

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE**

**APPLICATION No. 24/2013(WZ)**

**CORAM:**

**Hon'ble Mr. Justice V.R. Kingaonkar**

**(Judicial Member)**

**Hon'ble Dr. Ajay A. Deshpande**

**(Expert Member)**

**B E T W E E N:**

**Shankar Raghunath Jog,**

Aged : 73, Margawadi

Sancordem Via Tiska,

Goa 403 406

**....Applicant**

**A N D**

**The Secretary,**

**Ministry of Environment and Forest**

Paryavaran Bhawan,

C.G.O. Complex, Lodi Road

New Delhi 110 003

**...Respondent**

**Counsel for Applicant :**

Mr. K. Mukharjee,

Mr. Rahul Choudhari,

**Counsel for Respondent :**

Mr. Ranjan Nehru, w/

Ms. Shweta Busar,

**J U D G M E N T**

**1.** By this Application, Applicant-Shankar Raghunath Jog seeks general reliefs pertaining to determination of question relating to grant of Environmental Clearance (EC) for a mining project, particularly in the context of extension of lease period or renewal of the mining lease in accordance with Notification dated 13<sup>th</sup> March, 2013 (S.O. No.674(E) issued by the Ministry of Environment and Forests (MoEF).

**2.** According to the Applicant, following substantial questions arise in the Application and do require determination :

- a)** Whether any grant of Environmental Clearance (EC) for a mining project under the Environment Impact Assessment, 2006 (EIA Notification, 2006), lapses at the end of the mining lease and consequently a further prior EC is required for renewal of the mining lease ?
- b)** Whether, in the alternative, the term “which has already obtained Environmental Clearance (EC) under this Notification” used under S.O.

No. 674(E) dated 13<sup>th</sup> March 2013 refers only to prior EC which has been obtained for that particular renewal of the mining lease ?

3. Case of the Applicant is that in case of “**M.C. Mehta Vrs. Union of India, A.I.R. 2004 S.C. 4016**”, the Apex Court clarified legal provision in respect of EIA Notification, 1994 in the context of mining. The Apex Court held that no mining operation can be commenced without obtaining Environmental Clearance in terms of the Notification. According to the Applicant, ratio of the Judgment in “*M.C. Mehta’s case*” is that even in case of renewal of mining lease, it has to be deemed to be a wholly new project/expansion in EIA Notification which, therefore, requires prior Environmental Clearance (EC) before it can operate. The Applicant further referred to case of “**Shankar Jog V/s. M/s. Talaulikar and sons Pvt. Ltd. and Union of India**” (PILWP No.6/2011). He submits that the Amended EIA Notification, 2006 read with Notification dated 13<sup>th</sup> December, 2012 go to show that prior Environmental Clearance is required at the stage of renewal of mining lease for which Application shall be made up to two (2) years prior to the date due for the renewal. The earlier Notification (OM) provided that such extension/renewal could be sought by submitting

Application one year prior to the date due for renewal. The Notification dated 13<sup>th</sup> March 2013 extends one year period without any consideration of the legal position. The renewal of Mining does require existence of lease. The Applicant says that judgment of Delhi High Court in case of “***M/s. S.N. Mohanty & Another Vrs. Union of India & & Others, in W.P.(C) 2025/2012***” is irrational and requires to be overlooked in as much as it runs contrary to the ratio laid down by the Apex Court.

**4.** The Application, as it is explicit from the title and nature thereof is filed only against the MoEF. Affidavit of Dr. C. Kaliaperumal reveals that the Application is resisted on various grounds including that of Limitation. The MoEF would submit that the Applicant has only challenged the mining activity in which extension of the mining project is granted. According to the MoEF, the Application is liable to be dismissed on account of laches and delay. Secondly, the Application has not raised any “substantial question of environmental dispute”, as such and hence it may not be entertained. The Notification dated 4<sup>th</sup> April 2011 issued by the MoEF, no doubt, indicated that prior Environmental Clearance as well as EC required at the stage of renewal “mine lease” for which Application should be made upto one year prior to the

date of renewal but subsequently, this period was extended by one year more under Notification dated 13<sup>th</sup> December 2012. It is stated by the MoEF that such extension of period was fall out of judicial decision in case of “**M/s. S.N. Mohanty & Another Vrs. Union of India & Others, in W.P.(C) 2025/2012**” decided by the High Court of Delhi.

