

Jagannath Pandurang Sinnari vs Seiaa on 28 February, 2023

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

(By Video Conferencing)

Appeal No. 05/2022 (WZ)

IN THE MATTER OF :

1. Mr. Jagannath Pandurang Sinnari,
E-85, Fondvem,
Ribander, Goa-403005
Email: jpsinaristonequarry@gmail.com

Versus

1. State Environment Impact Assessment Authority-
Maharashtra(SEIAA)
Through Member Secretary,
Environment Department,
Room No. 217, 2nd floor,
Mantralaya Annexe, Mumbai-400032, Maharashtra
E-mail: mahaseiaa@gmail.com
2. Maharashtra Pollution Control Board,
Through Member Secretary,
Kalptaru Point, 3rd Floor, Near Sion Circle,
Opp. Cine Planet Cinema, Sion(E),
Mumbai-400022, Maharashtra
E-mail: ms@mpcb.gov.in
3. Ministry of Environment, Forest and Climate Change,
Through its Secretary,
Indira Paryavaran Bhavan, Jorbagh Road,
New Delhi 110001.
Email: secy-moef@nic.in

Counsel for Appellant(s):

Mr. Saurabh Kulkarni, Advocate

Counsel for Respondent(s):

Mr. Aniruddha Kulkarni, Standing Advocate for R-1
Mr. Vilas Jadhav, Advocate for R-2

Mr. D. M. Gupte, Advocate for R-3

PRESENT :

CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER

Reserved on
Pronounced

Judgment

1. This appeal has been filed to seek quashing of order dated 21st December, 2021 (Minutes of the Meeting of SEIAA held on 21st December, 2021) where-by the application filed by the appellant for revalidation of earlier EC on 16.01.2016 for stone quarry at Gat No. 77/1A, 78/2 Village- Degave, Taluka- Sawantwadi, District- Sindhudurg was rejected.

2. The brief facts of the case are as follows:

The appellant is the lessee of a plot of land bearing Survey No. 77/1A & 78/2 Village- Degave, Taluka- Sawantwadi, District- Sindhudurg, whereon there has been pre-existing small scale Basalt quarry over an area of 4.5 hectare in operation. The said quarry was operational with the help of local villagers from the year 2009 till September, 2012 by way of Transit Passes for minor minerals of the said quarry less than 5 hectors issued by the Respondent No-4-The Collector and that the Appellant has paid all the dues. The said quarry provides employment to approximately 100 villagers from Degave and nearby villages and has incurred from time to time substantial investment by way of salary, machinery hired, transportation, royalty and rent for excavating and operation of the said quarry without causing environmental degradation. The appellant was using method of drilling and controlled blasting in accordance with the judgment of the Hon ble Supreme Court. The appellant had resubmitted an application to Collector, Sindhudurg for issue of five years quarry lease rights, however the same was kept pending because of the moratorium imposed by the MoEF&CC government of India. Therefore, after the lifting of moratorium, the said application should have been considered, but the same was kept pending in the absence of Environmental Clearance. Because of the quarry falling in the category B2, as per the EIA Notification 2006 read with judgment of the Hon ble Supreme Court in Deepak Kumar s case, it was required to obtain prior Environmental Clearance despite the fact quarry was having area less than 5 Ha., but the Collector, Sindhudurg

refused to grant the same vide communication dated 24.04.2014, because the village Degave fell under the Eco Sensitive Area as per the Notification dated 13.11.2013. The said document dated 13.11.2013 has been annexed at Page Nos. 23 to 25 of the paper book which is direction issued by the Deputy Director MoEF under Section 5 of the Environment (Protection) Act, 1986 where-in following has been recorded in Para-9:-

"9. Now therefore, in exercise of powers conferred under Section 5 of Environment (Protection) Act, 1986, the following directions are hereby issued:

The following category of new and/ or expansion projects/ activities shall be prohibited in ESA from date of issue of these directions except those cases which have been received by EACs/MoEF or SEACs / SEIAAs before the date of putting HLWG report on the website of the Ministry, i. e. 17.04.2013 and which are pending with EACs / MoEF or SEACs/ SEIAAs. Such projects will be dealt under the guidelines and rules applicable at the time of application before the respective EACs / MoEF or SEACs/ SEIAAs. Apart from such cases, no pending case or any fresh case shall be considered by the EACs/MoEF or SEACs/SEIAAs from the date of issue of these directions.

