

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

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APPEAL NO. 26 OF 2014

IN THE MATTER OF:

M/s Ahuja Plastics Ltd.
Registered office at
VPO: Dadahu, Tehsil: Nahan, District Sirmour,
Himachal Pradesh-173022
Through Sri Parveen Kumar, Authorised Representative

..... Appellant

Versus

1. State of Himachal Pradesh
Through Secretary (Industry),
Secretariat, Shimla,
Himachal Pradesh - 171001
2. Director (Industry)
Udyog Bhawan, Near High Court, Shimla,
Himachal Pradesh - 171001
3. The State Geologist,
Udyog Bhawan, Near High Court, Shimla,
Himachal Pradesh - 171001
4. Office of the Mining Officer,
Court Road, Nahan, District Sirmour
Himachal Pradesh - 171001
5. Ministry of Environment and Forest,
Govt. of India,
Through Additional Principal Chief
Conservator of Forests (Central)
Northern Regional Office, Bays No. 24-25,
Dakshin Marg,
Sector – 31-A, Chandigarh - 160017
6. Principal Chief Conservator of Forests,
Government of Himachal Pradesh
Tolland, Secretariat, Shimla,
Himachal Pradesh - 171001
7. Principal Secretary (Forests)
Govt. of Himachal Pradesh,
Shimla, H.P. - 171001

8. Deputy Mining Controller & Office-in-Charge,
Indian Bureau of Mines,
Regional Office, 108, Nehru Nagar-2,
Dehradun, Uttrakhand-248001
9. Divisional Forest Officer,
Forest Division Renukaji,
District: Sirmour,
Himachal Pradesh - 171001

.....Respondents

Counsel for Appellant:

Mr. Shailender Kumar Mishra, Mr. Sarfaraz Siddiqui and
Mr. Adbhut Pathak, Advocate

Counsel for Respondents:

Mr. Suryanarayana Singh, Addl. AG. and Ms. Pooja Dhar,
Advocate for Respondent Nos. 1 to 4 and 6 to 9.
Ms. Panchajanya Batra Singh, Advocate for Respondent No. 5.

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice U.D. Salvi (Judicial Member)
Hon'ble Prof. A.R. Yousuf (Expert Member)
Hon'ble Mr. B.S. Sajwan (Expert Member)

Reserved on: 24th December, 2014
Pronounced on: 13th January, 2015

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

Factual matrix of the case

The challenge in the present appeal is to the order dated 10th February, 2014, passed by the Mining Officer, District Sirmour, at Nahan, Himachal Pradesh, herein respondent no. 4. We may notice the precise facts giving rise to the present appeal. The

Government of Himachal Pradesh on 16th March, 1984 decided to grant mining lease for mining of Lime Stone in an area nearly 101.11 bighas of land comprised in Khasra No. 629/1 situated at Village Kalva, near Village Bhutmari (Renukaji), District Sirmour, Himachal Pradesh for a period of 20 years under the provisions of Mineral Concession Rules, 1960 (for short 'Rules of 1960'), to one Shri Lalit Kumar. The Appellant – a registered company incorporated under the Indian Companies Act, 1956, got the said mining lease transferred in its favour and since then it is involved in the mining activity of extracting limestone.

2. After pronouncement of the judgment of the Hon'ble Supreme Court of India in the case of *T.N. Godavarman Thirumulkpad Vs. Union of India & Ors.*, (1997) 2 SCC 267, the area in question being a forest land, mining activity was stopped by the respondent no. 4, vide its letter dated 24th February, 1997. The Appellant Company applied for diversion of 'forest land' for 'non-forestry land purpose' under the provisions of section 2 of the Forest (Conservation) Act, 1980 (for short 'Act of 1980'). The Appellant Company also applied for renewal of mining lease on 17th October, 2002. The approval for diversion of 2.00 hectares of forest land for mining purpose for five years in favour of the Appellant Company was granted by respondent no. 5 vide letter dated 7th December, 2005. It is the claim of the Appellant Company that the State Geologist had requested the Mining Officer to grant permission to the Appellant Company to carry-out

developmental works and also to lift the lime stone which was already lying at the plots, subject to the conditions stated therein.

According to the appellant, the 30th Monitoring Committee in its meeting permitted the appellant to lift the balance stock of limestone lying at the mining site subject to conditions, which the Appellant Company complied with. Thereafter, the 32nd Monitoring Committee passed an order on 12th June, 2013 observing that no fresh extraction of limestone was being done by the Appellant Company. It was further stated in the said order that though the check dams have been raised by the mining lessee in the adjoining Khala, however, the lime stone and other debris stacked along the natural drainage near the grinding unit of the lease holder should be removed immediately. The Appellant Company claims to have also complied with the said order. Again the Appellant Company approached respondent no. 3 for permission to lift the balance stock, as soon as possible, to clear the path for free flow of water, which permission was granted.

