

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.842 OF 2023

Nikhil Construction Group Pvt. Ltd.
having registered office at :
Nikhil Group, Plot No.65, Shri Shivaji
CHS Behind ICC Tower,
Near JW Marriott, S.B. Road,
Pune-411016.

Through its Authorized Person.

... **PETITIONER**

VERSUS

1. The State of Maharashtra
Through the Secretary
Revenue and Forest Department
Maharashtra State,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner (Revenue)
Nashik Division, Nashik.
3. The District Collector
Ahmednagar, Dist. Ahmednagar.
4. Sub Divisional Officer
Sub Division, Karjat,
Tq, Karjat, Dist. Ahmednagar.
5. The Tahasildar
Karjat, Tq. Karjat,
Dist. Ahmednagar.
6. The Circle Officer
Kombali, Tq. Karjat,
Dist. Ahmednagar.
7. The District Forest Officer
Ahmednagar, Dist. Ahmednagar.
8. The Range Forest Officer (Regional)
Karjat, Tq. Karjat,
Dist. Ahmednagar.
9. The Range Forest Officer (Wildlife)
Karjat, Tq. Karjat,
Dist. Ahmednagar.

... **RESPONDENTS**

...

Advocate for Petitioner : Mr. Niteen V. Gaware,
Government Pleader for respondents : Mr. D.R. Kale

...

**CORAM : MANGESH S. PATIL AND
S.G. CHAPALGAONKAR, JJ.**
Reserved on 03.02.2023
Pronounced on : 12.04.2023

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. The Rule is made returnable forthwith. Learned AGP waives service for all the respondents. At the request of the parties, the matter is heard finally at the stage of admission.

2. By invoking the powers of this Court under Article 226 of the Constitution of India, the petitioner a private limited company, is challenging the communications dated 21.12.2022, 23.12.2022 and 24.12.2022 issued by the respondent Nos.5 and 7 who are the Tahsildar, Karjat and the District Forest Officer, Ahmednagar directing it to close down the stone crusher installed by it in land Gut No.100 of Village Supe, Taluka Karjat, District Ahmednagar. The respondent No.1 is the State Government through the Secretary of the Revenue and Forest Department, Respondent No.2 is the Divisional Commissioner of Nashik Revenue Division, the respondent No.3 is the District Collector, Ahmednagar, Respondent No.4 is Sub-divisional Officer, Karjat, Respondent No.6 is the Circle Officer of the Kombali, Taluka Karjat, Respondent Nos.8 and 9 are the Range Forest Officers, Regional and Wildlife, respectively.

3. The petitioner undertakes construction activity and is engaged in construction of roads, bridges, small city development projects and water line projects and even has received an award from the State Government for

completion of its projects.

4. Pursuant to a tender floated for the purpose, the petitioner secured a contract for up-gradation/reconstruction of the existing highway from Adhalgaon to Jamkhed stretch which is a part of a Section of NH-548D Package No.Nashik-IV for a length of 62.775 kms. The work order was issued to it on 11.02.2022 and is expected to complete the project within 18 months. It has completed around 40% of that work.

5. It is averred by the petitioner that in order to set up a stone crusher plant it has obtained on leave and licence basis lands bearing Gut No.98,99 and 100 totally admeasuring 6 Hectares 89 Are from its owner and an agreement to that effect was registered on 07.12.2021. It then applied for none agricultural use permission by submitting an application to the respondent No.5 - Tahsildar on 08.12.2021 under the provisions of the Maharashtra Land Revenue Code, 1966 (herein after the MLRC). In turn the respondent No.5 - Tahsildar sought permission/approval from the respondent Nos.7 to 9. Since the stone crusher plant was to be erected in the vicinity of Great Indian Bustard Sanctuary, Karjat (GIB Sanctuary), mentioning that the petitioner's lands were at a distance of about 564 meters and 772 meters from the boundary of the sanctuary. Accordingly, respondent No.5 - Tahsildar by the order dated 04.05.2022 granted permission for non-agricultural use under section 45 of the MLRC, after the respondent Nos.7 to 9 granted no objection certificate on 22.04.2022. It is further averred that even the Grampanchayat, Supe issued a similar no

objection certificate on 15.11.2021 for setting up the stone crusher plant. It is averred that after obtaining requisite permission even from the Maharashtra Pollution Control Board (MPCB) the stone crusher plant was set up. It is then averred that as per the order of the respondent No.3 - Collector necessary advance royalty was also deposited from time to time.