5. We have heard learned counsel Shri Mukherjee for the Applicant and learned counsel Ms. Shweta Busar for the MoEF. We have perused the relevant Environmental Clearance Notifications, the subsequent clarificatory Notification issued by the MoEF and Office Memorandums (O.Ms.). It is argued by Shri Mukherjee that renewal of mining lease would amount to expansion activity. He would submit that the lease period cannot be for more than 30 years and renewal has to be made on basis of each category of lease, as per the project assessment. It is argued that lease period cannot be determined by giving a *lump-sum* period in each case. He argued that for each mining lease “*frog leap*” or “*quantum leap*” of twenty (20) years or thirty (30) years of period cannot be stipulated for Environmental Clearance. He argued that the extension of lease has to be granted only on pre-assessment of each project and that could be done only when the future life of

project can be assessed and that can be done only when the life of the project is at the fag end, when renewal is sought.

**6.** According to learned counsel Ms. Shweta Busar, certification of compliance of the conditions stipulated in the Environmental Clearance before filing application for the renewal of EC is by way of precautionary measures and will not cause any harm but will be beneficial in the Environment Impact Assessment process (EIA). She argued that “Renewal of lease” does not amount to expansion of mining. She contended that the Delhi High Court has duly considered relevant aspects in case of “**M/s. S.N. Mohanty**” referred to above. She further submits that the term “Renewal of lease” in the context of mine, as per 1994 (EIA Notification is not changed under 2006 (EIA Notification as amended in 2013). So, according to learned counsel Ms. Shweta Busar, the Application is filed without any substantial reason and does not involve any substantial dispute.

**7.** Having heard learned counsel for the parties, we deem it proper to formulate following points for determination :

- i)** Whether the Application involves substantial questions relating to environment and as such, requires consideration ?
- ii)** Whether the expression “Environmental Clearance” (EC) as used in the Notification dated 13<sup>th</sup> February 2013 relates to prior environmental clearance (EC) obtained before seeking relief of the mining lease ?

**8.** At the threshold, we may refer to MoEF circular dated 20<sup>th</sup> October 2004. By this Circular EIA Notification, 1994 is explained after the judgment in “*M.C. Mehta’s case*”. By the said Circular, the MoEF clarified as follows :

*“Expansion in Production : The term ‘expansion’ would include increase in production or lease area or both.”*

**9.** A careful reading of the above clarification would make it clear that the term ‘expansion’ is elaborated under the Notification referred to above. But it does not include extension of lease period. The expansion of lease activity necessarily increases in either production or lease area or both. Therefore, if there is mere extension of the period of lease, it cannot be branded as expansion and

would not attract the process of public hearing and other rigors.

**10.** Shri Mukherjee, learned counsel for the Applicant invited out attention to Regulation 2 of the EIA Notification dated 14<sup>th</sup> September 2006 which reads as follows :

*“(ii) Expansion of modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;*

*(iii) Any change in product – mix in an existing manufacturing unit included in Schedule beyond the specified range.”*

**11.** His main argument is that Regulation 2(ii) deals with the subject of expansion and modernization of existing project or activities which must be treated as “project activities” and therefore, will have to be subject matter of the whole process to be followed at the time of extension of the lease. He argued that prior EC process as contemplated in Regulation 7(ii) must be followed when extension of any lease is sought. We find it difficult to read the expression “expansion/modernization” as identical with the expression “extension in the context of



mining lease”. We find it difficult to countenance the argument of Shri Mukherjee that; view taken by the Delhi High Court in “**M/s. S.N. Mohanty and another**” is improper and requires to be overlooked. As a matter of fact, Delhi High Court has considered the case of “M.C. Mehta” and duly dealt with the same. For ready reference, the relevant observations in case of “**M/s. S.N. Mohanty & Another Vrs. Union of India & & Others, in W.P.(C) 2025/2012**” may be stated as follows :

