

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

**Original Application No. 173 of 2018  
(Earlier O.A. No. 89/2017) (EZ)**

**IN THE MATTER OF:**

**Sudarsan Das Vs. State of West Bengal & Ors.**

**CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

**Present: Applicant Mr. Ritwick dutta and Mr. Utkarsh Jain, Adv.**  
**Respondent: Ms. Madhumita Bhattacharyajee, Ms. Urmila Kar Purkayastha and Mr. Vidur Kamra, Advs. for State of West Bengal  
Mr. Soumyajit Pani and Mr. Chittaranjan Singh, Advs. for State of Odisha**

	<b>Date and Remarks</b>	<b>Orders of the Tribunal</b>
	<p style="text-align: center;"><b>Video Conferencing Item No. 03</b></p> <p style="text-align: center;"><b>September 04, 2018</b></p> <p style="text-align: center;"><b>ss &amp; dv</b></p>	<p>1. In this application, the applicant has highlighted the large scale unchecked mechanized sand mining being carried out on the banks of river <i>Subarnarekha</i> by use of suction pumps, earth movers and netting in an area falling under Jaleshwar Tehsil, Balasore District, Odisha on the Odisha – West Bengal Boarder area. It is stated that the sand is also extracted from the river bed by people from the neighbouring district of West Medinapur in West Bengal and in villages of Bilaspur, Gopalpur, Mankidia, Kuanrpur, Totapada, Beherasahi, Praharajpur, Dakshina-praharajpur and Makrampur falling within Balasore district of Odisha.</p> <p>2. It is alleged that sand mining is being carried out through sumps mining method whereby ground water is allowed to seep into excavation of 40 to 50 feet beneath the river and collected in sumps and pumped away for disposal. Such excavation and extraction is being carried out in this manner entirely from the river bed. Neither the Environmental Clearance has been obtained from the</p>

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their respective areas as an interim measure. It was also decided to impose complete prohibition against the use of sump pumps for lifting the sand.

4. The applicant states that despite such decisions and in spite of being fully aware of the illegalities, the authorities have failed to act in accordance with the decisions. Decision to prohibit mechanical mining by use of pumps also was not acted upon on account of helplessness expressed by the Collector, Balasore, in carrying out such decision due to violent obstructions caused by the sand mafia and likelihood of there being law and order situation. It is stated that although various letters were exchanged between the authorities in the State of Odisha and West Bengal for carrying out demarcation exercise, no such exercise has been carried out. The area where such illegal mining is being carried out is stated to be within 5 kms. distance of inter-state boundary between Odisha on one side of the river and West Bengal on the other side.

5. As already noted, the applicant has highlighted the adverse ecological impact of sand mining from the bed with the use of heavy machineries by the mining operators to extract sand from the river bed. Highlighting the adverse impact of sand mining with the use of sump pumps, it is stated that the sump pumps extract sand from about 40 to 50 feet beneath the water which create deep gorges in the river bed causing landslides and erosion of the river bank during monsoon endangering the villages situated along the river. It is stated that the banks of the river *Subarnarekha* are highly prone to

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stated that 32 sand mining blocks had been put out on tender to settle through e-auction of which four blocks had been granted mining leases and 12 issued with letters of intent. The decision to settle the sand blocks is curiously stated to be to prevent illegal mining.

12. An affidavit was also filed on behalf of the Department of Water Resources, Government of Odisha, on 17<sup>th</sup> November, 2017 conceding the deleterious effect of sand mining by suction technology through deep inserting sump pumps, but at the same time stating that such illegal in-stream mining of sand was being carried out by illegal sand miners from the State of West Bengal.

13. Upon consideration of the facts and circumstances as revealed from the averments contained in the original application and the various affidavits filed by the respondents, we find that the authorities have completely failed in discharging their responsibility in preventing illegal sand mining in the area in question. The magnitude of the illegal mining carried out openly with impunity by the unscrupulous sand miners manifests total lack of regulation and blatant violation of the rules and regulations in place, governing the sand mining. Apart from registering stray cases under the Motor Vehicles Act, no action has been taken under any of the relevant environmental laws. Even the fine imposed are meagre. No action whatsoever appears to have been taken for seizure of the vehicles and machinery as directed by the Tribunal. The affidavits filed by the District Magistrate and on behalf of Department of Water Resources, Government of Odisha, are bereft of any