6. In order to facilitate completion of the highway project the stone crushing plant has been set up temporarily for crushing rubbles and stone aggregate. Except crushing of the stones no other activity is being undertaken. No excavation of mines and minerals has ever been carried out. The stone aggregate/rubbles were brought from different sources that is from road cutting stones and the stones excavated from land Gut Nos.103 of Village Supe and Gut No.203 of Village Bitkewadi of Taluka Karjat that too with due permissions from the respondent No.3 – Collector dated 15.12.2022 and 28.12.2022. The actual site for excavation of mines and minerals situate more than 1000 meters away from the petitioner's stone crushing plant which is evident from the consent given by the respondent No.3 dated 19.05.2022 and the permission mentioned herein above granted by the respondent No.3 – Collector. It is then alleged that when everything was going on smoothly, due to the political pressure exerted by a Member of the Legislative Council of the State alleging loss of environment, the respondent No.7 - DFO by his communication dated 21.12.2022 constituted a monitoring committee to monitor the activities of the stone crushers operating in Karjat Taluka around the GIB Sanctuary. By communication

dated 23.12.2022 the respondent No.7 - DFO informed the respondent No.5 - Tahsildar and in turn the latter by impugned communication dated 24.12.2022 which is served to the petitioner on 11.01.2023 directed it to close down the stone crusher plant on the ground that it situates within 1000 meters of the boundary of the GIB Sanctuary relying upon the circulars issued by the Central Government and the State Government on 11.02.2020 and 05.10.2018 respectively. It is alleged that no opportunity of being heard was ever extended to the petitioner. No show cause notice was given. The decision is politically motivated and is arbitrary and illegal being violative of principles of natural justice.

7. The learned advocate Mr. Gaware would endeavor to point out that as per the directions of the State Government in the circular dated 05.10.2018 only the mining activity within the peripheral 1 km wide area around the national parks, sanctuaries, natural reserves has been prohibited. By the communication addressed by the Secretary of Department of Forest, State of Maharashtra to the Principal Chief Conservator of Forest called upon the latter to furnish the information regarding such mining activity. This direction was issued pursuant to the directions of the Supreme Court dated 04.08.2006 in the matter of **Goa Foundation Vs. Union of India; in Writ Petition No.460/2004**, although the communication dated 05.10.2018 erroneously refers to it as a decision in the matter of **Writ Petition (C) No.202/1995** which in fact is a matter **In Re: T.N. Godavarman Thirumulpad Vs. Union of India and Ors.**, as can be noticed from the judgment in letter

dated 03.06.2022. All the impugned communications whereby the petitioner's stone crushing plant has been directed to be closed is based on the judgment of the Supreme Court in the matter of **T.N. Godavarman** (supra). He took us through the entire judgment and submitted that the Supreme Court had issued the directions in order to regulate mining activity in and around the National Parks and Wild Life Sanctuary. The directions were issued in furtherance of the Government Guidelines dated 09.02.2011. He would further submit that the Minister of Environment, Forest and Climate Change by its notification dated 11.02.2020 issued in exercise of the powers conferred under the Environment Protection Act, 1986 and the Rules framed thereunder has notified an area to an extent varying from 0 (zero) meter to 400 meters around the boundary of GIB Sanctuary spread in Ahmednagar and Solapur District of the State of Maharashtra as the Eco-Sensitive Zone (ESZ). It contains the boundary description of the GIB sanctuary and its Eco Sensitive Zone in Annexure IA. Clause 4 of notification gives list of activities which are prohibited or to be regulated within ESZ. The description given in the tabulated form under the category 'A' list of prohibited activities whereas category 'B' contains the list of regulated activities. The activity of stone crushing mentioned in serial No.1 of category 'A' (prohibited activities) contemplates a unit comprising of stone quarrying and crushing. A stand alone stone crushing plant unconnected with stone quarrying has not been specifically mentioned as a prohibited activity. It has to be understood in the light of the decision in the matter of

Goa Foundation and **T.N. Godavarman** (supra). He would thereafter pointed out that in Annexure IA which gives list of patch wise boundary description of GIB Sanctuary and its ESZ, petitioner's Gut Nos.98, 99 and 100 of Village Supe do not find place in that list. Even Gut No.103 of Supe and Gut No.203 of Bitkewadi are not mentioned in that list from which the stones are sourced and crushed at the petitioners' stone crushing plant. He would further submit that as per clause 1 of the notification dated 11.02.2020 the ESZ is declared to be 0 (zero) meter to 400 meters around these patches and not 1 km. The reliance of the authorities on the decision in the matter of **Goa Foundation** and **T.N. Godavarman** (supra) is misplaced. The Supreme Court had merely laid down 1 km wide ESZ only in respect of mining activity. He would therefore submit that the very basis for the respondents to issue impugned communications is fallacious.

