

Haikar Khan vs State Of Madhya Pradesh on 29 April, 2022

Author: Adarsh Kumar Goel

Bench: Adarsh Kumar Goel

Item No. 06

(Court No. 1)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(By Video Conferencing)

Original Application No. 403/2019

Haidar Khan

Applicant

Versus

State of Uttar Pradesh

Respondent

Date of hearing: 29.04.2022

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER

Respondent: Mr. Anurag Patel, District Magistrate, Banda
Mr. Daleep Dhyani, Adv. for UPPCB

ORDER

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1. The issue for consideration is remedial action against illegal sand mining, in violation of environmental norms, by M/s. R.S.I. Stone World Limited, without requisite Consent from the State PCB, in Tehsil Naraini, District Banda, Uttar Pradesh.

2. Vide order dated 20.01.2020, a joint report was sought from UP State PCB and the District Magistrate, Banda. The State PCB filed its report on 22.09.2020, based on inspection on 06.05.2020 by the Mining Officer to the effect that illegal mining was found by M/s. R.S.I. Stone World Limited, without requisite Consent from the State PCB and also in violation of norms. The District Magistrate issued notice to the unit and as per Mining Rules required compensation of Rs.

1.43 crores and ought to be paid. FIR was also lodged on 15.03.2020, apart from other action.

3. The matter was considered on 30.09.2021 in light of further report of the State PCB dated 06.09.2021, acknowledging illegal mining by way of overloading of trucks, causing air pollution, mining outside the mining area, mining upto the depth of 6 meters against maximum permitted depth upto 3 meters so that water does not come out, use of Pokland machines, use of lifter machines, part of which were found inside the Kane river. The District Magistrate, Banda cancelled the lease and blacklisted the Project Proponent and also levied penalty.

4. The Tribunal further considered the matter and found that compensation for damage to the environment had not been recovered which was required to be done by the statutory regulator. Notice was also directed to be served on the Project Proponent. The operative part of the order is reproduced below:-

"2.....Further report has been filed by the State PCB on 06.09.2021 to the effect that after considering the viewpoint of the lessee, violations were determined in the form of illegal mining in violation of Rule 58 and 60 of the Uttar Pradesh Minor Minerals (Concession) Rules, 1963 and conditions of the lease. Violations include overloading of trucks, causing air pollution, mining outside the mining area, mining upto the depth of 6 meters though maximum depth is permitted upto 3 meters so that water does not come out, use of Pokland machines, use of lifter machines, part of which were found inside the Kane river. Accordingly, vide order dated 19.09.2020 of the District Magistrate, the lease granted on 28.11.2018 for five years was cancelled and the lessee was placed in blacklist for two years. Proceedings were initiated for recovery of balance lease amounting to Rs. 53,92,000/-, balance TCS amount of Rs. 25,23,576/- and balance DMF (dues for rehabilitation of the mining area) amounting to Rs. 2,68,34,280/-, apart from penalty for violations amounting to Rs. 1,45,04,350/-.

3. Question for consideration is whether apart from action already taken, any further action is required. We have heard learned Counsel for the State PCB.

4. It is on record in the form of order of the District Magistrate referred to above that the lease money is more than Rs. 20 Crores per year. Obviously, value of mined material from leased area and even beyond, as found is more than the said amount. Lease was operated for atleast two years during which the mined material collected is of the value of more than Rs. 40 Crores.

5. It is well settled that apart from mining rules, the mining leasee is to comply with environment laws and is accountable for damage to air, water, soil and eco systems. Reference is made to MC Mehta vs. UOI & Ors¹. Adverse consequences of mining are noticed inter alia in Deepak Kumar vs. State of Haryana², State of NCT of Delhi vs. Sanjay³ and Goa Foundation vs. UOI . In Samaj Parivartana Samudaya & Ors.

v. State of Karnataka & Ors.⁵, it was held that compensation for damage to environment on polluter pays principle can be upto 10% of value of mined material so as to restore the environment and ensure compliance of norms. This Tribunal has also considered the issue of compensation for illegal sand mining vide order dated 26.02.2021 in OA No. 360/2016, NGT Bar Association v. Virender Singh (State of Gujarat) and other connected matters to the effect that compensation has to be equal to the value of loss of ecological services with deterrent element. In the present case, value of mined material involved is more than 40 crore and thus compensation can be upto Rs.4 crore while compensation calculated is less than 1.50 crore. Moreover, if compensation is not paid, coercive measures can include blacklisting. In the present case blacklisting for two years does not consider failure to pay compensation assessed. There has to be restoration plan for utilising the amount of compensation which has not been done. Thus, the State authorities - Mining and Environment Departments need to take further action.

