

Item No. 01

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

(By Video Conferencing)

Original Application No.45/2020(CZ)
(I.A. No.60/2021)

Mukesh Sharma

Applicant

Versus

State of Rajasthan & Ors.

Respondent(s)

Date of hearing: 15.11.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

Applicant: Mr. Manav Tanwani, Advocate

Respondent(s): Mr. Shoeb Hasan Khan, Advocate for the State of Rajasthan
Mr. Arvind Soni, Advocate for RSPCB
Mr. Ashwani Chobisa, Advocate for R - 11 to 15

ORDER

1. This application seeks remedial action against illegal mining in pasture land, within 10 km periphery of Sariska Tiger Reserve (STR), at village Baldevgarh, District Alwar, Rajasthan and against illegally putting of the overburden on pasture and *sivay chak* government land, in violation of environmental norms. The application also highlights illegal exploitation of water from natural water sources. We note that overlapping issue of illegal mining close to the STR has earlier been subject matter of consideration in Appeal No. 48/2016 (order dated 20.12.2018) and OA 154/2020. The issue has also been subject matter of consideration by the Hon'ble Supreme Court and there are guidelines of the MoEF&CC having

the effect of prohibiting mining. The issue raised being substantially covered by the earlier orders, question herein is of compliance of the said orders.

2. Vide order dated 31.07.2020, the Tribunal sought a factual report from a joint Committee consisting of:

- (i) Collector Alwar;
- (ii) District Mining Officer, Alwar;
- (iii) State Pollution Control Board.

3. On 14.10.2020 while considering the report filed in pursuance of above, the Tribunal observed that distance of mining from the STR was not specifically mentioned which was directed to be mentioned by the Divisional Forest Officer and the Chief Wildlife Warden. Same observation was made vide order dated 10.06.2021 while considering the reply filed by the State PCB and such distance was directed to be provided.

4. The matter was last considered on 07.07.2021. It was noted that the area in question was within Eco-sensitive Zone of the Sariska Tiger Reserve/ Sanctuary and the Eco-sensitive Zone of the Sariska Tiger Reserve/Sanctuary. Though, ESZ had not yet been notified, no mining was permissible in buffer zone of 10 kms in view of order of this Tribunal dated 20.12.2018 in Appeal No. 48/2016, *Nityendra Manav Vs State of Rajasthan and Ors.* as follows:

“It is the admitted position that the final notification of Eco-sensitive zone for Sariska Tiger Reserve/Sanctuary is yet to be issued by the MoEF. We, therefore, direct that all mining activities of any mineral will be stopped within 10 kms. of the boundary of Sariska Tiger Reserve/Wildlife Sanctuary till mining leases are cleared by the standing committee of the National Board of Wildlife. All the ECs of the mining leases may be referred to the standing Committee of the NBWL. In case MoEF issues final notification on Eco-sensitive Zone, the mining lease, which fall within the Eco-sensitive Zone will have to have

clearance of the standing committee of the NBWL. With this direction the present Appeal no. 48 of 2016 stands disposed of, with no order as to cost."

5. The Tribunal noted the report dated 20.07.2020 of the joint Committee to the effect that mining was still continuing though the Forest Department had issued various orders requiring the Mining Department to stop mining within the prohibited distance. The Tribunal noted the stand of the State PCB that draft ESZ has been prepared but not finalized. Stand of the DCF, Sariska Rajasthan was that 10 meters to 150 meters area from tiger reserve had to be taken to be Eco-sensitive area. Out of eight mines, following five mines were still operating at a distance ranging from 10 meters to 150 meters from the boundary of proposed ESZ. No action was being taken against such illegal mining:

Sl. No.	Name of Lessee	Distance from the Tiger Reserve	GPS
1	M.L.No.278/1988(R78/2007) Smt.Nirmala Sharma	100 meters	N.27°08'29.4" S76°23'00.5"
2	M.L.No.160/1987(R116/2007) Shri.Manoj Kumar Sharma	10 meters	N.27°08'32.4" S76°22'55.8"
3	M.L.No.167/1988(R72/2007) SA/S.S.Marble Shri Shishupal Sharma	10 meters	N27°08'39.9" S76°22'54.9"
4	M.L.No.341/1987(R107/2007) Shri Ashok Ajmera	150 meters	N.27°08'16.6" S76°22'26.3"
5	M.L.No.342/1987(R80/2007) Shri Vinod Kumar Ajmera	150 meters	N27°08'13.1" S76°22'25.7"