3. The Appellant Company was inspected on 17th January, 2014 and an inspection report was placed before the 33rd Monitoring Committee. The report stated that the period of 20 years for which mining lease was granted to the Appellant Company expired on 17th April, 2004. Furthermore, no specific permission had been granted in favour of the Appellant Company after 18th December, 2012 for extraction or lifting of limestone from the said site. The 33rd Monitoring Committee in its meeting noticed various deficiencies which were pointed out in the

inspection report as well. The relevant extracts of the report of the 33rd Monitoring Committee, showing the deficiencies and irregularities of respondent no. 5, reads as under:

“xi) First of all, the committee had a panoramic view of the whole of the stretch of the Kolba limestone mine of M/s. Ahuja Plastic Ltd from the common mine road leading towards the mine of Sh. Rattan Singh. The committee expressed its serious concern over the rolling down of huge quantum of debris/mine waste in the adjoining drainage. The Committee further observed that the retaining structures raised by the mining lessee in the natural drainage to arrest the rolling down of mine waste/debris were of inadequate strength and it was felt that these structures in present form instead of reducing the problem will result in multiplication. The Committee also found fresh signs of large scale unauthorised mining in the area applied for renewal of mining lease by the mining lessee and issued following directions:

Keeping in view, the unscientific and haphazard and illegal mining activities being carried out by the mining lessee in the mine in the past and adverse geological setting of rocks i.e., steep slope coupled with hanging walls of incompetent formation i.e., shale which results in topping and is highly vulnerable to landslides due to the ecologically fragile strata, Committee felt that the quantum of degradation caused at the base of the mine in the area near the Barag Khala is highly objectionable. Moreover, entire slope and hillock has been rendered unstable and unsafe for undertaking any further mining activity. Therefore, in the light of the facts explained above, the committee is of the view that in order to maintain the ecology of the area, this area/mining lease should be permanently closed under intimation to other line departments and no letter of intent/mining lease should be issued in favour of the applicant in respect of this area regarding renewal of mining lease.

- The stock of limestone which is approx. 15000 M.T., extracted by the applicant mining lessee illegally and stacked at the left bank of Barag Khala towards upstream and downstream of PWD bridge near the premises of industrial units named as Aditi Chemicals and Ekta Chemicals should be auctioned by a team of the officers headed by Sub Divisional Magistrate Sangrah, Environmental Engineer, HPPCB, Paonta Sahib and Mining Officer, Nahan with the

help of police. The applicant mining lessee should not be allowed to participate in the auction of this material (limestone).

- It was also observed by the committee that the inspection of grinding units located at Barag (near bridge over Jogar-ka-khala) be immediately carried out by General Manager, District Industries Centre, Nahan along with Mining Officer, Nahan in regard to source of raw material used by these units over the last three years after analysing the production record/electricity consumption records and see whether sources were legal and whether royalty/other taxes payable to Govt. were paid or not.”

4. In light of the above, a Show Cause Notice dated 20th January, 2014 was issued to the Appellant Company by the Mining Officer, District Nahan. To this Show Cause Notice, the Appellant Company submitted its reply on 5th February, 2014, in which it was averred that they had not done any unauthorised mining. The company was granted 12,000 metric tonne (MT) stock, out of which, 3851.340 MT balance was lying because of lapse of time for its lifting. The Appellant Company, therefore, prayed for grant of permission to lift the balance stock as the same was stated to be hypothecated to the State.

5. The Mining Officer found the reply submitted by the Appellant Company entirely unsatisfactory and vide its order dated 10th February, 2014, stated that the Appellant Company had failed to produce documents relating to any valid permission from the competent authority for carrying out mining operations in the area in question and transportation of the mineral thereof. Referring to the minutes of the meeting of the 33rd Monitoring Committee, which found that stocks had been accumulated at the

site in question and which was also not justified, the Mining Officer directed as under : -

“whereas their offence of unauthorised mining violates the provisions of the section 4 of mines and minerals (Development and Regulation) Act, 1957 for which action is being initiated against M/s. Ahuja Plastic Ltd. as per law and as such under section 21 (4), the above said material seized as per powers conferred to the undersigned vide Govt. Notification No. Ind-II(F)6-20/2005 dated 30/04/2011.

Therefore, in view of the above M/s. Ahuja Plastic Ltd. is hereby directed not to undertake any further mining operations in the applied for mining lease area. The material accumulated at the left bank of Barag Khala towards upstream and downstream of PWD bridge near the premises of industrial units named as Aditi Chemicals and Ekta Chemicals is now being the property of the Govt. should be remain as and where M/s. Ahuja Plastic Ltd. has no right over the accumulated mineral at the said site.”

