Item No. 03 (Bhopal Bench)

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

Original Application No.44/2019(CZ)

Daulat Singh Applicant(s)

Versus

State of Rajasthan & Ors. Respondent(s)

Date of hearing: 28.10.2020
Date of uploading: 04.11.2020

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

For Applicant(s): Mr. Anoop Agarwal, Advocate

For Respondent(s): Mr. Mhod Iquaam, Advocate on behalf of Mr. Shoeb Khan, Advocate for-State
Mr. Arvind Soni, Advocate for-RSPCB
Mr. Shantanoo Saxena, Advocate for-R-7
Mr. Yadvendra Yadav, Advocate for CGWA

ORDER

1. The applicant seeks direction to the respondent to immediately close the stone crushing unit of respondent no.7 and others in the area of Ramah Tehsil, District Alwar and to direct the authorities concerned to conduct a surprise inspection of the stone crushing units operating in the area and if it is found to be operational without any valid consent and against the provisions of law, to take necessary remedial action and to impose penalty and environmental compensation.

2. It is further alleged that these stone crushing units are operational without fulfilling the requirement of the guidelines issued by the

competent authority and without NOC from the Central Ground Water Authority(CGWA).

3. It has further been submitted that these stone crushing units are violating the rules and causing air and noise pollution and ecological degradation of the surrounding area which is hazardous to the health of local residents of the area. It is also alleged that these stone crushers are situated near the abadi land within 1500 meter.

4. Notices were issued to the respondents and in compliance thereof, respondent nos. 1 and 2 had submitted the affidavit which is as follows:-

" 2. *A detailed reply was filed by the answering respondent no. 1 and 2 wherein reliance was placed on the report prepared by the Tehsildar on 10.12.2019 wherein it was mentioned that the unit of Respondent No. 7 was not in operation but on the contrary on hearing dated 30th January 2020 it was submitted by the respondent no.7 before the Hon'ble Tribunal that the unit of respondent no. 7 is in operation.*

3. In order to clarify the aforesaid situation a letter was issued to the Tehsildar dated 10th February 2020 seeking clarification with respect to operation of the unit of respondent no. 7 and thereafter the Tehsildar Ramgarh vide its letter dated 13th February 2020 informed that on the spot inspection carried out on 12th February 2020, the Manager of Mahadev Stone Crushers (respondent no. 7) Shri Sanjay S/o. Shri Dalchand R/o Firozpur, Jhirkahat informed that vide order dated 08.11.2019 passed by Environment Pollution Prevention Control Authority, the unit of the respondent no. 7 was directed to be stopped. Thereafter, vide order dated 18.12.2019 the operation of

the unit of Respondent No. 7 reinstated and as on date the unit of Respondent No. 7 is in working condition".

5. The respondent nos. 1 and 2 has further stated that vide order dated 18.12.2009, the land conversion order was passed in favour of the respondent no. 7 and subsequently vide order dated 14.07.2016, the District Collector constituted a team comprising of Revenue officials and officials from Pollution Control Board and Mining Department to carry out a joint inspection and the said team observed that the respondent no. 7 was not complying with the conversion orders. In the letter dated 26.11.2009 issued by UP Nagar Niyojak (NCR) at point no. 11 it is mentioned about keeping a distance of 1.5 km. from Abadi Area and as per the report of the Tehsildar, the 1500 meter distance from abadi area is not mentioned and accordingly, letter dated 29.10.2018 was issued by the District Collector regarding revocation of conversion order. In compliance of the said letter, vide order dated 05.02.2019, the conversion order in favour of respondent no. 7 is revoked by the answering respondent. Against the said withdrawal order, the respondent no. 7 has preferred an appeal before the Revenue Appellate Authority, Alwar and has obtained a *status quo* order on 14.02.2019, the next date of hearing in the said appeal is 24. 12.2019. As per the report of the Tehsildar dated 10.12.2019, the operations of respondent no. 7 unit are closed.

6. The respondent nos. 3 and 4 had submitted the reply which is as follows:-

"5. *That the respondent no, 7 i.e. M/s Mahadev Stone Crusher was issued Consent to Operate by the State Board vide letter dated 08.02.2011 and the said Consent to Operate was renewed from time*

to time by the State Board vide letters dated 25.10.2012; 24.04.2015 and lastly by 28.01.2019. As per the letter dated 28.01.2019 the respondent no.7 is having valid consent to operate with validity upto 31.03.2023.