6. The Tribunal further noted the stand of the State that action will now be taken in terms of order of the Hon'ble Supreme Court in *Goa Foundation vs. Union of India*¹. Commercial mining in the ESZ was prohibited as per guidelines issued by the MoEF&CC. Observations in this regard are:

¹ (2011) 15 SCC 793

“12. Govt. of India, MoEF&CC has issued guidelines for declaration of ESZ around National Parks and Wildlife sanctuaries with direction to the State Governments to take necessary action and to finalise the Eco Sensitive Zones around National Parks and wildlife sanctuaries. Further, a Public Interest Litigation (PIL) was also filed in the Goa Foundation vide Writ Petition No. 460/2004 before the Hon’ble Supreme Court of India regarding the issue of declaration of ESZ and vide order dated 04.12.2006, the Hon’ble Supreme Court of India has directed the MoEF to give a final opportunity to the all States / Union Territories to response to the letter and that the State Government have to send their proposal within a time limit and it was also directed that there shall not be any further activities which are in prohibited category within the 10 Kms. zone of ESZ. The basic aim is to regulate certain activities around the National Parks and Wildlife Sanctuaries, so as to minimise the negative impact of such activities on the fragile eco system in-compassing the protected area. MoEF & CC, Government of India has also issued an OM regarding procedure for consideration of development projects located within 10 kms of National Parks/Wildlife sanctuary Vide F.No. 22-43/2018-IA.III dated 8th August 2019 wherein cognisance of the orders of the Hon’ble Supreme Court dated 04.08.2006 in the matter of T.N. Godavarman Thirumulupad Vs UOI in W.P. (C) NO. 202 of 1995 and dated 21.04.14 in the matter of Goa Foundation Vs. UOI in W.P. (C) 435 of 2012 have been taken and mentioned that proposals involving mining of minerals within ESZ (or) one kilometre from the boundary of National Parks and Sanctuary whichever is higher is prohibited.

13. Annexure-1, Sl. No.1 totally prohibits a commercial mining, thus, the mining within the ESZ is prohibited. Learned Counsel appearing for the applicant has submitted that inspite of above guidelines issued by the MoEF&CC, the State Authorities or local Administration are directly or indirectly permitting the illegal mining within the ESZ.”

7. The Tribunal accordingly directed that the activities prohibited in terms of the guidelines of the MoEF&CC must be strictly stopped and State PCB may also recover environment compensation on “Polluter Pays” principle. The direction is as follows:

“16. Accordingly, we direct that the activities which are prohibited in Annexure-1 of the guidelines, which was issued by the Ministry referred above dated 09.02.2011 and/or which are prohibited by the orders of the Honb’le Supreme Court must be strictly prohibited and complied with and further Local Administration, State Authorities, and Chief Wildlife Warden is directed to take necessary action to enforce the guidelines issued above. The State Pollution Control Board is directed to take necessary step and also calculate the Environmental Compensation according to law.”

8. With regard to action against vehicles used for transportation of illegally mined material, the Tribunal noted the earlier order of this Tribunal as follows:

“15. *Learned Counsel for the applicant has submitted that so many vehicles are involved in carrying the illegal sand mining and State Authorities are not taking proper action. He has also drawn the attention of the Bench, about the direction issued on 26.2.2021 by the Principal Bench of this Tribunal in O.A. 360/2015 National Green Tribunal Bar Association vs. Virendar Singh & Ors. with regard to the action being taken against the vehicles involved in illegal mining, relevant paras are quoted below:*

“8. *Another issue bearing on the enforcement mechanism is the action against the vehicles used in illegal sand mining. Seizure of such vehicles is required and release of seized vehicles lightly, defeats the purpose of the coercive measures. Since the vehicles are in a way weapon of offence, the same cannot be dealt with in the manner disputed property is dealt with under section 451 Cr. PC. by releasing the same in favour of the ostensible owner by taking an entrustment/indemnity bond/ sapurdginama. In Sujit Kumar Rana, (2004) 4 SCC 129 and order dated 26.03.2019 in Cr. A. 524/2019, State of Madhya Pradesh v. Uday Singh, it was held that special procedure for seizure and release of such vehicles prevails over the procedure under Section 451 Cr.P.C. This Tribunal earlier directed, in the case of illegal mining in Meghalaya that such vehicles should be released only on the payment of 50% of the showroom value. The same was affirmed by the Hon’ble Supreme Court in 2019 (8) SCC 177. Similar order was passed by the Tribunal on 05.04.2019 and dated 26.07.2019 in O.A. No. 670/2018, Atul Chouhan v. State of U.P., which stands affirmed by the Hon’ble Supreme Court vide order dated 07.05.2019 in C.A. No. 1590/2019. **Thus, the procedure under Cr.P.C. for release of vehicles on superdari without stringent conditions would not apply in respect of action taken for enforcement of Sustainable Guidelines issued under the Environment (Protection) Act, 1986 (EP Act) and for enforcement of orders of this Tribunal under Section 15 of the National Green Tribunal Act, 2010 (NGT Act).***