	<p><b>Video Conferencing Item No. 03</b></p> <p><b>September 04, 2018</b></p> <p><b>ss &amp; dv</b></p>	<p>meaningful action towards prevention of illegal sand mining. We, therefore, have no hesitation in holding that there is complete failure of law with regard to the prevention of such illegalities in the States concerned. The facts and circumstances indubitably establish that the mine operators have neither obtained Environment Clearance under the EIA Notification, 2006 nor consents under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. It is also not clear as to whether such statutory clearances have been obtained by the authorities in West Bengal before leasing out the sand block as stated in the affidavit of the District Magistrate, Paschim Midnapur district, West Bengal. Even the provisions of West Bengal Minor Mineral Concession Rules, 2016 incorporating the directions issued by the Hon'ble Supreme Court in <i>Deepak Kumar's</i> case undeniably have not been complied with. Thus, the illegalities are glaring. No prosecution appears to have been initiated nor recovery effected for loss of royalties nor compensation for damage to the environment.</p> <p>14. There can be no two views that an effective institutional monitoring mechanism is required not only at the stage when Environmental Clearance is granted but also at subsequent stages. In the light of the experience gained, the MOEF&amp;CC has published Sustainable Sand Mining and Management Guidelines 2016, after extensive consultation with the States and the stake holders for about one year. The object of the guidelines is to restore and maintain ecology of rivers.</p>
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	<p><b>Video Conferencing Item No. 03</b></p> <p><b>September 04, 2018</b></p> <p><b>ss &amp; dv</b></p>	<p>factors in the degradation of stream fisheries. However, in-stream mining may contribute additional sediment to downstream reaches due to the disruption of substrate stability. Once sediment enters the stream, it is best to let natural geomorphological and hydrological processes reach a dynamic equilibrium, rather than further exacerbating the situation by additional disturbance.</p> <p>15. According to the guidelines, following consideration are required to be kept in mind for sustainable sand mining and gravel mining :-</p> <p><i>“a) Parts of the river reach that experience deposition or aggradation shall be identified first. The Lease holder/ Environmental Clearance holder may be allowed to extract the sand and gravel deposit in these locations to manage aggradation problem.</i></p> <p><i>b) The distance between sites for sand and gravel mining shall depend on the replenishment rate of the river. Sediment rating curve for the potential sites shall be developed and checked against the extracted volumes of sand and gravel.</i></p> <p><i>c) Sand and gravel may be extracted across the entire active channel during the dry season.</i></p> <p><i>d) Abandoned stream channels on terrace and inactive floodplains be preferred rather than active channels and their deltas and flood plains. Stream should not be diverted to form inactive channel.</i></p> <p><i>e) Layers of sand and gravel which could be removed from the river bed shall depend on the width of the river and replenishment rate of the river.</i></p> <p><i>f) Sand and gravel shall not be allowed to be extracted where erosion may occur, such as at the concave bank.</i></p> <p><i>g) Segments of braided river system should be used preferably falling within the lateral migration area of the river regime that enhances the feasibility of sediment replenishment.</i></p> <p><i>h) Sand and gravel shall not be extracted within 200 to 500 meter from any crucial hydraulic structure such as pumping station, water</i></p>
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intakes, and bridges. The exact distance should be ascertained by the local authorities based on local situation. The cross-section survey should cover a minimum distance of 1.0 km upstream and 1.0 km downstream of the potential reach for extraction. The sediment sampling should include the bed material and bed material load before, during and after extraction period. Develop a sediment rating curve at the upstream end of the potential reach using the surveyed cross-section. Using the historical or gauged flow rating curve, determine the suitable period of high flow that can replenish the extracted volume. Calculate the extraction volume based on the sediment rating curve and high flow period after determining the allowable mining depth.

i) Sand and gravel could be extracted from the downstream of the sand bar at river bends. Retaining the upstream one to two thirds of the bar and riparian vegetation is accepted as a method to promote channel stability.

j) Flood discharge capacity of the river could be maintained in areas where there are significant flood hazard to existing structures or infrastructure. Sand and gravel mining may be allowed to maintain the natural flow capacity based on surveyed cross-section history.

k) Alternatively, off-channel or floodplain extraction is recommended to allow rivers to replenish the quantity taken out during mining.

l) The Piedmont Zone (Bhabhar area) particularly in the Himalayan foothills, where riverbed material is mined, this sandy-gravelly track constitutes excellent conduits and holds the greater potential for ground water recharge. Mining in such areas should be preferred in locations selected away from the channel bank stretches.

m) Mining depth should be restricted to 3 meter and distance from the bank should be 3 meter or 10 percent of the river width whichever less.