It is further submitted that as per the available office record; the unit has applied for NOC to CGWA on 30.03.2017 and reapplied on 27.09.2018. Further the unit has installed Air Pollution Control Measures as per the inspection dated 24.01.2019. As far as other stone crushers are concerned the applicant has failed to provide details of any non-compliant stone crushers.

6. It is submitted that the applicant has failed to submit any evidence with respect to his averments. The answering respondent has issued consent to establish to the respondent no, 7 vide letter dated. 08.02.2011 after taking into consideration the distance certificate dated 04.11.20009 issued by the Tehsildar, Ramgarh, Alwar."

7. The respondent no.5-Central Ground Water Board, Jaipur has submitted the brief submission in reply and stated that:-

"6. That the averments made para 4 primarily indicate violations related to Air and Noise Pollution, Land use violations and violations of conditions of consent to operated. Limited issue pointed out in the OA pertinent to CGWA/CGWB is ground water extraction without a valid NOC from CGWA/CGWB. As per the directions of Hon'ble NGT under its order dated 03.01.2019, the CGWA cannot grant NOC in OCS areas. It is also submitted that the notified guidelines of CGWA are on hold under the orders of Hon'ble NGT vide order dated 03.01.2019. The Hon'ble NGT, New Delhi vide order dated

11.09.2019 in OA No. 176/2015 has appointed an Expert Committee to examine the issues related to robust framework for ground water and coercive mechanism for violations. The report of the committee will be examined by Hon'ble NGT on the next date of hearing fixed on 28.11.2019. The Hon'ble NGT under its order dated 10.10.2019 dismissed an I.A. No. 640/2019 in OA No. 176/2015 filed by Association of the Industrial Manufacturers, Ghaziabad, reiterating the stand of Hon'ble Tribunal. In safe areas NOCs for ground water extraction may be granted by CGWA/CGWB on application by units and subject to condition that the user is environment compliant. If the stone crushing units are drawing ground water from irrigation wells or flouting ground water guidelines, the District Collector/Deputy Commissioner/District Magistrate (R/2) has been authorised by CGWA vide public notice no.8/2017 dated 23.10.2017 to take coercive action. For violation related to Air, Noise Pollution or for violations of conditions of consent to operate granted by RSPCB, the State Pollution Control Board is empowered to take action under Air Pollution, Noise Pollution and Water Pollution Laws."

8. Current status was called by this Tribunal from the State Pollution Control Board Rajasthan and incompliance thereof, the Regional Officer has filed the report dated 29.07.2020 with the following facts:-

"2. *That the officials of the State Board have inspected the stone crusher on 16.03.2020 to know the status/ adequacy of the pollution control measures. During the course of inspection certain deficiencies were observed in the stone crusher.*

3. *That on the basis of deficiencies observed during inspection dated 16.03.2020, the State Board has issued a show cause notice to the stone crusher on 16.03.2020 for intended revocation of consent to operate and intended closure directions under section 31 A of the Air Act.*

4. *That the project proponent vide letter dated 20.03.2020 submitted the reply to show cause notice dated 16.03.2020.*

5. *That the officials of the State Board again conducted the inspection and monitoring of the stone crusher on 16.06.2020 to verify the reply submitted on 20.03.2020. During the course of inspection on 16.06.2020 it was observed that the unit has rectified the deficiencies of pollution control measures and emission level of suspended particulate matter (SPM) in ambient air was found 573 ug/m^3 against the permissible limit of 600 ug/$m^{3.}$"*

9. The respondent no.7 has filed preliminary objections which is as follows:-

"2. *It is stated that the guidelines by the Rajasthan Pollution Control Board dated 05.06.2018 via notice no. SCMG(Gen)RPCB/307 primarily deal with New Stone Crushers being established and with the Pollution Control Measures to be adopted by existing stone crushers. It is pertinent to mention that the definition of New Crusher includes newly established unit and also those existing units which have expanded their size or production capacity or making any structural enhancement, the crusher of the answering respondent falls in none of the above mentioned categories since it is not applicable to the answering respondent for the reason that the Stone Crusher unit of the answering respondent is not a new*

establishment since it was established in the year 2010 much prior to this policy. Ii is also pertinent to mention that the answering respondent has also not made any expansion/enhancements to the stone crusher unit.

