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

M.A. No.685 of 2013 and
M.A. No.708 of 2013
in
ORIGINAL APPLICATION NO. 171 OF 2013

In the matter of :

National Green Tribunal Bar Association

.....Petitioner

Versus

1. The Secretary,
   Ministry of Environment & Forests
   Through Secretary, Paryavaran Bhawan,
   CGO Complex, Lodhi Road,
   New Delhi

2. The Chief Secretary,
   Govt. of Andhra Pradesh,
   Secretariat Building,
   Hyderabad-500001

3. The Chief Secretary,
   Govt. of Arunachal Pradesh,
   Secretariat
   Itanagar-791111

4. The Chief Secretary,
   Govt. of Assam,
   Block-C, 3rd Floor, Secretariat,
   Guwahati-781006

5. The Chief Secretary,
   Govt. of Bihar, Old Sectt.,
   Patna-800015

6. The Chief Secretary,
   Govt. of Chhattisgarh,
   Room No.207, D.K.S. Bhavan,
   Mantralaya
   Raipur-492001

7. The Chief Secretary,
   Govt. of Goa, Secretariat,
   Porvoriam-403001 (Goa)

8. The Chief Secretary,
Govt. of Gujarat,
3rd Floor, Block No.1,
New Sachivalaya Complex,
Gandhinagar-382010

9. The Chief Secretary,
Govt. of Haryana, Secretariat,
Chandigarh-160001

10. The Chief Secretary,
Govt. of Himachal Pradesh,
Secretariat,
Shimla-171001

11. The Chief Secretary,
Govt. of Jammu & Kashmir,
Civil Secretariat,
Srinagar-190001

12. The Chief Secretary,
Govt. of Jharkhand,
Secretariat,
Ranchi-834001

13. The Chief Secretary,
Govt. of Karnataka,
Vidhan Soudha,
Bengaluru-560001

14. The Chief Secretary,
Govt. of Kerala,
Secretariat,
Thiruvanthapuram

15. The Chief Secretary,
Govt. of Maharashtra,
Room No.518, 5th Floor,
Main Building, Mantralaya,
Mumbai-400032

16. The Chief Secretary,
Govt. of Madhya Pradesh,
Vallabh Bhavan,
Bhopal-462003

17. The Chief Secretary,
Govt. of Manipur,
Room No.171, South Block, Secretariat,
Imphal-795001

18. The Chief Secretary,
Govt. of Meghalaya,
Main Secretariat Bldg.,
Shillong-793001

19. The Chief Secretary,
Govt. of Mizoram,
Block–C, Civil Secretariat,
Aizawal-796001

20. The Chief Secretary,
Govt. of Nagaland,
Secretariat,
Kohima-797001

21. The Chief Secretary,
Govt. of NCT of Delhi,
New Secretariat Bldg., I.P. Estate,
New Delhi-110002.

22. The Chief Secretary,
Govt. of Odisha,
General Admn. Deptt.,
Odisha Secretariat,
Bhubaneshwar-751001

23. The Chief Secretary,
Govt. of Puducherry,
No.1, Beach Road,
Puducherry-605001

24. The Chief Secretary,
Govt. of Punjab,
Punjab Civil Secretariat,
Chandigarh-160001

25. The Chief Secretary,
Govt. of Rajasthan,
Secretariat,
Jaipur-302005

26. The Chief Secretary,
Govt. of Sikkim,
Tashiling Secretariat,
Gangtok-737101

27. The Chief Secretary,
Govt. of Tamil Nadu,
Secretariat,
Chennai-600009

28. The Chief Secretary,
Govt. of Tripura,
Civil Secretariat,
Agartala-799001

29. The Chief Secretary,
Govt. of Uttar Pradesh,
Lal Bahadur Shastri Bhavan,
U.P. Secretariat
Lucknow-226001

30. The Chief Secretary,
Govt. of Uttarakhand,
Uttarakhand Secretariat,
4-B, Shubhash Road,
Dehradun-248001

31. The Chief Secretary,
Govt. of West Bengal,
Writers' Building,
Kolkata-700001

32. The Chief Secretary,
U.T. of Andaman & Nicobar Islands,
Secretariat,
Portblair-744101

33. The Adviser to Administrator,
U.T. of Chandigarh,
Secretariat, Sector 9,
Chandigarh-160001

34. The Administrator,
U.T. of Dadra & Nagar Haveli,
Secretariat,
Silvasa-396230

35. The Administrator,
U.T. of Daman & Diu,
Fort Area, Secretariat,
Moti Daman-396220

36. The Administrator,
U.T. of Lakshadweep,
Secretariat,
Kavaratti-682555

37. State Level Environment Impact Assessment Authority,
Directorate of Environment, State of Uttar Pradesh,
Dr. Bhim Rao Ambedkar Paryavaran Parisar,
Vineet Khand-I, Gomti Nagar,
Lucknow-226010

38. Geological Survey of India,
3rd Floor, A-Wing,
Shastri Bhawan,
New Delhi-110001

39. The Director,
Department of Geology & Mining,
State of Uttar Pradesh,
Kanij Bhawan,
27/8, Ram Mohan Rai Marg,
Lucknow-226001

40. The Engineer-in-Chief,
Department of Irrigation,
State of Uttar Pradesh,
New Planning Bhavan, Toilibagh, 3rd Floor,
Lucknow-226001

41. The Member-Secretary,
Central Pollution Control Board,
Parivesh Bhawan, CBD-cum-Office Complex,
East Arjun Nagar,
Delhi-110032

