

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

**Appeal No. 03/2019 (CZ)
(I.A. No. 15/2019)**

IN THE MATTER OF:

- 1. Rashmi Sharma
R/o Teli Pada
Ward No. 18
Bayana, Bharatpur
Rajasthan 321401**

.... Appellant

Versus

- 1. State Environment Impact Assessment Authority
Rajasthan
Through Chairman
4, Institutional Area
Jhalana, Doongri
Jaipur, Rajasthan – 302004**
- 2. Ministry of Environment, Forest & Climate Change
Through its Director
Paryavaran Bhawan
C.G.O Complex, Lodhi Road
New Delhi – 110003**

...Respondent(s)

COUNSEL FOR APPELLANT (S):

Mr. Dhairya Madan, Advocate.

COUNSEL FOR RESPONDENT (S):

Ms. Arushi Gaur Chauhan, Advocate for Mr. Arvind Soni,
Advocate

Ms. Parul Bhadoria, Advocate for Mr. Hemant Shrivastava
Advocate

JUDGEMENT

PRESENT:

Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)

Hon'ble Dr. Satyawan Singh Garbyal (Expert Member)

Reserved on: 18th February, 2020
Pronounced on: 27th February, 2020

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

Dr. S.S. GARBYAL, (EXPERT MEMBER)

1. The appellant in this appeal has prayed that the cancellation of environmental clearance granted by State Environment Impact Assessment Authority (SEIAA) on 26.10.2016 for sandstone mine in area of 10 hectare in Khasra No. 1178, Village- Sirrond, Tehsil- Rupbas, District- Bharatpur, Rajasthan be quashed.

2. The said mine was originally leased to one Mr. Vasudev Katara for a period of 10 years on 23.07.1990. Thereafter, the mining lease was renewed on 23.07.2000 for a further period of 20 years i.e., up to 22.07.2020. Subsequently, above mining lease granted in favour of Mr. Vasudev Katara was transferred by the present appellant vide order dated 17.07.2013.

3. The present appellant is aggrieved by the decision of SEIAA, Rajasthan to cancel the environmental clearance granted to them on 18.01.2019 being without any legal and factual basis. It is submitted that the appellant has never defaulted in meeting the legal and/or administrative obligation associated with the mine and its operation. The appellant has stated that the mine is situated at a distance of 50 meter from Bandh-Baretha Wildlife Sanctuary. On 26.12.2018, the Ministry of Environment, Forest and Climate Change (MoEF & CC), exercising the powers conferred under Section 3 of the Environment (Protection) Act, 1986, issued final notification for Eco Sensitive Zone ranging from 25 meter to 1 kilo meter around the boundary of Bandh-Baretha Wildlife Sanctuary in State of Rajasthan.

4. The case of the appellant is that mine is situated at a distance of 50 meter from the boundary of the Bandh-Baretha Wildlife Sanctuary towards eastern side where Eco Sensitive Zone is only upto 25 meter and, therefore, the mine is outside the notified Eco Sensitive Zone of the Bandh-Baretha Wildlife Sanctuary. SEIAA, Rajasthan issued a letter on 18.01.2019 cancelling the environmental clearance granted by them on 26.10.2016 for Sandstone mine at ML No. 10/90,42/200, on 10 Hectare land in Khasra No. 1178, Village- Sirrond, Tehsil-

Rupbas, District- Bharatpur, Rajasthan with production capacity of 8,00,000 tons per annum. Before issuing the cancellation order show cause notices dated 05.11.2018 and 17.12.2018 were served. The order *inter alia* states as under:

“10. And whereas, the SME, Bharatpur, vide letter dated 28.6.2018 informed the SE1AA that the mining lease of Rashmi Sharma is located at a distance of 50 mts from the Bandh Baretha wild life sanctuary.

11. And whereas, the State Government in exercise of the powers conferred upon it under section 18(1) of the Wild life Protection Act. 1972 declared Bandh Baretha area as Wild Life Sanctuary vide notification dated 5.10.1985.

12. And whereas you have deliberately concealed the material information that your mining lease ML No. 10/90,42/200 was situated at a distance of 50 mt. from the boundary of Bandh Baretha Wild life Sanctuary, from SEIAA with a view to obtain prior environmental clearance.

13. And whereas the provisions of para 8(vi) of the EIA Notification provide that deliberate concealment and or submission of false or misleading information of data which is material to screening or scoping or appraisal or decision on the application, shall make the application liable for rejection and cancellation of prior environmental clearance granted on that basis.