n) The borrow area should preferably be located on the river side of the proposed embankment, because they get silted up in course of time. For low embankment less than 6 m in height, borrow area should not be selected within 25 m from the toe/heel of the embankment. In case of higher embankment the distance should not be less than 50 m. In order to obviate development of flow parallel to embankment, cross bars of width eight times the depth of borrow pits spaced 50 to 60 meters centre-to-centre should be left in the borrow pits.

o) Demarcation of mining area with pillars and geo-referencing should be done prior to start of

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enumerated at Paragraph (i) above and issue them to the mine lease holder through the District Collector. Once these Transport Permits or Receipts are issued, they would be uploaded on the server against that mine lease area. Each receipt should be preferably with pre-fixed quantity, so the total quantity gets determined for the receipts issued. When the Transport Permit or Receipt barcode gets scanned and invoice is generated, the particular barcode gets used and its validity time is recorded on the server. So all the details of transporting of mined out material can be captured on the server and the Transport Permit or Receipt cannot be reused.

(v) The staff deployed for the purpose of checking of vehicles carrying mined mineral should be in a position to check the validity of Transport Permit or Receipt by scanning them using website, Android Application and SMS.

(vi) In case the Vehicle breakdown, the validity of Transport Permit or Receipt shall be extended by sending SMS by driver in specific format to report breakdown of vehicle. The server will register this information and register the breakdown. The State can also establish a call centre, which can register breakdowns of such vehicles and extend the validity period. The subsequent restart of the vehicle also should be similarly reported to the server/call centre.

(vii) The route of vehicle from source to destination should be tracked through the system using check points, Radio-frequency identification (RFID) Tags, and Global Positioning System (GPS) tracking.

(viii) The system shall enable the Authorities to develop periodic report on different parameters like daily lifting report, vehicle log/history, lifting against allocation, and total lifting. The system can be used to generate auto mails/SMS. This will enable the District Collector/Magistrate to get all the relevant details and will enable the authority to block the scanning facility of any site found to be indulged in irregularity. Whenever any authority intercepts any vehicle transporting illegal sand, it shall get registered on the server and shall be mandatory for the officer to fill in the report on action taken. Every intercepted vehicle should be tracked.”

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mechanism for effective monitoring of sand and gravel mining which may also take care of mining done without any Environmental Clearance as well as mining done in violation of Environmental Clearance conditions.

vii. The Mining Department may make a provision for keeping apart atleast 25% of the value of mined material for restoration of the area affected by the mining and also for compensating the inhabitants affected by the mining.

viii. One of the conditions of every lease of mine or minerals would be that there will be independent environmental audit atleast once in a year by reputed third party entity and report of such audit be placed in public domain.

ix. In the course of such environmental audit, a three member committee of the local inhabitants will also be associated. Composition of three members committee may preferably include ex-servicemen, former teacher and former civil servant. The Committee will be nominated by the District Magistrate.

26. Such steps may be worked out within two months and circulated to all States. The Mechanism may provide for a report of implementation from the concerned States every quarter. The matter may be reviewed after every six months by the MoEF&CC.

27. The direction with regard to setting up of dedicated institutional mechanism for monitoring of conditions of Environmental Clearance as granted under EIA

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undertaken strictly in accordance with the provisions of EIA Notification, 2006, MoEF Notification dated 15<sup>th</sup> January, 2016 and the Sustainable Sand Mining Management Guidelines, 2016. They must also ensure that no sand mining is permitted without due compliance of Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 as well as regulations governing clearances by the Central Ground Water Authority. The District Administration must be held accountable for any failure.

(iii) District Magistrates and Superintendents of Police, Balasore district in Odisha and Paschim Medinapur, West Bengal, respectively, shall seize all sump pumps, other machinery, tools, vehicles, etc. used for carrying out illegal sand mining.

(iv) Apart from instituting appropriate criminal proceedings against those carrying out illegal mining, exemplary penalty shall be imposed against them by the concerned District Magistrates within three months from today to cover the cost of restoration of environment and to compensate the victims.

(v) The Chief Secretaries of the two States shall also get prepared jointly a detailed restoration plan for river Subarnarekha and its river beds for which a Committee of experts shall be constituted from independent institutions, i.e., the CPCB, Indian School of Mines, Dhanbad and the respective State Pollution Control Boards as members. Such

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constitution may take place within one month.

(vi) The Expert Committee shall carry out detailed study and submit the restoration plan, as far as may be practicable, within three months after its constitution.

(vii) The Committee shall also get the assessment done through Indian Council of Forestry Research and Education, Dehradun of the ecological damage on account of illegal mining by incorporating the following components:

a) Cost of river bed material.

b) Cost of ecological restoration.

c) Net present value of the future ecosystem services foregone.