42. The Member-Secretary,
Uttar Pradesh State Pollution Control Board,
Picup Bhawan, 2nd Floor, B-Block,
Vibhuti Khand, Gomti Nagar,
Lucknow-226010

43. The District Magistrate,
Gautam Budha Nagar,
Noida-201301

44. The Superintendent of Police,
Gautam Budha Nagar,
Noida-201301

45. The Ministry of Mining,
Shastri Bhawan,
New Delhi-110001

46. Mr. Vishal Agarwal,
S/o Late Sri Nahar Singh,
12/10, Ashirwad Enclave
Ballupur,
Dehradun

.....Respondents

And

In the matter of:

The State of Madhya Pradesh
Through the Secretary
Department of Mineral Resources,
Government of Madhya Pradesh .....Review Applicant

Counsel for Appellants :

Mr. Abhimanue Shrestha, Advocate

Counsel for Respondents :

Ms. P.B. Singh for Respondent No.1
Mr. Pranab Prakash, Advocate for Respondent No.2
Mr. Avijit Roy, Advocate for Respondent No. 3
Mr. C.D. Singh, Mr. Ayushman Shrivastava and
Mr. Abhisheky Bose, Advocate s for Respondents No.5 & 15
Mr. Devender Pratap & Mr. Vineet Malik, Advocates
for Respondent No.8
Mr. Suryanarayana Singh, AAG for Respondent No.9
Mr. Jogi Scaria, Advocate for Respondent No.13
Mr. Atul Batra, Advocate for Respondent No.14
Mr. Sapam Biswajit, Advocate for Respondent No.16
Ms. Anibem Potsangbam, and Mr. Pragyan Pradip Sharma
Advocates for Respondent No.18
Mr. Shibashish Misra and Mr. Suvinay Dash
Advocates for Respondent No.21
Mr. Anil Soni, AAG for Respondent No.23
Mr. Manish Singhvi, Advocate for Respondent No.24
Ms. Aruna Mathur, Advocate for Respondent No.25
Mr. Abdul Saleem, Advocate for Respondent No.26
Mr. Pranab Prakash, Advocate for Respondent No.27
Ms. Savitri Pandey, Advocate for Respondents
No.28, 36, 38, 42 & 43
Ms. Neelam Singh & Mr. Rahul Verma,
Advocates for Respondent No.29
Mr. Bikash Kar Gupta, Advocate for Respondent No.30
Mr. V. Jagdishvaran and Mr. Balasubramaniam,
Advocates for Respondent No.31
Mr. Alok Kumar, Advocate for Respondents No.33 & 34
Mr. Gaurav Bhatia, AAG & Mr. B. Banerjee,
Advocate for Respondent No.38 & 40
Mr. Daleep Kr. Dhyani, Advocate for Respondent No.41

ORDER/JUDGMENT

PRESENT :

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice U.D. Salvi (Judicial Member)
Hon'ble Dr. D.K. Agrawal (Expert Member)

Hon'ble Mr. B.S. Sajwan (Expert Member)
Hon'ble Dr. R.C.Trivedi (Expert Member)

Dated : November 28, 2013

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

Miscellaneous Application No.708 of 2013 has been filed by the M.P. State Mining Corporation Ltd., Government of Madhya Pradesh, praying for intervention and for being heard in Misc. Application No.685 of 2013 filed by the Department of Mineral Resources, Government of Madhya Pradesh. This Corporation was permitted to intervene and was heard by the Tribunal at length during the course of hearing of MA No.685 of 2013. This application stands allowed.

2. In M.A. No.685 of 2013, filed in the Registry of the Tribunal on 13th August, 2013, the applicant-State of Madhya Pradesh is praying for modification of the orders of the Tribunal dated 5th August, 2013 and 6th August, 2013. The applicant-State of Madhya Pradesh, had challenged these orders before the Supreme Court in Civil Appeals No.6786 and 6787 of 2013, which were disposed of by a Bench of the Supreme Court, vide its order dated 16th August, 2013, which reads as under:

> "Appeals are admitted.
>
> 2. By order dated 5th August 2013, the National Green Tribunal, Principal Bench, New Delhi, while issuing notice in O.A. No. 277 of 2013 (NGT Bar Association & Other v. Ministry of Environment & Forests and others), passed an interim order restraining the partner/Company/Authority to carry out any mining activity or remove sand from river beds anywhere in the country without obtaining the environmental clearance

from the Ministry of Environment & Forests/SEIAA and license from the competent authorities.

3. It has been brought to our notice by Mr. Tankha learned Senior Counsel appearing for the appellant-State of Madhya Pradesh that under the Madhya Pradesh Mines and Minerals Rules, 1956 as amended in exercise of powers under sub-Section (i) to Section 15 of the Mines and Minerals Development Act, 1957 the District Level Environment Committee is an authority to give clearance and license for mining minerals including sand, for lands less than 5 hectares. He submitted that although Interlocutory Application No. 685 of 2013 has been moved before the National Green Tribunal for modification of the order dated 5th August, 2013 so as to include the District Level Environmental Committee as an authority in addition to MOEF/SEIAA to give clearance/licence, no order has been passed in the said IA by the Tribunal and as a result the sand mining activity in the entire State of Madhya Pradesh has come to a standstill and consequently, a lot of connected business activities have been adversely affected.