As regards air pollution there is no such allegation in the petition. It is also pertinent to mention that as per the inspection conducted by Respondent no. 4 dated 24.01.2019, the answering respondent has installed adequate pollution control measures like dust contamination cum separation system, wind breaking wall, boundary wall, metalled road, regular cleaning and wetting of grounds etc.

3. *It is submitted that the answering respondent has been issued the consent to operate by the State Board via letter dated 08.02.11. The said consent has been renewed regularly and periodically via letters dated 25.10.12 and 24.04.15 and lastly by 28.01.19. It is further submitted that as per the letter dated 28.01.2019 the answering respondent possesses valid consent to operate which is valid up to 31.03.2023. He is further submitted that the answering respondent has applied to the CCGWA for no objection certificate for storage of water and older formalities on 27.09.2018. It is further pertinent to mention that the Rajasthan Pollution Control Board ad conducted an Inspection of the 24.01.2019 on the premises of the answering respondent. The premises were not found to be in violation of any Air Pollution Control Measures."*

10. It is further submitted that the application has been filed after a delay of about 9 years and in light of the provisions contained in Section 15 of the

National Green Tribunal Act, 2010-"No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose".

11. In the rejoinder affidavit, the applicant has submitted that the units are operational without any valid authorisation and NOC from CGWA. It is further submitted that the distance from the abadi and inhabitation has not been taken into account by the authority concerned.

12. The Learned Counsel for the applicant has submitted that the Rajasthan State Pollution Control Board has framed guidelines for the stone crusher units which states that if a stone crusher is established on land having conversion and if competent authority for land conversion, on the basis of distance or any other issue cancels prevailing land conversion and intimate to the board about cancellation of land conversion, then consent to establish or operate as the case may be, shall be revoked and competent authority for land conversion shall be solely responsible to take necessary action for removal of the stone crushers. It is further submitted that the respondent no. 7 is running its unit near about 350 metre from the abadi area within the radius of 1500 metre from Abadi Land, from a long time in manipulation with the authority and when this fact was brought within the knowledge of respondent, an inquiry was done but no action has been taken by the authority concerned.

13. It is further argued that the authority inspected, issued show cause notice and also submitted a report on the same day and that too in the period of COVID-19 and it is the version of the applicant that the show

cause notice and inspection that too in the COVID-19 cannot be said to be a practicable inspection. As per direction of this Tribunal, the authority concerned visited the spot, issued show cause notice and there is no provision that show cause notice cannot be issued on the date of inspection. After inspection if it is found that the unit was operational in defiance of any provision then the authority can issue show cause notice accordingly.

14. It is further argued that the unit has withdrawn ground water without any NOC from CGWA whereas the unit and the State Pollution Control Board have argued that an application has been moved before the CGWA for grant of NOC.

15. The Learned Counsel appearing for the CGWA has argued that mere submission of the application before the competent authority does not mean the indirect permission or deemed permission for withdrawal of the ground water and if any ground water is extracted without the permission of CGWA then it is said to be in violation of the provisions of rules.

16. The Learned Counsel for the applicant has submitted that the matter with regard to the extraction of ground water has been taken by this Tribunal in the matter of *Dr.Tanzeen Fatima Vs. Ministry of Environment and Forests and Climate Change & Ors.* (*O.A. 361/2017*), in which Tribunal held that "------- illegal drawal of ground water without sanction even though the area is semi critical, on the ground that application for sanction was 'pending'. We do not find any merit in this submission. Delay in deciding renewal application could not be treated as a licence to draw the ground water. The unit could take remedy against such

inaction. While regulatory authorities are required to act promptly but any inaction is not a ground for a citizen to take the law in his hands instead of approaching the concerned higher authority or the Court-------.” More so, application of respondent no.7 for getting NOC has already been cancelled on 30.3.2017. As has been clear from the documents annexed with the reply given by respondent no. 3 & 4. Then how RSPCB allow him and granted CTO on 28.01.2019 and as per section 15 of Environment Protection Act, 1986 it deserve action as well as adequate compensation as per the guidelines of CPCB and compensation for restoration of environment has to be imposed on the defaulting units.