(viii) The above steps may be facilitated by the Regional Office of the CPCB as nodal officer, by coordinating with the Chief Secretaries of the two States.

(ix) The damage suffered by the inhabitants caused by the illegal mining may also be assessed by the above Committee, which shall form a separate component of the Restoration Plan for river Subarnarekha as per direction No. (v) above. Cost of restoration plan shall be recovered as environmental compensation from the illegal miners, to be identified by the District Magistrate. The component of the compensation in respect of damages suffered by the inhabitants may be credited with District Legal Services Authority. The District Legal Services Authority may disburse the same to the victims of illegal mining, after proper

	<p style="text-align: center;">Video Conferencing Item No. 03</p> <p style="text-align: center;">September 04, 2018</p> <p style="text-align: center;">ss &amp; dv</p>	<p style="text-align: center;">identification.</p> <p style="text-align: center;"><b><u>OVERSIGHT AUTHORITY IN RESPECT OF STEPS TO BE TAKEN IN THE STATES OF WEST BENGAL AND ODISHA</u></b></p> <p>30. Justice R.K. Merathia, former Judge of Jharkhand High Court, will act as Oversight Authority (O.A.) for execution of the above directions. He may be provided requisite logistic support for performing his duties by the State of West Bengal. He may also be provided adequate security for visit to the site as and when necessary. The O.A. will be entitled to issue appropriate directions for resolving any issue which may arise in the course of execution of the above directions subject to any objection which may be decided by this Tribunal. The respective District Magistrates in the States of West Bengal and Odisha shall provide the working secretariat as and when the O.A. desires in their respective jurisdiction. The States of West Bengal and Odisha shall provide all logistic support to the O.A. for the purpose of effective discharge of its functions. The O.A. will be entitled to honorarium of Rs. 2.25 Lakhs per month. The payment may be initially made by the State of Odisha followed by the State of West Bengal and alternatively thereafter by the two States.</p> <p>i. The Oversight Authority will take the following steps:</p> <ul style="list-style-type: none"> <li>• Take stock of all actions taken so far.</li> <li>• Prepare time bound action plan to deal with the problem and ensure its implementation.</li> </ul> <p>ii. The O.A. may requisition services of such technical experts as may be necessary and may also carry out visits to sites whenever necessary. The O.A.</p>
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	<p><b>Video Conferencing Item No. 03</b></p> <p><b>September 04, 2018</b></p> <p><b>ss &amp; dv</b></p>	<p>will be entitled to all logistic support for performing these functions which shall be provided by the respective States of West Bengal and Odisha.</p> <p>iii. The O.A. may also set up website for receiving and giving information on subject.</p> <p>iv. The O.A. may also involve educational institutions for awareness and feedback about results.</p> <p>v. All authorities concerned in the States of West Bengal and Odisha shall cooperate and coordinate with the O.A. The O.A. can seek such technical assistance as may be required from any relevant authority.</p> <p>vi. The Chief Secretaries of States of Odisha and West Bengal to provide all facilities to said O.A. to perform its functions. The O.A. may send its periodical reports to the Tribunal by e-mail.</p> <p>vii. The O.A. may assume its charge within two weeks from today. The O.A. may prepare Action Plan which shall have targets of ensuring compliance.</p> <p>viii. The O.A. will be free to take up all incidental issues. The O.A. will be free to seek any further directions from this Tribunal by e-mail.</p> <p>ix. The District Magistrates of the concerned Districts in the States of West Bengal and Odisha will be the coordinators for their respective Districts.</p> <p>31. The O.A. will initially function for six months and send his reports to this Tribunal by e-mail as and when necessary. First report may be preferably sent within three months.</p>
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	<p><b>Video Conferencing Item No. 03</b></p> <p><b>September 04, 2018</b></p> <p><b>ss &amp; dv</b></p>	<p>32. The applicant may furnish a set of papers to the observer. The Registrar, Kolkata Bench may coordinate the working of the observer.</p> <p>33. The application is disposed of.</p> <p>34. A copy of this order be sent to all concerned authorities by e-mail. The concerned authorities may send response by e-mail at filing.ngt@gmail.com.</p> <p>35. To consider the report which may be received in pursuance of the above directions, the matter may be listed in second week of February, 2019.</p> <p>....., CP (Adarsh Kumar Goel)</p> <p>....., JM (Dr. Jawad Rahim)</p> <p>....., JM (S.P. Wangdi)</p> <p>....., EM (Dr. Nagin Nanda)</p> <p style="text-align: right;">04.09.2018</p>
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