(a) Mining, quarrying and sand mining

(b) Thermal Power Plants.

(c) Building and construction projects of 20,000 sq.m.

area and above with built up area of 1,50,000 sq.m.

and above.

(d) Red category of industries* (* The CPCB list of red category industries would be minimum list, Industries not included in the CPCB list but mentioned in the Red Category list of the SPCB of the concerned Western Ghat State shall also be categorized as Red Category for that State.)"

3. The Collector, Sindhudurg forwarded the Appellant's application dated 10.12.2013 for EC to the State Environment Assessment Committee (SEAC) for appraisal and issue of EC. The appellant was not given opportunity of hearing and yet the disposal of the said application was done, due to which the Appellant made a representation on 23.03.2014 for considering his application after condoning delay. The Appellant received a letter dated 26.05.2014 from the Respondent No.2- MPCB communicating that his application for grant of EC had been rejected (It appears that instead of Respondent No.2, it should have been Respondent No.1 SEIAA that has passed the rejection order). Thereafter the Appellant approached this Tribunal under Section 16 of the National Green Tribunal Act, 2010 impugning the communication dated 26.05.2014 by filing Appeal No. 49 of 2014. It was decided vide judgment dated 12.03.2015 directing SEAC and SEIAA, Maharashtra to consider the Application of the appellant on its own merit. Thereafter, the application of the Appellant was

considered by the SEAC in its meeting held on 10th and 11th September, 2015 and decided to recommend the case of the appellant for grant of EC, based on which Respondent No.1- SEIAA granted EC on 16.01.2016 subject to the conditions that the Project Proponent shall obtain all statutory clearances. Thereafter, the Appellant moved an application dated 27.01.2016 under Section 25 and 26 of the Water (Prevention & Control of Pollution) Act, 1974 along with Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 before Respondent No.2-MPCB, pursuant to which the Field Officers of the Respondent No.2 visited the quarry site and submitted their report but nothing happened. Thereafter, the appellant made enquiry from the officers of the Respondent No.2-MPCB and was informed that the matter was under consideration. Thereafter, the Appellant moved representation dated 08.10.2016 to consider his application pointing out therein that the same is pending for last four(4) months, due to which it would be deemed to be granted. Thereafter, the appellant approached this Hon ble Tribunal, by filling an Original Application No. 171/2016 where-in order dated 05.12.2016 was passed directing Respondent No.2- MPCB to consider the application and pass order within four(4) weeks but even then Respondent No.2-MPCB did not take any decision. Thereafter, the Appellant filed Execution Application No. 05/2017 which was heard on 23.01.2017, and then the counsel for Respondent No.2-MPCB made a statement before the Tribunal that the quarry of the Appellant falls in the orange category and the decision would be taken; during the pendency of the Execution Application the Respondent No.2 rejected the application for grant of consent vide order dated 10th February, 2017, on the ground that the activity of the appellant fell in the Red Category and in the Eco-Sensitive Area as well. Thereafter, the Appellant preferred an appeal challenging the order dated 10th February, 2017, however, the Respondent No.2-MPCB, informed the Appellant that they were seeking guidance of the Respondent No.3- MoEF&CC and Respondent No.4- The Collector on the issue hence the appellant should withdraw the Appeal and file a Review Application instead. Thereafter, the Appellant withdrew the Appeal on 29th April, 2017 and filed review application before Respondent No.2 on the same day submitting therein that the Notification pertaining to the Eco-Sensitive Area in the Western Ghats was still a draft notification and the same was not finalized as yet. The appellant also submitted the directions of the Respondent No.3 dated 7th March, 2016, wherein it was mentioned that the activity of stone crushing fell in orange category. The Respondent No.3 vide its letter dated 14th March, 2017 to the Respondent No.1 directed the appellant to seek the approval of the Respondent No.4- District Collector. The Appellant thereafter received a letter dated 28th February, 2018 from Respondent No.2 where-in it was submitted that an opinion was sought from Respondent No.3 whether the activity of the Appellant fell into Red Category and in Eco-Sensitive Area. Thereafter, the Appellant approached this Tribunal by moving an application under Section 14 seeking direction to be issued to respondent to decide the application for grant of Consent to Establish, which was disposed of by directing Respondent No.2 to decide the application within 10 days. Thereafter, the Appellant received the Consent to Operate from the Respondent No.2 on 17th August, 2021 and the same is valid till 30th September, 2030. Further, it is submitted that the Environmental Clearance (EC) dated 16.01.2016 was granted for five years. However, the Respondent No.4- District Collector vide its Office Memorandum dated 12.04.2016 directed that the Environmental Clearance (EC) granted for a period of five years shall stand automatically extended for a period of 7 years. The mining lease dated 10.10.2016 granted to the Appellant came to an end and he was constrained to approach the Respondent No.4- The Collector for its renewal, but the Respondent No.4- The Collector directed the Appellant to obtain the revalidation of the Environmental Clearance (EC) from the Respondent

