

**BEFORE THE NATIONAL GREEN TRIBUNAL,
SOUTHERN ZONE BENCH, CHENNAI.**

APPLICATION NO. 137 OF 2015 (SZ).

IN THE MATTER OF:

Southern Region Mines and Mineral based Workers Welfare Association
Represented by its President R. Balakrishanan
S/o. Rangasamy Nadar
Mahadevankulam Post,
Tisayaianvilai,
Tirunelveli District

..... Applicant

Versus

1. Ministry of Environment, Forests and Climate change,
Represented by its Secretary,
Government of India,
Indira Paryavaran Bhavan,
Jor Bagh Road,
New Delhi-110 003.
2. V.V.Minerals
Represented by its Managing Partner
Keeraikaranthattu,
Tisaiyanvilai
Tirunelveli District
3. Industrial Minerals India Private Ltd
Represented by its Managing Partner
Keeraikaranthattu,
Tisaiyanvilai

Counsel appearing for the Applicant: M/s. K. G. Vipra Narayanan

Counsel appearing for the Respondents: Mr.G.Rajagopalan, Additional Solicitor General of India assisted by Mr. G.M. Syed Nurullah Sheriff for Respondent No.1; Mr. Raj Makesh for Respondent No.2 and 3.

ORDER

PRESENT:

1. Hon'ble Justice M. Chockalingam
Judicial Member

2. Hon'ble Shri P.S.Rao
Expert Member

Dated, 8th February, 2016.

1. Whether the judgment is allowed to be published on the Internet. Yes / No
2. Whether the judgment is to be published in the All India NGT Reporter. Yes / No

This Application is filed by a registered association engaged in the mining of beach sand minerals, on behalf of, and in the interest of, 50000 persons who are directly or indirectly engaged in beach sand mining. This application seeks answer as to whether the 1st Respondent is correct in mandating manual mining of beach sand minerals, even when it is against the norms stipulated by the Atomic Energy Regulatory Board (AERB).

2) The brief facts of the case can be stated thus: The Applicant states that the workers represented by them are being engaged by the 2nd and 3rd Respondents in the manual extraction of beach sand minerals using spade and shovel as a result of which they are forced to inhale large quantities of airborne sand particles. After being aware of the health issues associated with the manual beach sand mining, the Applicant members made a representation to the 2nd and 3rd Respondent employers on 01.05.2015 to permit mechanized mining. 2nd and 3rd Respondents have informed the Applicants that they are prevented by the 1st Respondent from engaging in mechanised mining.

3) The Applicant states that the Government of India, Department of Atomic Energy (DAE) has issued Notification in S.O No.61 dated 20.01.2006 deprecating most beach sand minerals, with effect from 01.01.2007. The control over the main beach sand minerals was then shifted from DAE to the AERB. As per the directions issued by AERB under Radiation Protection Rules, 2004, (Radiation Rules, 2004), the 2nd and 3rd Respondents have appointed Radiological Safety Officer (RSO). The Applicant also learnt that the RSO in his letter dated 13.07.2009 had advised the 2nd Respondent to stop the practice of manual mining, as it was potentially hazardous to the persons engaged in the activity and instead, do mining by using mechanical equipment.

4) It was submitted by the Applicant that mining of rare beach minerals was not regulated under Coastal Regulation Zone (CRZ) Notification and an

express exemption for the same was provided when it was promulgated originally in 1991. The Government of India then amended the CRZ Notification *vide* S.O.550 dated 15.05.2002, making Environmental Clearance (EC) mandatory even for mining beach sand minerals. Although there is no stipulation under the CRZ Notification, 1991 that all the mining activities are to be done manually, the CRZ clearance issued by the 1st Respondent stipulates so. The condition in the CRZ clearance reads as follows:

“Mining will be done only by physical methods, by scraping and no heavy machinery will be used and no mining should be carried out within the intertidal area.”

5) It was further submitted by the Applicant that there is no zonal restriction in respect of mining of rare minerals and use of machinery for mining as per the amended CRZ Notification subsequently issued by Government of India in 2011. Therefore only the earlier CRZ clearances granted under the 1991 Notification during the period from 1991 to 2011 insist on manual mining. It is submitted that with the 2011 Notification of CRZ, all existing ECs' issued under the 1991 Notification will now *ipso facto* be governed by the new one.

6) The Applicant learnt that the 2nd and 3rd Respondents sought relaxation on the condition of manual mining in the EC by a letter dated 12.07.2009 addressed to the 1st Respondent. The 1st Respondent immediately called for

comments from the Tamil Nadu State Coastal Zone Management Authority (TNCZMA) but did nothing further. The 2nd Respondent sent a reminder on 27.06.2012 and another one on 06.03.2014 but no reply was given by the 1st Respondent.

