

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

Original Application No. 360/2015
WITH
Original Application No. 366/2015
(M.A. No. 02/2019)
WITH
Original Application No. 368/2015
(M.A. No. 16/2019 & M.A. No. 170/2019)
WITH
Original Application No. 173/2018
(Earlier O.A. No. 89/2017 (EZ)
(I.A. No. 76/2019)
WITH
Original Application No. 874/2018
WITH
Original Application No. 44/2016
WITH
Original Application No. 517/2015
WITH
Original Application No. 550/2015
WITH
Original Application No. 530/2016
WITH
Original Application No. 272/2016
WITH
Original Application No. 481/2016
WITH
Original Application No. 540/2015
WITH
Original Application No. 90/2016
WITH
Execution Application No. 40/2017
IN
O.A. No. 517/2015
WITH
Original Application No. 671/2017
(Earlier O.A.No.123/2014)

National Green Tribunal Bar Association

Applicant(s)

Versus

Virender Singh (State of Gujarat)

Respondent(s)

WITH

National Green Tribunal Bar Association

Applicant(s)

Versus

Dr. Sarvabhoun Bagali (State of Karnataka) Respondent(s)
WITH
National Green Tribunal Bar Association Applicant(s)

Versus

Dr. Sarvabhoun Bagali (State of Karnataka) Respondent(s)
WITH
Sudarsan Das Applicant(s)

Versus

State of West Bengal & Ors. Respondent(s)
WITH

News item published in "The Tribune" Authored by Arun Sharma

Titled

"Mounds of sand on Sutlej banks, mining mafia digs in"

WITH

Mushtakeem Applicant(s)

Versus

MoEF& CC & Ors. Respondent(s)
WITH
Sandeep Kumar Applicant(s)

Versus

Ministry of Environment, Forests and Respondent(s)
Climate Change & Ors.
WITH
Virender Kumar Applicant(s)

Versus

Ministry of Environment, Forests and Respondent(s)
Climate Change & Ors.
WITH
Sandeep Kumar Applicant(s)

Versus

Ministry of Environment, Forests and Respondent(s)
Climate Change & Ors.
WITH
M/s Ganga Yamuna Mining Co. Applicant(s)

Versus

State of Haryana & Ors. Respondent(s)

WITH
Joginder Singh Applicant(s)

Versus

Ministry of Environment & Forest & Ors. Respondent(s)

WITH
Ved Pal Singh Applicant(s)

Versus

Ministry of Environment and Forests & Ors. Respondent(s)

WITH
Chander Mohan Uppal Applicant(s)

Versus

State of U.P. & Ors. Respondent(s)

WITH
Sandeep Kumar Applicant(s)

Versus

Ministry of Environment, Forest and
Climate Change & Ors. Respondent(s)

WITH
Himmat Singh Shekhawat Applicant(s)

Versus

State of Rajasthan & Ors. Respondent(s)

(Compliance Reports in O.A. No. 306/2015 by State of Madhya Pradesh, Gujarat and CPCB, O.A. No. 366/2015 by State of Karnataka, O.A. No. 173/2018 by State of West Bengal and State of Odisha and Justice R.K.Merathia, O.A. No. 44/2016 by State of Uttar Pradesh and State and Haryana and O.A 671/2017 by State of Himachal Pradesh and Rajasthan)

Date of hearing: 26.07.2019

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

For Applicant(s): Mr. Raj Panjwani, Senior Advocate
Ms. Meera Gopal, Mr. Sany Antony, Mr. Aagney Sail, Mr. Sarvan Kumar, Advocates

For Respondent (s): Ms. Vipra Bhardwaj, Advocate for CPCB
Mr. Aagney Sail, Advocate for R-1 (in O.A. No. 366/2015 & 368/2015)
Ms. Madhumita Bhattacharjee, Advocate for State of West Bengal
Mr. Saumyajit Pani, Advocate for State of Odisha

Mr. Vikas Mahajan, AAG for State of HP
Mr. Rahul Khurana, Advocate for State of Haryana
Ms. Padhmalakshmi Iyengar, AAG, State of Rajasthan
Mr. Ankit Verma, Advocate for State of UP
Mr. Jitendra Kumar Upadhyay, Director, Mines & Geology, Rajasthan
Mr. Nivesh Kumar alongwith Principal Secretary, Mines & Mineral, State of MP