No.1-SEIAA as EC dated 16th June 2016 mentioned as condition No. 6 "the validity period or EC will be 7 years but limited to period or lease. Thereafter the SEIAA rejected the revalidation of EC because the village Degave fell in Eco-Sensitive Area of Western Ghats despite the fact that the said notification was yet to be finalized. It is further mentioned that the Government of Maharashtra vide its letter dated 5th December, 2018, has recommended for removing the village Degave from the list of Eco- Sensitive Area of the Western Ghats. The Revised Mining Plan of the Appellant is also approved on 27th August, 2021. It is apparent that the Respondent No.1-SEIAA has erroneously applied the notification (direction) dated 13.11.2013 (Supra) and has completely ignored the fact that the finalization of the Eco- Sensitive Area was yet to be done and that the draft notification could not have been implemented. It has resulted in tremendous financial loss to the appellant as the appellant had taken loan from various banks and financial institutions for the project. Further, it has emphasized that the appellant's possession of the crushed material of approximately 1,33,000 brass valued at Rs. 3 crores is lying idle. Hence, the above prayer has been made.

4. This matter was first taken up on 11.02.2022 when the respondents were directed to be issued notices. Pursuant to the said direction, service affidavit has been filed as per which service on all the Respondents is sufficient.

5. The stand of Respondent No.1-SEIAA is as follows:

In the meeting of SEIAA held on 10.12.2021, it was observed that the mining proposal fell in Western Ghat Eco-Sensitive zone as per MoEF&CC draft notification for Western Ghat ESA. It was observed by the answering Respondent that the said draft notification completely prohibits mining, quarrying and sand mining etc., in order to protect, preserve and nurture the rich biodiversity and environmental integrity of the Western Ghats and also to check further degradation of the fragile ecology of the said area. The draft Notification also mandated that all existing mines be phased out within five years from the date of final notification or on the expiry of the existing mining lease, whichever is earlier. In view of the above, the answering Respondent decided to reject the proposal.

6. The stand of Respondent No.2-MPCB is as follows:

The answering Respondent has granted Consent to Operate vide letter dated 17.08.2021 which is valid upto 30.09.2030. The village Degave falls under Eco-Sensitive Zone. The officials of the answering Respondent visited the site of the Appellant on 02.09.2022 and reported as follows:

(a) During the visit the said industry has found in closed conditions and no crusher is found on site.

(b) The industry representative has reported that old plant will be replaced by new machinery/ plant(Crusher)

(c) The industry has provided 4.50 ha stone quarry and it was not in operation since June 2021.

(d) Industry has obtained Environmental Clearance from environment and Climate Change Department, Government of Maharashtra vide letter dated 16.01.2016.

(e) The Industry has not provided DG set having capacity of 125 KVA as per the condition stipulated in consent to operate at site.

(f) The industry has not submitted BG of Rs. 5000/- ensuring compliance of operation and maintenance of pollution control system and compliance of consent conditions. A copy of said visit report dated 02.09.2022 is enclosed and marked as an Annexure "B"

7. The stand of Respondent No.3-MoEF&CC is as follows:

The answering Respondent re-published draft of Western Ghats Ecological Sensitive Area Notification on 06.07.2022, since the earlier draft dated 03.10.2018 could not be finalized and consequently lapsed on 30.06.2022. The said draft notification prescribes for projects and activities to be prohibited or regulated in the Eco-Sensitive areas. It laid down that the projects and activities shall be prohibited in Eco-sensitive Area except those proposals which have been received by Expert Appraisal Committees or the Ministry of Environment, Forest and Climate Change or State Level Expert Appraisal Committees or the State Level Environment Impact Assessment Authorities before 17th April, 2013, the date on which the High Level Working Group report was uploaded on the website of the Ministry and are pending consideration. Such proposals shall be dealt with in accordance with the guidelines and rules in existence at that time. It also prescribes that mining activity in the ESA of Western Ghats shall be prohibited activity, the relevant part of it is reproduced hereinbelow :-

"(a) Mining- There shall be a complete ban on mining, quarrying and sand mining in Ecologically Sensitive Area and all existing mines shall be phased out within five years from the date of issue of the final notification or on the expiry of the existing mining lease, whoever is earlier."

