

**BEFORE THE NATIONAL GREEN TRIBUNAL
(CENTRAL ZONE) BENCH, BHOPAL**

Original Application No. 31/2019

IN THE MATTER OF:

1. M/s. Hind Khanij

Office at 809, 8th Floor,
O.K. Plus Tower, M.I. Road,
Jaipur through its partner
Sh. Satya Narain Agarwal
S/o. Late Shri Chhitar Mal Ji Agarwal,

.... Applicant

VS

1. UNION OF INDIA

Through its Secretary,
Ministry of Environment and
Forests and Climate Change,
4th Floor, PrithviWingh,
Indira ParayavaranBhawan,
Jorbagh Road, Aliganj,
New Delhi-110003

2. STATE OF RAJASTHAN

Through its Principal Secretary
Department of Mines & Geology,
Government of Rajasthan,
Secretariat, Jaipur

**3. THE DIRECTOR OF MINES & GEOLOGY,
Government of Rajasthan, Udaipur**

**4. THE CHIEF CONSERVATOR OF
FORESTS (CENTRAL)**

Government of India, MoEF,
Regional Office (Central Division),
5th Floor, KendriyaBhawan,
Sector-H, Aligarj, Lucknow-226024 (U.P)

5. THE CHIEF CONSERVATOR OF FOREST

Government of Rajasthan,
JhalanaDoongri, Jaipur

6. The Mining Engineer

Karauli, Distt. Karauli

.....Respondents

Counsel for Applicant(s):

Mr. Ranveer Singh Mehta, Advocate

Counsel for Respondent(s):

Mr. Om Shankar Shrivastava, Advocate

Mr. Saurabh Sahini, Advocate for Mr. Shoeb Khan, Advocate

JUDGEMENT

PRESENT:

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

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

Reserved on: 11.02.2020

Pronounced on: 19.03.2020

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?

RAGHUVENDRA S. RATHORE J

1. Being aggrieved of the arbitrariness on part of the respondents, so much so that the review application filed by the applicant has not been decided so far, this Original Application has been filed. Letters/notices were subsequently given in this regard, even then the respondent had not decided the application. Instead of deciding the review application on merits the respondent issued a letter on 11th April 2019. Therefore, the applicant has prayed that revocation of in-principle sanction granted by the respondents vide order dated 16.05.2007, be quashed and set aside. Further the order granting approval in-principle be restored and the applicant be permitted to comply with the same within a period of six months from the date of order.
2. In brief, the material facts of the case are that the applicant is having a mining lease of minerals and silica sand in village

Budretta, tehsil Todabhim, District Kaurali, Rajasthan which was granted from 1st January 1977 (ML No. 7/70) for a period of 20 years. The applicant started mining operations by setting up machinery like mineral processed plant, rail line etc. Excavations and dispatch were undertaken with the help of JCB and dumpers. He had initially invested an amount of rupees 20 lakhs, approximately.

3. The excavation and dispatch of minerals continued from 1st January 1977 to 12th December 1996 for which regular ravanas were issued by the mining department. Applicant had also submitted monthly returns of production and dispatch since January 1977. He had regularly paid dead rent and excess royalty. There were no dues, against the applicant, of the mining department upto 12th December 1996.
4. As the mining lease was in forest land, the applicant had opted for a land measuring 5.9065 hectars and applied to grant permission under Section 2 of the Forest (Conservation) Act 1980 for continuing the mining operation. It was in the year 1997 that the applicant had submitted a proposal for diversion, to the mining department. The said proposal was recommended by the forest department of the State and sent to Government of India for grant of permission, based upon the proposal for diversion of an area of 5.9065 hectares.
5. Government of India had in-principle approved the diversion proposal on the conditions, as mentioned in its order dated 7th October 2003. The said order issued by Government of India was

communicated only to the Principal Secretary Forest, Government of Rajasthan Jaipur. No copy of the order was sent to the applicant, that is to say the user agency. Consequently, the applicant never came to know about the grant of in-principal approval by Government of India. In-principal approval was also not conveyed to the applicant by Chief Conservator of Forest/forest department. According to the applicant, it was due to non-communication of in-principal approval to him that he failed to comply with the conditions mentioned in it.

