

**BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**Original Application No. 173 of 2018
(Earlier O.A. No. 89/2017) (EZ)**

IN THE MATTER OF:

Sudarsan Das Vs. State of West Bengal & Ors.

CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

Present:	Applicant	Mr. Ritwick dutta and Mr. Utkarsh Jain, Adv.
	Respondent:	Ms. Madhumita Bhattacharyajee, Ms. Urmila Kar Purkayastha and Mr. Vidur Kamra, Advs. for State of West Bengal
		Mr. Soumyajit Pani and Mr. Chittaranjan Singh, Advs. for State of Odisha

Date and Remarks	Orders of the Tribunal
<p data-bbox="311 1005 500 1147">Video Conferencing Item No. 03</p> <p data-bbox="311 1163 500 1306">September 04, 2018</p> <p data-bbox="311 1322 500 1384">ss & dv</p>	<ol style="list-style-type: none"> <li data-bbox="500 1005 1318 1935">1. In this application, the applicant has highlighted the large scale unchecked mechanized sand mining being carried out on the banks of river <i>Subarnarekha</i> by use of suction pumps, earth movers and netting in an area falling under <i>Jaleshwar Tehsil</i>, Balasore District, Odisha on the Odisha – West Bengal Boarder area. It is stated that the sand is also extracted from the river bed by people from the neighbouring district of West Medinapur in West Bengal and in villages of Bilaspur, Gopalpur, Mankidia, Kuanrpur, Totapada, Beherasahi, Praharajpur, Dakshina-praharajpur and Makrampur falling within Balasore district of Odisha. <li data-bbox="500 1951 1318 2392">2. It is alleged that sand mining is being carried out through sumps mining method whereby ground water is allowed to seep into excavation of 40 to 50 feet beneath the river and collected in sumps and pumped away for disposal. Such excavation and extraction is being carried out in this manner entirely from the river bed. Neither the Environmental Clearance has been obtained from the