Further, it is submitted that as per the provision of Section 23(c) of Mines and Mineral (Development and Regulation) Act (MMDR Act), the State Government is empowered to make rules for preventing illegal mining, and transportation & storage of illegal minerals and all such activities shall be dealt with under the provision of the said Act. Further, it is mentioned that State Pollution Control Board (SPCB) is the nodal agency to deal with cases related to Pollution or environment management coming under the purview of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment Protection Act, 1986, which shall initiate appropriate action under the relevant provision.

8. From the pleadings stated above, it is absolutely clear that the appellant is aggrieved by the passing of order dated 21st December, 2021 by way of minutes of meeting by SEIAA declining the revalidation of earlier granted EC dated 16.01.2016 for stone quarry in the above mentioned area on the ground that the said decision was taken on the basis of draft Notification issued by the MoEF&CC regarding Western Ghat Eco- Sensitive Zone, wherein it is observed that the mining proposal in question falls in Western Ghat Eco-Sensitive zone and that SEIAA observed that in order to protect, preserve and nurture the rich biodiversity and environmental integrity of the Western Ghats and to further prevent degradation of the fragile ecology of the Western Ghats, the said notification completely prohibits Mining / quarrying activity and that as per direction (being said to be notification by the SEIAA) dated 13.11.2013 which is annexed Page No. 23 to 25 of the paper book, all existing mines were to be phased-out within five years from the date of final notification or on the expiry of the existing mining lease, which is earlier.

9. The main argument which has been made by the learned counsel for the appellant is that the Respondents have failed to finalize the Eco-Sensitive areas in Western Ghat because the matter is said to be under consideration since the issuance of first draft notification in this regard on 10th March, 2014, which was allowed to be lapsed and second draft notification was issued in this regard on 3rd October, 2018, but till then it could not be finalized and a fresh draft notification has been issued thereafter on 30th June, 2022. Therefore, it indicated that they are keeping this matter undecided deliberately which has resulted in lot of inconvenience and financial loss to the appellant which had already been granted EC on 16.01.2016 for the quarry in question for five years which stood further extended for seven (7) years by Office Memorandum dated 12.04.2016 issued by the Respondent No.4 and that since the mining lease dated 10.10.2016, granted to the appellant came to an end, the appellant had to approach Respondent No.4 for approval of its renewal but he was directed to seek revalidation of EC, which has been illegally rejected on the basis of draft notification stated above. It is also urged by him that in case Tribunal is not agreeable to allow the appeal, whatever material already been mined which is kept on the place, the same should be allowed to be taken away by the appellant so that he may not incur any further loss. He also urged that he had made a number of efforts for procuring the EC as well as various consents from relevant authority and had to approach this Tribunal again and again and despite the Tribunal having passed several order regarding consideration of the application of the appellant, no positive decision has been taken by the authority. Only to harass the appellant shelter is taken of the draft notification cited above laying down that the mining project in the area where the appellant is seeking mining project to be operated falls in eco-sensitive zones of Western Ghats despite the fact that no final notification has come into force. It is settled law that the provision of draft notification would not be enforceable till the same is finalized. It is further emphasized that the area where the appellant is seeking permission for mining, has been proposed to be excluded from the list of villages which are falling in eco sensitive area of Western Ghat and attention is drawn to the document in this regard annexed at Page No. 63 to 65 of the paper book.

10. On the other hand from the side of learned counsel for the Respondent Nos. 1, 2 and 3, it is vehemently argued that the draft notification classifies the area in question to fall in highly eco-sensitive zone in Western Ghat and that the said area needs to be protected strongly and that no mining activity can be allowed to take place in the said area in order to keep intact the integrity

of the ecology of the said area. It is further emphasized that the finalization of the draft is under process which is a long term process. Sincere efforts are going on in order to finalize the same since the year 2014, the process being extremely tedious and sensitive. An extreme cautious approach is being adopted. It cannot be said that no action is being taken for early finalization of the draft and that the appellant is being deliberately harassed. It is also emphasized that „Precautionary Principle” needs to be adopted in the present case looking to the highly eco-sensitivity of the area in question and that no such permission should be allowed to mine mineral from the said area even if the final notification is yet to be issued.

