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W.P.No.21447 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.08.2023

PRONOUNCED ON : 28.08.2023

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.21447 of 2023

and WMP.Nos.20836, 21858 and 21847 of 2023

The Executive Engineer,
Public Works Department,
Mining and Monitoring Division,
Water Resources Department,
Trichirappalli

..Petitioner

.Vs.

1.T.Saravanakumar

2.The Tamil Nadu State Environment Impact

Assessment Authority, Rep. by its Member Secretary

3rd Floor, Panagal Maligai, No.1, Jeenis Maaligai, Saidapet,

Chennai-15

..Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of certiorari calling for the records in respect of order dated 05.07.2023 passed in Original Application No.77 of 2023 (SZ) by the National Green Tribunal, Southern Zone, Chennai, and quash the same.



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For Petitioner :: Mr.J.Ravindran, Addl.Advocate General,
Asst by Mr.P.Gurunathan, Addl.Govt Pleader

For respondents : : Mr.T.Mohan, Senior counsel
for Mr.A.Yogeswaran for R1
Mr.A.R.L.Sundaresan, Senior counsel
for Mr.V.Chandrasekaran, Senior Panel counsel for R2.

ORDER

J.NISHA BANU, J.

This writ petition is filed by the State-Public Works Department, praying to quash the order dated 05.07.2023 passed in Original Application No.77 of 2023 (SZ) by the National Green Tribunal, Southern Zone, Chennai.

2. It is averred by the petitioner-Executive Engineer, PWD that to curb the indiscriminate quarrying in the river systems, the Government of Tamil Nadu took steps and issued amendment to the Tamil Nadu Minor Mineral Concession Rules, 1959, in G.O.Ms.No.95, dated 01.10.2003, by introduction of Rule 38-A of the Tamil Nadu Minor Mineral Concession Rules, 1959, whereby all existing leases for quarrying sand in Government lands and permissions granted in Ryotwari lands



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ceased to be effective with effect from 02.10.2003. Thereby, the right to quarry sand in the State now vested only with the State through the Public Works Department and Water Resources Department.

3. G.O.Ms.No.19 Industries (MMC 1) dated 19.04.2004, Rule 36-A sub rule (6) was substituted as follows:-

" No machinery shall be used for quarrying sand from river beds, except with the permission of the Secretary to Government, Industries Department or any other authority or Officer, as may be authorized by him in this behalf, who may grant such permission, if use of such machinery will not be detrimental to ecology."

4. The petitioner-State PWD would state that even though Madurai Bench of Madras High Court directed that no poclain or other heavy machinery shall be used for sand quarrying by order dated 02.12.2010 in W.P.No.11182 of 2010, the said order was modified by granting permission for use of minimum poclains not more than two poclains.

5. Pursuant to the above review order, Tamil Nadu Government issued G.O.(D).No.67, Industries (MMC-I) Department, dated 11.03.2011, whereby directing the District Collectors to impose conditions restricting judicious use of



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minimum number of poclains and not more than two poclains. The Ministry of Environment, Forest and Climate Change, [Moef & CC] issued Notification dated 14.09.2006 and the projects listed in the Schedule to the Notification require prior Environmental Clearance, which were classified into two categories viz., “A” category and “B” category. For “A” category projects, prior Environment clearance had to be issued by MoEF & CC and for “B” category projects, Environment clearance had to be issued by the State Environmental Impact Assessment Authority (SEIAA).

6. As per Schedule 1(a) of the said Notification 2006, mining of minerals between 5Ha to 50 Ha was categorized as A Project. The Hon'ble Supreme Court of India in ***Deepak Kumar Vs. State of Haryana reported in (2012) 4 SCC 629*** has directed the State Governments to take steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 and further directed that in the meantime, the leases of minor minerals including their renewal for an area less than 5 Ha be granted by States/Union Territories only after getting clearance from the MoEF/SEIAA.

7. According to the petitioner-PWD, as per the direction of the Honourable



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Supreme Court of India dated 27.02.2012 in Deepak Kumar's case, as per Office Memorandum dated 18.05.2012 issued by MoEF & CC, the Madurai Bench of Madras High Court in its order dated 03.08.2012 in W.P.4699 of 2012, directed that the sand quarries should be operated only after obtaining Environment Clearance from State Level Environment Impact Assessment Authority and also directed to use two poclains in each of the sand quarries.

8. In compliance of the above, as per EIA Notification 2006, necessary applications for Environmental Clearances were filed by the State Government for river sand mining in the State. However, in the absence of notification of MoEF regarding categorization of B1 and B2 categorised the SEIAA, TN decided in its meeting held on 28.08.2012 to follow the procedure of SEIAA. Further, the State-PWD submits that The State Environmental Impact Assessment Authority granted Environment Clearances under B2 Category based on the adhoc guidelines dated 27.09.2012 to the State Government from 26.10.2012 onwards to quarry on the existing operations.