17. In a similar matter, NGT in a case O*.A. No. 687/2018, Mahendra Singh Vs. State of Haryana & others*, passed and order dated 24.07.2019, by which authorities directed to ensure immediate closure of all illegally operating polluting stone crusher in the area initiation of action by way of prosecution and recovery of compensation which must be deterrent and relatable to cost of restoration, so illegal activity is not profitable. The compliance of Environment Norms including the siting criteria, ambient air quality, the carrying capacity of the area for permitting such polluting activity and health impact on the inhabitants may also be assessed.

18. The main objection of applicant is against the location of stone crushers units which are closed to the plantation and Abadi areas and also second objection is that the aforesaid area is critical/over exploited in terms of ground water. There is scarcity of water even for drinking purposes. If the stone crushers operate, the ground water will be illegally extracted. Before any consent to operate is granted, the Project Proponent must be required to disclose the source of water for operation of the stone

crushers and to mitigate dust and air pollution. But same has not been fulfilled till date.

19. In aforesaid area of Tehsil Ramgarh Alwar, there are many stone crusher units, running without getting NOC from CGWA in critical/over exploited area as has been admitted by the respondent no. 5 & 6 (CGWB & CGWA). In its reply respondent no. 5&6 admitted that Tehsil of Ramgarh in Alwar District is categorized as over exploited area. It has further been admitted by respondent no. 5 & 6 that in critical/over exploited area, CGWA could not grant NOC as per NGT order dated 03.01.2019 and in a recent Judgment the NGT also passed order to impose environmental compensation on such defaulting industries as they are violating the rules and causing Air and Noise pollution and Ecological degradation of the surrounding area which is hazardous to the health local residents of the area.

20. As per policy/guidelines of RSPCB, there are several guidelines and there is also a conditions that all existing and new stone crusher units are required to comply with the prescribed pollution control measures under Environment (Protection) Act, 1986. All stone crusher units must establish dust containment cum suppression system, construction wind breaking walls, construction of metalled roads within the premises, regular cleaning and wetting of the ground within the premises, growing of green belt along the periphery. There is another condition that ground water shall not be extracted without prior NOC from CGWA and water storage facility must be provided at stone crusher site and its capacity shall not be less than 3000 ltr., There is another condition that the stone crusher area shall be clearly demarcated by providing boundary walls. All

the stone crusher units in the area are violating, aforesaid conditions laid down by the pollution control board and they are operating near the abadi area with the radius 1500 meter of recorded revenue village as defined under the provisions of the Land Revenue Act 1956.

21. The minimum distance from the inhabitation for the purposes of mining has been dealt by this Tribunal in *Appeal No.03/2020(WZ), Sabarmati Majoor Kamdar Sahkari Mandli Ltd. Vs. State of Gujarat & Ors*. vide order dated 30.09.2020 and it was observed as follows:-

"80. *Learned counsel appearing for the appellant had submitted that the criteria as laid down or followed by the authorities are not in accordance with the provisions of law or neither has been laid down anywhere in the rules. The Sustainable Sand Mining Guidelines are exhausted in respect of sand mining activity. Clause 49 of the Guidelines says that the mining cannot be undertaken in 200-500 infrastructure meter of bridge, 200 meter upstream and downstream water supply/irrigation scheme, 100 meter from the edge of the national highway and railway line, 50 meter reservoir, canal or building 25 meter from the edge of State Highway and 10 meter from edge of other roads. There is no mention of any distance from a human habitation. The EC granted to the applicant earlier on 21.02.2015 shows that EC was subject to the appellants were following the Guidelines. The Guidelines are being followed by the appellant in letter and spirit. The State Authorities has not produced any document to show stipulation of 500 meter criteria for human habitation.*

81. The Guidelines issued in 2020 make it clear that they are supplemental to the 2016 Guidelines. The Guidelines itself says that the document is supplemental to the existing 2016 Guidelines and these two Guidelines via enforcement of monitoring guidelines for sand mining 2020 and 2016 shall be read and implemented in sync with each other.

