

Sadashiv Mahadev Morye vs Seiaa on 28 February, 2023

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

(By Video Conferencing)

Appeal No. 27/2021 (WZ)

1. Mr. Chandrakant Vishnu Poojare,
Gut No. 1201,1210,1211, Village- Mine,
Tal-Kankavali, Dist- Sindhudurg,
Maharashtra 416602
Email: ssparab2700@gmail.com

.....Appellant

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: psec.env@maharashtra.gov.in
2. Ministry of Environment, Forest and Climate Change,
Through its Secretary,
Indira Paryavaran Bhavan, Jorbagh Road,
New Delhi 110001.
Email: secy-moef@nic.in

....Respondent(s)

With

Appeal No. 28/2021 (WZ)

1. Mr. Sadashiv Mahadev More,
Gut No. 1381, Village- Mine,
Tal-Kankavali, Dist- Sindhudurg,
Maharashtra 416602
Email: ssparab2700@gmail.com

.....Appellant

Versus

1. State Environment Impact Assessment Authority-
Maharashtra(SEIAA)
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2. Ministry of Environment, Forest and Climate Change,
Through its Secretary,
Indira Paryavaran Bhavan, Jorbagh Road,
New Delhi 110001.
Email: secy-moef@nic.in

....Respondent(s)

With

Appeal No. 29/2021 (WZ)

2. Mr. Pramod Sadanand Kambli,
Gut No. 1091, Village- Mine,
Tal-Kankavali, Dist- Sindhudurg,
Maharashtra 416602
Email: ssparab2700@gmail.com

.....Appellant

Versus

3. State Environment Impact Assessment Authority-
Maharashtra(SEIAA)
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Environment Department,
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E-mail: psec.env@maharashtra.gov.in
4. Ministry of Environment, Forest and Climate Change,
Through its Secretary,
Indira Paryavaran Bhavan, Jorbagh Road,
New Delhi 110001.
Email: secy-moef@nic.in

....Respondent(s)

With

Appeal No. 30/2021 (WZ)

3. Mr. Mahadev Balkrishna Parkar,
Gut No. 974(Part), Village- Mine,
Tal-Kankavali, Dist- Sindhudurg,
Maharashtra 416602
Email: ssparab2700@gmail.com

.....Appellant

Versus

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5. State Environment Impact Assessment Authority-
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E-mail: psec.env@maharashtra.gov.in
6. Ministry of Environment, Forest and Climate Change,
Through its Secretary,
Indira Paryavaran Bhavan, Jorbagh Road,
New Delhi 110001.
Email: secy-moef@nic.in

....Respondent(s)

With

Appeal No. 31/2021 (WZ)

4. Mr. Shailesh Shashikant Parab,
Gut No. 1222, Village- Mine,
Tal-Kankavali, Dist- Sindhudurg,
Maharashtra 416602
Email: ssparab2700@gmail.com

.....Appellant

Versus

7. State Environment Impact Assessment Authority-

Maharashtra(SEIAA)
Through Member Secretary,
Environment Department,
Room No. 217, 2nd floor,
Mantralaya Annexe, Mumbai-400032, Maharashtra
E-mail: psec.env@maharashtra.gov.in

8. Ministry of Environment, Forest and Climate Change,
Through its Secretary,
Indira Paryavaran Bhavan, Jorbagh Road,
New Delhi 110001.
Email: secy-moef@nic.in

....Respondent(s)

Counsel for Appellant(s):

Mr. Saurabh Kulkarni, Advocate

Counsel for Respondent(s):

Mr. Aniruddha Kulkarni, Standing Advocate for R-1
Mr. Rahul Garg, Advocate for R-2

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PRESENT:

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

Reserved on
Pronounced

Judgment

1. All above appeals have been filed against the order dated 12.03.2021 passed in the minutes of the meeting of the Respondent No.1-SEIAA.
2. Since all the above appeals have been filed challenging common order, we are disposing them of by a common judgment.

3. In Appeal No. 27/2021, Gat No. 1201,1210,1211, Village: Mine, Taluka-

Kankavli, District- Sindhudurg is concerned; In Appeal No. 28/2021, Gat 1381, Village: Mine, Taluka- Kankavli, District- Sindhudurg is concerned; In Appeal No. 29/2021, Gat No. 1091, Village: Mine, Taluka- Kankavli, District- Sindhudurg is concerned; In Appeal No. 30/2021, Gat No. 974(Part), Village: Mine, Taluka- Kankavli, District- Sindhudurg is concerned; In Appeal No. 31/2021, Gat No. 1222, Village: Mine, Taluka- Kankavli, District- Sindhudurg is concerned.