ORDER

1. The common question for consideration in the group of matters is the remedial action against illegal sand mining in violation of direction of the Hon'ble Supreme Court in *Deepak Kumar Vs. State of Haryana & Ors. (2012) 4 SCC 629*. In the said judgement, degradation of environment on account of unregulated sand mining has been noted in detail. Since even after the said judgement, such sand mining was going on, various petitions were filed before this Tribunal and have been dealt with in the last six years by series of orders starting from 05.08.2013¹.
2. The Ministry of Environment, Forest & Climate Change (MoEF&CC) issued Sustainable Sand Mining Management Guidelines 2016 (**2016 Guidelines**), vide amendment notification dated 15.01.2016 to the Environment Impact Assessment Notification, 2006.
3. On 04.09.2018, in *O.A No. 173/2018, Sudarsan Das v. State of West Bengal & Ors*, the Tribunal considered the matter in detail and found that the 2016 Guidelines needed revision in the light of September, 2016 report of the High Powered Committee noted therein and the observations in the said order so that there is mining surveillance

¹ In O.A. No 38/2015

system, safeguards against degradation of environment, mechanism to evaluate loss to the ecology, effective monitoring and provision for restoration of the environment and compensation to the inhabitants.²

4. The MoEF&CC was to furnish a report by 31.12.2018. The States of West Bengal and Odisha were also directed to demarcate the boundaries for regulating grant of sand mining leases and take other remedial action.
5. The Tribunal reviewed the matter comprehensively vide order dated 05.04.2019 with regard to issues of illegal sand mining in all the states. Some of the observations are:-

“The Hon’ble Supreme Court observed that absence of regulation of such mining was not justified as it was threat to bio-diversity, could destroy riverine vegetation, cause erosion, pollute water sources, badly affecting riparian ecology, damaging ecosystem of rivers, safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spell disaster for the conservation bird species, increase saline water in the rivers.

The Hon’ble Supreme Court observed that such mining has direct impact on the physical habitat characteristics of the rivers such as bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Increase in demand of sand has placed immense pressure in the supply of sand resource and mining activities were going on illegally as well as legally without requisite restrictions. Lack of proper planning and sand management disturbs marine ecosystem and

² Paras 25-28 in O.A No. 173/2018, *Sudarsan Das v. State of West Bengal & Ors*, order dated 04.09.2018

upset the ability of natural marine processes to replenish the sand.

The Hon'ble Supreme Court noted that core group was constituted by the MoEF&CC to examine the impact of minor minerals on riverbeds and ground waters. A draft report was prepared recommending mandatory preparation of mining plan on the pattern of mining plans for major minerals. Further recommendations are reclamation and rehabilitation of abandoned mines, proportion of hydro geo-logical balance for minerals below ground water table limiting depth of mining to 3 meter and identification on locations where mining should be permitted was required. There is need for identifying safety zones in the proximity of intendments. Thus, strict regulatory parameters were required for regulating mining of minor minerals. It was noted that in-stream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the stream bed causes deepening of rivers which may result in destruction of aquatic and riparian habitats. It has impact on stream's physical habitat characteristics.”

After noticing various orders passed by this Tribunal in the light of above observations, the Tribunal further observed.

“Despite this, the menace of illegal sand mining in India continues unabated. As per reports, the sand business in India employs over 35 million people and is valued at well over \$126 billion per annum. In the year 2015-2016, there were over 19,000 cases of illegal minor minerals including sand in the country.³ In Uttarakhand, a 115 years old bridge collapsed due to overloaded sand trucks. In Maharashtra, 26,628 cases of illegal sand mining were recorded in the year 2017. The State of Maharashtra has the highest number of cases of non-compliance of Sustainable Sand Mining Management Guidelines, 2016. The State of Kerala suffered hugely in 2004 Tsunami and 2018 floods which several report explain were aggravated by illegal sand extraction.⁴ The issue of illegal sand mining

³<http://www.legalserviceindia.com/legal/article-73-why-is-illegal-sand-mining-harmful-.html>

⁴<https://sandrp.in/2019/03/01/sand-mining-2018-is-it-a-national-menace/>

is also rampant in the states of Goa⁵, Bihar⁶, Tamil Nadu⁷, Uttarakhand⁸, Telangana⁹, Jammu and Kashmir¹⁰ amidst others.”

