

Item No. 02

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)**

Execution Application No. 3/2019
In
Original Application No. 91/2015 (CZ)
(I.A. No. 24/2020 & 72/2020)

Bhanwar Lal & Ors.

Applicant(s)

Versus

State of Rajasthan & Ors.

Respondent(s)

Date of hearing: 28.08.2020

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER**

For Applicant(s) : Mr. Dharamveer Sharma, Advocate

For Respondent(s) : Ms. Parul Bhadoria, Advocate
Mr. Shoeb Khan, Advocate
Mr. Om Shankar Shrivastava, Advocate
Mr. Naveen Ahuja, Advocate
Mr. Yadvendra Yadav, Advocate
Mr. Arvind Soni, Advocate
Dr. Manish Singhvi, Sr. Advocate
Mr. B.S. Sodha, ADM (Mine) Jaipur, R-1
Mr. S.K. Sharma, SDO

ORDER

1. The matter was taken up by this Tribunal on 05.08.2020 and it was directed as follows:

"1. Heard the Learned Counsels for the parties and perused the records.

2. The compliance of the order passed in O.A. No. 91/2015 was considered and it was found that the illegal mining should be immediately stopped and the Department to have quantified the loss caused to the environment, and work out the cost of restoration and filling of the pits.

3. In compliance thereof, the Department/Respondents have filed I.A. No. 72/2020 for modification of the order and I.A. No. 24/2020 for impleading parties.

4. Applicant wants some time to file reply. Reply may be filed within fortnight.

5. *Learned Advocate, Shri Om Shrivastava, who visited the spot has facilitated that for remedial action, the illegal mining should be immediately stopped and action must be initiated against the persons who were involved in the illegal mining. Accordingly, we direct the Respondent to comply the remedial measures as suggested in para 2 of the I.A. No. 72/2020 and further to immediately stop the illegal mining, take necessary legal action against the persons who were involved in the illegal mining and State Pollution Control Board is directed to assess, calculate and further to proceed for the recovery of Environmental Compensation, on the principle of 'Polluter's to Pay'.*

6. *In the meantime, the respondents are at liberty and directed to fill the pits from the available materials within the catchment area, if possible.*

7. *The further action taken report be filed before the next date of hearing by email at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.*

8. *List it on 28.08.2020."*

2. Respondent No. 1, 2 and 3 has submitted that the matter was taken up by this Tribunal on 16.05.2017 and it was directed that in the facts and circumstances no further direction are required to be issued, the matter stands disposed of and the consent to record in light of the order dated 28.02.2017. The matter was again raised in M.A. No. 438/2017 whereby similar allegations were raised and this Tribunal vide order dated 16.01.2018 disposed of the application and consigned the matter to record. It is further submitted that, in order to protect Shakti Sagar Lake Respondent has taken every possible steps and in furtherance have submitted the compliance report of the order dated 28.02.2016 which was accepted by this Tribunal and the matter was consigned the records vide order dated 16.05.2017 and 16.01.2018.
3. By filing the I.A. No. 72/2020 the Respondent No. 1, 2 and 3 that the State Government in compliance of the Hon'ble Tribunal order dated 22.05.2020 constituted a team of technical staff to assess the

number and sizes of mining pits situated in the catchment area of Shakti Sagar Talab and also to carry out the survey of various anicuts situated in the catchment area of Shakti Sagar Talab. The survey completed in a period of 3 days and a map was prepared marking the Shakti Sagar Talab, various mining pits, anicuts, Forest area of the talab and other relevant features. The Collector visited the Shakti Sagar talab and its catchment and the surrounding areas on 27th May, 2020, alongwith the officials of all the concerned departments. It was found that there is no overburen/waste material available in the area by which the mining pits could be filled. It was also observed that the anicuts are very old, and as per the survey report all the anicuts, except 3, are not more than 2 meter in height.

4. That the Mining Engineer, Beawar persuaded the lessees whose leases are situated near the Shakti Sagar Talab to carry out the filling of the pits with the waste/overburden material lying scattered in the area. The lessees started filling of the pit situated near the Guwadia village, which was mentioned in the court commissioner's report.
5. That thereafter the Principal Secretary, Department of Mines and Geology, visited on 02.06.2020 the Shakti Sagar Talab along with the Collector, Ajmer and the officials of concerned departments. It was observed that the owners of mining leases, situated near the talab have started filling the mining pits located near their leases. The Principal Secretary and officials toured the catchment area of the talab and also visited some anicuts situated in this area. During the site visit, *prima facie*, the fact emerged out that even if

the mining pits are filled in the area, the flow of water will not reach the Shakti Sagar Talab, because the area is very undulating and there are small hillocks located in this area and land use pattern have changed a lot in the past years, which causes hindrances in the free flow of water towards talab, moreover, the average rain fall in this area i.e. 493 mm is not sufficient to fill the talab. Some of the local inhabitants endorsed this fact that they have never seen the talab filled with water since last 40 years.