	<p>Video Conferencing Item No. 03</p> <p>September 04, 2018</p> <p>ss & dv</p>	<p>Ministry of Environment, Forest and Climate Change/SEIAA nor consent taken from the Pollution Control Board for such extraction. The applicant contends that such large scale illegal and unscientific mining is directly impacting the ecology of the river <i>Subarnarekha</i>, including its channel geometry, bed elevation, substratum composition and stability, in-stream roughness of the bed, flow velocity, discharge capacity, sediment transpiration capacity, turbidity, temperature, etc. Such indiscriminate mining is stated to be the cause of the river <i>Subarnarekha</i> changing its course every year and made susceptible to flooding during every monsoon threatening the safety of the villages situated along the river bank due to the banks being severely eroded in villages Rajnagar, Mankia, Kanrpur, Totapada, Beherasahi and Praharajpur.</p> <p>3. The applicant contends that the States of Odisha and West Bengal have failed to stop such large scale illegal mining despite repeated complaints by the people and ultimately, when the villagers submitted a representation before the Revenue Divisional Commissioner, expressing their concerns, a meeting was called. It was decided that illegal mining be stopped by the respective authorities and FIRs filed in the local police stations. In another meeting, held on 07th September, 2015 between the Balasore Administration and West Medinapur district, it was decided that a joint exercise would be undertaken to demarcate the boundary soon after the monsoons. Pending such demarcation, transit passes would be issued to individuals for lifting sand from</p>
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	<p>Video Conferencing Item No. 03</p> <p>September 04, 2018</p> <p>ss & dv</p>	<p>their respective areas as an interim measure. It was also decided to impose complete prohibition against the use of sump pumps for lifting the sand.</p> <p>4. The applicant states that despite such decisions and in spite of being fully aware of the illegalities, the authorities have failed to act in accordance with the decisions. Decision to prohibit mechanical mining by use of pumps also was not acted upon on account of helplessness expressed by the Collector, Balasore, in carrying out such decision due to violent obstructions caused by the sand mafia and likelihood of there being law and order situation. It is stated that although various letters were exchanged between the authorities in the State of Odisha and West Bengal for carrying out demarcation exercise, no such exercise has been carried out. The area where such illegal mining is being carried out is stated to be within 5 kms. distance of inter-state boundary between Odisha on one side of the river and West Bengal on the other side.</p> <p>5. As already noted, the applicant has highlighted the adverse ecological impact of sand mining from the bed with the use of heavy machineries by the mining operators to extract sand from the river bed. Highlighting the adverse impact of sand mining with the use of sump pumps, it is stated that the sump pumps extract sand from about 40 to 50 feet beneath the water which create deep gorges in the river bed causing landslides and erosion of the river bank during monsoon endangering the villages situated along the river. It is stated that the banks of the river <i>Subarnarekha</i> are highly prone to</p>
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	<p>Video Conferencing Item No. 03</p> <p>September 04, 2018</p> <p>ss & dv</p>	<p>factors in the degradation of stream fisheries. However, in-stream mining may contribute additional sediment to downstream reaches due to the disruption of substrate stability. Once sediment enters the stream, it is best to let natural geomorphological and hydrological processes reach a dynamic equilibrium, rather than further exacerbating the situation by additional disturbance.</p> <p>15. According to the guidelines, following consideration are required to be kept in mind for sustainable sand mining and gravel mining :-</p> <p><i>“a) Parts of the river reach that experience deposition or aggradation shall be identified first. The Lease holder/ Environmental Clearance holder may be allowed to extract the sand and gravel deposit in these locations to manage aggradation problem.</i></p> <p><i>b) The distance between sites for sand and gravel mining shall depend on the replenishment rate of the river. Sediment rating curve for the potential sites shall be developed and checked against the extracted volumes of sand and gravel.</i></p> <p><i>c) Sand and gravel may be extracted across the entire active channel during the dry season.</i></p> <p><i>d) Abandoned stream channels on terrace and inactive floodplains be preferred rather than active channels and their deltas and flood plains. Stream should not be diverted to form inactive channel.</i></p> <p><i>e) Layers of sand and gravel which could be removed from the river bed shall depend on the width of the river and replenishment rate of the river.</i></p> <p><i>f) Sand and gravel shall not be allowed to be extracted where erosion may occur, such as at the concave bank.</i></p> <p><i>g) Segments of braided river system should be used preferably falling within the lateral migration area of the river regime that enhances the feasibility of sediment replenishment.</i></p> <p><i>h) Sand and gravel shall not be extracted within 200 to 500 meter from any crucial hydraulic structure such as pumping station, water</i></p>
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	<p>Video Conferencing Item No. 03</p> <p>September 04, 2018</p> <p>ss & dv</p>	<p>intakes, and bridges. The exact distance should be ascertained by the local authorities based on local situation. The cross-section survey should cover a minimum distance of 1.0 km upstream and 1.0 km downstream of the potential reach for extraction. The sediment sampling should include the bed material and bed material load before, during and after extraction period. Develop a sediment rating curve at the upstream end of the potential reach using the surveyed cross- section. Using the historical or gauged flow rating curve, determine the suitable period of high flow that can replenish the extracted volume. Calculate the extraction volume based on the sediment rating curve and high flow period after determining the allowable mining depth.</p> <p>i) Sand and gravel could be extracted from the downstream of the sand bar at river bends. Retaining the upstream one to two thirds of the bar and riparian vegetation is accepted as a method to promote channel stability.</p> <p>j) Flood discharge capacity of the river could be maintained in areas where there are significant flood hazard to existing structures or infrastructure. Sand and gravel mining may be allowed to maintain the natural flow capacity based on surveyed cross- section history.</p> <p>k) Alternatively, off-channel or floodplain extraction is recommended to allow rivers to replenish the quantity taken out during mining.</p> <p>l) The Piedmont Zone (Bhabhar area) particularly in the Himalayan foothills, where riverbed material is mined, this sandy-gravelly track constitutes excellent conduits and holds the greater potential for ground water recharge. Mining in such areas should be preferred in locations selected away from the channel bank stretches.</p> <p>m) Mining depth should be restricted to 3 meter and distance from the bank should be 3 meter or 10 percent of the river width whichever less.</p> <p>n) The borrow area should preferably be located on the river side of the proposed embankment, because they get silted up in course of time. For low embankment less than 6 m in height, borrow area should not be selected within 25 m from the toe/heel of the embankment. In case of higher embankment the distance should not be less than 50 m. In order to obviate development of flow parallel to embankment, cross bars of width eight times the depth of borrow pits spaced 50 to 60 meters centre-to-centre should be left in the borrow pits.</p> <p>o) Demarcation of mining area with pillars and geo-referencing should be done prior to start of</p>