9. The petitioner-State PWD submits that aggrieved by the aforesaid grant of the Environmental Clearances by the State Environmental Impact Assessment



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Authority for sand quarry operations in the Cauvery and Coleroon Basin of State of Tamil Nadu, batch of appeals were filed before the National Green Tribunal, Southern Zone, Chennai, seeking to quash the same. In the mean time, Office Memorandum dated 24.12.2013 issued by the MoEF, wherein the “B” category projects were further divided into two categories viz., B-1 category (25Ha to 50Ha) and B-2 category (5Ha to 25Ha) of which B-1 category projects require Environmental Impact Assessment Report, whereas, B-2 projects did not require the same which will be granted based on Form I accompanied with Pre-feasibility Report. The said OM restricts river sand mining project with mine lease area less than 5 Ha, however, it mandates that the mining activity for the mine lease area between 5-25 Ha which was categorized as B2, should be done manually.

10. In the appeals filed by the State-PWD, the National Green Tribunal, Southern Zone, Chennai directed the Executive Engineer, PWD, in its judgment dated 24.02.2014 to run all the above sand quarries based on the adhoc guidelines of SEIAA for a period of six months and to make necessary applications for obtaining Environmental Clearances based on the new guidelines issued by the MoEF which have come into force from 24.12.2013.



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11. Aggrieved by the orders passed by the National Green Tribunal dated 24.02.2014, the individual parties and Associations filed WP(MD).Nos.7146 to 7157 and 7767 to 7772 of 2014 before the Madurai Bench of Madras High Court, wherein, the Madurai Bench, by citing the Office Memorandum dated 24.12.2013 regarding categorization of B category into B1 and B2, passed an interim order dated 30.04.2014 directing as follows:-

- “ (i) There shall be no instream mining and
- (ii) The respondents shall not do mechanized mining”.

12. As against the above said interim order dated 30.04.2014, the Public Works Department filed Appeals in Civil Appeal Nos.5531-5548 of 2014 in SLP(C).Nos.12619-12636 of 2014 before the Hon'ble Supreme Court. The Apex Court vacated interim order in its order dated 09.05.2014 and held that the appellants are at liberty to do mechanised mining and that rest of the impugned order remains as it is.

13. Subsequent to the above direction of the Hon'ble Supreme Court, the Madurai Bench of the Madras High Court in its order dated 06.08.2014 dismissed the batch of Writ Petitions in W.P.(MD).Nos.7146 to 7157 and 7767 to 7772 of 2014 as



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the 6 months period granted by the Hon'ble NGT was expired then.

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14. The Office Memorandum dated 24.12.2013 was challenged before the Hon'ble National Green Tribunal, Principal Bench, New Delhi (Circuit Bench) in batch of applications viz., Application Nos.279 and 343 of 2013 and an interim stay was granted with a following observations:-

“ The Notification issued by the MoEF is an act of subordinate legislation and was issued in exercise of statutory powers. The Office Memorandum is an administrative order and cannot frustrate the legislative act. In fact, it falls beyond the scope of administrative powers. Consequently, we stay the operation and effect of the order of Office Memorandum dated 24th December, 2013.”

15. The State-PWD petitioner herein submits that various other Original Applications in O.A.Nos.123 of 2014 and Batch, were filed against the aforesaid OM dated 24.12.2013 before the Principal Bench of National Green Tribunal, Southern Zone, on the ground that in their States, larger mining areas of more than 5 Ha are hardly available, besides raising various other grounds. The Principal Bench in its Order dated 13.01.2015 held that first part of Clause 2 (1)(iii) of Office Memorandum dated 24.12.2013 declared as invalid as it related to mining less area less than 5 ha



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and further held that till MoEF issued a comprehensive notification in consonance with Deepak Kumar's case, the following directions shall be followed:

“83. In light of the above discussion and particularly keeping in view the persistent conflict between the State Regulations and the Central Notifications, it is imperative for us to issue directions specially to provide for an interim period, during which appropriate steps should be taken to comply with the judgment of the Supreme Court and to issue Notifications which are necessary in that regard. Therefore, we pass the following order and directions:-

1. For the reasons afore recorded, we hold and declare that the Notification dated 9th September, 2013 is invalid and inoperative for non-compliance of the statutorily prescribed procedure under the Environment (Protection) Rules, 1986 and for absence of any justifiable reason for dispensation of such procedure.

II. We also hold and declare that the Office Memorandums dated 24th June, 2013 and 24th December, 2013 to the extent aforeindicated are invalid and inoperative being beyond the power of delegated legislation.

III. All the Office Memorandums and Notifications issued by MoEF i.e. 1st December, 2009, 18th May, 2012 and 24th June, 2013 and 24th December, 2013 (except to the extent afore-stated) are operative and would apply to the lease mine holders irrespective of the fact that whether the area involved is more or less than 5



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hectares.”

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16. It is the submission of the petitioner-PWD that the directions given by the Principal Bench in its Order dated 13.01.2015, are valid till MoEF and CC issue a comprehensive notification with regard to river sand mining.

17. Thereafter, the MoEF and CC amended 2006 Notification under Section 3(2)(v)(1) under Environment (Protection) Act, 1986 and included lease area less than or equal to 5 ha as also requiring prior EC (known as 'B2' category) and constituted District Level Environment Impact Assessment Authority (DEIAA) at the district level to process such projects, vide S.O.141 (E) dated 15.01.2016 . Thereafter, in consultation with all the States including the State of Tamil Nadu, the MoEF and CC on 15.03.2016, issued a sustainable Sand Mining Management Guidelines, 2016. In Sl.No.19, “Standard Environmental Conditions for Sand Mining”, it is mentioned that “depending upon the location, thickness of sand, deposition, agricultural land/riverbed, the method of mining may be manual, semi-mechanized or mechanized; however, manual method of mining shall be preferred over any other method.”