4. Considering the aforesaid submission made by Mr. Tankha instead of entertaining these appeals, we request the National Green Tribunal, Principal Bench New Delhi to take up IA No. 685 of 2013 and pass orders thereon in accordance with law, if possible within a week from today.

The appeals stand disposed of in the above terms."

3. After the above order was passed by the Supreme Court, the matter came up for hearing of the above application before the Tribunal on 23rd August, 2013. On that date, an adjournment was sought by the learned counsel appearing for the applicant and the Tribunal passed the following order in MA No.685 of 2013:

"The Learned Counsel appearing for the Applicant submits that she is not in a position to place the Order passed by the Hon'ble Supreme Court of India before us and prays that the Application be listed for hearing on adjourned date.

We may notice that we have asked the Learned Counsel to argue the matter as it was reported in the paper that the Hon'ble Supreme Court has observed that the

Tribunal should deal with this Application within a period of one week. However, keeping in view the request made on behalf of the Learned Counsel appearing for the Applicant the matter is adjourned to 29th August, 2013 the date already fixed."

4. Thereafter the matter came up for hearing on 29th August, 2013 on which day the arguments were again heard. The matter was adjourned on that date for 19th September, 2013 for arguments as the learned counsel appearing for various non-applicants prayed for time to file their respective replies and they were granted one week's time to do the needful. The arguments were heard in part on 19th September, 2013 and stood concluded on 24th September, 2013, the date on which this application was reserved for judgment.

5. The case of the applicant in the present application is that the Supreme Court of India had passed various directions in relation to mining of minerals and sand in the case of *Deepak Kumar and Others v. State of Haryana* on 27th February, 2013 [2012(4) SCC 629]. Vide communication dated 16th May, 2011, the State Governments were asked to comply with the Model Guidelines, 2010 issued by the Ministry of Environment and Forests (for short the "MoEF") as well as the draft rules i.e. the Minor Minerals (Conservation and Development) Rules, 2010 (for short the "Minor Mineral Rules"). The State of Madhya Pradesh filed an application for extension of time for compliance with the directions, as contained in the order of the Supreme Court, and the same was permitted. Thereafter, the State of Madhya Pradesh in

May, 2013 submitted the compliance report. It is claimed by the State of Madhya Pradesh that the States of Madhya Pradesh and Rajasthan are primarily the only States to have complied with the orders of Supreme Court and enacted the amended rules. The State of Madhya Pradesh further submits that it has strictly been monitoring compliance with these rules and upon detection of any illegal mining activity, appropriate action is taken against the wrong-doer and also if it is found that any mining operation is carried out against the mandate of law including non-compliance with the conditions of environmental clearances, strict action is being taken including closing down the operations of the unit and imposing heavy penalties, as mandated under law. The State of Madhya Pradesh had detected a total of 3147 cases of illegal extractions during 2008-2013 and about 27732 illegal vehicles carrying material extracted through illegal mining have been confiscated during the said period. An amount of Rs.3867.67 lakhs has been collected by the State Government as fine and penalty for illegal sand mining activities.

6. It was further contended by the applicant herein that an application has been filed before the Tribunal with regard to the State of Uttar Pradesh where large scale illegal mining without prior environmental clearance was being carried out. The Tribunal had passed the following orders on 5th August, 2013 and 6th August, 2013 and these read as under:

5th August, 2013:

"The contention raised before us is that large scale illegal and impermissible mining activity is going on, on the bank of Yamuna, Ganga, Chambal, Gaumti and Revati amongst others. This removal of minerals from the river beds is causing serious threat to the flow of the river, forests upon river bank and most seriously to the environment of these areas. All these 3 aspects are covered under Schedule – I of the National Green Tribunal Act, 2010 (NGT Act, 2010). It is further contended that in terms of the Orders of the Hon'ble Supreme Court of India in the case of Deepak Kumar Vs. State of Haryana, even the person carrying on mining activity in less than 5 hectares, are expected to take EIA Clearance from MoEF/SEIAA. Besides holding the above, the Hon'ble Supreme Court of India clearly stated that sand mining on either side of the rivers, upstream and in-stream, is one of the causes for environmental degradation and also a threat to the biodiversity. The contention is also that majority of persons carrying out the mining activity of removing mineral from the river bed have no license to extract sand, they also have not obtained clearance from MoEF/SEIAA at any stage in terms of the Environment (Protection) Act, 1986 (EP Act, 1986) as well as Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) act, 1974. Besides violations of law, the mining activity is being carried out on a large scale, causing State revenue loss which may be running into lakhs of crores of Rupees. For the reasons aforestated, we find merits in this Petition which raises substantial environmental issues and questions arising directly from the implementation of the EP Act, 1986 and other Acts under Schedule – I of NGT Act, 2010. Thus, squarely this Petition falls within the ambit of Section 14 of NGT Act, 2010. Resultantly, we issue Notice to all the Respondents by registered post/ acknowledgment due and Dasti as well and email. Notice returnable on 14th August, 2013. In the meantime, we restrain any person, company, authority to carry out any mining activity or removal of sand, from river beds anywhere in the country without obtaining Environmental Clearance from MoEF/SEIAA and license from the competent authorities The Deputy Commissioners, Superintendent of Police and Mining Authorities of all the States are directed to ensure compliance of these directions."

6th August, 2013

"At the oral request of the learned counsel appearing for the Applicant the amended Memo of Parties is permitted to be taken on record.