7) The Applicant further submitted that the TNCZMA in its order dated 23.08.2012 expressed the view that it has no objection in relaxing the manual mining condition while replying to the request made by the 2nd and the 3rd Respondents in this regard. This order dated 23.08.2012 was forwarded to the State Government on 12.09.2012 which in turn was promptly forwarded to the 1st Respondent on 08.10.2012. Though TNCZMA duly recommended the matter to the 1st Respondent, the 1st Respondent appears to have not taken any action. Finally, the Applicant Association has approached this Tribunal to declare the conditions of manual mining and zonal restrictions imposed in the ECs' issued by the 1st Respondent prior to the CRZ Notification, 2011 are illegal and not enforceable.

8) The 2nd and 3rd Respondents concurred with the averments made by the Applicant and went on to say that RSO of the 2nd Respondent, *vide* communication dated 13.07.2009, observed the presence of Radioactive minerals and other associated heavy minerals up to a depth 3 to 4 meters and recommended undertaking of scientific mining with the help of power and heavy machinery. Immediately on receipt of this letter from RSO, the 2nd and 3rd

Respondents, *vide* a communication addressed to the 1st Respondent, requested permission for employing mechanised mining and to fill up mine pits with the waste sand received from pre-concentration plant.

9) The 1st Respondent submitted that the condition of manual mining imposed for mining of rare minerals under the CRZ Notification, 1991 as amended *vide* S.O.No. 550 dated 21.05. 2002 was based on recommendations of the Expert Appraisal Committee (EAC), constituted by the 1st respondent for appraisal of such proposals. It is further submitted that the extraction of sand depends on accretion rate in the area to be mined. The sand deposition in the coastal area is caused by wave actions, which brings the mineral sand from the sea bed to the coast. It is a very slow process and the replenishment of mined sand and minerals takes very long time. If it is mechanically carried out, the sand cannot be replenished at the rate of extraction and will lead to huge open areas which will be filled with sea water affecting the coastal environment including the coastal aquifers. Further, the mineral sand available is less than 20% and if the back filling is not carried out, it will lead to serious environmental problems. Based on the above mentioned scientific principles and status of ground water table, the conditions are imposed on case to case basis to ensure sustainability of coast and surrounding marine ecosystem.

10) It is further submitted by the 1st Respondent that the Application seeking amendment to the EC along with the recommendation of TNCZMA

was received in the Ministry and were collectively examined by EAC in its 122nd meeting held on 25th and 26th March, 2013. The EAC deferred the proposal for want of additional information and suggested for submitting separate projects as there were three different projects for which the project proponent submitted only one proposal. The legal requirement/ suggestion from AERB regarding mechanised mining, the compliance report of the existing clearances, monitoring report from the concerned Regional Office of the Ministry along with latest Google maps for the sites, were also sought as additional information. EAC decided to reconsider the proposal after submitting the above mentioned additional information but the additional information desired by EAC is not yet received in the Ministry.

11) As seen above, the Applicant, Southern Region Mines and Minerals Workers Welfare Association, representing the cause of nearly 50000 persons who are directly and indirectly engaged in beach sand mining, has brought forth this Application seeking a declaration that the conditions of manual mining and the zonal restrictions imposed in the EC issued by the 1st respondent, MoEF&CC to the 2nd and 3rd respondents prior to the CRZ Notification, 2011, are illegal and not enforceable.

12) Arguments put forth by the Learned Counsel for the Applicant and also for the Respondents are heard and considered and documentary evidence relied by them are also scrutinized. Admittedly, the beach sand mining along

the coastline of India is being carried on for decades and long before the enactment of the CRZ Notification. Two of the establishments carrying on the operation of mining of the beach sand minerals employing the members of the Applicant association are shown as the 2nd and 3rd respondent. The pleaded case of the Applicant association is that the beach sand minerals are rare and found only in the coastal areas and have a unique property, that they are replenishable i.e. if they are removed from the beach, they would quickly restore back to the beach by the action of wind and tides and hence they have got to be excavated quickly. The CRZ Notification which was promulgated originally in 1991 did not regulate mining of rare beach sand minerals and an express exemption was provided in mining of rare minerals found only on the beach. The CRZ Notification dated 15.05.2002 made obtaining of EC for mining of beach sand minerals mandatory. While issuing the clearance, the 1st respondent stipulated a condition that mining should be done only manually. Pursuant to the same, the workers engaged and employed for beach sand mining by the mining companies such as the 2nd and 3rd Respondents were using spade and shovel for the extraction of the sand and hand loading it into the vehicles. While they are working on the seashore, wind carries a very large quantity of sand particles that get deposited in the shore, hitting them on the face, nose and eyes making it very difficult to do the work. Their working conditions should be in such a way that it is not deleterious to their health.