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18. The petitioner- State PWD submits that MoEF and CC on January 2020, issued Enforcement & Monitoring guidelines for sand Mining, 2020. The State-PWD had proposed to quarry river sand in Cauvery River and identified an area measuring 16.18 Ha comprised in S.F.No.643/1 (P) of Oruvanthoor Village, Namakkal Taluk, Namakkal District and sent proposal seeking new quarry outlet to the District Collector, vide Letter dated 17.12.2015. Pursuant to the above proposal, joint field inspection was conducted by State authorities and based on the recommendations of the technical team, a communication was issued by the District Collector, Namakkal, to the petitioner to obtain Environmental clearance from SEIAA and consent from the Tamil Nadu Pollution Control Board vide letter dated 18.02.2016. Based on a thorough field study, mining plan method of mining proposed was “opencast semi mechanized of shallow mining, without drilling and blasting” and type of machinery proposed was “Machineries like excavators”.

19. In the above mining proposed plan, in compliance of EIA Notification 2006 and its amendments, the petitioner applied for Environmental Clearance for the subject quarry, through online under B2 category, vide Proposal dated 22.02.2016. The above proposal was placed at 79th SEAC (State Level Expert Appraisal Committee) meeting held on 08.08.2016 wherein the application and other supporting



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documents were appraised by the experts and recommended for grant of EC to SEIAA. The recommendation of SEAC was placed at 503rd SEIAA Meeting held on 10.08.2016 and granted EC for the subject quarry in favour of the petitioner with various general and specific conditions with permission to use two poclains for excavation of sand. In compliance of the conditions imposed in the above EC dated 10.08.2016, the petitioner obtained necessary consents from the Tamil Nadu Pollution Control Board under Air (Prevention and Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act 1974 on 05.01.2017.

20. The District Collector, Namakkal, in his Proceedings bearing RC.No.1198/Mines/2015 dated 12.03.2017, granted permission to operate the subject quarry. After permissions/approvals/clearances from the competent authorities and in compliance of the conditions imposed therein, the petitioner commenced its quarry operation on 16.06.2017.

21. The petitioner-State PWD avers that based on the Sand Mining Guidelines 2016, the Government of Tamil Nadu issued G.O.Ms.No.21 dated 02.06.2017, wherein, it was directed that the Public Works Department may move SEIAA on case to case basis to permit more number of poclains for sand quarries. Pursuant to the



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above G.O., a modified mining plan was prepared for subject quarry which was also approved by the Assistant Director, Geology & Mining, Namakkal, vide Letter dated 20.07.2017. The petitioner had applied for modified proposal to SEIAA on 26.07.2017 and the same was placed before the 93rd SEAC Meeting held on 12.08.2017 and the Committee directed the petitioner to submit comprehensive report, which was complied with by the petitioner and made a presentation on 12.08.2017. Subsequently, SEAC recommended the amendment with respect to usage of 4 poclains in the subject sand quarry based on formulation. The above proposal was placed at 241st SEIAA Meeting held on 09.10.2017 and amended the EC dated 10.08.2016 which was valid upto 09.08.2018. However, one Mr.Varadharajan filed Public Interest Litigation in W.P.No.22433 of 2017 and an order of interim injunction was granted vide order dated 06.11.2017 in WMP.No.23563 of 2017. The Madras High Court in its order dated 13.11.2017 suo moto impleaded SEIAA as a party and extended the interim order and directed the State Expert Appraisal Committee (SEAC) to file report based on the site inspection as to whether the general conditions stipulated in the Environment Clearance dated 10.08.2016 issued by the State Level Environment Impact Assessment Authority were complied with or not.

22. On 22.11.2017 SEAC conducted inspection and filed report. The Madras



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High Court, in its final order dated 06.07.2018, closed W.P.No.22433 of 2017 and appointed independent monitoring agency comprising of four members to oversee the quarry operations to report periodically.

23. The petitioner-State PWD would submit that the validity period of EC as well as the mining lease expired on 09.08.2018 and the petitioner applied to the District Collector, Namakkal and SEIAA for time extension of EC for further period of two years to excavate the remaining quantity of sand. The District Collector, Namakkal, in his Letter dated 18.12.2022 approved the lease extension for remaining quantity of sand in the subject quarry. Subsequently, on 01.02.2023, the SEIAA extended the period of EC for 1 year and 4 months.

24. The petitioner-State PWD submits that they obtained necessary consents from the Tamil Nadu Pollution Control Board on 03.04.2023 and that the District Collector, Namakkal, in his proceedings dated 05.05.2023, granted permission to resume the quarry operation in the subject site. One Mr.Saravanakumar, claimed to be an activist, filed Original Application in OA.No.77 of 2023 (SZ) before the National Green Tribunal, Southern Zone, Chennai, on 30.05.2023, despite knowing the necessary permission granted by the competent authorities for the subject quarry,



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seeking directions to the respondent therein to strictly comply with OM dated 24.12.2013 in issuing environmental clearances for mining of minor minerals. The said OA was taken up on 31.05.2023 and the National Green Tribunal, granted an interim order as follows:-

“11. As admittedly, the Environmental Clearance is granted under “B”(B2) category, the mining has to be done only manually and the poclain should not be used. If the project proponent prefers to use the poclain for mining operation, it should have obtained the Environmental Clearance under “B1”.”