6. Though no time was stipulated in the order of approval for compliance of the condition but the rules/guidelines framed under Forest (Conservation) Act 1980 provides for a period of five years. The respondent had then revoked the in-principal sanction by its order dated 16.05.2007. In other words, revocation of sanction of in-principal was done within 3 years and 9 months which was not in accordance to provisions of the rules/guidelines framed under Forest (Conservation) Act 1980. Furthermore, the revocation order dated 16.05.2007 was not communicated to the applicant.
7. The applicant had then filed an application before Government of India wherein a request was made to recall the order of 16.05.2007 and to restore the in-principal approval. Thereafter, applicant had submitted a letter on 04.02.2012 reiterating that the letter granting in-principal approval was never received by him, as a result of which he was deprived of complying with the conditions. The respondents had replied to the said letter on 25.03.2013, stating that all communications had been done with

the Nodal Officer, Rajasthan and the concerning Divisional Forest Officer. Further it was said that there is no provision of direct communication to the User Agency and therefore, the Regional Office is not responsible for the current situation. The applicant had again given a reminder on 20.08.2014 to recall/cancel the revocation order of 16.05.2007 and to issue the necessary directions. The applicant persuaded the matter in person in the office of respondent no. 4 but without any result, except assurances. The situation remained the same as neither the review application was decided nor any reasoned order was passed.

8. The applicant had then filed an original application (34/2018) before the Tribunal wherein, after some hearings, the applicant submitted that he would pursue the Review Application pending before respondent no. 1. Accordingly, the original application was withdrawn on 26.02.2019, with liberty to the applicant to pursue the Review Petition. Subsequently the applicant, through his Counsel, gave a Notice for demand of justice to the respondent on 12.03.2019; a reminder on 12.04.2019 and an application on 13.05.2019 for deciding the Review Petition. But no decision on Review Application was taken by respondent no. 1. A communication was received from respondent on 11.04.2019 stating that for further clarification, the applicant may represent before the State Government.
9. The grievance of the applicant is that no decision has yet been taken on the Review Petition and he has been compelled to shuttle from one Department to another. It is a case where no proper

opportunity was given to the applicant for compliance of the conditions incorporated in-principle approval letter. The applicant has submitted that as per letter dated 11.04.2019 sent by respondent, he was to seek further clarification from State of Rajasthan whereas the State Government has no competency to review the revocation order dated 16.05.2007. Therefore, the applicant has submitted that it is a case of clear denial by the respondent to decide the Review Petition. Hence the present original application had been preferred by the applicant.

- 10. After considering the case of the applicant, notices were issued to the respondents on 30.07.2019. Thereafter, reply on behalf of respondent no. 1 and 4 was filed in November, 2019. However, respondent nos. 2,3,5 and 6 did not file their replies and sought time again and again. Reply on behalf of respondent no. 6 was filed in the month of December. But, no reply was filed on behalf of respondent no. 5, the Chief Conservation of Forest, State of Rajasthan despite of the fact that an order was passed on 12.12.2019 that if no reply is filed by 13.12.2019, then the right to file reply shall stand closed. Subsequently on 23.01.2020, the Learned Counsel for Forest Department was directed to contact respondent no. 5, the Nodal Officer (Forest Conservation) to file reply within one week. It was also ordered that the concerning officer of the Forest Department shall remain present on the next date of hearing. Ultimately, reply on behalf of respondent no. 5 was filed on 07.02.2020.**