*“Before we examine the contentions of the EC granted to M/s. S.N. Mohanty, it may be relevant to point out at this stage that M/s. S.N. Mohanty had been working the mines under a mining lease granted to it on 02.04.1982 for a period of 30 years. At that point of time, there was no requirement of obtaining an EC. It is subsequent to the enactment of the said Environment Act and the decision of the Supreme Court in M.C. Mehta Vrs. Union of India and others : MANU/SC/0247/2004 : 2004(12) SCC 118 that the petitioner No.1 (M/s. S.N. Mohanty) thought it advisable to apply for an EC even prior to the due date of renewal of the mining lease. It is in this backdrop that, before the initial 30 years period of the mining lease expired, that is, much prior to 02.04.2012. In the year 2006-07 itself, the said M/s. S.N. Mohanty applied for an EC and the same was granted on 15-01-2007. As we have seen above, the said EC is for the*

*project life, subject to a maximum of 30 years. The petitioner No.1's mining lease was as mentioned above, initially for a period of 30 years and it was renewable for another two periods of 20 years each. The first renewal fell due, as mentioned above on 02.04.2012, the said M/s. S.N. Mohanty had obtained the EC on 15-01-2007."*

*"We have already seen that the Notification of 2006 did not speak of renewals. But, it must be noted that the said Notification of 2006 was clearly in respect of (1) new projects or activities listed in the Schedule to the said Notification; (2) expansion and modernization of the existing projects or activities, etc.; and (3) any change in the product mixed in an existing manufacturing unit, included in the Schedule to the Notification beyond the specified range. In other words, the scope of the Notification of 2006 was essentially to cover all the new projects, expansions modernizations, change in technology, change in capacity, change in product mix, etc. This meant that it was targeted in respect of any change. In other words, the requirement of an EC was necessary whenever there was any change. Be it by setting up new projects or expanding an existing one or changing the technology of the existing project or changing the product mix of an existing manufacturing unit. If we read the Notification of 2006 strictly, it did not apply to a situation where there was no change. We realize that the notification of 2006 was introduced after*

*the decision of the Supreme Court in M.C. Mehta (supra). Therefore, it would be necessary for us to examine the scope and width of the observations and directions given in M.C. Mehta (supra)”.*

*“Thus, it is apparent from the above extract that the decision of the Supreme Court was that since the renewal of a lease was like a fresh grant, it must be consistent with law. It did not matter if the initial grant was prior to the Notification of 1994. Even if the Notification of 1994 was to be prospective, it would certainly apply to renewals subsequent to 1994. Thus, a prior EC would be necessary whenever a renewal was sought of the initial grant. All that the Supreme Court meant was that after 1994, there could be no fresh grant or renewal of an existing lease unless and until there was a prior EC. In our view, it does not mean that if a person has a valid and subsisting EC at the point of time he seeks a renewal of the mining lease, he would still be required to obtain another EC prior to the grant of renewal by the respondents. That, in our view, is not the intent and purport of the Supreme Court directions in M.C. Mehta (supra). The clear direction of the Supreme Court was that there ought not to be any mining activity without an EC. If the lease holder already has a valid and subsisting EC, there cannot be a requirement that during the validity and subsistence of the said EC, he*

*would be asked to get another EC at the point he seeks renewal.”*

**12.** Taking a stock of foregoing discussion, we are of the opinion that the present Application is filed without involvement of any particular, substantial environmental dispute. It appears that the Application is filed in order to overcome the explanation made in the MoEF Notification regarding “expansion of project” and attempt to equalize the same with expression “lease period”. The Applicant has raised only academic questions. He has not made out any case of environmental damage due to error in the process of assessment of the Environmental Impact under the EIA Notification, nor we find any reason to interfere with the policy decision of the MoEF in the procedure to be followed before granting extension of the lease period of existing lease for mining. Of course, there is merit in the argument that once the mining lease period is over and no application is filed for extension of the lease till the last date of expiry of the lease period, after the lapse of the mining lease, the void is created and therefore, later on when the Application for grant of lease is submitted then, it cannot be treated as extension of lease because the earlier lease is no more in existence. The earlier lease period when elapsed in toto, the further Application after

the lapse of such period, if no renewal is sought within period of existence of such lease, then such an Application would be for a new lease and must be processed accordingly though it may not be treated as expansion or modernization of the project. With this clarification and limited relief, we deem it proper to dismiss the instant Application.

The Application is accordingly dismissed. No costs.

.....,JM  
(Justice V. R. Kingaonkar)

....., EM  
(Dr. Ajay. A. Deshpande)

**Date : 6th August 2014**

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