83. The report prepared by the CPCB in compliance of the order of this Tribunal passed in O.A. No. 304/2019 in the case of M. Haridasan & Ors. Vs. State of Kerala is as follows:

> *"**2.0 Stone Quarrying:***
>
> *Stone is classified as minor minerals under Section 3(e) of the Mines and Minerals (Development and Regulations) Act, 1957. As per provisions of MMDR Act, the administrative and legal control over minor minerals vests with State Governments and empowered to make rules to govern minor minerals.*
>
> *Stone Quarrying / Mining is an activity where extraction of stone is done from hillocks or mountain or ground surface having geological mineral deposits. The stone extracted from stone quarry are used either as construction materials or in stone crushers to produce rori/bajri and dust.*
>
> *Systematic Mining (formation of benches) is done by blasting and drilling, to loosen up the rock materials followed by fragmentation of large size into smaller size. The reduced size material is then loaded and transferred to stone crushers for further processing in order to obtain necessary sizes required for final use. The blasting and drilling during mining operation have environmental impacts and requires mitigation measures to minimise the impacts on environment and nearby habitations.*
>
> ***3.0 Minor Mineral Concession Rules***
>
> *As per sub-section (1) of section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957), State Government has to make Rules for regulating the grant of quarry lease, mining lease/permit, mineral*

concessions and purposes connected in respect of minor minerals.

Accordingly, State Governments have framed rules and defined the criteria of minimum distance of minor mineral mining from different locations based on the type of mining used.

Minimum distance prescribed by various states is vary with respect to mining operation of minor mineral involved. In general, minimum distance prescribed by states such as Rajasthan, Madhya Pradesh, Punjab, Tamil Nadu, Orissa, Bihar, Uttar Pradesh, Himachal Pradesh, West Bengal, Sikkim, Meghalaya and Manipur are:

- *In the range of 45 - 200 m from any reservoir, canal, public works such as public roads and buildings*
- *In the range of 45 -100 m from any railway line / area*
- *In the range of 60 - 100 m from National Highway, State Highway and other roads and 10 m from village roads*

Various states have further prescribed minimum distance based on the use of blasting in mining operation of minor mineral, as follow:

4.0 Criteria of Danger Zone: Directorate General of Mines Safety

As per Directorate General of Mines Safety circular no. - DGMS (SOMA)/ (Tech) Cir No. 2 of 2003 Dt. 31/01/2003, on subject of Dangers due to blasting projectiles, all places within the radius of 500 m from the place of firing to be treated as danger zone and accordingly, all person in danger zone to take protection in substantially built shelter at the time of blasting.

Further, mine manager to control the throw and to prevent ejection of flying fragments within a safe distance with the use of refined blasting practices as well as developed explosives and accessories such as controlled blasting Technique with milli-second delay detonators/ electric shock tubes/ cord relays or use of sequential blasting machines or by adequately muffling of holes etc.

5.0 Criteria of no blasting distance around blast sites: Indiana Department of Natural Resource, USA

(Source: Citizen Guide to Coal Mine Blasting in Indiana)

Indiana Department of Natural Resource, USA has stated that the blasting not to be conducted within 300 feet (~91 m) of an occupied dwelling or school, church or hospital, public building, community or institutional building.

6.0 Conclusion:

In view of available information, following minimum distance criteria may be considered for permitting stone quarrying by SPCBs:

In view of available information, following minimum distance criteria may be considered for permitting stone quarrying by SPCBs:

Mining Type		*Minimum Distance*	*Locations*
A.	*When Blasting is not involved*	*100 m*	*Residential/Public buildings, Inhabited sites, Protected monuments, Heritage sites, National / State Highway, District roads, Public roads, Railway line/area, Ropeway or Ropeway trestle or station, Bridges, Dams, Reservoirs, River, Canals, or Lakes or Tanks, or any other locations to be considered by States.*
B.	*When Blasting is involved*	*200 m **	

*****Note:** The regulations for danger zone (500 m) prescribed by Directorate General of Mines Safety also have to be complied compulsorily and necessary measures should be taken to minimise the impact on environment.*

However, if any states is already having stringent criteria than the above for minor mineral mining (i.e. more prescribed distances than the above), the same shall be applicable."