Let Notice be issued to all the Respondents in furtherance to our Order dated 5th August, 2013 by registered post/acknowledgment due, Dasti and by e-mail as well.

Let the Chief Secretaries/Administrators of all the States be also informed of this Order for its proper implementation.

Liberty to serve to the Learned counsel appearing for the respective States before the Tribunal is granted.

Stand over to 14th August, 2013"

7. It is the case of the applicant-State that as a result of the above orders, even legal mining activity which has all the necessary approvals as per the applicable statutory provisions, is required to be shut down if it does not have approval of MoEF or State Environment Impact Assessment Authority (for short 'SEIAA'). The Environment Clearance (EC) has to be given by the District Level Environmental Committee as per the State law and because of the directions of the Tribunal, the mining activity has been adversely affected and is causing grave economic and developmental crisis. The State of Madhya Pradesh has thus, filed an appeal in the Supreme Court in terms of Section 22 of the NGT Act. In substance, the case of the applicant-State of Madhya Pradesh is that the State of Madhya Pradesh, in exercise of its powers conferred by sub-section (1) of Section 15 of the Mines and Mineral (Development & Regulation) Act, 1957 (for short the "Act of 1957"), amended/added/substituted Rules 42 to 49 and 68, *inter alia,* of the Madhya Pradesh Minor Mineral Rules, 1996 vide Notification dated 23rd March, 2013 and incorporated the report of the Group dated March, 2010 constituted by MoEF titled "Environmental Aspects of Quarrying of Minor Minerals – Evolving of Model Guidelines" and the draft Minor Minerals Rules issued by the MoEF. As per the amendment dated 23rd March, 2013, under Rule 18(2) of the Madhya Pradesh Minor Minerals Rules, 1996, the

applicant would be required to submit environmental permission in terms of the Notification dated 14th September, 2006 of MoEF within six months only for the grant of quarry lease by the sanctioning authority for an area of more than five hectares. As per notification dated 23rd March, 2013, under Section 15(1) of the Act of 1957, under the amended Rule 49 of the Madhya Pradesh Minor Mineral Rules, a District Level Environmental Committee has been constituted which can grant or refuse environment management plan of quarry lease and trade quarry under Rules 49 and 50 of the amended Madhya Pradesh Minor Mineral Rules and mandatory measures are required to be adopted for protection of environment. Thus, it is contended that the District Level Environment Committee is competent to give environmental clearance for carrying on of mining activity in areas less than five hectares and therefore, the order should be modified to include the District Level Environment Committee in addition to MoEF and SEIAA as competent authorities to grant EC. This is precisely the prayer of the applicant-State of Madhya Pradesh in this application. The application has been opposed on behalf of MoEF as well as some other parties. Having heard the learned counsel of the parties, we are of the considered view that the following questions of law need to be answered by the Tribunal:

Whether in face of the Notification of 2006 and the law of the land, stated in the *Deepak's Kumar*'s case (supra), the State Government was competent in enacting a law in constituting and

empowering District Level Environmental Committee to grant EC for carrying on mining of minerals and sand in less than 5 ha. of area?

8. To answer this question, we must examine the legislative scheme behind both the Environmental (Protection) Act 1986 (for short the 'Act of 1986') and the Act of 1957.

9. The Act of 1986 was enacted to provide for protection and improvement of environment and for matters connected therewith. The decisions that were taken at the United Nation's Conference on the Human Environment held at Stockholm in June 1972, in which India was a participant country, required the countries to take appropriate steps for protection and improvement of Human Environment. The Act of 1986 specifically states in its objects and reasons that although there are existing laws dealing directly or indirectly with several environmental matters, it is necessary to have a general legislation for environmental protection. Existing laws generally focus on specific types of pollution or specific categories of hazardous substances. However, some major areas of environmental hazards are still not covered and there also exist uncovered lacunae in the areas of major environmental hazards. There are inadequate linkages in handling matters of industrial and environmental safety. Control mechanisms to guard against slow insidious build-up of hazardous substances, especially new chemicals in the environment are weak. Therefore, due to multiplicity of regulatory agencies, there was a need for an authority which could assume the lead role for studying, planning and implementing long term requirements of environmental safety

and give a direction to, and co-ordinate a system of speedy and adequate response to emergency situations threatening the environment.

10. Thus, in view of the above situation/scenario and the urgency manifested in the same, enactment of a general legislation on environmental protection was pertinent which *inter alia,* enabled co-ordination of activities of the various regulatory agencies, creation of an authority or authorities with adequate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances and provided for deterrent punishment to those who endangered human environment, safety and health. And consequently came into being *the Act of 1986.* It is thus clear that this was the law enacted with the intent and object of regulating the environment and all its fields and was to be the paramount law in relation to the environment. Such legislative intention is further demonstrated under the provisions of Section 5 of the Act of 1986 which uses a non-obstante clause and commands that the directions issued by the Central Government would take prevalence over the law in force. In exercise of powers conferred under Sections 6 and 25 of the Act of 1986, the Central Government framed the rules namely, the Environmental Protection Rules 1986 (for short the ”Rules of 1986”). These rules were framed primarily to carry out the purposes of the Act of 1986. Further, in exercise of the powers vested in terms of Rule 5 (3)(d) of the Rules of 1986 read with Sub-section (1) and clause (v) of sub-Section 2 of Section 3 of the Act of

