

Item No. 05

Court No. 1

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

(By Video Conferencing)

Original Application No. 190/2020

(With Report dated 06.10.2020)

Noble M Paikada

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 28.10.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Mr. Aniruddha Deshmukh, Advocate
Respondent: Mr. Ravinder Gupta, Advocate for MoEF&CC

ORDER

1. In this application, challenge is to the Notification dated 28.03.2020, amending the Notification dated 14.09.2006, on the subject of requirement of Environment Clearance before undertaking some projects impacting environment. The amendment exempts new lessees of mining leases (in respect of leases where EC had been earlier granted in favour of the previous leasee) from requirement of EC for two years from the date of original lease. Further exemption, inter-alia, is to extraction of earth for linear projects such as roads, pipelines, etc., dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.

2. The matter was considered on 07.09.2020 and after referring to the main provision and noting the submission on behalf of the applicant, the Tribunal sought response from the MoEF&CC. Relevant extract from the impugned notification is as follows:-

“In the said notification,-

(i) in paragraph 11, after sub-paragraph (2), the following sub-paragraph shall be inserted, namely:-

“(3) The successful bidder of the mining leases, expiring under the provisions of sub-sections (5) and (6) of section 8A of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) and selected through auction as per the procedure provided under that Act and the rules made thereunder, shall be deemed to have acquired valid prior environmental clearance vested with the previous lessee for a period of two years, from the date of commencement of new lease and it shall be lawful for the new lessee to continue mining operations as per the same terms and conditions of environmental clearance granted to the previous lessee on the said lease area for a period of two years from the date of commencement of new lease or till the new lessee obtains a fresh environmental clearance with the terms and conditions mentioned therein, whichever is earlier:

Provided that the successful bidder shall apply and obtain prior environmental clearance from the regulatory authority within a period of two years from the date of grant of new lease.”;

(ii) in the Schedule, against the item 1(a), in the column (5), after clause (2) of the Note, the following clause shall be inserted, namely:-

“(3) The evacuation or removal and transportation of already mined out material lying within the mining leases expiring under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), by the previous lessee, after the expiry of the said lease, shall not form the part of the mining capacity so permitted to the successful bidder, selected through auction as per the procedure provided under that Act and the rules made thereunder.”;

(iii) for Appendix-IX, the following Appendix shall be substituted, namely:-

EXEMPTION OF CERTAIN CASES FROM REQUIREMENT OF ENVIRONMENTAL CLEARANCE

The following cases shall not require Prior Environmental Clearance, namely:-

“.....

6. *Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc.*

7. *Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.”*

3. The Tribunal noted the contention of the applicant as follows:

“2. Learned Counsel for the applicant submits that the requirement of EC in the mining leases has been laid down by the Hon’ble Supreme Court in Deepak Kumar & Ors. v. State of Haryana & Ors. (2012) 4 SCC 629 and the same cannot be exempted. With regard to the exemption to extraction of earth for linear projects, it is submitted that neither there is condition for exemption nor there is any limit to the extent of such extraction. Blanket exemption will be against the ‘Sustainable Development’ concept, including the ‘Precautionary’ principle required to be enforced by this Tribunal under Section 20 of the National Green Tribunal Act, 2010.

3. In view of above, let the MoEF&CC furnish its response within one month 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.”

4. Accordingly, MoEF&CC has filed its response by way of affidavit on

06.10.2020 as follows:-

“It is further submitted that notification which is in question was issued in public interest and all the above mentioned cases in APPENDIX-IX is self-explanatory that the notification is for the aid of general public.

It is respectfully submitted that prior to this notification the answering respondent also has exempted the above mentioned cases in APPENDIX-IX by issuing certain OM's and Circulars time to time. It is further submitted that the Ministry has clarified by way of Notification dated 28.03.2020, S.O. 1224 (E), that following activities are exempted from obtaining the Prior Environmental Clearance.

It is respectfully submitted that the notification dated 28.03.2020, S.O. 1224 (E), which the was issued by the ministry of Environment, Forest and Climate Change is only 28.03.2020, S.O. 1224 (E) has provided assistance to the Kumhars (POTTER), Farmers, Gram Panchayats, Vanjara, Oads of Gujarat and to all the non-mining activities declared by the State Government under legislations or rules. But the applicant is wrongly trying to build a parallel analogy averring that the Ministry of Environment, Forest and Climate Change has exempted list of activities from obtaining prior environmental clearance. The applicant is trying to twist the facts in order to mislead the Hon'ble Tribunal therefore, the present original application ought to be dismissed on this ground alone.

It is respectfully submitted that a writ petition no. 631 of 2020 titled as Society for protection of Environment and Biodiversity versus Union of India was filed in the Hon'ble Supreme Court

challenging the same notification dated 28.03.2020. The Hon'ble Supreme Court in its vide order dated 28.07.2020 stated that:

The writ petition is dismissed.

As a sequel to the above, pending interlocutory applications, if any, stand disposed of."

It is respectfully submitted that the notification dated 28.03.2020 has been adjudicated by the Hon'ble Supreme Court and has been upheld."

5. We have heard learned counsel for the parties and considered the rival submissions.

6. As regards dismissal of a writ petition by the Hon'ble Supreme Court, it is not clear whether the merits have been gone into. It is also not clear as to what was the contention or the issue therein. The order cited cannot be read as laying down law. While parties to the petition are bound but it is difficult to accept the plea that the matter is concluded by the said order.

7. On merits, there are two issues. First issue is exemption to a leasee where EC was earlier granted but a fresh lease was granted before expiry of validity of EC. There may be justification for the exemption as such but some mechanism is required for damage assessment and mitigation measures in respect of a particular lease at the time of transfer. Further, some time limit must be fixed for the new leasee applying for the EC and also for the SEIAA/EAC for taking decision on such application. Such a course will balance the need for the protection of the environment on the hand to effectuate the mandate of judgement of the Hon'ble Supreme Court in Deepak Kumar, supra and obviating hardship to a new leasee in respect of lease for which earlier EC had been granted.

8. The second issue is exemption from requirement of EC for extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc and for dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management. It is possible to take a view that the EC can be exempted for these situations on account of assessment already made or for extraction of earth for linear project but such blanket exemption must be balanced by sustainable development concept. The exemption should strike balance and instead of being blanket exemption, it needs to be hedged by appropriate safeguards such as the process of excavation and quantum. Similarly, in respect of item 7, safeguards are required to be incorporated in terms of disposal of dredged material. These aspects are not shown to have been considered and the reply does not provide any explanation thereon. Learned counsel for the MoEFCC is also unable to provide any justification why these aspects be not addressed and incorporated in the notification for ensuring sustainable development concept which is required to be enforced by this Tribunal under section 20 read with section 15 of the NGT Act, 2010.

9. We accordingly dispose of this petition by directing the MoEFCC to revisit the impugned notification in the light of the above observations within three months.

In view of the order passed in main matter, I.A. No. 293/2020 also stands disposed of.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. S.S. Garbyal, EM

Dr. Nagin Nanda, EM

October 28, 2020
O.A. No.190/2020
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