6. The Tribunal thereafter noted the directions issued in various orders and the status of compliance with regard to States of Gujarat, Karnataka, Maharashtra, West Bengal, Odisha, Punjab, Haryana and Uttar Pradesh and other States. In the light of situation found, this Tribunal framed the following issues for consideration:-

*“(a) Revision of Sustainable Sand Mining Guidelines, 2016 by the MoEF&CC in the light of directions of this Tribunal vide order dated 04.09.2018 in Sudarsan Das (supra).
(b) Compliance of Sustainable Sand Mining Guidelines, 2016 as may be revised by MoEF&CC as above.
(c) Effective monitoring mechanism for preventive and remedial measures as directed in orders of this Tribunal, including surveillance system and recovery of compensation.
(d) Directions in individual cases listed today.
(e) Scale of compensation.”*

7. The directions after considering the above issues are as follows:-

“(a) MoEF&CC may now take necessary steps in the matter in terms of order dated 04.09.2018 in Sudarsan Das (supra) latest by June 30, 2019 and file compliance report by 15.07.2019, as already directed.

(b) The States of West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal

⁵<https://timesofindia.indiatimes.com/city/goa/govt-is-ignoring-illegal-sand-mining/articleshow/67908428.cms>

⁶<https://www.firstpost.com/india/illegal-sand-mining-part-3-bihar-govts-attempted-crackdown-has-sent-prices-soaring-officials-face-axe-as-rivers-in-ruin-6008351.html>

⁷https://en.wikipedia.org/wiki/Sand_mining_in_Tamil_Nadu

⁸<https://sandrp.in/tag/uttarakhand-sand-mining/>

⁹<https://sandrp.in/2019/02/26/sand-mining-2018-telangana-and-andhra-pradesh/>

¹⁰[https://greaterkashmir.com/article/news.aspx?story_id=309365&catid=2&mid=53&AspxAutoDetectCookieSupport=](https://greaterkashmir.com/article/news.aspx?story_id=309365&catid=2&mid=53&AspxAutoDetectCookieSupport=1)

Pradesh may take steps in terms of orders dated 04.09.2018 in Sudarsan Das v. State of West Bengal & ors, 05.09.2018 in, 13.9.2018 in Mushtakeem v. MoEF&CC & Ors. and 16.01.2019 in Compliance of Municipal Solid Waste Management Rules, 2016. The Chief Secretaries may monitor and furnish reports as earlier directed.

(c) The States of West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh may review monitoring mechanism in terms of directions of the Tribunal and guidelines of MoEF&CC.

(d) The Director Indian School of Mines, Dhanbad may appear in person on 26.07.2019 to explain why action be not taken for violation of order of this Tribunal.

(e) The State of West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh may send further action taken reports by 30.06.2019.

(f) The Committee in terms of para 59 above may furnish its report within three months to the Tribunal by email at ngt.filing@gmail.com.”

8. The matter has been taken up today to consider the compliance of the above directions. We have perused the reports received from States of Gujarat, Karnataka, Maharashtra, West Bengal, Odisha, Punjab, Haryana and Uttar Pradesh. Neither MoEF&CC has taken steps nor given any explanation for its failure. None appeared for the MoEF&CC during hearing but while dictating the order, learned counsel for MoEF&CC suddenly appeared and only casual

explanation furnished is that MoEF&CC has approached the Hon'ble Supreme Court. While seeking of reasonable time for compliance on the ground that the matter was pending in higher Court may stand on different footing, there is no justification for unreasonable delay for more than 9 months on the part of the MoEF&CC. Learned counsel for the applicant submitted that in absence of any stay, order of this Tribunal may be enforced by coercive measures. We find merit in the submission, but before doing so, we give an opportunity for compliance of the directions and direct Additional Secretary concerned of MoEF&CC to remain present in person with the compliance report and an explanation as to why action be not taken against the person responsible for the default.

9. As regards the reports received from the above mentioned states, our observations are as follows:

Report of the State of West Bengal and Gujarat

10. The report 24.07.2019 of the State of West Bengal is not in terms of the directions of this Tribunal. No material particulars of the action taken have been furnished. Learned counsel for the State fairly accepts this position and seeks time to file a revised report. Same is the position of the report dated 05.03.2019 filed by the State of Gujarat. No counsel appears for the State. Let the revised report be furnished specially in respect of revised compensation regime by e-mail at judicial-ngt@gov.in.