11. Reply on behalf of respondent nos. 1 and 4, Ministry of Environment, Forest and Climate Change was filed through the Deputy Inspector General of Forest. It has been stated in the reply that Forest Department, Government of Rajasthan had submitted the proposal for diversion of 5.9095 hectares forest land for mining in favour of M/s Hind Khanij to respondent no. 4 vide letter dated 30th November, 2000. Further it is stated that after careful consideration in-principle approval for diversion of said forest land was granted on 07.10.2003 by respondent no. 4 under Section 2 of the Forest (Conservation) Act, 1980. Further, it is stated that Forest Department, Government of Rajasthan had been reminded by respondent no. 4 on 17.02.2004 to submit the compliance of the conditions stipulated in in-principle approval. Respondent no. 4 then cancelled the mining lease approval on 16.05.2007, in accordance to para 4.14 of guidelines of Forest (Conservation) Act, 1980, due to non-compliance of conditions of in-principle approval within stipulated time. The applicant approached respondent no. 4, through Review Application, on 07.07.2008 and also by notice through his Counsel on 04.02.2013 to restore revocation on mining lease and for non-communication of respondent no. 4 to the applicant.

12. Respondent no. 4 then replied to the Notice dated 04.02.2013 vide its letter of 25.03.2013 that due to non-compliance of conditions of in-principle approval within stipulated time and according to para 4.14 of Guidelines of Forest (Conservation) Act, 1980, as approved by Hon'ble Supreme Court in I.A. No. 800 and 944 of Writ Petition

No. 202/1995 vide order dated 01.08.2003, the in-principle approval was revoked. Further it is stated that all these communications were done with the Nodal Officer, Rajasthan and concerned Divisional Forest Officer as there is no provision for direct communication by respondent no. 4 with the User Agency.

13. The respondent had then referred to para 4.14 of Guidelines of Forest (Conservation) Act, 1980, extensively and also order of the Hon'ble Supreme Court dated 01.08.2003. It is also stated that respondent no. 4 had again intimated the applicant vide letter dated 11.04.2019 and 28.05.2019 regarding revocation of mining lease and that there is no provision of direct communication of Central Government with the User Agency. The respondent no. 4 had also sought information and the factual position from the State Government, based on the field report, vide letter dated 11.04.2019, 28.05.2019 and 09.08.2019 but the field report as well as the compliance of in-principle approval are still awaited. On behalf of the State respondent, it has been concluded in the reply that the Tribunal be pleased to pass such further orders as it deem fit in the given circumstances of the case.

14. Though the Principal Secretary, Department of Mines and Geology, Government of Rajasthan, Director of Mines and Geology and Mining Engineer, District Karauli are respondent to the original application but respondent no. 6 Mining Engineer, Karauli has chosen to file a reply.

15. No reply has been filed to the contents of para 1,2,3, 4.1 to 4.5. With regard to contents of para 4.6 and 4.7, it has been submitted

that letter dated 08.06.2007 was received by respondent no. 6 from the office of Additional Director Mines, Nodal Officer, Forest (Udaipur) which mentioned about receipt of letter dated 16.05.2007 from the Ministry of Environment and Forest. Further it is submitted that from perusal of the said orders, it is clear that the communication dated 28.07.2007 which was returned by respondent no. 6 to the applicant was inconsonance of the above mentioned letters. No specific reply has been submitted in respect of contents of para 4.8 to 4.11, on the ground that the same does not pertain to respondent no. 6. It was prayed by respondent no. 6 that appropriate orders in the interest of justice may be passed by the Tribunal.

16. **A reply to the original application has been filed by respondent no. 5 Chief Conservator of Forest on 06.02.2020.**

Preliminary objection with regard to limitation has been raised stating that the applicant had the knowledge of revocation and therefore the original application is to be dismissed as being barred by limitation.

17. In respect of contents of para 1,2,3,4.1 and 4.2, it has been submitted that the same needs no reply from respondent no. 5 as they are formal in nature and they do not pertain to them. In regard to contents of para 4.3, it has been submitted by respondent no. 5 that they are not disputed and hence needs no reply. The respondents has submitted in relation to contents of para 4.5 that they are malafidely submitted and needs clarification. Further it has been submitted, in-principle approval

dated 07.10.2003 was communicated by Deputy Conservator of Forest (Central) to the Principal Secretary Forest, State of Rajasthan and a copy was also sent to Director (Forest) Conservation, MoEF, Nodal Officer, Forest Jaipur and DCF, Karauli. It is also submitted that a copy of the said approval was sent for necessary action to the office of Deputy Conservation of Forest and to the Additional Director and Nodal Officer, Mining Department, Jaipur, vide letter dated 04.05.2004.