8. Per contra, the learned AGP would refer to the two affidavits in reply one filed on behalf of the respondent Nos.3 to 5 (Revenue Officers) and the other on behalf of the respondent Nos.7 and 8 (Forest Officers). He would submit that the impugned communications have been issued strictly in tune with the directions of the Supreme Court and in view of the location of the petitioner's stone crushing plant which is admittedly within 1 km range of the boundary of the GIB sanctuary. He would submit that the non-agricultural use permission granted to the petitioner has already been cancelled by the order dated 25.07.2022 for violation of clause No.8 of the order dated 04.05.2022.

9. We have considered the rival submissions perused the papers and the decision in the matter of **T.N. Godavarman** (supra). It must be noted at the outset that as has been mentioned in one of the affidavits-in-reply filed by Sub-divisional Officer, Karjat referring to all the aforementioned facts and circumstances and particularly in the light of the decision in the matter of **T.N. Godavarman** (supra), mentions that the non-agricultural use permission was granted subject to certain terms and conditions and for the alleged breach of clause No.8 it has been cancelled by the order dated 25.07.2022 for operating the stone crusher illegally. That decision is not under challenge in this writ petition. However, as is mentioned in the affidavit-in-reply, the respondents are squarely relying upon the decision in the matter of **T.N. Godavarman** (supra) which declares portion of 1 km wide around the National Parks and Sanctuaries as ESZ and the Ministry of Environment of the Central Government referring to it has issued the notification dated 11.02.2020 notifying such area around the GIB sanctuary as ESZ.

10. The judgment in the matter of **T.N. Godavarman** (supra), clearly directs such 1 km wide portion around National Parks Sanctuary as Eco-Sensitive Zone. Though the petitioner's lands Gut Nos.98,99 and 100 on which the stone crushing plant has been erected situate within this 1 km distance from the boundary of the GIB sanctuary albeit it is beyond 400 meters. The emphasis of the learned advocate Mr. Gaware is on the fact that this notification dated 11.02.2020 in the preface specifically notifies an area

to an extent varying from 0 (zero) meter to 400 meters around the boundary of GIB sanctuary as ESZ.

11. Pursuant to this notification dated 11.02.2020 a monitoring committee under the chairmanship of respondent No.3 - Collector and comprising of as many as 9 members has been constituted and the Deputy Conservator of Forest Ahmednagar is its Member Secretary. This committee by its communication dated 13.12.2020 (page No.215) expressly directed various governmental authorities including the respondent Nos.4 and 5 herein not to accord permission to any activity prohibited by the notification within the peripheral 1 km wide ESZ and contains the details of the mine/stone crusher operator, the land gut numbers and if that land is situated within the GIB sanctuary or within 1 km of ESZ. The petitioner's name appears at serial No.10. Its land Gut No.100 of Supe has been shown to be within 1 km distance and within ESZ. By a communication the respondent No.5 - Tahsildar has directed the respondent Nos.6 and 9 Range Forest Officers expressly mentioning the distance of the petitioner's lands of distance of 709 and 747 meters from the boundary of the GIB and calls upon them to remove the stone crusher plants of the individuals named therein from their lands.

12. The submission of Mr. Gaware that the notification dated 11.02.2020 declares only the 400 meter wide peripheral land around the GIB sanctuary as ESZ, the impugned decision of the respondent authorities in spite of petitioner's land being beyond the 400 meters distance is illegal

sounds attractive. However, when **T.N. Godavarman** (supra) expressly directs in paragraph No.44 that minimum 1 km distance measured from the demarcated boundary of a National Park or a Wild Life Sanctuary as ESZ, in our considered view no fault can be found with the impugned decision to hold the petitioner's stone crushing plant as illegal. It is to be noted that this notification was issued on 11.02.2020 whereas **T.N. Godavarman** (supra) was decided on 03.06.2022. If this is so, merely because the notification prescribes four hundred meter wide land around the boundary of GIB sanctuary as ESZ, the respondent authorities are justified in relying upon the directions of the Supreme Court and their attempts to enforce the directives of the Supreme Court cannot be said to be illegal.