However, having regard to the difficulty expressed by the State that requirement to pay 50% of the showroom value of the vehicle was resulting in vehicles not being released at all, the earlier order was modified on 19.02.2020 to the effect that following scale of amount be recovered for release of the seized vehicles:-

Sr. No.	Category of Vehicle	Penalty Amount
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1	Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and less than 5 years old.	Rs. 4 lacs
2	Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and more than 5 years but less than 10 years old.	Rs. 3 lacs
3	For the remaining Vehicles older than 10 years/ Equipments/ Excavators which are otherwise legally permissible to be operated and not covered by Serial No. 1 and 2.	Rs. 2 lacs
<p>Note – I: On repetition of the offence by the same vehicle/equipment, Order dated 05.04.2019 will be applicable.</p> <p>Note – II: The option of release may be available for a period of one month from the date of seizure and thereafter, the vehicles may be confiscated and auctioned.</p>		

9. Following further directions were issued :-

“6. The State may issue an appropriate Office Order/Rule to the above effect and publish the same. Needless to say that any private contract between a financier and a debtor cannot affect the States’ sovereign power to protect the environment and take incidental coercive measure for enforcement of rule of law. Lien of the State will override any private interest. The above compensation regime will be over and above any existing Rules or provisions. The amount collected may be remitted to the State PCBs/PCCs for being utilized for restoration of the environment.

7. The above course of action will be permissible to all the States at their option.”

So far as the calculation of environmental compensation is concerned the guidelines have been provided in para 10,11 & 12 of the order quoted above.

9. In pursuance of order dated 7.7.2021, compliance report dated 15.11.2021 has been filed on behalf of the State Authorities to the effect that the illegally operating mines have been closed vide order dated 01.10.2021. The stand of the State PCB is that show cause notices were

issued to the PPs and in absence of satisfactory reply, consent was refused and closure order was passed against the concerned PPs.

10. We note that in the draft notification dated 04.03.2021 extent of Eco-sensitive area is mentioned as follows:

“Extent of Eco-sensitive zone in different directions (kilometres) as given below:-

Direction	Extent
<i>North</i>	<i>uniformly 1 kilometer</i>
<i>North-East</i>	<i>uniformly 0</i>
<i>East</i>	<i>0 to 1 kilometers</i>
<i>South-East</i>	<i>0 to 1 kilometers</i>
<i>South</i>	<i>100 meter to 1 kilometers</i>
<i>South-West</i>	<i>0 meter to 1 kilometers</i>
<i>West</i>	<i>100 meter to 1 kilometers</i>
<i>North-West</i>	<i>uniformly 1 kilometer</i>

11. It may be difficult to understand why 0 km distance is eco sensitive zone at some places. However, it cannot mean that mining is permissible anywhere beyond the said area. Appropriate EC or Consent orders have to specify location for mining. List of activities prohibited is mentioned in the said draft notification as follows:

Sl. No.	Activity	Description
A. Prohibited Activities		
1.	Commercial mining, stone quarrying and crushing units	<p>(a) All new and existing mining (minor and major minerals), stone quarrying and crushing units shall be prohibited with immediate effect except for meeting the domestic needs of bona fide local residents including digging of earth for construction or repair of houses within Eco-sensitive Zone;</p> <p>(b) The mining operations shall be carried out in accordance with the order of the Hon’ble Supreme Court dated 4th August, 2006 in the matter of</p>

		<p>T.N. Godavarman Thirumulpad Vs. UOI in W.P.(C) No. 202 of 1995 and dated 21st April, 2014 in the matter of Goa Foundation Vs. UOI in W.P.(C) No. 435 of 2012.</p>
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12. We are of the view that the Chief Wildlife Warden/MoEF&CC need to clarify the boundaries to avoid any confusion.