Report of the State of Karnataka

11. The report dated 02.07.2019 of Karnataka merely states that a meeting was held by the Chief Secretary of the State on 25.06.2019 and it was suggested that the staff be deployed at check posts and squads be formed to take stringent action. There is, however, no report of the action taken on the ground. Learned counsel for the State fairly states that this is not a satisfactory affidavit. Let a further affidavit be filed giving actions on the ground. The plea raised by the State that sale of cement in Karnataka was of not high magnitude and it could be presumed that no illegal sand mining was taking place is untenable. Such plea is only to avoid the issue and the points laid out in the rejoinder ignores the specific observations contained in paragraph 28 of the order dated 05.04.2019. Let a revised affidavit be furnished to this Tribunal also addressing the points raised in the rejoinder filed on 24.01.2019.

Report of the State of Madhya Pradesh

12. Report dated 01.07.2019 refers to the compensation regime under Rule 23 (Penalty Provisions) of the Madhya Pradesh Sand Rule, 2018 (**Mining Rules**) to check evasion of Royalty which does not take into account the damage to the environment. Whatever be the provision for checking evasion of royalty, the compensation regime for restoration of damage to the environment is a different issue as already noted in the earlier order of this Tribunal in paragraphs 22 and 51. The Principal Secretary, Mineral Resources, Madhya Pradesh is present in person. We have explained to him the requirement of

the 'Polluter Pays' principle which is different from the mechanism to deal with the royalty evasion as laid down under the Mining Rules. The State needs to evolve a mechanism for recovering compensation for the damage to the environment for legal as well as illegal mining. Wherever damage is caused to the environment by using vehicles, the vehicles or other equipment involved are to be dealt with in the manner laid down in the order of this Tribunal dated 05.04.2019. Let a further affidavit be filed before this Tribunal in terms of the direction dated 05.04.2019 before the next date by e-mail at judicial-ngt@gov.in.

Report of the State of Odisha

13. Report dated 19.02.2019 of an Expert Committee constituted in pursuance of order of this Tribunal dated 04.09.2018, has been forwarded to the State of Odisha and is furnished before the Tribunal. This Report refers to the preliminary report dated 11.02.2019 furnished by Indian Council of Forestry Research and Education (ICFRE) and more time is sought for completing the study. Let the same be done at the earliest but before the next date.
14. We have also perused the report dated 28.03.2019 of the Justice R.K. Merathia, former Judge of Jharkhand High Court, who was to oversee (as Oversight Authority) the execution of directions of this Tribunal dated 04.09.2018. We request the said Expert Committee to furnish its final recommendations on or before 31.08.2019 so that thereafter the monitoring regime may be evolved and taken over by

the Chief Secretaries concerned. The O.A was to operate initially for only 6 months.

Report of the State of Himachal Pradesh

15. The report dated 09.07.2019 of the State of Himachal Pradesh does not advert to the directions of this Tribunal dated 05.04.2019. The compensation regime does not take into account the requirements of 'Polluter Pays' principle to restore the environment as earlier noted in the case of the State of Karnataka. The revised affidavit may now be filed before the next date by e-mail at judicial-ngt@gov.in.

Report of the State of Rajasthan

16. The report dated 23.07.2019 of the State of Rajasthan does not refer to the compensation regime as well as monitoring, as noted in the order dated 05.04.2019. The revised affidavit may now be filed before the next date by e-mail at judicial-ngt@gov.in.

Report of States U.P. and Haryana

17. The reports dated 25.07.2019 furnished on behalf of the State of U.P. and Haryana also do not deal with the issues required to be dealt with in the order dated 05.04.2019.

Report of the CPCB

18. The Committee constituted in terms of paragraph 57 was to prepare a scale of compensation and furnish its interim report seeking six

months' time. There is no justification for such a long time in view of inputs already available and any further inputs can be collected in the next one month. The Chairman of CPCB may ensure that report of the Committee is furnished latest within three months of the order to this Tribunal by e-mail at judicial-ngt@gov.in.

19. In view of the failure of the States to give appropriate response or failure to give any response, while giving last opportunity, we make it clear that for any further default, matter may have to be viewed seriously and deterrent costs imposed for continued default in giving relevant response by the States. The cost may have to be recovered personally from senior Officers of the State responsible for the default.
20. It is made clear that pending further reports, the States must apply the compensation regime as per principles specified in paragraph 56 of order dated 05.04.2019.
21. All the reports be filed in O.A. No. 360 of 2015.
22. Apology of Director, IIT – Indian School of Mines, Dhanbad is taken on record. He is advised to be careful in future.
23. Copies of this order be sent to the Secretary, MoEF&CC, Chairman CPCB and the Chief Secretaries of the States of West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh.

List for further consideration on 31.10.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

Dr. Nagin Nanda, EM

July 26, 2019

Original Application No. 360/2015 and other connected matters

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