18. As regard the contents of para 4.5 and 4.6, it has been submitted that the same pertain to MoEF and no specific reply is needed from respondent no. 5.

19. As regard to contents of para 4.7, it has been submitted that they are false and specifically denied. In respect to contents of para 4.8, 4.9, 4.10 and 4.11, it is submitted that no reply is needed as the same is not related to respondent no. 5.

20. In respect to contents of para 5 and 6, the respondent has denied the same and submitted that the application has no ground for relief prayed in it. Therefore, it is submitted that the application is liable to be dismissed.

21. After having considered the facts and contentions raised by the rival parties, we now proceed to consider the grievance raised by the applicant against the impugned order whereby the respondents revoked in-principle approval of diversion proposal. First grievance raised by the applicant is that the impugned order revoking in-principle sanction was premature. The provisions of Forest (Conservation) Act, 1980, clearly spells out as under:

“However, in cases where compliance of conditions stipulated in the in-principle approval is awaited for more than 5 (five) years from the State Governments, the in-principle approvals would summarily be revoked.”

22. In instant case, in-principle approval was revoked within 3 years and 9 months, whereas the aforesaid provision stipulates that in respect of compliance of the conditions laid down in the in-principle approval is to be awaited for 5 years. Further, it would not be out of place to mention here that in some cases, permission for in-principle approval has been granted for a period of 10 years. The order of Ministry of Environment and Forest, respondent no. 1 dated 21.09.2000, placed on record by the applicant, (Annexure 5) condition no. 6 lays down that the permission is valid for 10 years. However, as per the provisions under Forest (Conservation) Act, 1980, revocation of in-principle approval is to be made only after 5 years. Therefore the impugned order of revocation, in the instant case being made within 3 years and 9 months, is illegal and not permissible under law. Besides, such premature revocation has been made without affording any opportunity of hearing to the applicant. Above all, revocation order of 16.05.2007 was not even communicated to the applicant.

23. As regards the question of non-compliance of the conditions enumerated in the order of in-principle approval, it is a specific case of the applicant that neither in-principle approval dated 07.04.2003 was communicated by the Government of India, respondent no. 1 nor conveyed by the Chief Conservator of Forest/Forest Department of the State Government. It was due to non-communication, which could not be clearly controverted by

respondents, that the applicant was unable to comply with the requisite conditions of the in-principle approval. The contention raised by the respondent, as referred to in their replies, that they do not send any communication to the user agency, is on the face of it not correct as it is clearly revealed from the document placed on record by the applicant, relating to other persons, where copies of approval order has been sent to the user agency/miner. In-principle approval dated 21.09.2000 (Annexure 5) which is for three lease holders for mining in District Tonk, Rajasthan and order dated 24.01.2013 (Annexure 6) goes to show that the copies of the orders have been sent to the user agency. Therefore, inaction on the part of respondents in not communicating order of approval in-principle to the applicant is neither reasonable nor fair. It was for this reason that the applicant did not come to know about the conditions and could not comply them. In such a situation, the applicant neither had the occasion to comply with the conditions nor opportunity of hearing before passing of the order of revocation. In our considered opinion, non-communication to the applicant, on the part of the respondent, at the time of approval as well as at the time revocation is in gross violation of principle of natural justice and discriminatory.

24. Besides, the applicant filed a review application in the month of July, 2008 for recalling the order of revocation passed on 16.05.2007 and to restore in-principle approval. However, the said Review Application was not decided despite of persuasion, written as well as in person, by applicant from time to time. In response to

one of the letters submitted by the applicant on 04.02.2012 that in-principle approval letter was never received by him with the result that he was deprived from making compliance of the conditions laid therein, the respondents had replied on 25.03.2013 stating that all communications were done with the Nodal Office, Rajasthan as well as the concerning Divisional Forest Officer and no direct communication is to be made to the user agency. As mentioned above, in some cases direct communication had been made to the user agency, which clearly establishes that the respondents had adopted a policy of pick and choose which is wholly discriminatory and illegal. The applicant had further sent a reminder on 20.08.2014 to recall the revocation order and issue necessary directions.

