee:- A

“A Sub-Divisional Committee comprising of Sub-Divisional Magistrate, Officers from Irrigation department, State Pollution Control Board or Committee, Forest department, Geology or mining officer shall visit each site for which environmental clearance has been applied for and make recommendation on suitability of site for mining or prohibition thereof.” B

12. It is to be noted that with the advent of modern technology, various technological gadgets like Drones and satellite imaging etc. can be used for identification of the potential sites and preparation of the DSR and also to check misuse and unauthorized mining. C

13. We further find that when the 2020 guidelines as well as the notification issued by MoEF and CC of 2016 itself provide for constitution of sub-divisional committees comprising of the officers of the State Government from various Departments for identification of the potential sites for mining, there would be no necessity of the DSRs being prepared through private consultants as directed by the Tribunal in the impugned order. The sub-divisional committee consists of various officers from Revenue Department, Irrigation Department, State Pollution Control Board, Forest Department and Geology Mining Department of the State Government. They are better equipped to visit the sites and prepare the draft DSR for the concerned district. Apart from that, preparation of DSR through private consultants would also unnecessarily burden the public exchequer. We are therefore of the view that the direction in that regard issued by the Tribunal requires to be modified. We are further of the considered view that until the DSRs are finalized and granted approval by SEAC and SEIAA, it is appropriate that certain necessary arrangements are permitted so that the State can continue with legal mining activities. This apart from preventing illegal mining activities, would also ensure that the public exchequer is not deprived of its share in legalized mining. D E F G

14. We therefore find it appropriate to substitute the directions issued by the Tribunal vide judgment and order dated 14th October 2020, with the following directions:-

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- A (i) The exercise of preparation of DSR for the purpose of mining in the State of Bihar in all the districts shall be undertaken afresh. The draft DSRs shall be prepared by the sub-divisional committees consisting of the Sub-Divisional Magistrate, Officers from Irrigation Department, State Pollution Control Board or Committee, Forest Department, Geological or mining
- B officer. The same shall be prepared by undertaking site visits and also by using modern technology. The said draft DSRs shall be prepared within a period of 6 weeks from the date of this order. After the draft DSRs are prepared, the District
- C Magistrate of the concerned District shall forward the same for examination and evaluation by the SEAC. The same shall be examined by the SEAC within a period of 6 weeks and its report shall be forwarded to the SEIAA within the aforesaid period of 6 weeks from the receipt of it. The SEIAA will thereafter consider the grant of approval to such DSRs within a period of 6 weeks from the receipt thereon;
- D (ii) Needless to state that while preparing DSRs and the appraisal thereof by SEAC and SEIAA, it should be ensured that a strict adherence to the procedure and parameters laid down in the policy of January 2020 should be followed;
- E (iii) Until further orders, we permit the State Government to carry on mining activities through Bihar State Mining Corporation for which it may employ the services of the contractors. However, while doing so, the State Government shall ensure that all environmental concerns are taken care of and no damage is caused to the environment.
- F 15. List the matter after 20 weeks.