14. And whereas the Hon'ble Supreme Court in the matter of T.N Godavarman Vs UOI and Ors. And Goa Foundation Vs UOI and Ors has directed that the grant of temporary working permits should not result in any mining activities within the safety zones around the National Park or Wild life Sanctuary as an interim measure. And that one Km safety Zone was to be maintained subjected to the orders that may be made in IA No. 1000 in Jamua Ramgarh Sanctuary.

15. And whereas the operation of your mine is in contravention of the provisions of the EIA Notification and in violation of the directions passed by the Hon'ble Supreme Court in the above mentioned matters.

16. And whereas in view of the violations of the EIA Notification mentioned herein above, a Notice was given to you calling upon to be present before the Authority at on 10.12.2018 at Aravali Bhawans Malaria Dungri. Jaipur and to

show cause as to why the EC granted to you vide letter dated 26.10.2016 be not cancelled. However, you did not personally appear before the authority at the assigned time and place and also did not submit any reply whatsoever in response to the show cause notice.

17. And whereas, the Authority. vide letter dated 17.12.2018, afforded another opportunity of hearing to you and served one more Show Cause Notice asking you to be present personally before the Authority on 11.12.2019 at its office to explain as to why LC granted to you vide letter dated 26.10.2016 lie not cancelled and were warned that failing which the EC granted to you would be cancelled, without further notice.

18. And whereas, you appeared before the Authority on 11.01.2019 along with your nephew Sh. Nitin Kishore and representative of the consultant Sh. Amit Kumar Saini, Manager, M/s Overseas Mintech Consultants , Jaipur.

19. And whereas, during hearing on 11.01.2019 you made oral submissions that at the time of submitting application for EC you were not aware about the location of the mine vis-a-vis Bandh Baretha Wild Life Sanctuary. You, however, admitted that the mine is located at a distance of 50 mts from the boundary of Bandh Baretha Wild Life Sanctuary.

20. And whereas, in regard to the facts mentioned hereinabove this Authority also noted the order of the Hon'ble Supreme Court dated 4.8.2006 in the matter of T.N Godavarman V/s U01 in WP (C) No. 202/95 wherein it was directed that the grant of temporary working permits should not result in any mining activities within the safety zones around the National Park or Wild life Sanctuary as an interim measure. And that one Km safety Zone was to be maintained subjected to the orders that may be made in IA No. 1000 in Jamua Ramgarh Sanctuary. This judgement was again relied upon by the Hon'ble Supreme Court in its order dated 21.4.2014 in the matter of Goa Foundation V/s UOI, in Writ Pet. (C) No. 435 2012. The NGT in its judgment dated 25.9.2018 has also relied upon the law declared by the Hon'ble Supreme Court in TN Godavarman and Goa Foundation cases.

21. And whereas, this Authority, after thoughtfully considering the complete record of the case and oral submissions made by you on 11.1.2019, is of the firm opinion that you have concealed material facts and furnished false and misleading information in order to wrongfully obtain Environmental Clearance for the project inquestion.

Therefore, this authority, in view of above observations, hereby cancels Environmental Clearance granted by it vide letter dated 26.10.2016 for Sandstone mine at ML No. 10/90, 42/200, Area 10 Ha. Khasra No. 1178, Village Sirrond, Teh. Rupbas, District Bharatpur, Rajasthan. Please be informed that any grievance, if any, against this order is challengeable before the

National Green Tribunal under section 16 of the National Tribunal Act, 2010.”

5. The appellant has submitted that the Hon'ble Supreme Court vide its order dated 04.08.2006 in *T.N. Godavarman Thirumulpad Vs. Union of India & Ors. (2010) 13 SCC 740*, laid down the 'pre-conditions' for the grant of Temporary Work Permits ("TWP") for mining activity to be carried out in and around National Parks & Wildlife Sanctuaries. It is submitted that by way of the said pre-conditions for grant of TWP, the Hon'ble Supreme Court passed an interim order directing a 1 kilometer safety zone to be maintained around a national park/wildlife sanctuary, subject to orders made in I.A No. 1000 regarding JamunaRamgarh Sanctuary. The relevant part of the order has been extracted hereunder for ready reference:

“(iii) the grant of TWP would not result in any mining activity within the safety zone around such areas referred to in Precondition (ii) above (as an interim measure, one kilometre safety zone shall be maintained subject to the orders that may be made in I.A No. 1000 regarding JamuaRamgarh Sanctuary);”