25. When no steps were taken by the respondents, the applicant persuaded the matter in person with the Regional Office of MoEF at Lucknow where only assurance was given to him. As neither the Review Application was decided nor any reasoned order was passed in response to letters/reminders of the applicant, that he had filed an Original application (34/2018) before this Tribunal. As had transpired during the course of hearing, original application that the applicant withdrew the same to pursue the review application pending before respondent no. 1. Accordingly, the Tribunal granted liberty to the applicant.

Even thereafter, the matter could not conclude because no order was passed on the Review Application. Therefore, a notice for demand of justice was sent, on behalf of the applicant, on

12.03.2019, a reminder on 12.04.2019 and an application was filed on 13.05.2019 for deciding the Review Application. The applicant had also persuaded the matter by appearing in person at the Office of respondent in Delhi.

26. Ultimately, instead of deciding the Review Application, respondent no. 1 sent a communication on 11.04.2019 stating that for further clarification, the applicant may represent to the State Government. Such a direction was passed without deciding Review Application in accordance to law despite of the fact that the essence of the order passed by the Tribunal on 26.02.2019 in O.A. (34/2018) was that the pending Review Application be considered and decided.

27. The facts and circumstances of this case reveals that neither time was made available to the applicant for complying with the conditions incorporated in the approval nor any opportunity of hearing was given to him before revoking the same nor the Review Petition has been decided on merits so far. Thus, it leaves no room of doubt that in the instant case, respondents have failed to proceed in accordance to law i.e. to say, revoking in-principle approval prematurely; the same having not been communicated to the applicant; the Review application filed for recalling the revocation order has not been decided despite of several reminders and the order passed by the Tribunal while deciding the earlier original application on 26.02.2019 with liberty to the applicant to pursue the Review Petition have not been complied.

Despite of long persuasion, the respondents had chosen to respond only in the month of April, 2019 stating that for further

clarification applicant may represent before the State Government. This clearly shows that though the applicant had been constantly pursuing the matter since beginning, through letters and in person, only assurances had been given to him from time to time. He was made to shuttle between the State Government and the Ministry of Environment and Forest, Government of India. In such a situation it cannot be said that there had been any delay on the part of the applicant to raise his grievance, so as to deprive him from consideration of the case on merits and reject the same on the ground of limitation.

28. It is also revealed from the record that in-principle approval granted in favour of the applicant was revoked on 16.05.2007 (Annexure 4) but in subsequent reply by the Regional Office (Central) MoEF, Lucknow on 25.03.2013 it is stated that when compliance report was not received, the Regional Office had closed the proposal on 21.01.2010. In other words, the Regional Office, Lucknow had earlier issued an order of cancelling on 07.08.2007 which was premature as being done before the statutory period of five years but in their subsequent letter of 25.03.2013 it is stated that closing of the proposal was only on 21.01.2010. These facts further reflects the manner in which the orders have been passed and the steps taken by the respondents at the back of the applicant. The respondent themselves had not decided the Review Application, and kept it pending without any justification.
29. From the aforesaid reasons it is crystal clear that the respondents had not given any opportunity of hearing to the applicant as

orders/decision taken by them had not even been communicated to him. It is rather a case where respondent State and Government of India had been blaming each other on the question of communicating the orders to the applicant. Therefore, we are of the considered opinion that no fault lies on the part of applicant to make compliance of the conditions of in-principle approval dated 07.10.2003.

30. Consequently, the original application is allowed. The order of revocation of in-principal approval dated 16.05.2007 and that of 11.04.2019 deserves to be quashed and set aside. It is ordered that the applicant be permitted to comply with the conditions of in-principle approval within 6 months from the date of this order.

There shall be no order as to cost.

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Justice Raghuvendra S. Rathore
(Judicial Member)

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Satyawan Singh Garbyal
(Expert Member)

DATE: 19.03.2020
New Delhi