22. The right to development itself cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. It encompasses much more than economic well-being and includes within its definition the guarantee of fundamental human rights. It includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of people's wellbeing and

realisation of their full potential. It is an integral part of human rights. Of course, development is the essence of any pragmatic and progressive society. But essentially, development besides being inter-generational, must be balanced to its ecology and environment. Sustainable development means that the richness of the earth's bio-diversity would be conserved for future generations by greatly slowing or if possible halting extinctions, habitat and ecosystem destruction, and also by not risking significant alterations of the global environment that might-by an increase in sea level or changing rainfall and vegetation patterns or increasing ultraviolet radiation-alter the opportunities available for future generations. Sustainable development has been defined in many ways but the most frequently quoted definition is from the Brundtland Report which states as follows:

> "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:
>
> • The concept of needs, in particular the essential needs of the world's poor, to which overriding priority should be given; and
>
> - The idea of limitations imposed by the state of technology and social organisation on the environment's ability to meet present and future needs."

23. The earlier school of thought was that development and ecology are opposed to each other but with the passage of time and development of law, this concept has undergone tremendous change and is no longer acceptable. Now operates the principle of sustainable development. It

takes within its ambit the application of 'principle of proportionality' and the 'precautionary principle'. In other words, one must, while promoting development, not only ensure that no substantial damage is caused to the environment but also take such preventive measures which would ensure that no irretrievable damage to the environment, even in future, is caused. All these principles have to be examined and applied on the touch stone of "reasonable person's test", as afore-stated. Where the principle of proportionality introduces prudent mind's reasonableness in relation to development vis-a-vis environment, there the precautionary principle can be explained to say that it contemplates that an activity which poses danger and threat to the environment is to be prevented since prevention is better than cure.

24. While applying the concept of sustainable development, one has to keep in mind the "principle of proportionality" based on the concept of balance. It is an exercise in which courts or tribunals have to balance the priorities of development on the one hand and environmental protection on the other. So sustainable development should also mean the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a 'reasonable person's test'. [Refer: *Research Foundation for Science and Technology and Natural Resource Policy v. Union of India MANU/SC/7894/2007 : (2007) 9 SCR 906*; *Narmada Bachao Andolan v. Union of India supra; Chairman Barton: The Status of the Precautionary Principle in Australia (Vol. 22) (1998)* (Harv. Envtt. Law Review, p. 509 at p. 549-A) as in *A.P. Pollution*

Control Board v. Prof M.V. Nayudu supra; and *M.C. Mehta v. Union of India, supra.*] At this stage, we may usefully refer to a very recent judgment of the Supreme Court in the case of *G. Sundarrjan v. Union of India & Ors. MANU/SC/0466/2013: (2013) 6 SCC 620* where the Court, while referring to the principles of balance inbuilt in the concept of sustainable development, elaborated the principles as follows:

> *228. I have referred to the aforesaid pronouncements only to highlight that this Court has emphasized on striking a balance between the ecology and environment on one hand and the projects of public utility on the other. The trend of authorities is that a delicate balance has to be struck between the ecological impact and development. The other principle that has been ingrained is that if a project is beneficial for the larger public, inconvenience to smaller number of people is to be accepted. It has to be respectfully accepted as a proposition of law that individual interest or, for that matter, smaller public interest must yield to the larger public interest. Inconvenience of some should be bypassed for a larger interest or cause of the society. But, a pregnant one, the present case really does not fall within the four corners of that principle. It is not a case of the land oustees. It is not a case of "some inconvenience". It is not comparable to the loss caused to property. I have already emphasized upon the concept of living with the borrowed time of the future generation which essentially means not to ignore the inter-generational interests. Needless to emphasize, the dire need of the present society has to be treated with urgency, but, the said urgency cannot be conferred with absolute supremacy over life. Ouster from land or deprivation of some benefit of different nature relatively would come within the compartment of smaller public interest or certain inconveniences. But when it touches the very atom of life, which is the dearest and noblest possession of every person, it becomes the obligation of the constitutional courts to see how the delicate balance has been struck and can remain in a continuum in a sustained position. To elaborate, unless adequate care, caution and monitoring at every stage is done and there is constant vigil, life of "some" can be in danger. That will be totally shattering of the constitutional guarantee enshrined under Article 21 of the Constitution.*

25. Sustainable Development primarily finds its origin from the Rio Declaration, 1992 on Environment and Development. Certain principles were stated for achieving sustainable development. The element of

integration of environmental and developmental aspects was spelt out in the following principles of that Declaration:

> Principle 3:
>
> The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.
>
> Principle 4:
>
> In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

