

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.20206 of 2016 (O&M)
Date of decision: 29.11.2016**

M/s Delhi Royalty Company, Yamuna Nagar

....Petitioner

versus

State of Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK SIBAL**

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Present:- Mr. Akshay Bhan, Senior Advocate with
Mr. Alok Mittal, Advocate, for the petitioner.

Mr. Amar Vivek, Addl.A.G., Haryana
for respondents No.1 to 4.

Mr. Vinod S. Bhardwaj, Advocate, and
Ms. Deipa Singh, Advocate, for respondent No.5.

Mr. Ish Puneet Singh, Advocate
for M/s Ganga Yamuna-respondent No.6.

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S.J. VAZIFDAR, CHIEF JUSTICE (ORAL)

The petitioners have sought a writ of certiorari to quash orders passed by respondents No.2 and 3 dated 20.09.2016 and 21.09.2016 directing them to stop the mining operations. By an amendment, they have challenged the orders passed by the National Green Tribunal (hereinafter referred to as the 'Tribunal') dated 18.02.2016 and 01.06.2016 in O.A. No.184 of 2013 and O.A. No.272 of 2016, respectively.

2. It will not be necessary for us to consider the amended prayer impugning the orders of the Tribunal as we are of the view that the orders of the Tribunal do not compel respondents No.2, 3 and 4 i.e. Director General, Mines and Geology Haryana, Mining Officer, Department of Mines and Geology Haryana and Chairman, Haryana State Pollution Control Board, to restrain the petitioners from carrying on mining operations.

3. The official respondents stated that they had no objection to the petitioners carrying on the mining operations pursuant to and in accordance with the license issued by respondent Nos.2, 3 and 4. In fact, the official respondents admitted that the petitioners have all the permissions and license in place and would be entitled to carrying on mining operations in accordance therewith. They, however, contended that they find themselves compelled to pass the impugned orders restraining the petitioners from acting pursuant to the permissions, namely, the environmental clearance, consent to operate and consent to establish in view of the Tribunal's order dated 01.06.2016.

4. It is apparent, therefore, that the only issue that falls for consideration is whether the official respondents correctly construed the orders of the Tribunal.

5. It is important to note at the outset of the consideration of the orders of the Tribunal that the petitioners were not parties before the Tribunal and had at no stage taken out any proceedings before the Tribunal.

6. The proceedings before the Tribunal were initiated on account of a complaint by the newly added respondent No.5-Gurpreet Singh Bagga.

As the impugned orders were passed in view of the orders of the Tribunal and as the petitioner/complainant before the Tribunal was not before us, we,

by order dated 26.10.2016, granted the petitioners liberty inter alia to implead the petitioner before the Tribunal, as a respondent herein. Notices were issued and served upon the newly added respondent, who also appeared before us.

7. We are and must, at the outset, state that respondent No.5 also did not contend that the said order of the Tribunal affects the rights of the petitioners despite their having all the permissions in place. As the matter involves not merely the rights of respondent No.5 we consider it necessary to construe the orders ourselves.

8. By an order dated 18.02.2016, the Tribunal dealt with the various allegations in the complaint at considerable length. Mr. Amar Vivek, learned counsel appearing on behalf of respondents No.1 to 4 i.e. official respondents invited our attention to paragraphs Nos.14 & 15 of the order, which reads as under:-

“We direct that the all the persons carrying on mining activity as well as the persons operating screening plants/stone crushers shall obtain the consent of the State Board immediately. They shall submit the applications for the same within two weeks from the date of pronouncement of this judgment which shall be dealt with immediately and consent should be refused/granted by the State Board within three weeks thereafter. The State Board shall decide the application on the basis of the joint inspection conducted by the team(s) constituted by the High Powered Committee involving the State Boards of the respective states. If the consent is granted, the State Board shall stipulate such conditions as are necessary for

protecting the environment, ecology and the interest of the people of that area in relation to mining and transportation of mined material and processing at the respective plants.

The mining units, if any, which have obtained the consent of the Board and are operating would be subjected to inspection by the Joint Inspection Team. They would be permitted to operate after expiry of 45 days only if the report the Joint Inspection Teams is favourable to them, subject to the orders of the Tribunal.”

