

Debashis Das vs State Of Jharkhand on 28 February, 2022

Item No. 03

Court No.1

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(Through Video Conferencing)
Original Application No. 50/2021/EZ

Debashis Das

Applicant(s)

Versus

State of Jharkhand & Ors.

Respondent(s)

Date of hearing: 28.02.2022

CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

For Applicant(s) : Mr. Somnath Roy Chowdhury, Advocate

For Respondent(s) : Ms. Aishwarya Rajyashree, Advocate for R-1, 2 & 6,
Mr. Surendra Kumar, Advocate for R-3,
Mr. Dipanjan Ghosh, Advocate for R-4,
Mr. Ashok Prasad, Advocate for R-5

ORDER

1. Heard Mr. Somnath Roy Chowdhury, learned Counsel for the Applicant.
2. No counter-affidavit has been filed by the State Respondents till date.
3. One affidavit dated 06.08.2021 has been filed by Respondent No.4, Central Pollution Control Board; same is taken on record.
4. One counter-affidavit dated 27.08.2021 has been filed by Respondent No.3, Jharkhand State Pollution Control Board; same is taken on record.
5. Along with the affidavit of Jharkhand State Pollution Control Board an Inspection Report has been filed which confirms that illegal mining was going on by the use of vehicles, since tyre marks are reported, sand pile has also been noted. It is also mentioned that there is no Environmental Clearance (EC), Consent to Operate (CTO) yet neither Environmental Compensation nor penalty nor restoration measures have been computed. The Inspection Report is reproduced herein under in its entirety:-

"Site Inspection Report of Sand Ghats situated in Sukhjora Gram Panchayat and Govindpur Gram Panchayat in Raneshwar Area, Police Station-Raneshwar, Dist.-Dumka, in the State of Jharkhand in light of the Hon'ble NGT, EZB, Kolkata order dated 24/06/2021 in O.A. No.50/2021/EZ in the matter of Debashis Das Vs. State of Jharkhand & Ors.

In light of the Hon'ble NGT, EZB, Kolkata order dated 24/06/2021 in O.A. No.50/2021/EZ in the matter of Debashis Das Vs. State of Jharkhand and Ors., the Sand Ghats situated in Sukhjora Gram Panchayat and Govindpur Gram Panchayat in Raneshwar Area, Police Station-Raneshwar, Dist.-Dumka, in the State of Jharkhand was inspected on 20-21/08/2021 by the committee constituted by the Hon'ble NGT, EZB, Kolkata in the said matter. The Committee consisted of Sri Yatindra Kumar Das, Member Secretary, Jharkhand State Pollution Control Board; Sri A.T. Mishra, Member Secretary, State Level Environment Impact Assessment Authority, Jharkhand; Sri Toufic Aslam, Scientist-B, CPCB Regional Directorate, Kolkata and Sri Atul Ranjan Bhagat, Circle Officer, Raneshwar, Dumka (Representative of the District Magistrate, Dumka, Jharkhand) in the presence of some local people of the nearby area. Moreover, the learned advocate of the Applicant (Sri Debashis Das) was intimated about the site visit schedule but neither Sri Debashis Das nor his representative came to assist the committee for site visit. So, the committee conducted the site visit without the Applicant.

During Inspection the following observations were found at Mouza-Diguli, Govindpur Gram Panchayat:-

- 1) The area in question lies at the Latitude 23°59'22.88" N and Longitude 87°26'36.84"E.
- 2) As per the report of the Circle Officer, Raneshwar there is a huge deposit of sand measuring an area of 259 Bighas 14 Katha (34.74 Hectare approx). The trace map of the area as provided by the Circle Officer is enclosed as Annexure-I.
- 3) During inspection fresh marks of wheels of various vehicles and marks of used equipments were found at the site (sand ghat). These marks appeared to be very recent (either of morning hours or of late-night hours of the day before). From these marks it appears that sand mining is going on using vehicles/equipments such as tractors, pockleins, trucks, hyva, loader etc.
- 4) There was a haul road (approach road) connecting the metalled road to the sand Ghat. Fresh wheel marks were found on the haul road.
- 5) That, at present Environmental clearance has not been accorded to any of the sand ghat in the Govindpur Gram Panchayat from the Competent Authority as per the Environment Impact Assessment Notification, 2006, as amended.
- 6) That, at present no Consent to Operate has been issued to any of the sand ghat in the Govindpur Gram Panchayat, Raneshwar Area, Police Station-Raneshwar, Dist.-Dumka, in the State of Jharkhand from the Competent Authority as per the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

7) During the inspection it was observed that there is huge accumulation of sand due to indiscriminate and unscientific mining at the bank of the river Mayurakshi.

