

✱

SL. No. 14/29

BEFORE THE NATIONAL GREEN TRIBUNAL
(EASTERN ZONAL BENCH),
KOLKATA, WEST BENGAL
FINANCE CENTRE, 3rd FLOOR, NEW TOWN
[Under section 18(1) read with sections 14, 15, 16 & 17 of
the National Green Tribunal Act, 2010]

OA NO. 137 OF 2023/EZ

IN THE MATTER OF

Bhumi Adhigrahan Visthapan Avam Punarwas Kisaan Samiti

.....Applicant(s)

VERSUS

State of Jharkhand & Ors

..... Respondent(s)

16 JUL 2024

- X -

INDEX

1	Affidavit	1 - 12
2	A photocopy of posting notification of Mr. Nand Deo Baitha , Mines Inspector in the office of District Mining Officer, Garhwa- Annexure-A	13
3	A photocopy of order dated 23.04.2024 of Hon'ble High Court of Jharkhand restraining Member Secretary, JSPCB from functioning - Annexure-B	14 - 19,
4	A photocopy of representation dated 12.04.2024 of Applicant represented by Gaurav Singh filed before committee members- Annexure-C	20 - 26
5	A photocopy of latest order dated 27.02.2024 of Supreme Court of India prohibiting mining operations within 1 Km radius of protected forest- Annexure-D	27 - 30,

Paushali Banerjee

Advocate

- 8 -

**BEFORE THE NATIONAL GREEN TRIBUNAL
(EASTERN ZONAL BENCH),
KOLKATA, WEST BENGAL
FINANCE CENTRE, 3rd FLOOR, NEW TOWN
[Under section 18(1) read with sections 14, 15, 16 & 17 of
the National Green Tribunal Act, 2010]**

Original Application NO. 137 OF 2023 / EZ

IN THE MATTER OF

Bhumi Adhigrahan Visthapan Avam Punarwas Kisaan Samiti

.....Applicant(s)

VERSUS

State of Jharkhand & Ors

..... Respondent(s)

Rejoinder Affidavit of Applicant on Counter Affidavit of Respondent No. 6,

Jharkhand State Pollution Control Board, Ranchi dated 14.05.2024

-X-

I, Gaurav Singh S/o Late Shripati Singh, aged about 32 years, resident of Belwatika, P.O.& P.S:Daltonganj, District:Palamau, being the Honorary President of the present applicant, Bhumi Adhigrahan Visthapan Avam Punarwas Kisaan Samiti, having its registered office at Belwatika, Daltonganj, Palamau ,solemnly affirm and say as follows:

1. That I am the Honorary President of the Applicant herein and I am fully conversant with the facts and circumstances of the case and I am competent to affirm this affidavit on behalf of the Applicant herein.
2. That the Jharkhand State Pollution Control Board, Ranchi (JSPCB), and Respondent No. 6 in the present OA has filed counter affidavit dated 14.05.2024 annexing the report of the Committee in compliance of the order of this Hon'ble Tribunal dated 5/10/2023.
3. That the Applicant before dealing with the report of the Committee submits before this Hon'ble Tribunal certain relevant facts necessary that are crucial for holistic adjudication of this matter.

-~~5~~-

4. I say that the Inspection Report of the aforesaid committee is annexed at Page 10-59 of counter affidavit dated 14.05.2024 of JSPCB. One of the member of the committee representing "*District Mining Officer, Government of Jharkhand or his nominee being an Officer of Senior rank*" who is also custodian of all the original records of Pachadumar sand ghat has been represented by a non-gazetted staff of the rank of Mines Inspector, posted as in-charge Assistant Mining Officer, Garhwa. This member namely Mr. Nand Deo Baitha a Mines Inspector is a non-gazetted staff has signed falsely as District Mining Officer (DMO), Garhwa vitiating the entire inspection report.

A photocopy of posting notification of Mr. Nand Deo Baitha , Mines Inspector in the office of District Mining Officer, Garhwa is annexed herewith and marked as **Annexure-A** to this rejoinder affidavit.

5. I say that the Regional Officer, JSPCB, Ranchi has submitted the inspection report on behalf of committee to the Member Secretary, JSPCB, Ranchi vide letter No. 576 dated 14.05.2024 for necessary further action at Page 10 of counter affidavit dated 14.05.2024. Thereafter, the counter affidavit on behalf of JSPCB annexing the report of the committee has been filed before National Green Tribunal by one

- X -

Mr. Kamla Kant Pathak, Section Head, Dumka Region, JSPCB. Though Mr. Kamla Kant Pathak is posted as Section Head of far off Dumka region, but claims that he is *“well acquainted with all the facts and circumstances of this case”* and he has been *“duly authorized to swear this affidavit”*. It is not mentioned in counter affidavit dated 14.05.2024 as to who has authorized him to swear this counter affidavit on behalf of JSPCB in O.A. No.137/2023/EZ. The Applicant craves leave before this Hon’ble National Green Tribunal to present an order dated 23.04.2024 of Hon’ble High Court of Jharkhand passed in W.P. (C) No. 3619 of 2021-
“17. Accordingly, the respondent No. 4 is hereby, restrained from functioning as the Member Secretary, Jharkhand State Pollution Control Board, henceforth”

A photocopy of order dated 23.04.2024 of Hon’ble High Court of Jharkhand is annexed herewith and marked as **Annexure-B** to this rejoinder affidavit.