9. Firstly, these paragraphs referred to persons who had already been carrying on mining activities. The petitioners obtained their aforesaid permission after the order dated 18.02.2016. They, in fact, have the consent of the State Board as well. Even assuming that paragraph No.14 applies to them, they admittedly have complied with all the requirements thereof. The period of 45 days mentioned in the order in any event has expired. This order, therefore, does not affect the rights of the petitioners. Mr. Bhan, learned Senior counsel appearing on behalf of the petitioners also contended that in any event this order does not prohibit legal mining and that it only affects illegal mining. It is contended that the subsequent orders of the Tribunal have not placed a complete ban on mining irrespective of whether it is legal or not.

10. The petitioners obtained the environmental clearance on 27.06.2016.

11. The Tribunal passed the said order dated 01.06.2016 on the basis whereof the impugned orders have been passed. It is necessary, therefore, to construe this order carefully. Mr. Bhan, invited our attention to

the order, which reads as under:-

“Heard the learned counsel for the parties.

“While passing the judgment dated 18th February, 2016 the Tribunal had issued directions, inter alia, that there will be complete prohibition on carrying mining of minor mineral (Bajri, Sand and Boulders) in the flood plain of river Yamuna in District Yamunanagar (Haryana) and Saharanpur (Uttar Pradesh) and all other villages situated on the bank of river Yamuna, Kaluwala Rao, Solani and Badshahibagh Rao, for a period of 45 days from the pronouncement of that judgment.

This matter was listed before the Tribunal on 31st May, 2016 and it was ordered that the same be listed on 01st June, 2016 in relation to State of Haryana only. It is to be noted that the aforesaid judgment was passed in a matter which includes State of Uttar Pradesh also. Hence the question in relation to State of Haryana is before us today.

Apart from this a separate Original Application (No. 272/2016) has been filed in respect of the same subject by the Applicant M/s Ganga Yamuna Mining Company wherein it has been prayed that they may be permitted to commence their mining operations.

It has been submitted by the Learned counsel for the Lessee that subsequent to the passing of the judgment by the Tribunal on 18th February, 2016, the High Powered Committee constituted therein has submitted a report. Further he submits that MoEF has also approved the said report, through an Affidavit filed by its Director Scientist –

F. It is also submitted that the High Powered Committee has made certain recommendations as follows:-

(i) The provision envisaged in the notification No. 141(E) dated 15.01.201 and 190(E) dated 20.01.2016 be strictly adhered to. The Districts will not allow any mining in area which has not been identified in the comprehensive Mining Plan submitted to the HPC and the NGT. Any change in the site be done in preparing and revising the District Survey Report as envisaged in above notification following the due process. The mechanisms outlines for monitoring of mined out material through use of IT and IT enabled services should be followed. The movement of sand (mined out material) should be controlled through Transit Permit with security features like its Printing on IBA approved MICR paper: Unique Barcode, Unique QR Code; Fugitive Ink Background; Invisible Ink Mark; Void Pantograph and Watermark. The DEIAA should ensure strict monitoring of movement of mined out material to ensure that no mining in excess of quantity mentioned in environmental clearance takes place. The riverbed mining in monsoon period from 01st July to 15th September should not be allowed.

(ii) In Yamunanagar district of Haryana two valid leases with all statutory clearances and 69 crushers one Screening operating with all statutory clearances as on 18.02.2016 may be permitted to continue their operation. The mining leases as identified in comprehensive Mine Plan for the district may be permitted to operate after obtaining all the requisite approvals.

(iii) In Saharanpur district of Uttar Pradesh five valid leases with all statutory clearances are in existence as on date. These lease holders are : M/s Amit Jain,

Nassem, Vikas Agarwal, Wajid Ali etc. which are the same as outlines in 13 leases in NGT order. Out of 148 crushers in Saharanpur 39 crushers were inspected and various non-compliances were observed during the visit. In Saharanpur the investigation on loss and damage to environment of the area due to illegal sand mining is not completed, the identification of persons involved in illegal sand mining is not completed, the identification of person involved in illegal mining has not been done by the State, and no environmental compensation has been deposited (Stayed by Hon'ble Supreme Court in the Civil Appeal No. D-7484 of 2016 Mohd. Inam & Anr. Vs. Gurpreet Singh Bagga and Others and Civil Appeal No. 2667 of 2016 M/s Pradhan Stone Crushers Vs. Gurpreet Singh Bagga & Ors vide order dated 18.03.2016). In view of above HPCB do not recommend commencement of mining or running of crushers and screening plants in Saharanpur district of Uttar Pradesh.

(iv) Both the States will carry out mining in semimechanized manner using manpower, tractor, trucks, JCB and excavators for mining and transportation.