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

All above appellants are businessmen by profession owning the above Gat numbers and are operating quarries of laterite stones, which lie in category „B2 of the EIA Notification, 2006. The Appellants are excavating the laterite stone approximately upto 4 to 6 mtrs., depending upon availability of hard strata through blade cutting mechanism, without blasting and drilling, which process is environmentally friendly. After removal of the laterite stone, the same would be used for construction and the soil strata shall be utilized for mango and cashew plantation. The appellants are operating the said quarries under temporary consent granted from time to time up to 7th April, 2013, which provided employment to approximately 10 villagers from Mine and nearby villages. The Appellants had incurred huge investment on this project to the tune of Rs. 25 lakhs. The Government of India appointed the Western Ghats Ecology Expert Panel (WGEEP) headed by Prof. Madhav Gadgil to demarcate the ecologically sensitive zones of Western Ghat region and suggest measures to project and rejuvenate the ecology, which has submitted its Report dated 15th April 2013. This Tribunal on 12th November, 2013, passed an interim order in M. A. No. 868 of 2013 in Original Application No. 26 of 2012 to the effect that it is not mandatory for the MoEF to decide the application for any clearances in the permissible area of the Western Ghats only with reference to Gadgil Report. They are free to take into consideration either the Report or other relevant factors in accordance with law. Accordingly, the Respondent No.2-MoEF&CC had issued directions under Section 5 of the Environment (Protection) Act, 1986 on 13th November, 2013 and annexed the list of the villages in Eco Sensitive area of the Western Ghats which is also showing village Lingdal under ESA. The State Level Assessment Committee was not considering the Applications of the Appellants, thus the appellants sought status of the proposals under the RTI Act which has stated that the appellants proposals were kept pending on account of the draft notification of the ESZ of Western Ghats. Thereafter, the appellants approached this Tribunal by filling appeal No. 42 of 2015 challenging the said communication and vide judgment dated 17th August, 2015, the State Level Impact Assessment Authority was directed to decide the applications of the Appellants within three months, but even then no decision was taken thereon. Thereafter, the Appellants filed an Execution Application No.23 of 2016 before the Tribunal. During the pendency of the Execution Application, the said Authority took a decision and deferred the proposals of the Appellants. Subsequently, the Appellants filed applications under Section 14 of the National Green Tribunal Act, 2010, seeking

directions for expeditious decision in his case, which were decided by the Tribunal vide order dated 27th December, 2016 directing the Government of India to take a decision within three months. The Tribunal had also issued show cause notice to the Member Secretary of the State Environment Impact Assessment Authority seeking explanation of this delay. The EAC of the Government of India did not take decision within three months and kept the proposal pending again and again. On 15.11.2017, the Committee directed the appellants to submit the online proposal, which was complied with and the proposals came up for consideration on 21st and 22nd December, 2017, but the same were rejected on the ground that they were received after 17th April, 2013 and were not found to be covered under the exemption as stated in the directions dated 13th November, 2013. The Government of Maharashtra after conclusion of the meeting, addressed a letter to the EAC, MoEF, GOI seeking the exact date of submission of proposals of the appellants. The Government of Maharashtra vide its letter dated 2nd April, 2018 clarified that the proposals of the appellants were received by them on 12th April, 2018 which were well within the cut-off date. Thereafter, the appellants challenged the said order before this Tribunal by filing an appeal under Section 16 of the National Green Tribunal Act, 2010 and this Tribunal had remanded the matter to the Respondent to decide the same within three months. Thereafter cases of the appellants were placed before the State Environment Assessment Committee, Government of Maharashtra (SEAC) on 10th February, 2021 and the Committee recommended the proposal for grant of EC. Thereafter, the appellants' cases were placed before the Respondent (It appears to be SEIAA) on 13th August, 2021. It was observed by it that the proposals were received before the cut-off date 17th April, 2021, but even then the proposals were rejected on the ground that the quarries of the Appellants fall within the Eco-Sensitive Zone. In the case in hand the appellants' proposals were not decided for a period of about 8 years resulting in loss of the revenue to the appellants and appellants were aware of the fact that the quarry of the appellants will be phased out after a period of five years. The fact that the Notification of the Eco Sensitive Zone is yet to be finalized, has not been considered by the Respondent and yet the proposals have been rejected on the basis of draft Notification. The draft Notification was issued by the Government of India regarding Eco-Sensitive Zone on 10th March, 2014, 4th September, 2015 and 27th February, 2017 and finally on 3rd October, 2018 and yet it is not finalized. The Respondent No.1 have recommended the grant EC to other projects in the same district. Hence, the above prayer has been made.

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. From the side of Respondent No.2 MoEF&CC at the time of argument learned counsel Mr. Rahul Garg stated that reply affidavit which has been filed by it in Appeal No. 05/2022 should be read as reply in this case as well, which 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 would be prohibited activity, the relevant part of the paragraphs reproduced hereinabove :-

"(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.

7. 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.

8. 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 should 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.

9. 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 the take 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 the 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.

10. 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.

11. 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 serous 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 bidodiversity 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 Distric, 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."

12. We can take assistance from the above decision wherein draft notification had been directed to be followed by this Tribunal in the above mentioned cases 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.

13. We have also considered the prayer made by the learned counsel for the appellants that whatever mined material is lying at the spot should be permitted to be carried away by the appellants so that the appellants do 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 appellants, 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 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.

14. Based on above citations and the position of law as also taking into consideration the precautionary principle, we are of the view that all appeals deserves to be rejected having no force and they are accordingly rejected. No order as to costs.

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

Appeal No. 26/2021, 27/2021, 28/2021, 29/2021,30/2021,31/2021 Sachin J.