

06-01-2022

ct no. 13

Sl. 13

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**WPA 20690 of 2021
(Through Video Conference)**

Laltu Dutta

-Versus-

National Green Tribunal Eastern Zone Bench, Kolkata
& Ors.

**Mr. Sandip Kumar Bhattacharyya,
Mr. Rajarshi Basu,
Mr. Sanjiv Dan,
Ms. Debannwita Pramanik,
Mr. Gaurav Dutta**

....for the petitioners

**Mr. Anirban Ray, Id. G.P.,
Mr. T.M. Siddiqui,
Mr. Debasish Ghosh**

...for the State

**Mr. Arjun Ray Mukherjee,
Mr. Debapriya Mitra**

...for the Pollution Control Board

Supplementary affidavit of service filed in
Court today is taken on record.

Pursuant to order dated December 23, 2021, the private respondent has submitted that the said order at page 15, Annexure – P/2 to the writ petition is in respect of a completely different proceeding in which eight other sand mines in the area in question were dealt with and penalized. It is submitted that O.A. 32 of 2020/EZ being the subject matter of the present writ petition, was also heard on the same date by the National Green Tribunal (NGT) as O.A. 80 of 2020/EZ 1 was

heard. The inclusion of the name Laltu Dutta with the wrong subject is an inadvertent omission.

The writ petition is filed alleging violation of principles of natural justice. It is submitted that notice of O.A. 32 of 2020/EZ was not given to the writ petitioner. It is also submitted that the orders passed in the said O.A.s had not been communicated to the writ petitioner by registered post as required under the applicable rules. It is, therefore, submitted that the petitioner has been condemned without being heard.

It is also submitted that the original application ought not to have been entertained by the National Green Tribunal since the writ petitioner is not an affected party. The Tribunal does not have jurisdiction to adjudicate Public Interest Litigation.

On merits it is submitted that the writ petitioner was granted Letter of Intent on January 15, 2019 by the District Magistrate, Paschim Bardhaman in terms of Rule 38 to 41 of the West Bengal Minor Minerals Concession Rules, 2016.

It is further argued that in terms of Rule 33, a Letter of Intent is issued only after environmental clearance is obtained. The petitioner was, therefore, not obliged to produce the same separately. The production of Letter of

Intent was sufficient to entitle the petitioner to start mining of sand.

It is also argued that in terms of the Notification of the Ministry of Environment and Forests dated September 14, 2006, particularly, Schedule-I thereof activity under Clause 1(1)(1a), EC is not necessary as the petitioner's LOI is only in respect of 5 hectares of land.

The following decisions have been relied upon and cited by the counsel for the petitioner;

(1) ***Sarup Singh and another vs. Union of India and another*** reported in **(2011) 11 SCC 198**, particularly paragraphs 24 and 25.

(2) ***Deepak Kumar and others vs. State of Haryana and others*** reported in **(2012) 4 SCC 629**, particularly paragraph 29.

(3) ***A.R. Antulay vs. R.S. Nayak*** reported in **AIR 1988 SC 1531**, particularly paragraphs 36, 42, 61, 83, 92, 99, 100 and 104.

(4) ***State of Uttaranchal vs. Balwant Singh Chaufal and others*** reported in **(2010) 3 SCC 402**, particularly paragraph 181.

(5) ***Kalabharati Advertising vs. Hemant Vimalnath Narichania and others*** reported in **(2010) 9 SCC 437**, paragraph 25

(6) ***Harshad Chiman Lal Modi vs. DLF Universal Ltd. and another*** reported in ***(2005) 7 SCC 791***, particularly paragraphs 30, 31 and 32.

Mr. Ray Mukherjee, learned counsel for the Pollution Control Board produces order sheets and copies of orders dated June 9, 2020, September 9, 2020, October 14, 2020, December 2, 2020, June 11, 2021, June 30, 2021, August 10, 2021, November 18, 2021 and November 30, 2021 in OA 32 of 2020/EZ. It is submitted that the writ petitioner was personally present in course an inspection conducted by the PCB on 08.07.2020, in terms of the direction of the NGT in order dated 09.06.2020.

As a preliminary objection, counsel for the private respondent/applicant would submit that the petitioner has efficacious alternative remedy in terms of Section 22 of the National Green Tribunal Act of 2010 before the Hon'ble Supreme Court. The writ petition, therefore, ought not to be entertained. He denies that the petitioner was not notified of OA/32/2020. Affidavits of service are stated to have been received by the NGT.

It appears from the records of the case in O.A. 32 of 2020/EZ before the NGT that the matter was heard over a long period of time. The WBPCB has conducted an inspection on 9th June,

2020 of all sand mining leases in the area in question i.e. on the banks of the river Ajay River at Dubrajpur in Birbhum District. The petitioner was personally present in course of such inspection. The writ petitioner has admittedly and illegally mined in the area that was subject matter before the NGT.

Applying the Second Proviso of Order 9, Rule 13 of the Code of Civil Procedure 1908, this Court is of the view that the writ petitioner cannot take the plea of having been condemned unheard when he was at all material times aware of the said proceeding occurring before the NGT and the subject matter thereof.

The decision in the cases of Sarup Singh (supra) and Harshad C. Modi (supra) have no manner of application in the facts of the case.

The reference to O.A. 80 of 2020/EZ in the order dated December 10, 2021, is therefore a typographical error. Similar and exact orders have also been passed by the NGT in OA 32/2020/EZ which has been suppressed by the petitioner. Various orders passed in OA 32 have been placed before and scrutinized by, this Court. The writ petition ought to have been dismissed on the said ground alone.

On the question of the requirement of EC, it appears from the decision of the Hon'ble Supreme Court in the case of **Deepak Kumar (Supra)**, particularly, paragraph 29 thereof that even sand mining leases below 5 hectares are required to obtain environmental clearance. Admittedly, the writ petitioner never had any environmental clearance. The decision in **Deepak Kumar (Supra)**, delivered in the year 2016, is subsequent to the notification of the MoEF of the year 2006 referred to by the writ petitioner.

The challenge to locus of the private respondent/applicant is not sustainable. The Tribunal has recorded in the order dated 9th June, 2020 that a substantial question relating to environment has been raised requiring intervention. The requirement of Section 14 (1) of the NGT Act, 2010 is therefore fulfilled. Therefore it cannot be argued that proceeding in the Tribunal was a PIL or could not have been entertained. The decision in the cases of A.R. Antulay (supra) and Balwant Singh (supra) have no manner of application in the instant case.

Given the fact that a sand mining is being continued by the petitioner, albeit after issuance of a Letter of Intent but without any sand mining

lease having been executed with the State, is itself a very serious crime.

Having considered the gamut of facts, in the instant case, this Court, under Article 226 of the Constitution, is not inclined to interfere with the imposition of penalty passed in OA 32/2020/EZ. This court does not find any serious infirmity in the procedure adopted by the NGT. It is clear before this Court based on the documents handed over by the parties that the petitioner had at all material times notice of the said proceedings. The writ petitioner did not even have a lease executed in his favour by the State. He is a rank trespasser and is guilty of stealing the Natural Resources of the State. The petitioner is just a common criminal convicted by a competent forum.

The writ petition is, therefore, dismissed.

Mr. Rajarshi Basu, who is led by Mr. Sandip Kumar Bhattacharyya, learned counsel for the petitioner submits after the order dictated that his client is desirous of appearing before the NGT and to seek leniency.

The Additional District Magistrate and District Land & Land Reforms Officer, Paschim Bardhaman shall, therefore, not take any coercive measures against the petitioner only until January 10, 2022.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)