6. That in compliance of the Principal Secretary, Mines, directions and on the basis of field observations, the Collector, Ajmer issued an order constituting a committee of the officials of water Resources Department, Watershed Department, Ground Water Department, Forest Department and Mines Department under the chairmanship of the SDM Masuda to look into the matter regarding the construction of sluice gates and its impact and filling mining pits and its impact on the flow of water to the Shakti Sagar Talab. The scope of the committee is to assess that if the sluice gates are constructed and mining pits are filled, then the water will accumulate in the talab after average rain fall in the area or not.
7. That it was submitted before the Hon'ble Tribunal that after the expert committee submits its report, needful action shall be taken in compliance of the orders. The genuine difficulties that had arisen after the field visits were informed to the Hon'ble Tribunal.
8. That the Hon'ble Tribunal in its order dated 25.06.2020 observed that the State Government has not taken any steps in compliance of the order dated 28.02.2017 and imposed a cost of Rs. 1,00,000/- (Rupees one lakh) on the Mining Department, however, an option of

recovering this cost from the persons involved in unauthorized mining has been given. Consequently, the department has issued legal notices to the miners involved in illegal mining activities to deposit the cost.

9. That as stated in above paragraphs, it is crystal clear that the State Government is trying hard to comply with the directions of the Hon'ble Tribunal in its letter & spirit, but there are many pragmatic complications, on which the kind attention of the Tribunal is obligatory.
10. It has further submitted that there is no overburden/waste material available in the nearby areas of talab, and it is not a feasible idea to excavate new pits to fill the existing pits.
11. The Shakti Sagar talab was built long back during the state times and forms the part of the kharwa state. The village of kharwa is situated at a distance of about 35 kms. from Ajmer in Masuda Tehsil. The history of mining activities in the Kharwa area dates back to the year 1913. The two major forts namely Kharwa fort and Masuda fort and India's renowned Shri cement plant and their colonies and infrastructures have been constructed using large quantum of stone from this Kharwa area. It is also significant to mention here that apart from this, the stone from Kharwa State has been used in the development of Beawar urban and nearby rural areas as well. There were 4 mining leases granted in the Kharwa State and subsequently after independence other mining permissions were also given from time to time, as shown below in the table:-

S. No.	Name of Lessee	Estate time Mining Lease	Sanction year
1	Sundarmal	Kharwa (Whole Estate)	31.10.1913
2	T.R. Kantharia Bombay	Kharwa, Gwardiya, Kashipura, Surajpura	09.12.1917
3	A Tharma Company	Piplaj Devgarh (Kharwa (Whole Estate))	04.03.1918
4	Insaro T.A. Vefik & Company	Kesarpura	20.04.1921

12. The major issues on which the State Government had put forth its perspective in the Hon'ble Tribunal are as under-

A] Catchment area- It is noteworthy that the Water Resources Department (previously Irrigation Department) had provided a map of effective catchment area of the lake, and no existing mining leases were found to be situated in the catchment area, however, some portion of one lease was falling in the catchment, which was got surrendered by the Mines Department in the year 2017 in Compliance of the order of the Hon'ble Tribunal. In catchment area there are 29 old abandoned pits of mining leases which remained effective during state times and pits created due to mining activities permitted under rule 65 of RMMCR-1986, which also was terminated in the year 2017.

B] Anicuts- There are 17 anicuts in the catchment area which were constructed prior to the year 2002 and in last 20 years, no new anicut has been constructed in this area.

C] Unauthorised mining -The stray activities of illegal mining by the local inhabitants can't be denied and even after the instances of man-handling of government officials, the State Government has taken stern actions against them, like filing of 7 FIRs against 40 Culprits in the last two years, moreover, the FIR against 29 persons, whose names surfaced in the second commissioner report was instituted on 12.05.2020.