13. We note that proceedings before this Tribunal in OA No. 154/2020 are based on News item published on 27.07.2020 in the local daily “Times of India” titled “**Forest guard mowed down by ‘mining mafia’ in Sariska**”. Therein, the Tribunal considered the matter in the light of report of the DCF, Sariska Tiger Reserve, Rajasthan dated 15.02.2021 giving list of mining within 10 kms of the STR and steps taken to control illegal mining. The Tribunal also noted the orders of the Hon’ble Supreme Court about declaration of ESZ areas and earlier orders of this Tribunal. The Tribunal constituted a joint Committee and further action is to be taken after receipt of report of the joint Committee. The operative part of the order is reproduced below:

“3. Accordingly, DCF, Sariska Tiger Reserve, Rajasthan has filed a report on 15.02.2021 giving the list of mining within 10 kms. of the Sariska Tiger Reserve with the steps taken to control illegal mining in the said eco sensitive zone. The annexure to the report is an action taken report by Member Secretary, Forest Conservation and Director, Sariska Tiger Reserve, Alwar to the effect that eco sensitive zone of Sariska Tiger Reserve has not been notified yet. 157 mines exist within 10 km. of the said Tiger Reserve. There is also a report by the State PCB dated 29.12.2020 to the effect that out of 157 mining leases, 69 leases are having valid consent to operate from the State PCB, 17 have applied for consent to operate and remaining 71 have not applied for consent to operate. 88 mines are not working.

4. We have heard learned Counsel for the appearing parties. Order of the Hon’ble Supreme Court dated 11.12.2018, in WP 2020/1995, TN Godavarman v. UOI, is as follows:

“The learned ASG has informed us that there are 104 National Parks and 558 Wildlife Sanctuaries making a total of 662 National Parks and Wildlife Sanctuaries in the country.

The proposals for declaring areas around these National Parks and Wildlife Sanctuaries as Eco Sensitive Zone have been received from State Governments / UT Administrations for 641 National Parks and Wildlife Sanctuaries. No proposals have been received in respect of 21 National Parks and Wildlife Sanctuaries.

The proposals have been accepted and Notification has been issued in respect of 289 National Parks and Wildlife Sanctuaries as on 26.11.2018 and draft Notification has been prepared in respect of 206 National Parks and Wildlife Sanctuaries.

The declaration with regard to Eco Sensitive Zone is under process with the Ministry of Environment, Forests and Climate Change (MoEF) as well as with the State Governments in respect of 146 National Parks and Wildlife Sanctuaries.

We expect the Ministry of Environment, Forests and Climate Change to actively pursue the preparation of the draft Notification and to issue a final Notification at the earliest.

The proposals for 21 National Parks and Wildlife Sanctuaries in respect of which proposals have not yet been received by the MOEF are as follows:-

ASSAM

- 1. Pobitora Sanctuary***

JAMMU AND KASHMIR

- 2. Hemis High Altitude National Park***
- 3. Kishtewar National Park***
- 4. Changthang Sanctuary***
- 5. Hokersar Sanctuary***
- 6. Trikuta Sanctuary***

KARNATAKA

- 7. Jogimatti Sanctuary***
- 8. Thimlapura Sanctuary***
- 9. Yadahalli Chinkara Sanctuary***

MAHARASHTRA

- 10. Deolgaon Rehekuri Sanctuary***
- 11. Thane Creek Flamingo Sanctuary***
- 12. Malvan Marine Sanctuary***

MANIPUR

- 13. Siroi National Park***
- 14. Khongjaingamba Ching Sanctuary***

MEGHALAYA

15. Baghmara Pitcher Plant Sanctuary

NAGALAND

16. Fakim Sanctuary

17. Puliebadze Sanctuary

18. Rangapahar Sanctuary

UTTAR PRADESH

19. Dr. Bhimrao Ambedkar Bird Sanctuary

20. Pilibhit Sanctuary

WEST BENGAL

21. Jorepokhri Sanctuary

It is submitted by the learned Amicus that this issue has been pending since sometime in December, 2006. 12 years have gone-by but no effective steps have been taken by the State Governments in respect of the National Parks and Wildlife Sanctuaries mentioned above.

Under the circumstances, we direct that an area of 10 Kms around these 21 National Parks and Wildlife Sanctuaries be declared as Eco Sensitive Zone by the MoEF. The declaration be made by the MoEF at the earliest.

Liberty is granted to the State Governments to move an application for modification of this order along with proposal only two weeks after submission of the proposals to the MoEF.”