The order further reads that

“As per the Office Memorandum No.J-13012/12/2013-IA-II(I) dated 24.12.2023 which mandates only manual operation for “B2” category, the 2nd respondent shall operate manually. If the project proponent proposes to operate with the poclains, it is at liberty to do after obtaining the Environmental Clearance to “B1” category. “

25. Aggrieved by the aforesaid interim order dated 31.05.2023, the petitioner had filed W.P.No.17725 of 2023. The Madras High Court, has partly allowed the above Writ Petition in its order dated 23.06.2023 and modified the interim order dated 31.05.2023 as follows:-



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“ 19. In view of the above factual scenario, submissions made and in the interest of justice, this court is inclined to pass the following order:

(i) As agreed by both the parties, the Tribunal shall reconsider to pass appropriate interim orders afresh after affording sufficient opportunity to the parties, on or before 04.07.2023. Both the parties have agreed that they will extend their cooperation for passing of the interim orders by the NGT.

(ii) The learned Senior Counsel for the petitioner as well as the learned Additional Solicitor General for the second respondent TN~SEIAA agreed that they will serve the copy of the counter affidavit to the first respondent in advance on or before 28.06.2023.

(iii) Thereafter, the first respondent shall file his reply / response to the counter affidavit on or before 02.07.2023.

(iv) It is made clear that in the interregnum, if the petitioner is carrying on any quarry operations, they shall use 2 poclains in strict compliance of the conditions imposed under EC/approvals/permissions given by the authorities concerned, and if there is any violation of the conditions, it is open to the first respondent to place the same before the Tribunal.

(v) The petitioner department shall videograph the entire quarrying operations in the quarry site in question by using drone facility and the entire video recording shall be placed before the Tribunal.



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(vi) The Tribunal shall decide the case on its own merits, without being influenced by any observations made by this Court.

(vii) The impugned order of the National Green Tribunal, Southern Zone, Chennai dated 31.05.2023 in O.A.No.77 of 2023 is modified to the above extent.”

26. Mr.J.Ravindran, learned Additional Advocate General submits that the National Green Tribunal, by order dated 05.07.2023, passed the impugned order holding the PWD cannot be permitted to use poclains contrary to OM issued; therefore, the PWD is directed to continue their mining only manually and it cannot operate the poclains; they are at liberty to operate the mining with poclains provided they obtain the Environment Clearance under “B1” category. According to the petitioner-State PWD, the OM dated 24.12.2013 is no longer valid, subsequent to the issuance of Statutory Order in S.O.141 (E) dated 15.01.2016 and Sustainable Sand Mining Management Guidelines, 2016 dated 15.03.2016 by MoEF & CC, which are comprehensive.

27. Mr.J.Ravindran, learned Additional Advocate General, appearing for the petitioner-PWD submitted that the Office Memorandum/Guidelines is an administrative order, cannot have statutory force and such OM, cannot supersede the Statutory Rules/Acts. He further submits that there is a specific amendment in Rule



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36 of the Tamil Nadu Minor Mineral Concession Rules, to use poclains in sand quarries, which cannot be superseded by way of an Office Memorandum/Guidelines and that the PWD obtained all necessary clearances from the statutory authorities for the present project as mandated under law and hence, there is neither any environmental violation nor any statutory violation alleged on the part of the petitioner-PWD till date.

28. The 2nd respondent-State Environment Impact Assessment Authority-Tamil Nadu, filed counter affidavit, stating in exercise of the powers conferred under sub section 1 clause (v) of subsection (2) of section 3 of the Environment Protection Act, 1986 read with clause (d) of sub rule (3) of rule 5 of the Environment (Protection) Rules 1986, and in supersession of the earlier Environment Impact Assessment notification 1994, the Central Government issued EIA Notification 2006, wherein it directed that any new project or expansion of the existing project shall be undertaken in any part of India only after the prior Environmental Clearance from the Central Government or as the case may be, by the State Level Environmental Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the EP Act in accordance with the procedures laid down therein in the said Notification 2006.



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29. It is stated that as per Para 2 of the EIA Notification 2006, the projects or activities, listed therein in the Schedule appendix therein, shall require prior Environmental Clearance from the concerned regulatory authority i.e The Central Government in the Ministry of Environment and Forest for matters falling under Category 'A' and at State level the State level Environmental Impact Assessment Authority for matters falling under Category 'B'. At present, SEAC Tamil nadu is comprising of a Chairman, a Member Secretary and 12 Expert members with various field experiences. The Environmental Clearances which are granted by the MOEF or SEIAA as the case may be, shall be challenged before the Hon'ble National Green Tribunal under the provisions of the National Green Tribunal Act 2010, if so aggrieved by such grant, as per the procedures laid down in the said Act of 2010. The Environmental Clearance for the Sand quarry was obtained from the State Environment Impact Assessment Authority constituted under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 by abiding all the rules and regulations. The matter is examined by the State Expert Appraisal Committee (SEAC) which consists of several experts who make the recommendations after detailed analysis and it is only thereafter that the SEIAA issued the Environmental Clearance to quarry in the subject area of this writ petition. The project proponent, the Executive Engineer, PWD/WRD, who is the State Agency for Sand Mining has applied for



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Environmental Clearance vide Online Proposal No.SIA/TN/MIN/50278/2016, dated 22.02.2016 for sand quarrying S.F.No.643/1 (P) (Mile 77/2+150 to 77/5+150) in Cauvery River Bed, Oruvanthoor Village, Namakkal Taluk, Namakkal District, Tamil Nadu.