D] Cancellation of Khatedari rights - On the basis of illegal mining and encroachment, approximately in 30 matters, the cancellation of khatedari rights has already been done and in Compliance of the orders of Hon'ble Tribunal dated 28.02.2017, whereby it was directed that no khatedari rights are allowed to exist in the river bed or tank as per the Section 16 of Rajasthan Tenancy Act, the Tehsildar, Masuda issued legal notices on 29.05.2020 to the khatedars whose lands are located in the catchment area of the talab.

13. Since, the further affidavit has been filed by the Additional Director (Mines) in which it has been stated that the fine has been realized and deposited to the account of the Central Pollution Control Board. Thus, the I.A. No. 72/2020 is disposed off with following terms:

(a) The order mentioned above in I.A. No. 72/2020 is modified upto the extent that in place of penalty it should be –environment compensation of Rs. One lac to be paid by the Mining Department which shall be recovered from the polluter's on the principle of "polluter's to pay". Since, it has been paid that no further action is required.

(b) The remedial measure which has been suggested may be acted upon.

14. It is prayed that the directions to backfill the abandoned pits be modified and the State Government be allowed to construct stone wall around the pits to restrain the rain water being filled in these pits and thus the water will flow towards the talab, as filling back the abandoned pits by excavating other area is environmentally not feasible. Moreover, the fencing of pits by constructing the masonry wall will protect wildlife, animals and human beings from unwarranted accidents and the directions of constructing sluice gates be also reconsidered on account of the fact that the Annicuts which are existing there are more than 20 years old and if the sluice gates are constructed, there is every possibility of the annicuts getting damaged.
15. The Additional Director (Mines), Jaipur Zone, Rajasthan and officer In Charge in the present case has further submitted and affidavit on 26.08.2020 which is as follows:

“3. That the Hon’ble Tribunal considered the facts submitted by the respondents, and in its order dated 05.08.2020 directed the respondents to comply with the remedial measures as suggested in para 2 of the IA 72/2020 and further to immediately stop the illegal mining. It also directed to take necessary action against the persons who were involved in the illegal mining and the State Pollution Control Board was directed to assess, calculate and further to proceed for the recovery of the compensation on the principle of “polluter’s to pay”.

4. That the Hon’ble Tribunal ordered the respondents to file the action taken report before the next date of hearing i.e. 28.08.2020.

5. That in the vicinity there is no surplus sand or malba (waste/filling material) available which can easily be transported and to fill up the existing pits. Since it is a primarily rocky area, the sand is not available in the vicinity

for easy transportation to fill the pits. It is under these circumstances that a decision was taken to construct wall, so that water around the pits does not collect close to reservoir.

6. That in compliance of the order dated 05-08-2020 of the Hon'ble Tribunal, the action taken so far by the respondent is submitted as follows:

(a). The Collector, Ajmer directed the Water Resources Department vide its letter dated 11.08.2020 to provide a rough estimate of the expenditure to be incurred on the construction of the stone wall around the mining pits.

(b). The Water Resources Department estimated the cost of construction of stone wall to be approximately 279 lacs of rupees.

(c). The Mines Department sent proposal for construction of stone wall to the member-secretary of the District Mineral Fund Trust, Ajmer. Once the funds are received, the work to construct stone wall shall commence.

(d). To curb the illegal mining and transportation in the Kharwa area a joint team consisting of Mines department employees and Border Home Guards has been constituted under the stewardship of Assistant Mining Engineer, Beawar. In its first effort, the joint team seized an excavator (JCB) in this area engaged in illegal mining and recovered a penalty of Rs. 1.62 lacs. In compliance of the order dated 25.06.2020 of the Hon'ble Tribunal, cost of Rs. one lac has been recovered from the persons involved in illegal mining activities and has been sent to the Central Pollution control Board, New Delhi."

16. In light of the above report, the order with regard to recovery of fine has been complied with and further suggestions have been made in para 6 to execute the order in the way. In this way, we deem it just and proper to dispose of this execution application finally with the direction that the suggestion as given in para 6 of the affidavit submitted by the Additional Director (Mines) be complied with and that will suffice the purpose of execution of order.
17. Accordingly, Execution Application No. 3/2019 in Original Application No. 91/2015 (CZ) and I.A. No. 24/2020 and 72/2020

are disposed off in full and final satisfaction of the execution application. Decided accordingly.

Sheo Kumar Singh, JM

Dr. S.S. Garbyal, EM

August 28, 2020
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