1986 and in supersession of its earlier Notifications, the Central Government framed regulations being Environmental Clearance Regulations, 2006 (for short the "Notification of 2006") dealing with the various facets of controlling and preventing the environmental pollution. *Inter-alia*, one of the most significant features of the Notification of 2006 was that the various industries listed in the Schedule to the Notification had to seek prior environmental clearance from the regulating authorities, which under Regulation 8 then were required to consider the recommendations of the EAC or SEAC and convey its decision on the application of an applicant for grant and/or refusal of environmental clearance for a project which falls under any of the entries stated in the Schedule to the Notification of 2006 and the regulations 2 and 7 of the Notification of 2006. Thus the central law provided as to the specific requirement of an applicant to obtain environmental clearance for carrying on an activity or project of the specified kind. Entry 1 (a) of this Schedule of Regulations of 2006 deals with mining of minor or major minerals. The said entry reads as under:

Project or Activity	Category with threshold limit			Conditions if any
	A	B		
1	Mining, extraction of natural resources and power generation (for a specified production capacity)			
(1)	(2)	(3)	(4)	(5)
1(a)	(i) Mining of minerals (ii) Slurry pipe-lines (coal lignite and other ores) passing through	≥ 50 ha of mining lease area in respect of non-coal mine lease.	<50 ha 5≥ of mining lease area in respect of non-coal mine lease.	General conditions shall apply *Note:* (i) Prior environmental clearance is as well required at

	national parks/sanctuaries/coral reefs, ecologically sensitive areas.	≥ 150 ha of mining lease area in respect of coal mine lease. Asbestos mining irrespective of mining area. All projects	≤150 ha ≥5 ha of mining lease area in respect of coal mine lease.	the stage of renewal of mine lease for which application should be made up to one year prior to date of renewal. (ii) Mineral prospecting is exempted.

11. The above entry thus shows that carrying out a mining activity i.e. mining extraction of natural resources in an area of more than or equal to 50 hectares would be a category A project while mining activity in an area of less than 50 hectares but more than 5 hectares would be a category B project but under both these categories, the applicant is required to obtain clearance (under category 'A' from MoEF while under category B from SEIAA). Moreover, even less than 50 hectares and more than 5 hectares of mining lease area in respect of non-coal mines would require clearance from the SEIAA. Also as per the amendment to the Notification of 2006 dated 9th September, 2013 issued by the MoEF, that amended Part 1 (a) of the Schedule to the Notification of 2006, stated that mining of minor minerals in land leases less than 5 ha will not be allowed with clearance from the SEIAA. The amended Notification reads as under:

Project or Activity	Category with threshold limit			Conditions if any
	A	B		

1	Mining, extraction of natural resources and power generation (for a specified production capacity)			
(1)	(2)	(3)	(4)	(5)
1(a)	(i) Mining of minerals. (ii) Slurry pipe-lines (coal lignite and other ores) passing through national parks/sanctuaries/coral reefs, ecologically sensitive areas.	≥ 50 ha of mining lease area in respect of non-coal mine lease. ≥ 150 ha of mining lease area in respect of coal mine lease. Asbestos mining irrespective of mining area. All projects	**< 50 ha of mining lease area in respect of minor minerals mine lease; and** ≤50 ha ≥5 of mining lease area in respect of non-coal mine lease. 150 ha ≥5 ha of mining lease area in respect of coal mine lease.	General conditions shall apply except for projects or activity of less that 5 ha of mining lease area of minor minerals: Provided that the above exception shall not apply for project or activity if the sum total of the mining lease area of the said project or activity and that of existing mines and mining projects which were accorded environment clearance and are located within 500 metres from the periphery of such project ort activity equals or exceeds 5 ha. **Note:** Prior environmental clearance is required at the stage of renewal of mine lease for which application shall be made up to

				two years prior to date due for renewal. Further, a period of two years with effect from the 4th April, 2011 is provided for obtaining environmental clearance for all those mining leases, which were operating as on the 4th April 2011 with requisite valid environmental clearance and which have fallen due for renewal on or after 4th November, 2011: Provided that no fresh environmental clearance shall be required for a mining project or activity at the time of renewal of mining lease, which has already obtained environmental clearance under this notification. (ii) Mineral prospecting is exempted.

12. The applicants in the main application while avoiding to comply with the restrictions of environmental laws were adopting unfair methods for carrying on the activities of extraction of minor minerals, particularly sand. Such applicants used to carry out this activity in various separate, yet adjacent blocks of less than 5 hectares thus eventually totalling upto a much larger area than 5 ha. This was being done to carry on mining activity on a large scale but by getting licence/lease deeds executed for the areas less than 5 hectares. Thus, while they were complying with the provisions of the Act of 1957, they were patently violating the provisions of the Act of 1986 and the Notification of 2006. This resulted in intervention by the highest court of the land in the case of *Deepak Kumar* (supra), wherein the Supreme Court, by a detailed judgment, put a check on continuation of such unfair and unjust practices. This practice was not only environmentally injurious but was even causing financial loss to the States concerned or the Centre. The Supreme Court thus *inter alia* held as under:

> "27. The State of Haryana and various other States have not so far implemented the above recommendations of the MoEF or the guidelines issued by the Ministry of Mines before issuing auction notices granting short term permits by way of auction of minor mineral boulders, gravel, sand etc., in the river beds and elsewhere of less than 5 hectares. We, therefore, direct to all the States, Union Territories, MoEF and the Ministry of Mines to give effect to the recommendations made by MoEF in its report of March 2010 and the model guidelines framed by the Ministry of Mines, within a period of six months from today and submit their compliance reports.
>
> 28. The Central Government also should take steps to bring into force the Minor Minerals Conservation and Development Rules 2010 at the earliest. State Governments and UTs also should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the

recommendations of MoEF in its Report of March 2010 and model guidelines framed by the Ministry of Mines, Govt. of India. Communicate the copy of this order to the MoEF, Secretary, Ministry of Mines, New Delhi, Ministry of Water Resources, Central Government Water Authority, the Chief Secretaries of the respective States and Union Territories, who would circulate this order to the concerned Departments concerned.