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	<p>of illegal mining activity through automatic remote sensing detection technology.</p> <p>Video Conferencing Item No. 03</p> <p>September 04, 2018</p> <p>ss & dv</p> <p><u>DIRECTIONS TO MOEF & CC</u></p> <p>25. In view of above discussion, we are of the view that since the subject of mining is also required to be regulated for protection of environment and it is to take care of this requirement, MoEF&CC has issued directions from time to time under Section 3 and 5 of the Environment (Protection) Act, 1986. The MoEF&CC needs to revise its directions keeping in mind the following:</p> <ol style="list-style-type: none"> i. Mining Surveillance System discussed in para 23 above be finalized in consultation with ISRO Hyderabad. ii. Safeguards suggested in Sustainable Sand Mining Guidelines published by the MoEF&CC in the year 2016. iii. Suggestions in the High Power Committee Report. iv. Requirement of demarcation of boundaries being published in respect of different leases in public domain. v. Need to issue SOP laying down mechanism to evaluate loss to the ecology and to recover the cost of restoration of such damage from the legal or illegal miners. Such evaluation must include cost of mining material as well as cost of ecological restoration and net present value of future eco system services forgone. vi. Need to set up a dedicated institutional
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	<p>Video Conferencing Item No. 03</p> <p>September 04, 2018</p> <p>ss & dv</p>	<p>mechanism for effective monitoring of sand and gravel mining which may also take care of mining done without any Environmental Clearance as well as mining done in violation of Environmental Clearance conditions.</p> <p>vii. The Mining Department may make a provision for keeping apart atleast 25% of the value of mined material for restoration of the area affected by the mining and also for compensating the inhabitants affected by the mining.</p> <p>viii. One of the conditions of every lease of mine or minerals would be that there will be independent environmental audit atleast once in a year by reputed third party entity and report of such audit be placed in public domain.</p> <p>ix. In the course of such environmental audit, a three member committee of the local inhabitants will also be associated. Composition of three members committee may preferably include ex-servicemen, former teacher and former civil servant. The Committee will be nominated by the District Magistrate.</p> <p>26. Such steps may be worked out within two months and circulated to all States. The Mechanism may provide for a report of implementation from the concerned States every quarter. The matter may be reviewed after every six months by the MoEF&CC.</p> <p>27. The direction with regard to setting up of dedicated institutional mechanism for monitoring of conditions of Environmental Clearance as granted under EIA</p>
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	<p>Video Conferencing Item No. 03</p> <p>September 04, 2018</p> <p>ss & dv</p>	<p>Notification, 2006 in respect of sand and gravel mining as directed in para (vi) may be an Over-Encompassing Body to monitor the conditions of Environmental Clearance with respect to all development projects.</p> <p>28. A copy of this order be sent to MoEF&CC by e-mail. Report of the steps taken by MOEF&CC may be furnished to this Tribunal by email at filing.ngt@gmail.com on or before 31.12.2018.</p> <p><u>DIRECTIONS TO THE STATES OF WEST BENGAL AND ODISHA</u></p> <p>29. Apart from above, in view of the grave and alarming situation and gross failure on the part of the authorities in the concerned districts in both the States of Odisha and West Bengal and to prevent illegal and unscientific sand mining in the areas in question, we deem it essential to issue following directions:-</p> <p>(i) The State of West Bengal and Odisha may demarcate the boundaries for regulating grant of sand mining lease within three months from today. No mining lease of minor minerals may be given in the area in question till demarcation is complete. All existing mining operations in those areas shall remain suspended till demarcation work is completed and attains finality. To carry out the demarcation, the Chief Secretaries of the two States may constitute a team of three suitable officers each within two weeks. The said teams may hold their first meeting within one month.</p> <p>(ii) The States of West Bengal and Odisha must ensure that mining in all sand mining blocks is</p>
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	<p>Video Conferencing Item No. 03</p> <p>September 04, 2018</p> <p>ss & dv</p>	<p>identification.</p> <p><u>OVERSIGHT AUTHORITY IN RESPECT OF STEPS TO BE TAKEN IN THE STATES OF WEST BENGAL AND ODISHA</u></p> <p>30. Justice R.K. Merathia, former Judge of Jharkhand High Court, will act as Oversight Authority (O.A.) for execution of the above directions. He may be provided requisite logistic support for performing his duties by the State of West Bengal. He may also be provided adequate security for visit to the site as and when necessary. The O.A. will be entitled to issue appropriate directions for resolving any issue which may arise in the course of execution of the above directions subject to any objection which may be decided by this Tribunal. The respective District Magistrates in the States of West Bengal and Odisha shall provide the working secretariat as and when the O.A. desires in their respective jurisdiction. The States of West Bengal and Odisha shall provide all logistic support to the O.A. for the purpose of effective discharge of its functions. The O.A. will be entitled to honorarium of Rs. 2.25 Lakhs per month. The payment may be initially made by the State of Odisha followed by the State of West Bengal and alternatively thereafter by the two States.</p> <p>i. The Oversight Authority will take the following steps:</p> <ul style="list-style-type: none"> • Take stock of all actions taken so far. • Prepare time bound action plan to deal with the problem and ensure its implementation. <p>ii. The O.A. may requisition services of such technical experts as may be necessary and may also carry out visits to sites whenever necessary. The O.A.</p>
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	<p>Video Conferencing Item No. 03</p> <p>September 04, 2018</p> <p>ss & dv</p>	<p>will be entitled to all logistic support for performing these functions which shall be provided by the respective States of West Bengal and Odisha.</p> <p>iii. The O.A. may also set up website for receiving and giving information on subject.</p> <p>iv. The O.A. may also involve educational institutions for awareness and feedback about results.</p> <p>v. All authorities concerned in the States of West Bengal and Odisha shall cooperate and coordinate with the O.A. The O.A. can seek such technical assistance as may be required from any relevant authority.</p> <p>vi. The Chief Secretaries of States of Odisha and West Bengal to provide all facilities to said O.A. to perform its functions. The O.A. may send its periodical reports to the Tribunal by e-mail.</p> <p>vii. The O.A. may assume its charge within two weeks from today. The O.A. may prepare Action Plan which shall have targets of ensuring compliance.</p> <p>viii. The O.A. will be free to take up all incidental issues. The O.A. will be free to seek any further directions from this Tribunal by e-mail.</p> <p>ix. The District Magistrates of the concerned Districts in the States of West Bengal and Odisha will be the coordinators for their respective Districts.</p> <p>31. The O.A. will initially function for six months and send his reports to this Tribunal by e-mail as and when necessary. First report may be preferably sent within three months.</p>
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