6. It is the case of the appellant that operation of his mine is not hit by order of the Hon'ble Supreme Court dated 04.08.2006 mentioned above, as this was only with regard to mining operation within Eco Sensitive Zone and that his mine was outside the Eco Sensitive Zone notified on 26.12.2018. He has

further submitted that the Hon'ble Supreme Court vide its order dated 21.04.2014 in Goa Foundation Vs. Union of India (2014) 6 SCC 590, inter alia, held that until modification of its own order in I.A No. 1000 in T.N. Godavarman Thirumulpad Vs. Union of India dated 04.08.2006, there will be no mining activities within one kilometre from the boundaries of the national parks and sanctuaries, in the State of Goa only. It further held that there is no prohibition on mining activities within 10 kilometers distance from the boundaries of the national parks or wildlife sanctuaries and directed the MoEF & CC to issue notification of Eco-Sensitive Zones around the national parks and wildlife sanctuaries.

7. The appellant has further submitted that Hon'ble Supreme Court vide its order dated 11.12.2018 in I.A. No. 1000 & I.A No. 1992 for clarification of order dated 04.08.2006 in T.N. Godavarman Thirumulpad Vs. Union of India & Ors. W.P. (c) No. 202 of 1995, held that out of a total of 662 National Parks & Wildlife Sanctuaries in the country, proposals have been received for 641 National Parks & Wildlife Sanctuaries only and no proposals have been received for 21 National Parks & Wildlife Sanctuaries. That as on 26.11.2018, proposals for 289 National Parks & Wildlife Sanctuaries have been accepted & Notification has been issued. Further, draft notification has

been prepared for 206 National Parks & Wildlife Sanctuaries. Therefore, only with respect of the 21 National Parks & Wildlife Sanctuaries in the State of Assam, Jammu & Kashmir, Karnataka, Maharashtra, Manipur, Meghalaya, Nagaland, Uttar Pradesh & West Bengal, shall the area of 10 kms be the Eco-Sensitive Zone with liberty to these states to move application for modification along with proposal.

8. On behalf of the MoEF & CC, it has been submitted that there is a prohibition on mining activities by orders of Hon'ble Supreme Court within one (1) kilometre from the boundaries of national parks and sanctuaries. Initially, such prohibition was only for the national parks and sanctuaries in Jamua Ramgarh Sanctuary in terms of order of the Hon'ble Supreme Court dated 04.08.2006 in IA No. 1000 in T.N. Godavarman Thirumulpad Vs. Union of India & Ors. Subsequently, such prohibition has been extended to all the States and UTs in the Country as precautionary measures.

9. The MoEF & CC in its office memorandum dated 08.08.2019 have laid a procedure for consideration of "developmental projects located within 10 km of National Park/Wildlife Sanctuary seeking environmental clearance under the provisions of the Environmental Impact Assessment (EIA)

Notification, 2006". In said memorandum, it has been clearly stated under para 4 (iv) which is reproduced below:

“iv. Proposals involving mining of minerals within the ESZ (or) one kilometre from the boundaries of National Parks and Sanctuaries whichever is higher is prohibited in accordance with the order of the Hon’ble Supreme court dated 04.08.2006 in the matter of T.N. Godavarman Thirumulpad Vs. UOI in W.P. (c) No. 202 of 1995 and dated 21.04.2014 in the matter of Goa Foundation Vs. UOI in W.P. (c) No. 435 of 2012”

10. It has, therefore, been brought out that there is a prohibition on mining activities if the mines falls within the Eco Sensitive Zone of the national parks and sanctuaries and also within one (1) kilometre of the national parks and sanctuaries even if such mines are located outside Eco Sensitive Zone. It is true that the mine of the appellants is located outside the notified Eco Sensitive Zone of the Bandh-Baretha Wildlife Sanctuary but it falls within one (1) kilometre of the boundary of the Bandh-Baretha Wildlife Sanctuary as admittedly the distance of the mine is 50 meter from the boundary of the Bandh-Baretha Wildlife Sanctuary.

11. We are, therefore, of the considered opinion that operation of the mine of the appellants cannot be permitted as it is only at a distance of 50 meter from the boundary of the Bandh-Baretha

Wildlife Sanctuary though outside its Eco Sensitive Zone.

Therefore the appeal filed by the appellant is dismissed.

12. As the main Appeal No. 03/2019 is dismissed, the I.A. No. 15/2019 does not survive for consideration and the same are also dismissed with no order as to cost.

.....
Raghuvendra S. Rathore, JM

.....
Dr. Satyawan Singh Garbyal, EM

Dated: 27.02.2020
Place : New Delhi