30. It is stated in the counter affidavit that the proposal was considered and examined by the SEAC based on the project documents furnished and the explanation made before the committee in its 79 Meeting held on 08.08.2016. The SEAC appraised the subject project in detail and took into consideration the less pollution that is possible in these types of activities and after verification of the details furnished by the proponent subject to usual terms and conditions. Subsequently, the proposal was placed before the SEIAA in its 186 meeting held on 10.08.2016 and based on the project documents furnished, the authority has recommended to issue environmental clearance for the said project under the provisions of Environment Impact Assessment Notification, 2006 subject to strict compliance of the terms and conditions.

31. The 2nd respondent in the counter affidavit submitted that Sand is a minor mineral, as defined under section 3(e) of the Mines and Minerals (Development and



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Regulation) Act, 1957 (MMDR Act). Section 15 of the MMDR Act empowers State Governments to make rules for regulating the grant of mineral concessions in respect of minor minerals and for purposes connected therewith. The regulation of grant of mineral concessions for minor minerals is, therefore, within the legislative and administrative domain of the state governments. Under the power granted to them by section 15 of the MMDR Act, State Governments have framed their own minor minerals concession rules. Section 23C of the MMDR Act, 1957 empowers State Governments to frame rules to prevent illegal mining, transportation and storage of mineral sand for purposes connected therewith. Control of illegal mining is, therefore, under the legislative and administrative jurisdiction of State governments. The Government of Tamilnadu issued a G.O Ms. No. 21 dated 02.06.2017, wherein it was directed that the PWD may approach SEIAA on case-to-case basis to permit more number of poclains for Sand quarries. The Executive Engineer, PWD/WRD had submitted a proposal for the issue of amendment for usage of more machines in the EC issued for the sand quarrying in River Cauvery over an extent of 16.18.0 ha at S.F.No.643/1(P), Oruvanthoor Village, Namakkal Taluk, Namakkal District, Tamil Nadu. The PWD also submitted a report covering the ecological aspects in this regard. Considering the same, the Committee formulated the following criteria in deciding the number of poclains:



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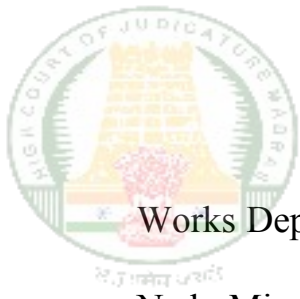
1. Upto one lakh m³ sand yet to be mined - maximum 2 poclains

2. One-Two lakh m³ sand yet to be mined-maximum 3 poclains

3. Two Four lakh m³ sand yet to be mined-maximum 4 poclains

4. Four Seven lakh m³ sand yet to be mined maximum 5 poclains.

32. In the counter affidavit, it is pointed out that the State Government in G.O.(2D) 46 Industries (MMC-1) Department Dated 25-09-2002 constituted a six-member High Level Committee. The observations and conclusions of the High-Level Committee clearly indicated the emergent need for a framework for regulation of mining in the State in Public interest. The Industries Department of the State of Tamil Nadu issued G.O. Ms. No. 95 dated 01.10.2003 and the Government stopped the quarrying of sand in Poramboke Lands and in Private Patta lands by private agencies. It has been decided by the State that the sand quarrying will be undertaken only by the Government of Tamil Nadu. The said G.O.Ms.No.95 dated 01.10.2003 was challenged and upheld by the Hon'ble Madras High Court in **(2004) 4 MLJ 418 (State of Tamil Nadu Vs. P. Krishnanmurthy)** and by the Hon'ble Supreme Court in **(2006) 4 SCC 517 (State of T.N. and another Va. P. Krishnamurthy and others)** and since then sand quarry operations are allowed to be carried on only by the Public



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Works Department. The Government of Tamil Nadu brought an amendment in Tamil Nadu Mines and Minerals Concession Rules 1959 inserting Rule 38 (A) under which all existing leases for quarrying sand in Government lands and permissions / leases granted in Ryotwari lands would cease to be effective on and from the date of coming into force of the Rule and the right to exploit sand in the State was to vest only with the State Government to the exclusion of others. The Government of Tamil Nadu vide its G.O. MS. No. 19 Industries (MMC 1) Department Dated: 19.04.2004 has amended the rule relating to use of machinery for quarrying of sand in river beds, with certain conditions which states that, No machinery shall be used for quarrying sand from river beds, except with the permission of the Secretary to Government, Industries Department or any other authority or Officer, as may be authorized by him in this behalf, who may grant such permission if use of such machinery will not be detrimental to ecology". The Union of India brought Environmental Impact Assessment notification 2006. The mining leases and activities were categorized on the basis of the area of operation. Where the area exceeds 50 ha. they were categorized as A and where mining operation were conducted in lease area from 5 to 50 ha were categories as B. The State Government was getting permission from the SEIAA for quarrying sand.