29. We, in the meanwhile, order that leases of minor mineral including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from the MoEF.

Ordered accordingly."

13. With the passing of the above order, authorities and Governments concerned had no option but to take steps to stop such unfair practices being carried out and to prevent circumventing of the law by unfair traders. Now, any person wanting to carry on the activities of mining in respect of non-coal mines irrespective of the area of the mining lease was required to take environmental clearance from the authority concerned i.e. MoEF at the central level or SEIAA at the State level. This law is enforceable with all its rigours all over the country and all States were subject to the same.

'Environment' is not stated as a field of legislation in any of three Lists of Schedule VII to our Constitution. Thus it is only the Indian Parliament which is vested with the power to legislate in that regard with the aid of Entry 97 of the Union List. This Residuary Entry in List I states that with respect to any matter not enumerated in Lists II or III including any tax not mentioned in either of those Lists, it is the Union Parliament that is competent to legislate in regard to such subject. On the other hand, the field of

mines and development of minerals is specifically covered under List I of the Union List. Entry 54 of the said List reads as follows:

> "Regulation of mines and minerals development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

14. A bare reading of the above Entry shows that it concerns itself to enacting law in relation to regulation on Mining & Minerals Development to the extent the same is under the control of the Union and is so declared by Parliament by law to be expedient in the public interest. In other words, the Union Parliament is competent to enact laws regulating the mines and minerals development which fall under its control and are so stated by the Parliament. Once it is so stated and law is enacted under either of the two (regulation of mines and mineral development),the field would be covered by the Central law.

15. As already noticed, under List II, the State cannot legislate in the field of environment laws for absence of prescribed field. Entry 6 of this List provides a field for the State legislature to enact laws in relation to public health, sanitation, hospital and dispensaries, etc. Though not strictly but public health is one of the consequential facets of environmental jurisprudence. Entry 23 of the List that relates to regulation of mines and minerals reads as under:

> "Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union."

16. In the present case, we are not concerned with Entry 6 of List II. The State can legislate under Entry 23 of the same List but subject to the limitations prescribed therein. The field of legislation by the State in regard to framing of regulations in relation of mining and mineral development is subject to limitation i.e. the law enacted by the Union Parliament under Entry 54 of List I. Parliament may by itself or through subordinate legislation may frame laws. This would cover the field and the law, if any, framed by the State with the aid of Entry 23 of List II and such State law would have to be read and construed subject to the Central law.

17. The Union Parliament enacted the Act of 1957. This Act was enacted to provide for regulation of mines and development of minerals under the control of the Union. Section 2 of this Act declared that it was expedient in the public interest that the Union should take control and provide for regulation of mines and development of minerals to the extent it was stated in the Act. Minerals included all minerals except mineral oil in terms of Section 3(a) of the Act of 1957. Mining lease means a lease granted for the purposes of undertaking mining operation and includes a sub lease granted for such purpose. Section 3(d) of the Act of 1957 defines mining operation to be any operation undertaken for the purposes of winning of minerals. Under the provisions of this Act of 1957, no person shall undertake any prospecting of mining operations in any area except in accordance with the terms and conditions of a prospecting licence or a mining lease granted under this Act as well as subject to the Rules framed thereunder, as the case may be. The

scheme of the Act of 1957 primarily deals with grant of licence or mining lease, terms & conditions of its continuation and for termination purposes for which such licence could be granted, the royalty payable in that regard and the manner in which application for grant of such licence lease is to be moved and processed. Importantly, Section 13 empowers the Central Government to make Rules in respect of minerals, which may relate to any of the subjects stated in Sub-sections 2 (a) to 2 (r) of Section 13 of the Act of 1957. The Rules so framed must relate to the subjects stated in that Section. A cumulative reading of these provisions shows that the Rules could primarily relate to the regulations of mines, grant or termination of licence/lease, payment of fee and the period within which such applications need to be dealt with. Under Section 17 of the Act of 1957, the Central Government itself can undertake prospecting or mining operations on certain lands in consultation with the State Government concerned. Section 18 of the Act of 1957 concerns itself with the development of minerals, and casts a duty on the Central Government to take necessary steps in that regard guided by the provisions made under Sub-sections 2 (a) to 2 (h) of Section 18 of the Act of 1957.

18. Section 15 of the Act of 1957 empowers the State Government to make rules in respect of minor minerals. However, these rules could be made for regulating the grant of quarry leases, mining leases or other mineral on cessions in respect of minor minerals or for purposes connected therewith. Section 15 of the Act of 1957 is the source of legislative competence of the State in regard

to framing of MP Minor Mineral Rules. The Parliament in its wisdom and keeping in view the Constitutional provisions, specifically provided for a window of subordinate legislation. But for such statutory delegation, the State might not have been able to frame Rules in face of the restrictive Entry contained under Entry 23 of List II. The power to frame Rules has to be regulated within the statutorily prescribed limitations. The State Government would not be able to frame Rules with the aid of Section 15 of the Act of 1957 on the subjects that fall outside the ambit of that Section.