13) The Learned Counsel for the Applicant would submit that the members of the association came to know that the EC granted in favour of the 2nd and 3rd respondents have imposed the condition of manual mining of the beach sand minerals. In view of the serious health hazards posed by the method of manual mining, the workers are forced to inhale large quantities of airborne sand particles while undertaking the mining. Hence, they made a representation to the 2nd respondent on 01.05.2015 expressing their longstanding grievance and made a representation to the 3rd respondent on the same day. It is not disputed that the 2nd and 3rd respondents have already addressed a communication to the 1st respondent long back on 12.07.2009 seeking a relaxation of the condition of the manual mining in the EC. In view of the delay caused, a reminder was also sent to the 1st respondent on 26.01.2012.

14) In reply, the 2nd and 3rd Respondents informed the members of the association that they are also in favour of mechanized mining in the interest of workers but they are forced to do only manual mining in view of the EC condition and they were doing their best for the relaxation of the said condition. The Learned Counsel for the 2nd and 3rd Respondents would contend that the demand made by the Association for mechanized mining was justified and proper and there were innumerable representations in the form of collective bargaining made in the past. The learned Additional Solicitor General of India Mr.G.Rajagopalan, would submit that the 1st respondent has issued a

communication to the 2nd and 3rd respondents along with the minutes of the EAC meeting held on 25th and 26th March, 2013 whereby the 2nd and 3rd respondents were required to furnish certain documents and those particulars were not yet furnished by the 2nd and 3rd respondents.

15) From all the above, it would be quite evident that the 2nd and 3rd Respondents have already placed their representations before the 1st Respondent for relaxation of the condition insisting manual mining and to permit them to do mechanized mining and also a reminder was made as contended by both of them. It is also clear that no orders have been passed on their representations. On the contrary, it was placed before EAC in the meeting held on 25th and 26th March, 2013 requiring certain documents from the 2nd and 3rd Respondents. No material is placed by the 1st Respondent to show that minutes of the said meeting was ever communicated. As rightly pointed out by the Learned Counsel for the Applicant, the Mining Engineer and the RSO appointed by AERB have sent a communication on 13.07.2009 and have made a recommendation for the use of machinery in the field of mining and sought to explain the need for using heavy machinery. The said communication reads as follows:

“All our mines in Tirunelveli, Kanyakumari, Tutricorn Districts are outside the HTL and no mines are in CRZ-I. We have obtained necessary EC from Government of India; MoEF & CC vide the following letters:

1. MoEF letter F No. J-17011/11/98-1A-III dated 12.11.2003
2. MoEF letter No. 11-57/2005-1A-III dated 21.03.2006
3. MoEF letter No. 11-56/2005-1A-III dated 03.04.2006
4. MoEF letter No. 11-17/2006-1A-III dated 15.04.2006 in favour of V.V. Mineral and

Vide MoEF letter F No. J-17011/32/2003-1A-III dated 23.08.2004 in favour of Industrial Mineral India Private Ltd.

With effect from 01.01.2007, Ilmenite, Rutile, Zircon are de-listed, since these are associated with Radio Active Mineral Monozite all the mining lessees are advised to obtain license under Radiation Protection Rules, 2004. According to the above Rules it is mandatory to give protection of employees who are working in factory and mines. In our factories no manual separation is carried out. All are automatic and mechanised separation. Hence there is no possibility of radiation hazard to factory labours. In respect of mining sites, according to the MoEF clearance condition that manual mining into scrapping method alone is carried out. The Radio Active minerals and associated heavy minerals are available up to 3 to 4 meter depth. If scientific mining with the help of power and heavy machinery are carried out, all the minerals will be taken from the mine site. Otherwise it will become national waste. More over the associated mineral along with Radio Active minerals will create a health hazard to the general public as well as the mining labourers. To avoid this we may use scientific mining with the help of power and heavy machineries up to 3 to 4 meters depth and we may remove the entire Radio Active associated mineral ore. The excavated pits may be refilled from the waste received from the Pre concentration Plant or Mineral separation plant so that the general public as well as the mines labourers will not be affected and mineral wealth will not become waste. Government will get a lot of loyalty in addition to foreign exchange.

Since Government of India, AERB vide its letter dated 02.04.2008, insisted for obtaining license under Radiation Protection Rules, the issue may be taken to the notice of the MoEF and necessary permission may be obtained from MoEF.”

16) Needless to say, Atomic Energy Act, 1962 governs all matters pertaining to atomic substances and under the said enactment, the Central Government has enacted the Atomic Energy (Radiation Protection) Rules, 2004 under which the AERB has been established for safety of all the establishments and places where the atomic substances are used. From the above, it is clear that in exercise of the powers conferred under the Atomic Energy Act, 1962, AERB has issued a direction that every company dealing with atomic substances must appoint an RSO and the RSO should ensure that the facilities available in the company are maintained in a safe manner and that the atomic substances do not pose any health hazard to the employees or others. As could be seen from the documentary evidence, the 2nd and 3rd Respondents already made an application to TNCZMA in this regard. In pursuance of the same, TNCZMA has passed the following order on 23.08.2012.