11. We, after having considered the rival contentions, are of the view that the draft Notification dated 06.07.2022 contains that earlier notifications were issued in 10th March 2014 and 5th December, 2018 and that in the draft notification, it has been clearly laid down that the village in question where the appellant is seeking permission for quarrying is falling in eco-sensitive zone of the Western Ghat, therefore, taking into consideration the precautionary principle, it would be advisable not to permit any mining activity. Simply because the final notification is yet to come, does not mean that the draft notification should be ignored.

12. We may rely in this regard upon the judgment of the Hon ble Supreme Court in Godavarman Thirumulpad Vs. Union of India, (2012) 3 SCC 277 and M. C. Mehta Vs. Kamal Nath, (1997) 1 SCC 388, where-in in para 8, it has been laid down that "no mining operation of any kind in the Western Ghat is to be countenanced". We may also rely on judgment passed by this Tribunal in Goa foundation vs. Union of India 2018 SCC OnLine NGT 1320 where-in in para 11 following is held:

"11. It is well acknowledged that ecology of the Western Ghat region is under serious stress. In t. N. Godavarma Thirumulpad V. Union of India, (2006) 1 SCC 1 it was noted that Western Ghats region is one of the richest biodiversity area which needs to be conserved. In T. N. Godavarm Thirumulpad Vs. Union of India, (2013) 8 SCC 228, mining operations in sensitive Western Ghats were directed to be restricted."

Further, we may rely upon the judgment of this Tribunal passed in Execution Application No. 19/2019 In O. A. No. 597/2018 (M. A. No. 121/2019 & I. A. No. 703/2019) where-in the issue under consideration was the remedial steps to be taken for protection of ecology of Western Ghats which is an eco-sensitive area within the meaning of relevant notification under the Environment (Protection) Act, 1986 where-in following is held :

6. "Having regard to the earlier delay and violation of undertaking given to this Tribunal and need for speedy finalization of the notification, the ongoing proceedings cannot be unending and need to be suitably curtailed. In any case, matter must not remain hanging beyond the schedule now proposed.

Accordingly, we direct that if there is a further default and delay beyond 31.03.2020, we may have to direct the Advisor, ESZ Division will not be entitled to salary till compliance and that the draft notification be deemed to the final from 01.04.2020."

We may also place reliance on the judgment dated 06.04.2022 passed in O. A. 801/2018 in Jasmeet Singh Vs. State of Himachal Pradesh with connected with Original Application No. 136/2020, Veterans Forum for Transparency in Public Life Vs. State of Himachal Pradesh & Ors., where-in the matter which came up for consideration was remedial action against the failure of the authorities in the State of Himachal Pradesh in preventing pollution of rivers in the Solan District, where-in in para 15 it has been recorded that "we consider it appropriate to direct under Section 15(1) of the NGT Act that pending finalisation by the MoEF&CC, standards proposed in the draft Notification dated 23.01.2020, which are based on expert studies, be strictly followed by all concerned."

13. We can take assistance from the above decision wherein draft notification had been directed to be followed by this Tribunal in the above mentioned case. In the present case as well, since the draft notification has been prepared based on expert study, till the finalization of the same, we can take assistance of it, as regards holding the area in question to be eco-sensitive area of Western Ghat where no mining activity may be permitted.

14. We have also considered the prayer made by the learned counsel for the appellant that whatever mined material is lying at the spot should be permitted to be carried away by the appellant so that the appellant does not suffer on that count. In this regard, our view is that since no mining activity is permissible in the area, we do not deem it appropriate to allow this prayer of the appellant, rather we direct the appellant to put back the mined material in the area from where it has been excavated so that said area is restored to its original position, within a period 2 months from today and that the Respondent No.2 Maharashtra Pollution Control Board shall ensure that the said direction is complied with. The MPCB shall also submit its report in this regard before this Tribunal within a period one month thereafter.

15. Based on above citations and the position of law as also taking into consideration the precautionary principle, we are of the view that the present appeal deserves to be rejected having no force and it is accordingly rejected. No order as to costs.

Dinesh Kumar Singh, JM Dr. A. Senthil Vel, EM February 28, 2023.

Sachin J.