19. Prior to 1972, there was no specific provision in the Act of 1957 specifically dealing with environment. It was by amending the Act of 1957, that Section 4(A) was introduced in it. As already noticed, Section 4 of the Act of 1957 had placed a restriction that no such activity could be carried on without licence or lease of mining and Section 4(A) of the Act of 1957 even provided for premature termination of the licence or mining lease. The reason for such premature termination, *inter alia,* could be for preservation of natural environment control of floods, prevention of pollution or to avoid danger to public health, etc. Section 18 of the Act of 1957 was also amended to take note that duty of the Central Government for conservation and systematic development of minerals was also coupled with the steps to be taken for protection of environment or control of any pollution which may be caused by prospecting or mining operations. For the first time, these provisions indicated the legislative concern for environment making preservation of environment and controlling pollution important considerations

while granting mining lease or licence and terminating the same. Despite these amendments, the provisions of Section 15 of the Act remained static and were not amended. In furtherance to the powers vested in State Government under Section 15 of the 1957 Act, the State of Madhya Pradesh enacted the MP Minor Mineral Rules 1996. These Rules provided for the matters specified under Section 15 and the matters connected thereto. These Rules, in their original form, did not deal with the concept of environmental clearance in relation to carrying on of mining activity under a licence or lease.

20. From the above legislative history of all these enactments, it is clear that when the legislature enacted the Act of 1986, it was fully conscious and aware of the existing enactments, i.e. the Act of 1957 and other prevalent laws. Despite existing laws, the legislature in its wisdom, did not opt to amend the Act of 1957 or any other existing law in relation to mining of minor minerals, and in fact, proceeded to enact the Act of 1986. The Rules of 1986 and the Notification of 2006 provided for specific environmental concerns and aimed at controlling environmental pollution while permitting the carrying on of mining activity and made it mandatory for the person carrying on mining activity to obtain environmental clearance from either of the authorities i.e. MoEF and SEIAA depending upon the category the particular project fell in. It is a settled cannon of statutory interpretation that legislature while enacting new laws is presumed to be aware of all existing laws and the legislative intent behind their enactment. Once the legislative

intent is explicitly specified in enacting a new law then the Courts must give full implementation to the law. The clear intention of the legislature is a relevant factor for the Courts to interpret and apply the law in a given case.

21. Declaring its dictum with reference to above laws, the Supreme Court in the case of *M.C. Mehta v. Union of India,* [(2009) 6 SCC 142] while referring to the precautionary principle and the need for regulating mining operations in view of the environmental concerns and also to prevent environmental degradation, held as under:

> "In the past, when mining leases were granted, requisite clearances for carrying out mining operations were not obtained which have resulted in land and environmental degradation. Despite such breaches, approvals were granted for subsequent slots because in the past the authorities had not taken into account the macro effect of such wide-scale land and environmental degradation caused by absence of remedial measures (including rehabilitation plan). Time has now come, therefore, to suspend mining in the Aravalli hill range till statutory provisions for restoration and reclamation are duly complied with, particularly in cases where pits/quarries have been left abandoned.
>
> Environment and ecology are national assets. They are subject to intergenerational equity. Time has now come to suspend all mining in the said area on sustainable development principle which is part of Articles 21, 48-A and 51-A(g) of the Constitution of India.
>
> Mining within the principle of sustainable development comes within the concept of "balancing" whereas mining beyond the principle of sustainable development comes within the concept of "banning". It is a matter of degree. Balancing of the mining activity with environment protection and banning such activity are two sides of the same principle of sustainable development."

22. After the above dictum, the Supreme Court also considered the matter in terms of protection of environment and control of pollution with regard to mining of minor minerals, in the

case of *Deepak Kumar* (supra), wherein the Court specifically held that lease in relation to mining of minor minerals even in regard to areas less than 5 hectares, should be granted by the State only after getting clearance from MoEF. In paragraph 22 of this judgment, the Supreme Court noticed the instructions issued by MoEF in the form of recommendations for their incorporation in the Rules framed under Section 15 of the Act of 1957. All these instructions/ recommendations primarily related to the size of the mining lease and the requirements for carrying the mining activity, however, environmental issues were also touched upon in that paragraph. These model Rules of 2010 were considered vital by the Supreme Court from environmental, ecological and biological points of view. All these recommendations were stated to be relevant for the purposes of framing Rules under Section 15 of the 1957 Act and to achieve the objective of that Act. Despite all these directions, the Supreme Court culled out a specific order in relation to obtaining environmental clearance for such projects in paragraph 29 of the judgment. It may be useful to notice here that the Model Rules of 2010 did not deal with the grant of environmental clearance. However, it did contemplate preparation of a regional environmental assessment and regional environmental management plan for the purposes of environmental clearance. These Rules also specifically provided for restoration, reclamation and rehabilitation in clusters.