26. In fact, in *Karnataka Industrial Areas Development Board v. C. Kenchappa & Ors. MANU/SC/8159/2006 : (2006) 6 SCC 383-84*, *the Apex Court held as follows:*

> *"63. The World Conservation Union' and 'the Worldwide Fund for Nature' prepared jointly by UNEP described that 'sustainable development, therefore, depends upon accepting a duty to seek harmony with other people and with nature' according to Caring for the Earth, A Strategy for Sustainable Living. The guiding rules are:*
>
> *(i) People must share with each other and care for the earth;*
>
> *(ii) Humanity must take no more from nature than man can replenish; and*
>
> *(iii) People must adopt lifestyles and development paths that respect and work within nature's limits."*

27. The development should be such as can be sustained by ecology. Sustainable development would be the development which can be maintained indefinitely in proportion to environment and ecology. Thus, there should not be development at the cost of causing irretrievable or irreversible damage to the ecology or the environment. They must find a

common path and objectivity in achieving the goal of sustainable development.

28. The Supreme Court of India, in the case of V*ellore Citizens' Welfare Forum v. Union of India (MANU/SC/0686/1996 : AIR 1996 SC 2715*) recognised the precautionary principle and explained it as follows:

> *"11. (i) Environmental measures-by the State Government and the statutory authorities-must anticipate, prevent and attack the causes of environmental degradation.*
>
> *(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*
>
> *(iii) The 'onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign."*

29. On the analysis of the above, one could state the essentials of invocation of precautionary principle as under:

(a) There should be an imminent environmental or ecological threat in regard to carrying out of an activity or development;

(b) Such threat should be supported by reasonable scientific data; and

(c) Taking precautionary, preventive or prohibitory steps would serve the larger public and environmental interest.

30. The normal rule of evidence is that one who pleads must prove before the Court or the Tribunal i.e. the onus of proving, while claiming relief, is on the person who approaches the Court/Tribunal. However, this rule may not be applicable to this Tribunal stricto sensu.

31. Accordingly, we are of the view that the contesting respondent has not taken any permission from CGWA for extraction of water and it is reported that the authority has sealed the borewell.

32. The inspection report and reply submitted by the CGWA reveals that the permission has not been granted or not taken by the respondent and extraction of the ground water was illegal, unauthorised and against the provisions of law.

33. Article 21 of the Constitution of India which provides that no person shall be deprived of his right to life or personal liberty, except according to the procedure established by law, is interpreted by the Indian courts to include in this right to life, the right to clean and decent environment. Right to decent environment, as envisaged under Article 21 of the Constitution of India also gives, by necessary implication, the right against environmental degradation. It is in the form of right to protect the environment, as by protecting environment alone can we provide a decent and clean environment to the citizenry. Right to clean environment is a guaranteed fundamental right. Various courts, particularly the superior courts in India are vested with wide powers, especially in terms of Articles 32 and 226 of the Constitution of India to deal with issues relating to the fundamental rights of the persons. The courts, in fact, can even impose exemplary damages against the polluter. Proper and healthy environment enables people to enjoy a quality life which is the essence of the right guaranteed under Article 21. The State and the citizens are under a fundamental obligation to protect and improve the environment including forests, lakes, rivers, wild life and to have compassion for living creatures. Right to have living atmosphere congenial to human existence is a right

to life. The State has a duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. The power to issue directions and other powers should be exercised by the State to effectuate and further the goals of approved scheme, zonal plans, etc. The hazards to health and environment of not only the persons residing in illegal colonisations but of the entire town as well as the provisions and schemes of the relevant Acts have to be taken into consideration. The most vital necessities, namely air, water and soil having regard to the right to life under Article 21 cannot be permitted to be misused or polluted so as to reduce the quality of life of others. Risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's" test. Life, public health and ecology have priority over unemployment and loss of revenue. It is often said that development and protection of environment are not enemies but are two sides of the same coin. If without degrading the environment or by minimising the adverse effects thereupon by applying stringent safeguards, it is possible to carry on developmental activities applying the principle of sustainable development, in that eventuality, development has to go on because one cannot lose sight of the need for development of industry, irrigation resources, power projects, etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck. Courts have exercised the power of imposing exemplary damages against the pollutants in order to protect the environment and to restore the damage done to the environment as well. In fact, even the disturbance in the environment by undesirable sound of various kinds, amounts to