(v) Both the States will activate the District Level Task Forces under District Magistrate constituted for monitoring sand mining and preventing illegal mining.

(vi) There should be a quarterly meeting between the two district Level Task Forces, alternating at two district head quartet or any other site in two districts decided mutually by the District Magistrates.

(vii) The District Magistrates and Superintendent of Police will be jointly

responsible for preventing illegal mining at their districts.

(viii) The duties on check posts either of police, revenue official or mining department officials be rotated every months.

(ix) The District environment Impact Assessment Authority (DEIAA) based on the recommendations of the District Expert Appraisal Committee (DEAC) constituted vide notification dated 30.01.2016 of the Ministry in the district of the SEIAA and Regional office of the Ministry.

(x) The model Environmental Clearance conditions suited to the site be prescribed in the Environmental Clearances and, its enforcement be strictly enforced by the DEIAA,SPCB and Regional offices of MoEF CC.

(xi) The check post as approved by the States in both the District shall be set up with adequate manPoweredand infrastructure and the staff be rotated every month”.

On perusal of the said recommendations we are of the considered view that the strict compliance needs to be made by all parties concerns.

The learned counsel for State of Haryana has submitted that there had been no illegal mining in the State. This fact has also been concurred by the learned counsel for MoEF.

In the aforesaid facts and circumstances and as observed in the judgment dated 18th February, 2016 that the matter could be re-considered by the Tribunal after 45 days, we deem it just and proper to permit lessee to commence their mining operation, crushing and screening for period of three months from today.

However, it shall be for State of Haryana,

State Pollution Control Board and MoEF to ensure that the recommendations of the High Powered Committee are followed in letter and spirit. State Pollution Control Board as well as MoEF may make random inspection so as to see that the recommendations made by the High Powered Committee are adhered to. The MoEF shall submit a status report in this regard before the expiry of the aforesaid period, to this Tribunal.”

12. It is apparent that the above order dated 01.06.2016 was on account of the application filed by M/s Ganga Yamuna Mining Company (respondent No.6 herein). Clause (ii) of the recommendations of the High Powered Committee, in fact, states that two valid lessees with all clearances may be permitted to continue their operations. The petitioners' leases are not one of the two leases referred to therein. However, this at least indicates that even the High Powered Committee did not appear to have any objection regarding legal mining. In any event, there is no recommendation by the High Powered Committee to ban even illegal mining. The Tribunal permitted the applicant-M/s Ganga Yamuna Mining Company, which was one of the lessees referred to in paragraph No.(ii) of the recommendations of the High Powered Committee, to commence the mining operation, crushing and screening for a period of three months from the date of the order. This also indicates that there was no total ban imposed by the Tribunal. This order does not ban all legal mining operations. We do not find anything in this order that compels the respondents to prevent the petitioners from carrying on mining operations pursuant to the said permissions which, at the cost of repetition, even the respondents' admit are in place and valid.

13. The impugned order dated 20.09.2016 has been passed on a misconstruction of the order of the Tribunal dated 01.06.2016. We must in fairness to the official respondents, however, observe that it appears that they have passed the impugned order out of abundant caution and not out of mala fide motive.

14. Had there been a doubt regarding the order of the Tribunal, we would have directed the parties to seek a clarification in respect thereof from the Tribunal. However, learned counsel appearing on behalf of respondent No.5 i.e. the petitioner before the Tribunal did not contend that the orders of the Tribunal prohibited mining operations being carried on by the petitioners so long as the same was done in accordance with law.

15. We record Mr. Bhan's statement on behalf of the petitioners that the petitioners would, in any event, carry out their mining operations under the said permission strictly in compliance with the recommendations of the High Powered Committee. The statement is accepted and it is so ordered. Mr. Amar Vivek, learned counsel appearing on behalf of respondents No.1 to 4 i.e. official respondents, states that in any event it is the stand of the official respondents that the mining operations under the said permissions would have to be carried out as per the recommendations of the High Powered Committee.

16. The impugned orders are accordingly quashed and set aside. It is clarified, however, that we have only construed the aforesaid orders of the Tribunal. We were not invited to construe any other orders of the Tribunal. In the event of there being any restrictions placed by any other order of the Tribunal or any other authority, the same would be a different matter and

not covered by this judgment.

The petitioners shall be at liberty to apply to the official respondents for any benefits on account of the delay caused by the impugned orders.

The petition is accordingly disposed of.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

November 29, 2016
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(i)	Whether speaking/reasoned	Yes
(ii)	Whether reportable	Yes/No