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33. The Government of India issued an Office Memorandum on 18.05.2012 clarifying that Mining projects with lease area up to less than 50 ha including projects of minor mineral with lease area less than 5 ha would be treated as category B as defined in the EIA Notification, 2006 and will be considered by the respective SEIAAs notified by MoEF & CC and following the procedure prescribed under EIA Notification, 2006.

34. The MoEP & CC issued guidelines on 24.12.2013 further categorizing the category B projects into B1 and B2. The projects categorized as B1 required an EIA report for appraisal and to undergo Public Consultation process whereas the category B2 did not require the Public Consultation process and were to be appraised on the basis of the application accompanied by the pre-feasibility report. The Hon'ble Principal Bench of National Green Tribunal, New Delhi in Original Application No. 123 of 2014 and M.A. No. 419 of 2014 has observed that in the persistent conflict between the State Regulations and the Central Notifications, it is imperative for us to issue directions specially to provide for an interim period, during which appropriate steps should be taken to comply with the Judgment of the Hon'ble Supreme Court and to issue Notifications which are necessary in that regard. The order reads as follows,



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“ I. For the reasons afore recorded, we hold and declare that the Notification dated 9th September, 2013 is invalid and inoperative for non-compliance of the statutorily prescribed procedure under the Environment (Protection) Rules, 1986 and for absence of any justifiable reason for dispensation of such procedure.

II. We also hold and declare that the Office Memorandums dated 24th June, 2013 and 24th December, 2013 to the extent afore indicated are invalid and inoperative being beyond the power of delegated legislation.

III. All the Office Memorandums and Notifications issued by MOEF ie., 1st December, 2009, 18th May, 2012 and 24th June, 2013 and 24th December, 2013(except to the extent afore-stated) are operative and would apply to the lease mine holders irrespective of the fact that whether the area involved is more or less than 5 hectares.

XII. In the meanwhile, no State shall permit carrying on of sand mining or minor mineral extraction on riverbed or otherwise without the concerned person obtaining Environmental Clearance from the competent authority.

XIII. We direct the Ministry of Environment and Forest to issue comprehensive but self-contained Notification relating to all minor mineral activity on the riverbed or otherwise, to avoid unnecessary confusion ambiguities and practical difficulties implementation of the environmental laws. “



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35. On 15.01.2016 the MOEF & CC issued the following Notification for Amendment in EIA notification 2006 with respect to mining of minor minerals including sand mining and others. One of the conditions is that the method of mining should be appraised before the Environmental Clearance issuing authority through the mining plan and the authority has to decide the method of mining i.e., either manual or mechanized or semi mechanized mining. It is respectfully submitted that the present Environmental Clearance was issued based on the Notifications and Sand Mining Guidelines issued by the MOEF & CC from time to time. The Ministry of Environment, Forest & Climate Change (MoEF&cc) has taken note of the common practices followed in various states in the case of sand mining and subsequently has acknowledged the use of poclains in the state of Tamil Nadu.

36. The Hon'ble Principal Bench of National Green Tribunal, New Delhi in Original Application No. 123 of 2014 and M.A. No. 419 of 2014 has directed the Ministry of Environment and Forest to issue comprehensive but self-contained Notification relating to all minor mineral activity on the riverbed or otherwise, to avoid unnecessary confusion, ambiguities and practical difficulties in implementation of the environmental laws. Subsequently, Notification vide S.O.141 (E) on 15.01.2016



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and S.O.3977(E) on 14.08.2018 was issued. The above Notification deals with the categorization of category B projects into B1 and B2 based on the area of lease and is silent about the method of excavation to be carried out. Further, the notification states the necessary document required for B2 category project is Form -1M, PFR, DSR and Approved Mine Plan. Hence, in accordance with the Sand & Guidelines 2016 and subsequent notifications issued by MoEF&CC, Environmental Clearance had been issued to PWD of the Government of Tamilnadu to quarry sand in river beds.

37. The Sustainable Sand Mining Guidelines 2016 which is the latest guidelines regarding sand mining, makes it clear that there is no blanket ban on the usage of machineries across the country and it is State specific and site specific and there is no Statutory Orders /Notifications prohibiting machineries in sand quarries pan India. The Office Memorandum dated 24.12.2013 is a Comprehensive Guidelines for Environmental Clearance for all Sectors, however, the Sustainable Sand Mining Guidelines 2016 issued by the MOEF & CC is a self-contained guidelines relating to all minor mineral activity on the Riverbed which was issued in compliance with Hon'ble Principal Bench of National Green Tribunal, New Delhi in Original Application No. 123 of 2014 and M.A. No. 419 of 2014 the dated 13 January 2015 and hence the Sand Mining Guidelines 2016 prevails I over the guidelines dated



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24.12.2013 in the case of the current subject.

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38. The latest Office Memorandum dated 12.07.2023 issued by MOEF & CC states that the exemption from EC provided vide S.O. 1224 (E) dated 28.03.2020 for dredging and desilting of dams, reservoirs, weirs, barrages, river and canals shall be subject to Environmental Safeguards as proposed in the National Framework for Sediment Management issued by the Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation. The 2nd respondent, in the counter affidavit therefore, submitted that it has acted strictly in accordance with the Sustainable Sand Mining Management Guidelines -2016 and other applicable Laws, Rules and Regulations while considering and granting Environmental Clearance.