6. The legality and correctness of this order has been challenged by the appellant by filing the present appeal before the Tribunal. Upon notices, the respondents have appeared and have raised the following preliminary issue:

Against the order dated 10th February, 2014, no appeal can lie before this Tribunal in terms of the provisions of the National Green Tribunal Act, 2010 (for short ‘the NGT Act, 2010’). Furthermore, that the Mines and Minerals (Development and Regulation) Act, 1957 (for short ‘Act of 1957’) and the Mineral Concession Rules, 1960 (for short ‘Rules of 1960’) do not form part of Schedule I to the NGT Act, 2010 and the Tribunal would have no jurisdiction to entertain an appeal against the order passed by respondent no. 4.

7. It cannot be disputed that the order dated 10th February, 2014, impugned in the present appeal, has been passed by respondent no. 4 in exercise of powers vested in him under Section 4 of the Act of 1957 and the Rules of 1960. Vide the impugned order, the permission to carry on mining activity in the area under lease and the removal of stocks lying at the site has been declined. The order not only refers to the specific provisions of the above referred law, but, in content is an order passed strictly with reference to the said provisions. It raises no question of environment, much less a substantial question relating to environment.

8. This Tribunal exercises three different jurisdictions as contemplated under the provisions of the NGT Act, 2010. Firstly, an original jurisdiction under Section 14 of the NGT Act, 2010, with reference to substantial questions relating to environment, arising from the implementation of the Acts specified in Schedule-I to the NGT Act, 2010. Secondly, an appellate jurisdiction, in terms of and against the orders mentioned in Section 16 read, with Section 18 of the NGT Act, 2010. Thirdly, a special jurisdiction for passing orders in relation to compensation, restitution of property damaged and restitution of environment in accordance with Section 15 of the NGT Act, 2010. A case that is brought before the Tribunal must fall within one of the above class of cases. It is a settled cannon of law that a Tribunal should exercise jurisdiction in accordance with the provisions of the Statute that creates it and therefore, the National Green Tribunal,

while adjudicating upon cases before it, has to confine itself to the provisions of the NGT Act, 2010.

9. The learned Counsel appearing for the Appellant Company vehemently contended that in the appeal they have prayed for award of compensation of Rs. 63 lakhs in lieu of loss, damage in business and expenditure suffered by the Appellant Company, during the period of 2004 – 2010, along with interest. A prayer has also been made for a direction to the respondents to renew the mining lease in its favour. The Learned Counsel has also made reference to the provisions of Sections 15 and 17 of the NGT Act, 2010 in support of his contentions. We are afraid that this has no merit. The provisions of Sections 17 are attracted only where a damage to any person or property has resulted due to, or from an accident or an adverse impact of any activity or operation or process, under any of the Enactments specified in Schedule I, where such liability would be determined. Section 15 restricts the jurisdiction of the Tribunal to direct the payment of relief and compensation, restitution of property damaged and environment, to the victims of pollution or any other damage to the environment, arising from and under the Enactments specified in Schedule I. None of these provisions have any application to the loss being claimed by the appellant, on account of loss of business or expenses which he has incurred upon his labour or maintenance of machinery. These are the disputes which clearly fall beyond the scope and ambit of the appellate jurisdiction of the Tribunal. It needs to be noticed here that in the entire petition,

the appellant has not averred any facts in relation to environmental pollution and any damage to person or property arising from such pollution. In fact, the appellant has not even made a statement in the entire appeal that the appeal raises a question, substantial or otherwise, which relates to environment and is arising out of the implementation of the Enactments specified in Schedule I to the NGT Act, 2010, so also none of such questions actually arise.

10. The Tribunal, therefore, is not an appropriate forum for the appellant to claim such reliefs. The appeal filed by the appellant is not maintainable under Section 16 of the NGT Act, 2010, in so far as it relates to challenge to the impugned order dated 10th February, 2014. The other reliefs claimed by the appellant also do not fall within the scope and ambit of Sections 15 and 17 of the NGT Act, 2010. Resultantly, the Tribunal has no jurisdiction to entertain and decide the appeal in question.

11. The appeal, therefore, is dismissed as not maintainable.

12. We make it clear that we have not commented upon the merits of the case and have exclusively dealt with the question of maintainability alone.

13. The parties are left to bear their own costs.

Justice Swatanter Kumar
Chairperson

Justice U.D. Salvi
Judicial Member

Prof. A.R. Yousuf
Expert Member

Mr. B.S. Sajwan
Expert Member

New Delhi
13th January, 2015

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