

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 2748 of 2022

M/s. Eagle Infra India Ltd. through its Director-Ramprakash B. Mishra, Ulhas
Nagar, Maharashtra

vs.

The Union of India through its Secretary, Ministry of Environment, Forest and
Climate Change, New Delhi and others.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A. M. Ghare, Advocate with Shri A. A. Kathane, Advocate for
petitioner.
Shri C. J. Dhumane, Advocate for respondent Nos.1 and 3.
Ms. N. P. Mehta, Assistant Government Pleader for respondent No.2.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : August 17, 2022

P. C.

The petitioner is a Company undertaking construction of all roads and highways. It has been awarded work of construction of a portion of National Highway No.6. While undertaking that work it was required to procure Murrum/ordinary earth for levelling and filling work. It is the case of the petitioner that in view of Government Resolution dated 29/11/2017 it was permitted to use ordinary earth for levelling and filling of roads under construction. On 03/02/2022 the National Green Tribunal, Bench at Pune passed an order directing that no mining activity would be permissible for area below 5H without Environmental Clearance. The petitioner has thus challenged the said order of the National Green Tribunal.

On 06/07/2022 after hearing the learned counsel for the parties, the following order was passed :

“ Pursuant to the judgment of the Hon’ble Supreme Court in the case of Deepak Kumar and others vs. State of Haryana and others [(2012) 4 SCC 629], the Ministry of Environment, Forest and Climate Change has issued a Notification dated 28.03.2020 and has proposed certain amendments in the earlier Notification dated 14.09.2006. As per this Notification, Appendix IX Clause 6 thereof reads as under:

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

The National Green Tribunal by its order dated 03.02.2022 has observed that no mining activities could be allowed in violation of the requisite environment clearance being obtained in terms of the judgment in Deepak Kumar and ors (supra). The State Government through its Ministry of Revenue and Forest has issued a communication dated 24.03.2022 to all Divisional Commissioners and Collectors stating therein that while granting permission even for temporary mining activities, environment clearance should be obtained.

The petitioner seeks to undertake activity of laying of roads and hence has sought to rely upon exemption indicated in Appendix IX of the Notification dated 28.03.2020.

The learned Assistant Government Pleader for the respondent no.2 obtain instructions as whether in the light of such exemption it would still be necessary for the petitioner to obtain necessary environment clearance while extracting or borrowing of ordinary earth for the

*linear projects such as roads, pipelines, etc.
Stand over two weeks.”*

Pursuant thereto an affidavit has been filed by the Joint Secretary, Revenue and Forests Department of the State of Maharashtra. It has been stated therein that the Cabinet Committee of the State of Maharashtra has taken a decision to grant exemption from obtaining ‘Environment Clearance’ for temporary permit vide communication dated 12/12/2013. It has been further stated that it would be cumbersome and difficult to obtain Environment Clearance for every excavation quantity. It is for that reason that the earlier procedure adopted for temporary permit would be necessary.

The learned counsel for the petitioner submits that on 08/08/2022 the respondent No.1 has issued Office Memorandum wherein it is stated in paragraph 5 as under :

“5. Based on the recommendations of the EAC and keeping in view the direction of Honourable NGT, the matter has been examined by the Ministry in detail and it has been decided that the exemption from EC provided vide S.O.1224 (E) dated 28/03/2020 for “extraction or sourcing or borrowing of ordinary earth for linear projects such as roads, pipelines etc.” shall be subject to Standard Operating Procedure (SOP) as enclosed to this Office Memorandum.”

The Office Memorandum dated 08/08/2022 is taken on record and marked ‘A’ for identification. Alongwith said Office Memorandum, the Standard Operating Procedure (SOP) has been prescribed in the matter of excavation of ordinary earth.

In view of aforesaid, since the Central Government has now clarified the applicability of the Environmental Impact Assessment Notification 2006 by issuing Standard Operating Procedure for the purpose of extraction or sourcing or borrowing of ordinary earth for linear projects to be subject to Standard Operating Procedure, the petitioner would be required to follow the said Standard Operating Procedure while extracting or sourcing or borrowing of ordinary earth for linear projects. It is also the stand of the Revenue and Forests Department that it would be cumbersome and difficult to obtain Environment Clearance for every excavation quantity and hence exemption for obtaining environmental clearance for temporary permit was allowed as per the communication dated 12/12/2013. The respondents in the aforesaid facts are thus duty bound to ensure that the aforesaid Office Memorandum dated 08/08/2022 along with its Standard Operating Procedure is followed when a temporary permit is granted as per communication dated 12/12/2013 while extracting and borrowing of ordinary earth for linear projects such as roads, pipelines etc.

By clarifying the aforesaid aspect, the writ petition is disposed of with no order as to costs.

Authenticated copy of this order be supplied to the counsel for the parties to act upon.

(URMILA JOSHI-PHALKE, J.)

(A. S.CHANDURKAR, J.)