5. Following the above order, this Tribunal vide order dated 20.12.2018 in Appeal No. 48/2016, Nityendra Manav vs. UOI, prohibited mining within 10 km of Sariska Tiger Reserve and quashed the EC in question against which appeal was filed before the Tribunal. Relevant part of the order is reproduced below:

“ xxx.....xxx.....xxx

Learned Counsel for respondent brought to our notice an order issued by Hon'ble Supreme Court on 11-12-2018 in WP (C) No. 202/1995 wherein Hon'ble Supreme Court had ordered that in respect of 21 National Parks/Sanctuary, the Eco-sensitive zone will be 10 kms as the proposal for the same had not been sent to MoEF by the States. The Learned Counsel for the respondent tried to make a distinction that in this case the Government of Rajasthan had sent the proposal to MoEF and it is pending consideration by MoEF.

It is the admitted position that the final notification of Eco-sensitive zone for Sariska Tiger Reserve/Sanctuary is yet to be issued by the MoEF. We, therefore, direct that all mining activities of any mineral will be stopped within 10 kms of the boundary of Sariska Tiger Reserve/Wildlife Sanctuary till mining leases are cleared by the standing committee of the National Board of Wildlife. All the ECs of the mining leases may be referred to the

standing Committee of the NBWL. In case MoEF issues final notification on Eco-sensitive Zone, the mining lease which fall within the Eco-sensitive Zone will have to have clearance of the standing committee of the NBWL.”

6. In view of above, it is necessary for the authorities to take further remedial measures to enforce the law of the land. **The State PCB and District Magistrate, Alwar may take steps to stop operation of mining leases, operating illegally, without requisite consents and also to examine whether the leases for which consents are given are permissible. The State PCB may also recover compensation for damage to the environment by illegal mining activities, following due process. on ‘Polluter Pays’ principle.**

7. Though counsel appears for the MoEF&CC, she says that she has no instructions. **Let the State of Rajasthan and the MoEF&CC take further steps in the light of order of the Hon’ble Supreme Court for issuance of requisite notification for declaring the area around the Tiger Reserves to be eco sensitive zone for protection of the said Reserve. The State of Rajasthan may furnish the requisite proposal in the light of Guidelines dated 09.02.2011 issued by the MoEF&CC to all the Chief Wildlife Wardens for eco sensitive zones.**

8. We further direct constitution of a joint Committee comprising MoEF&CC, CPCB, State PCB, Chief Wildlife Warden, SEIAA, Rajasthan and District Magistrate, Alwar to conduct a study about the carrying capacity of the area to sustain the mining activities on ‘Sustainable Development’ principle. The CPCB and State PCB will be the nodal agency for compliance and coordination. The joint Committee may give its report within three 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.

9. The MoEF&CC and State of Rajasthan may also file their respective action taken reports in the matter 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, before the next date.”

14. From the above, it is seen that in the present case, the mines were operating in violation earlier order of this Tribunal dated 20.12.2018 which still holds the field and also against the guidelines of the MoEF&CC mentioned above. The State PCB has refused consent to operate and State Authorities have taken action to close the illegally operating mines. Such orders are statutorily appealable under the NGT Act, 2010 and no such appeal has been filed. In absence of such appeal having been filed, prima-

facie, there is nothing wrong with the orders passed by the State PCB as well as other authorities, in compliance of operational guidelines of MoEF&CC as well as earlier order of this Tribunal which are still operating. We asked learned Counsel for the Project Proponents (PPs) whether earlier orders of this Tribunal prohibiting mining in buffer zone of the ESZ are still operative to which only answer is that the said orders have been challenged but neither stayed nor set aside. It is also not disputed that MoEF&CC guidelines do not allow mining.

15. Accordingly, in view of order of closure of illegally operating mines and refusal of consent to operate, the statutory regulators may take further action against illegal mining and transportation of illegally mined material, as per law, by way of prosecution and recovery of compensation on "Polluter Pays" principle. We also note that the photographs show that overburden from the mines is being illegally dumped on common land outside leased area for which the State PCB needs to take further action. Observations in the report of the State PCB that the quantity of the overburden is negligible cannot be accepted and need to be revisited by some higher-level officer. The conduct of the officer giving the report that the overburden is negligible is open to scrutiny by the Member Secretary, State PCB. The Chief Wildlife Warden, Rajasthan/MoEF&CC may consider rationalizing/clarifying any confusion in the boundaries of ESZ in the light of observations in paras 11 and 12 above.

The application is disposed of.

In view of order passed in the main application, IA No. 60/2021 also stands disposed of.

A copy of this order be forwarded to the Member Secretary, State PCB, Chief Wildlife Warden, SEIAA, Rajasthan and MoEF&CC by e-mail for compliance.

Adarsh Kumar Goel, CP

Sheo Kumar Singh, JM

Sudhir Agarwal, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

Dr. Arun Kumar Verma, EM

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