noise pollution. It is a shadowy public enemy whose growing public menace has increased in the modern age of industrialisation and technological advancement. Noise has become one of the major pollutants and has serious effects on human health. Consistent judicial opinion in India has recognised the right to live in freedom from noise pollution as a fundamental right also, protected under Article 21 of the Constitution. If anybody increases the volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels, then the person speaking is violating the right of others to a peaceful, comfortable and pollution-free life guaranteed under Article 21. Courts have even held that Article 19(1)(a) cannot be pressed into service for defeating the fundamental right guaranteed under Article 21 of the Constitution. Thus, the right of an individual to healthy and clean environment including air, water, soil and noise-free environment is of paramount consideration and it is impermissible to cause environmental pollution and particularly in violation of the prescribed standards. Since the different facets of environment are relatable to life and human rights and concern a person's liberty, it is necessary that resources are utilised in a planned manner. Wherever industrialisation has an impact on utilisation of essential resources like air, water and soil and results in irreversible damage to environment, then it may be impermissible to utilise these resources in that fashion. In the recent times, there has been accelerated degradation of the environment, primarily on account of lack of effective enforcement of laws and non-compliance with the statutory norms. Concentrated industrialisation in some pockets has been the other

reason for enhanced damage to the environment. It emerges from the desire of the people to operate from the areas where the industry presently exists.

34. Considering above all facts, we conclude the finding and direct the respondents as follows:

(i) Central Ground Water Authority (CGWA) is directed to proceed to calculate the Environmental Compensation for illegal extraction of ground water without the authority. The amount so calculated and recovered be deposited in the account of CGWA and be expended on the environmental matters.

(ii) If any material or machinery is found at the place at the site where there is illegal mining, State Pollution Control Board is at liberty to seize and confiscate and proceed in accordance with law.

(iii) The mines were in operational before two years and now at the time of inspection were reported to be closed. The State PCB shall proceed to calculate the environmental compensation and proceed to realise the environmental compensation in accordance with law.

(iv) The Licensee must use minimum number of poclains and it should not be more than two in the project site.

(v) The District Administration should assess the site for Environmental impact at the end of first year to permit the continuation of the operation.

(vi) The Annual replenishment report certified by the authorised agency must be submitted to the prescribed authority. In case, the

replenishment is low, the mining activity/production levels shall accordingly be decreased/stopped.

(vii) There shall be no quarrying of sand in any river bed or adjoining area or any other area which is located, within the parameters as fixed by CPCB, radial distances from the location of any bridge, water supply system, infiltration well or pumping installation.

(viii) The ultimate working depth shall be 1 meter from the present natural river bed level and the thickness of the sand available shall be more than 3 meter in the proposed quarry site.

(ix) The sand quarrying shall not be carried out below the ground water table under any circumstances. In case, the ground water table occurs within the permitted depth at 1 meter, quarrying operation shall be stopped immediately.

(x) The sand mining should not disturb in any way the turbidity, velocity and flow pattern of the river water.

(xi) The mining activity shall be monitored by the Taluk level Force once in a month by conducting physical verification.

(xii) After closure of the mining, the licensee shall immediately remove all the sheds put up in the quarry and all the equipments used for operation of sand quarry. The roads/pathways shall be levelled to let the river resume its normal course without any artificial obstruction to the extent possible.

(xiii) The mined out pits to be backfilled where warranted and area should be suitably landscaped to prevent environmental degradation.

(xiv) The minimum distance applicable for the grant of permission for the sand mining shall be taken from the State Rules and in the case State

Rules are not making any provision, the direction issued by this Tribunal as mentioned above shall be taken into account and the minimum distance must be observed.

(xv) So far as the sand mining conducted by the contesting respondent is concerned, permission and the consent has been obtained. Since no permission or consent has been obtained from the CGWA or Board, necessary action as directed above may be initiated.

(xvi) So far as the surprise inspection of other stone crushers is concerned as mentioned in the relief clause, the State Pollution Control Board is at liberty and duty bound to do according to law.

35. Accordingly, Original Application No. 44/2019 (CZ) is finally disposed of, no order as to cost.

Sheo Kumar Singh, JM

Dr. S.S.Garbyal, EM

JG
Original Application No. 44/2019 (CZ)