39. Heard Shri J.Ravindran, learned Additional Advocate General appearing for the petitioner-State PWD; Shri.T.Mohan, Senior counsel appearing for the 1st respondent and Mr.A.R.L.Sundaresan, Senior counsel appearing for the 2nd respondent.

40. This writ petition is filed by the state Public Works Department Mining and monitoring division, praying to quash the interim order dated 05.07.2023 passed by



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the National Green Tribunal, Southern Zone, Chennai in OA No 77 of 2023. The impugned interim order had permitted the PWD-petitioner herein to continue their mining at Oruvandhoor Village of Namakkal District subject to the condition that the mining can be done only manually and it cannot operate the poclains. It further added that the PWD-petitioners herein are at liberty to operate the mining with poclains provided they obtain the the environment clearance under B1 category.

41. Earlier, in the same proceedings, the National Green Tribunal had vide its interim order dated 31.05.2023 had issued a similar order restraining the petitioner herein from using poclains in the above quarry. The order was issued on the finding that machineries are not allowed to be used in B2 Category project as per OM dated 24.12.2013. In the writ petition No.17725 of 2023 filed by the PWD-petitioner against the said order dated 31.05.2023, this Court had modified that interim order to allow the use of two poclains and directed the NGT to conduct the proceedings and pass orders on merits. It is in this background the impugned second interim order is issued.

42. There is no dispute that the project proponent-PWD had obtained the environment clearance under “B2” category on 18.08.2016 which allowed the



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respondent to use two poclains for the purpose of mining river sand at SF No 643/1 (Part) in Oruvandhoor village, Namakkal district. And thereafter got the Environment Clearance amended to use four number of poclains on 09.07.2017 all in conformity with the Sustainable Sand Mining Management Guidelines, 2016 issued by MoEF & CC. The above guidelines came to be issued by the MoEF & CC in compliance of the decision of the Hon'ble Supreme Court in the case of **Deepak Kumar Vs State of Haryana reported in (2012) 4 SCC 629** and the Order dated 13.01.2015 passed by the Principal Bench of the National Green Tribunal, New Delhi and stand unassailed.

43. Hon'ble Supreme Court in the case of Deepak Kumar Vs State of Haryana reported in (2012) 4 SCC 629 and the Order dated 13.01.2015 passed by the Principal Bench of the National Green Tribunal, New Delhi had the occasion to deal with the minor mineral quarrying with mining area less than 5 hectares and eventually held that, contrary to the popular belief and mining practices followed across the country, prior environment clearance is mandatory even for sand mining leases less than 5 hectares. Owing to the confusion in the policies vis a vis the categorization of the mining leases, the Principal Bench of the National Green Tribunal had directed the MoEF & CC to issue a comprehensive notification in consonance with the decision of the Hon'ble Supreme Court in the Deepak Kumar vs State of Haryana case. It is in



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this background MoEF & CC Notification No S.O. 141 (E) dated 15.01.2016 and Sustainable Land Mining Management Guidelines, 2016 dated 15.03.2016 came to be issued.

44. In the background of the above facts, it is the contention of the petitioner that the NGT erred in passing the impugned order on the faulty assumption that machineries are not allowed to be used in B2 Category project. It was contended that the reliance on OM dated 24.12.2013 is misplaced and certain categorizations in the said OM has outlived its utility. They would argue that after the issue of the MoEF & CC Notification No S.O. 141 (E) dated 15.01.2016 and Sustainable Land Mining Management Guidelines, 2016 dated 15.03.2016, part of the OM dated 24.12.2013 categorizing the minor mineral leases has become redundant. It was asserted that even in any case if that part of the OM is not withdrawn for any reasons, they do not have the force of the statute as compared to the MoEF & CC Notification No S.O. 141 (E) dated 15.01.2016 and Sustainable Land Mining Management Guidelines, 2016 dated 15.03.2016.

45. The respondent would oppose the contention of the petitioner and urge that use of machines is not permitted for sand mining in terms of MoEF & CC OM dated



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24.12.2013. They had given an elaborate history of the litigation vis a vis the evolution of the mining policies on account of the interventions of alert citizens committed to the cause of safeguarding the environment. According to them, the PWD-petitioner herein have received environment clearance under B2 category and only B1 category leases are eligible for use of machinery. It was contended that B2 category leases, like the one possessed by the PWD-petitioner are not entitled to use machinery. For this contention, they rely on the OM dated 24.12.2013. This necessitated an appreciation of the said OM by this Court for the purposes of disposing off this Writ Petition.

46. Hitherto, prior to the intervention of the Hon'ble Supreme Court and the Principal Bench of National Green Tribunal and the consequent issue of MoEF & CC Notification No S.O. 141 (E) dated 15.01.2016 and Sustainable Land Mining Management Guidelines, 2016 dated 15.03.2016, leasing of minor mineral quarries were administered under eight categories in terms of MoEF & CC OM dated 24.12.2013 as below. (i) Less than or equal to 5 hectares needing no prior environment clearances, (ii) Less than or equal to 5 hectares needing prior environment clearances, (iii) Above 5 hectares and less than or equal to 25 hectares needing prior environment clearances (iv) Above 25 hectares needing prior



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environment clearances, (v) cluster situations where the total extent of the cluster is equal to or above 25 hectares requiring prior environment clearances, (vi) River sand mining less than 5 hectares and (vii) River sand mining more than or equal to 5 hectares and below 25 hectares including cluster situations and (viii) River sand mining clusters above 25 hectares.