“2) Among other conditions, the Ministry of Environment and Forests, Government of India has instructed that the mining should be done by physical methods by scraping and no heavy machinery will be used.

3) M/s V.V.Minerals have informed that w.e.f 01.01.2007 Ilmenite, Rutile, Zircon are de-listed and since these are associated with Radio Active Monozite all the mining lessees are advised to obtain license under Radiation Protection Rules, 2004. Accordingly, as per the provisions of the said Rules they have appointed one Radiological Safety Officer with the Approval of Atomic energy Regulatory Board. The AERB in their letter dated 02.04.2008, has informed that it is mandatory to give protection of employees who are working in the mines from Radioactive health hazards as per Radiation Protection Rules, 2004 as the Radioactive minerals and associated other heavy minerals may be present in the mining areas.

4) Hence, the Applicant has informed that the RSO-Level 1 appointed with the approval of AERB has advised them to carry out mining operations with the help of power and machinery since the raw material i.e., heavy beach minerals namely Ilmenite, rutile, Lucoxene, Zircon, Garnet and Silmanite are inherently associated with Radioactive Monozite, so that mining labours will not be affected and the general public may be prevented from health hazard.

5) In view of the above facts, the Applicant has requested to issue amendment to the existing EC for the scientific mining with the use of power and machinery for mining activities instead of manual mining by physical methods

6) The Applicant has informed that all the conditions imposed by the GOI in the EC have been compiled with and the Applicant has requested to issue only one amendment to the existing EC for the scientific mining with the use of power and machinery for mining activities instead of manual mining by physical methods

7) As per CRZ Notification, 2011 vide para (ii) (g), mining of rare minerals requires clearance from MoEF, GoI

The Authority may consider”

17) From all the above, it is clear that representations were made by the Association with a long pending demand of switching over to mechanized mining of beach sand minerals from manual mining. The 2nd and 3rd respondents in turn placed their representations before the 1st respondent on 01.05.2015 and also submitted a reminder thereon. The demand made by the association for mechanized mineral sand mining stood supported by the communication addressed by the RSO nominated by the AERB with recommendation for use of machinery and also the communication addressed by the TNCZMA to the MoEF&CC to consider the request of the 2nd and 3rd Respondents for relaxation

of the condition of the manual mining. The only reply forthcoming from the 1st Respondent is that in a meeting of the EAC held on 25th -26th March, 2013 certain documents and particulars were called for from the Respondents. In absence of any material to show that minutes of the meeting was communicated to the 2nd and 3rd Respondents it cannot be stated that the 1st Respondent was prevented from taking any decision or passing any order on the representations of 2nd and 3rd Respondents in respect of the relaxation of the conditions. All would clearly indicate that though the matter was placed before the EAC meeting held on 25th -26th March, 2013 the same was deferred on some reason as found therein.

18) The fact remains that the present CRZ Notification, 2011 also does not impose any ban / prohibition for the use of machinery in mining zone in respect of rare minerals. Yet another strong circumstance that is noticed is that the EC to *M/s. Indian Rare Earths Ltd.* dated 01.03.2011 (found in Page No.1 of the documents submitted by 2nd and 3rd respondents), EC given to *M/s. Trimex Heavy Minerals Pvt. Ltd.* on 17.04.2015 (Page No.6 of the documents submitted by 2nd and 3rd respondents) and equally the EC given to *M/s. Trimex Sands Pvt. Ltd.* on 17.04.2015 (Page No.17 of the documents submitted by 2nd and 3rd respondents) have been granted without imposing any specific condition of manual mining. The Tribunal is at a loss to understand as to why and how the 1st respondent can insist the 2nd and 3rd respondents alone to continue the

process only with manual mining while other similarly placed units are permitted mechanized mining. No doubt, such a discriminatory action would not only adversely affect the interest of the respondents but also the workers at large and also will not stand the scrutiny of law. In appraisal of the above facts and circumstances it would be suffice to dispose of the application as issuing directions as hereunder:

19) The 1st Respondent is directed to serve on the 2nd and 3rd Respondents a communication containing of the required particulars from them within one month herefrom and on being served with the said communication, the 2nd and 3rd Respondents are directed to file such particulars within one month therefrom and the 1st Respondent is directed to consider the representations of the 2nd and 3rd Respondents seeking for relaxation of the condition of manual mining and shifting to mechanized mining of beach sand minerals.

20) The Application is disposed of accordingly. No costs.

(Justice M. Chockalingam)

Judicial Member

(Shri. P. S. Rao)

Expert Member

Chennai.

8th February, 2016.