23. The legislature is supreme in its own sphere under the Constitution subject to Parliamentary limitations provided in the Constitution itself. The legislature enacted the Act of 1957 as well

as the Act of 1986. In furtherance to the powers conferred by the latter enactment, the Notification of 2006 came into existence. All these are statutory documents and have to be given complete and full effect to. The extraction of minor minerals, like that of major minerals, can invite rigours of environmental law. The Supreme Court in the case of *Deepak Kumar* (supra), while noticing that quarrying of river sand is an important economic activity in the country with river sand forming a crucial raw material for the infrastructure development and for the construction industry; excessive instream sand and gravel mining causes degradation of rivers. It lowers the stream bottom of rivers which may lead to bank erosion. Having noticed this aspect, the Court in para 20 of this judgment observed, with regard to the report submitted before it, that the report clearly indicated, that operation of mining of minor minerals needed to be subjected to strict regulatory parameters as that of mining of major minerals. The Court even suggested at expanding the definition of 'minor minerals'. In the current times, the minor mineral extraction activity has to be regulated to ensure that no degradation of environment is caused. This squarely means that the environmental laws are to be applied with all their rigours by the authorities stated under the provisions of the Act of 1986. The provisions of the Act of 1986, and the Notification of 2006 along with the judgment of the Supreme Court, clearly mandate that all activity of mining of minerals (sand) irrespective of the area would require environmental clearance from MoEF / SEIAA prior to operating the mining activity. Section 15 of the Act of 1957, as

already discussed at some length, gives limited power to the State Government to frame rules for regulating grant of lease or licence for quarrying of mines or minerals in respect of minor minerals. It will be difficult to give a liberal or wider meaning to the language of Section 15 of the Act of 1957 on the principle of plain interpretation. It is particularly so in face of the specific legislations on the subject of environment i.e. the Act of 1986, the Rules of 1986 and the Notification of 2006. The Union Parliament is competent to legislate and has so enacted these laws. It is only by virtue of delegated legislation under Section 15 of the Act of 1957 that the State Government can frame rules, which thus, must be construed strictly and subject to the provisions of the Section. The competence of the State legislature to regulate mining activity in terms of Entry 23 of List II is subject to the law enacted by the Parliament under entry 54 of List I. Thus, in no way can the State enact a law which would be in conflict with or would change the very course of the law laid down by the Centre. This conflict between the provisions of the amended rules of 2013 and the Notification of 2006 may lead to the very fundamental attack as to the legislative competence of the provisions.

24. The Supreme Court's direction for preparation of environmental plans has to be construed as a plan which would be in consonance with the existing law. Such plan cannot run contra to or be in conflict with the Central law. The contention of the State that in view of Rules 42 to 49 and 68 of the Rules of 2013, the environmental clearance would be granted by the District Level

Committee is unsustainable. The environmental clearance under the Central law can only be granted by the MoEF or SEIAA, depending upon the category of the project that comes up for consideration of these authorities. The State is vested with no power to change the system with regard to the grant of environmental clearance under law. The consideration and grant of environmental clearance is statutorily regulated by the Notification of 2006. The State Government would not be competent to alter or completely give a go-by to the said statutory procedure and methodology and assume to itself any authority appointed by it to grant environmental clearance. The environmental clearance has to be granted by the authority specified under the Central law.

25. We may also notice that Rules 42 to 49 and 68 are intended to and have to be construed so as to make the authorities responsible for granting lease or licence for mining, aware of the environmental facets. An applicant is to make the mining plan with complete information in regard to its impact on the environment as required under these rules and the District Level Environment Committee so constituted is subsequently to grant lease or licence in accordance with these rules. These rules are incapable of any other interpretation. By amending these rules, the State Government could not be permitted to entirely wipe out the impact, effect and procedure prescribed under the Central law. The District Level Environmental Committee has to perform its functions under the Act of 1957 and the rules. Neither the Act of 1957 nor the rules framed by the State vest any power in the State Government with

regard to environmental clearance. Thus, the appropriate way to read and interpret these Sections would be that such powers are to be exercised in relation to environment but primarily for the purposes of granting or refusing mining leases or licences.

26. Another contention raised on behalf of the State of Madhya Pradesh is that grant of environmental clearance by MoEF or SEIAA, as the case may be, is causing serious stagnation in the way of granting of permission, lease or licence for carrying on the activity of mining of minor minerals in the State. This is resulting in financial loss. Firstly, it is affecting the economy of the State and secondly, it is hampering the developmental projects.

27. Before we dwell upon this issue, we must notice that the observation of the Supreme Court requiring stringent regulation of mining of minerals is fully justified even by the facts disclosed by the State in its application. There have been a large number of cases of illegal mining in the State and huge amounts have to be recovered on account of penalty, charges etc. This itself shows that by the grant of mining leases/licences under its regulations, there has been huge illegal mining with great revenue loss to the State. The argument advanced by the State is self-destructive. Stringent regulation of mining of minerals is required. Due care, caution and prevention should be taken to ensure that no degradation of environment takes place. The objection that there being stagnation as well as delay in grant of EC is a mere administrative issue. Inconvenience is normally never a ground for changing the interpretation of law or reading words into a statute. The

administrative difficulty can be resolved by MoEF in consultation with the State by creating larger number of committees (SEIAA) at the State level to ensure that applications for environmental clearance for mining of minerals are dealt with expeditiously and no stagnation on any front takes place as a result thereof.

28. In view of the above discussion, particularly the judgment of the Supreme Court in Deepak Kumar's case (supra) and the notification of 2013, we find no merits in this application. The same is dismissed in the facts and circumstances of the case. However, we leave the parties to bear their own costs.

Justice Swatanter Kumar
Chairperson

Justice U.D. Salvi
Judicial Member

Dr. D.K. Agrawal
Expert Member

B.S.Sajwan
Expert Member

Dr. R.C. Trivedi
Expert Member

New Delhi
November 28, 2013