6. So far, the Tribunal has required the statutory regulators to go into the matter and take action as per law, but since action taken is inadequate accountability of the Project Proponent (PP) as well as the authorities needs to be determined. Notice be issued to the PP by email as well as through the State PCB. Response, if any, may be filed within one month from today by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. The concerned authorities may also file their action taken reports in same manner within one month. The PCB may coordinate with the concerned authorities of the State."

5. Vide order dated 18.02.2022, the Tribunal considered the matter further and directed the State PCB and the District Magistrate to take remedial action in light of observations of the Hon'ble Supreme Court. Relevant extracts from the said order is reproduced below:-

(2004) 12 SCC 118 (2012) 13 SCC 549 (2014) 9 SCC 772 (2014) 6 SCC 590 (2013) 8 SCC 154 "5. In pursuance of above, there is no response from the PP and the State PCB. Reply filed by the District Officer is that compensation for damage to the environment cannot be recovered by the District Officer.

6. Learned Counsel for the State PCB states that reply of the State PCB could not be filed and State PCB is bound to recover compensation for damage to the environment as laid down by the Hon'ble Supreme Court and order of this Tribunal referred to above.

We have drawn attention of learned Counsel to the statutory mandate under Section 21 (5) of the Mines and Minerals (Development and Regulation) Act, 1957 and judgment of the Hon'ble Supreme Court in Common Cause vs. Union of India & Ors., (2017) 9 SCC 499 requiring value of 100% of the mineral illegally extracted to be recovered which has not been done. Compensation for damage to the environment has to be over and above the price of illegally mined material.

7. In view of above, the State PCB as well as the District Magistrate, Banda may take further action in accordance with law and file compliance report within two months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. The PP is proceeded against ex parte.

8. Having regard to the serious inaction so far in remedying the situation, we direct the District Magistrate, Banda to remain present by way of Video Conferencing along with the Regional Officer of the State PCB so that the Tribunal can interact on the subject. Senior Superintendent of Police, Banda may furnish an action taken report on the FIR in the matter within one month by e-mail."

6. Accordingly, the District Magistrate, Banda is present in person by Video Conferencing and report has been filed by the District Officer, Banda on 02.04.2022 inter-alia stating as follows:-

"2. That the aforesaid directions dated 18th February, 2022, the under-signatory under the provisions of sub-section (5) of section 21 of the Mines and Minerals (Development & Regulation) Act, 1957 also imposed the amount of royalty, and price of such mineral, along with penalty total amount Rs.1,45,04,350/= (Rupees one crore, forty five lakhs, four thousand, three hundred fifty) for illegally mined 10,171.50 cubic metre sand and morrum by M/s R.S.I. Stone World Private Limited and also issued the Recovery Certificate to the Collector, Bhopal, Madhya Pradesh, vide its letter No.47/Khanij-30 Banda dated 6th October, 2020. Thereafter reminder was also sent to the Collector, Bhopal, Madhya Pradesh by Registered letter dated 23.03.2022.

3. That the Regional Officer U,P, Pollution Control Board, Banda also informed vide letter dated 22.03.2022 that by Chief Environment Officer circle-2 U.P, Pollution control board Lucknow on date 16.03.2022 show cause notice has been issued to M/s R.S.I. Stone World Private Limited for depositing Rs.98,40,000/- (Rupees ninety eight lakhs, forty thousand) only, for the period 01.07.2019 to 30.09.2019, during which no consent has been obtained from the Uttar Pradesh Pollution Control Board, under the provisions of the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981."

7. Though according to the above report, the amount of Rs. 1,45,04,350/- includes the value of the illegally mined material in terms of judgment of the Hon'ble Supreme Court in Common Cause vs. Union of India & Ors. (2017) 9 SCC 499. However, it is not clear how the value of the mined material is calculated when lease money is Rs. 20 crores per year, as noted in the order of the Tribunal. The District Magistrate may thus look into this aspect and verify the value of the mined material. If value of the mined material is found to be more, further action be taken for compliance of judgment of the Hon'ble Supreme Court in Common Cause (Supra) and also earlier orders of this Tribunal. The assessed amount may be recovered by the District Magistrate and the State PCB. The compensation amount be utilized for restoration of environment by preparing a restoration plan jointly by the State PCB and the District Magistrate. The action plan may address control of air pollution, restoring integrity of the river, rehabilitating damaged mined areas and other environmental

aspects. The District Magistrate will be the nodal agency for execution of the plan.

The application is disposed of.

A copy of this order be forwarded to District Magistrate, Banda and the State PCB by e-mail for compliance.

Adarsh Kumar Goel, CP Sudhir Agarwal, JM Prof. A. Senthil Vel, EM April 29, 2022 Original
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