47. Under the guideline dated 24.12.2013, category (iv), (v) and (viii) were classified as B1 projects falling under EIA Notification 2006. Category (ii), (iii) and (vii) are classified as B2 projects under EIA Notification 2006. Category (i) & (vi) were excluded from the purview of EIA Notification 2006. During the period prior to the issue of the said guideline dated 24.12.2013, all the minor mineral projects with area less than 50 hectares were categorized as B project that were later sub categorized as B1 and B2 projects vide the above said guideline.

48. Raising Concerns about the inadequacy of the above categorization allowing of mining without prior Environment clearances on certain categories, the Principal Bench of the National Green Tribunal had issued directions to the MoEF & CC to issue comprehensive guidelines. In turn the MoEF & CC had initiated an elaborate public consultation process obtaining the views of various stake holders and



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worked on it for over an year culminating in the issue the present guidelines viz MoEF & CC Notification No S.O. 141 (E) dated 15.01.2016 and Sustainable Land Mining Management Guidelines, 2016 dated 15.03.2016.

49. A careful perusal of the Sustainable Land Mining Management Guidelines, 2016 dated 15.03.2016 issued after the consultation process indicates a paradigm shift in the policy of administering the mining of minor minerals with emphasis on pragmatic conservation of the environment rather than through the control of the tools of mining like outright ban on use of machines that hitherto prevailed. The guidelines were prepared by competent personnel consisting of a senior administrator of the Government of India and scientists who hold expertise in the field of mining minerals. The guideline had recognized and factored in the best practices followed by the various states and union territories of India. It has struck a right balance on the need to conserve the environment vis a vis the need for development and arrived at a rational sustainable model. The hallmark of the new guidelines is a scientific management of the environment with the freedom to the lease holder to self regulate and in the event of failure to self regulate increasing monitoring and enforcement would be implemented. The regulation of mining through a total ban on mechanisation/tools was done away with even while optimal use of machine project



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wise was contemplated. Instead, mining is regulated and monitored through display of information to public at site, pre assessment of mining areas by experts, stringent licensing norms and so on. It recognises the practice of allowing mining rights only to state department followed in Tamil Nadu as a best practice.

50. It has now been made clear that categorization of mining leases of excavation of minor minerals into B1 and B2 categories are only on the basis of the extent of the lease area or the cluster area. Interestingly, even in OM dated 24.12.2013, sand mining upto a lease area of 25 hectares is categorized as B2 projects. The categorizations made for mining leases not in confirmity with the decision of the Hon'ble Supreme Court in the case of Deepak Kumar Vs State of Haryana and the new policy guidelines issued under the directions of the Principal Bench of the National Green Tribunal contained in OM dated 24.12.2013 has become redundant. The extent of inconsistencies in OM dated 24.12.2013 vis a vis MoEF & CC Notification No S.O. 141 (E) dated 15.01.2016 and Sustainable Land Mining Management Guidelines, 2016 dated 15.03.2016 is rendered otiose. Therefore, the plea of the respondents before the National Green Tribunal, South Zone, Chennai is devoid of merits in the changed policy senario. The extensive case laws cited as precedents by the respondents pertain to the period prior to the issue of MoEF & CC



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Notification No S.O. 141 (E) dated 15.01.2016 and Sustainable Land Mining Management Guidelines, 2016 dated 15.03.2016, in the old policy scenario.

Nevertheless, the diligence exercised by the respondent to present the policy notes and litigation history and the environment awareness is highly commendable. This court finds that, in the changed policy scenario, there is no express bar in the statutes for the use of machinery in the B2 category projects and therefore, in the absence of any material to show that the instant mining lease does not fall under the B2 category on the basis of the extent of lease land, the impugned order dated 05.07.2023 of the National Green Tribunal, Chennai is liable to be set aside. Accordingly, it is beyond the realm of the National Green Tribunal, Southern Zone, Chennai, to require the petitioner to obtain clearance under B1 Category. It is apparently for this reason, this court had modified the similar interim order dated 31.05.2023. In view of the above, the Writ Petition is allowed.

51. In the result,

(i) The Writ Petition is allowed. The impugned order dated 05.07.2023 of the National Green Tribunal, Chennai is set aside.



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(ii) The petitioner is directed to scrupulously follow the conditions laid out in the mining lease without any deviation.

(iii) In the event self regulation by the petitioner fails, the respondents would be free to pinpoint such failures and seek remedies before the appropriate forum.

No costs. Consequently, connected miscellaneous petitions are closed.

J.N.B.J., N.M.J.,
28.08.2023

Index : yes/no
Internet : yes/no
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To
The Executive Engineer,
Public Works Department,
Mining and Monitoring Division,
Water Resources Department,
Trichirappalli

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J.NISHA BANU, J.

&
N.MALA, J.

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28.08.2023