13. The second aspect being relied upon by Mr. Gaware is to draw a distinction between the mining activity and a stone crushing activity and to point out that when the petitioner is not involved and undertaking any activity of former kind and is merely engaged in the activity of latter kind, the latter activity is not prohibited and it is only when it is a complete unit where simultaneously mining as well as stone crushing is going on that is prohibited as per the activity at serial No.1 of the table annexed under clause 4 of that notification.

For the sake of convenience relevant portion of clause 4 reads thus :

“4. List of activities prohibited or to be regulated within Eco-Sensitive Zone.- All activities in the Eco-sensitive Zone shall be governed by the provisions of the Environment Act and the rules made thereunder including the Coastal Regulation Zone, 2011 and the Environmental Impact

Assessment Notification, 2006 and other applicable laws including the Forest (Conservation) Act, 1980 (69 of 1980), the Indian Forest Act, 1927 (16 of 1927), the Wildlife (Protection) Act 1972 (53 of 1972), and amendments made thereto and be regulated in the manner specified in the Table below, namely:-

S.No. (1)	Activity (2)	Description (3)
A. Prohibited Activities		
1.	Commercial mining, stone quarrying and crushing units.	(a) All new and existing mining (minor and major minerals), stone quarrying and crushing units are prohibited with immediate effect except for meeting the domestic needs of bona fide local residents including digging of earth for construction or repair of houses and for manufacture of country tiles or bricks for housing and for other activities; (b) The mining operations shall be carried out in accordance with the order of the Hon'ble Supreme Court dated the 4th August 2006 in the matter of T.N. Godavarman Thirumulpad Vs. UOI in W.P.(C) No.202 of 1995 and dated 21st April 2014 in the matter of Goa Foundation Vs. UOI in W.P. (C) No.435 of 2012.”

Mr. Gaware would emphasis on the fact that the description contained in item (a) and (b) makes the distinction between mining activity and a stone quarrying and crushing unit.

14. But again, as is mentioned herein above this notification was issued prior to the judgment in **T.N. Godavarman** (supra). A careful reading of that judgment reveals that the order dated 04.08.2006 referred to in the aforementioned serial No.1 (b) was in fact the order passed in the matter of **Goa Foundation** (supra) which was concerning a mining activity. True it is that it is not the case of the respondent authorities the petitioner is engaging in stone quarrying activity in its three lands. Its version that it has been fetching stones aggregate and rubbles from two sites namely Gut No.103 of

Village Supe and 203 of Village Bitkewadi and it has not been undertaking any quarrying activity in the three lands Gut Nos.98,99 and 100 has not been controverted by the respondents in the two affidavits-in-reply. Meaning thereby that a stand alone stone crushing plant wherein the aggregate stones fetched from out side are being crushed.

15. But then even according to the petitioner, the sites from which the stone aggregate/rubbles are being sourced that is Gut No.103 of Supe and 203 of Bitkewadi are barely at a distance of 1040 and 1122 meters from the boundary of the GIB sanctuary. It is therefore quite apparent that the petitioner is seeking to derive a benefit by segregating the stone quarrying activity and stone crushing activity considering the proximity of the petitioner's land and the lands from where the stone aggregate/rubbles are being sourced. Allowing any such distinction in the two activities of stone quarrying and stone crushing as distinct activities would clearly do violation to the whole purpose and object for which **T.N. Godavarman** (supra) declares 1 km wide ESZ around all National Parks and Sanctuaries. It would be easy for anybody to defeat such objectives and directions by running stone quarry just beyond 1 km peripheral ESZ and set up a plant inside that ESZ. Bearing in mind the fact that the stone crushing plant essentially indulges in crushing of stones, in our considered view no such distinction can be made between the two activities 'quarrying' and 'crushing'. Any attempt to do that according to us would be contrary to the notification dated 11.02.2020 and the directions in **T.N. Godavarman** (supra).

16. As far as the principles of natural justice are concerned, true it is that no opportunity of being heard was apparently extended to the petitioner before the impugned communications were issued. But then, when we have independently found that the impugned communications have been issued in obedience to the notification dated 11.02.2020 and the directions in **T.N. Godavarman** (supra), relegating the petitioner before the respondents would be an exercise in futility.

17. We see no substance in the Writ Petition. It is dismissed. The Rule is discharged.

(S.G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)