8) The Circle Officer, Raneshwar has provided a copy of FIR lodged by Sri Dilip Kumar Tanti, District Mining Officer, Dumka vide his letter No.01/camp, Raneshwar dated 26/06/2021 in which he has mentioned that a VOLVO EC 2100 model Pocklein machine has been seized. (The copy of the FIR lodged by Sri Dilip Kumar Tanti, District Mining Officer, Dumka vide his letter No.01/camp, Raneshwar dated 26/06/2021 is attached as Annexure-II) During Inspection the following observations were found at Mouza-Ektalla, Sukhjora Gram Panchayat:-

1) The area in question at the Latitude 2400'21.14" Longitude 87025'45.99"E.

2) As per the report of the Circle Officer, Raneshwar there is a deposit of sand measuring an area of 87 Bigha 15 Katha and 16 Dhur (11.74 Hectares approx). The trace map of the area as provided by the Circle Officer is enclosed as Annexure-I.

3) There were no marks of the wheel found at the site (sand ghat) but at the sand ghats damaged pathway and sand deposit were seen. It appears that sand mining was done few months back. When enquired, the local people said that the mining activities were carried out 2-3 months back.

4) There was a haul road connecting the metalled road to the sand Ghat. No wheel marks were found on the haul road.

5) That, at present Environmental clearance has not been accorded to any of the sand ghat in the Sukhjora Gram Panchayat, Raneshwar Area, Police Station-Raneshwar, Dist.-Dumka, in the State of Jharkhand from the Competent Authority as per the Environmental Impact Assessment Notification, 2006, as amended.

6) That, at present no Consent to Operate has been issued to any of the sand ghat in the Sukhjora Gram Panchayat, Raneshwar Area, Police Station-Raneshwar, Dist.-Dumka, in the State of Jharkhand from the Competent Authority as per the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

7) During the inspection it was observed that there is accumulation of sand due to indiscriminate and unscientific mining at the bank of the river Mayurakshi."

6. We also find that the District Magistrate, Dumka did not visit the site in person as a member of the Committee nor did he notify any officer of ADM rank to the member of the Committee during inspection and instead he directed the Circle Officer, Raneshwar, Dumka to represent him even though the Tribunal while constituting the Committee had specifically included the District Magistrate, Dumka as a member and not through his representative.

7. We, therefore, direct the District Magistrate/Divisional Commissioner, Raneshwar, Dumka to file his personal affidavit explaining as to why an officer at least not below the rank of ADM was not deputed to represent him. The District Magistrate in his affidavit shall also explain as to why illegal sand mining was permitted in the district right under his nose even though the District Magistrate is the Chairman of the District Environment Committee and what action has been taken by him to prevent illegal sand mining at the appropriate time. We also find that only one FIR was lodged and that too after the Tribunal has taken cognizance of this case. The District Magistrate shall also explain as to why he did not inspect the site in question along with the other members of the Committee which is in disobedience of the specific order of the Tribunal dated 24.06.2021. The District Magistrate in his personal affidavit shall take into account the observations made by the Committee as well as the photographic evidence and notes under each photographs and submit what action has been taken by him in this regard including remedial measures.

8. Mr. Somnath Roy Chowdhury, learned Counsel shall serve notice to the Respondent No.7 within one week and file affidavit of service by the next date of listing.

9. List on 08.04.2022.

..... B. Amit Sthalekar, JM

Saibal Dasgupta, EM February 28, 2022 Original Application No. 50/2021/EZ MN