6. That the aforesaid order dated 23.04.2024 of Hon’ble High Court of Jharkhand was enforceable on the date of filling counter affidavit dated 14.05.2024 of JSPCB before National Green Tribunal. Applicant is constrained to present the order dated 23.04.2024 of Hon’ble High Court of Jharkhand due to non-consideration of his representation dated 12.04.2024 filed before Member Secretary, JSPCB,

*

Ranchi along with committee members pursuant to NGT order dated 10.04.2024
in O.A. No. 137/2023/EZ.

A photocopy of representation dated 12.04.2024 of Applicant represented by Gaurav Singh is annexed herewith and marked as **Annexure-C** to this rejoinder affidavit.

7. That the inspection report of the committee dated 12.05.2024 was forwarded to the Member Secretary, JSPCB on 14.05.2024 vide Regional Officer, JSPCB, Ranchi Memo No. 576 dated 14.05.2024 and the same gets approval of JSPCB on the same day and counter affidavit is filed on behalf of JSPCB by Section Head of Dumka Region on the same day (14.05.2024) itself ignoring/not considering the representation dated 12.04.2024 of Applicant filed before Member Secretary, JSPCB, Ranchi with copy to all members of the committee.
8. I say that the Environmental Clearance of Pachadumar sand project was granted and communicated on 31.08.2018 on the basis of revised report No. 3012 dated 02.06.2018 of Divisional Forest Officer, Garhwa North , but the committee report relies on Letter No. 1440 dated 07.06.2022 of Divisional Forest Officer, Kaimur Forest Division, Bhabhua, Bihar at Page No. 19 of counter affidavit of JSPCB dated

~~X~~

14.05.2024 reporting a distance of 1.8 Km from Kaimur Wildlife Sanctuary to Pachadumar sand ghat . Divisional Forest Officer, Kaimur Forest Division, Bhabhua, Bihar is the officer of a separate state altogether and do not have the jurisdiction to submit a report regarding Panchadumar sand ghat that falls in Jharkhand, such an act of reliance of a report of a DFO of a separate State is in contravention to all principles of natural justice and fair play and is not a valid report.

9. Though the Environment Clearance to Pachadumar sand mining project was granted and communicated by SEIAA vide order No. EC/SEIAA/2018-19/2074/2018/205 dated 31.08.2018 , however, during its 59th meeting dated 09.08.2018 , SEIAA concludes that SEAC has pointed out in 58th meeting that JSMDC have submitted forged documents of DFO Garhwa North Division and have corrected the certificate itself which amounts to conspiracy. JSMDC in its letter dated 20/06/2018 states that SEAC sought additional information on 31/05/2018 and 1/07/2018, seeking the revised certificate of the DFO Garhwa. The revised letter of the DFO Garhwa is Letter no.3012 dated 02/06/2018.

10. This revised and final report of Divisional Forest Officer, Garhwa North No. 3012 dated 02.06.2018 mentions a distance of Pachadumar sand mining project as 900 meters from protected forest and no wildlife sanctuary within 10 Km radius.

✱

11. That the respondents of Jharkhand State jurisdiction are defending the Environment Clearance No. EC/SEIAA/2018-19/2074/2018/205 dated 31.08.2018 on the strength of a report of Divisional Forest Officer of Bihar dated 07.06.2022 which never existed on 31.08.2018. In fact, the respondents of Jharkhand State failed to find a letter or report prior to 31.08.2018 to support their claim that the Pachadumar sand mining project is outside 1Km radius of Kaimur Wildlife Sanctuary. The Supreme Court of India has repeatedly held on many occasions that there cannot be any mining within 1Km radius of wildlife sanctuary/eco-sensitive zone.

A photocopy of latest order dated 27.02.2024 of Supreme Court of India prohibiting mining operations within 1 Km radius of protected forest/wildlife sanctuary is annexed herewith and marked as **Annexure-D** to this rejoinder affidavit.

12. That it is astonishing that a Divisional Forest Officer of Bihar certifies in 2022 that Pachdumar sand mining project of Jharkhand is at a distance of 1.8 Km from Kaimur Wildlife Sanctuary of Bihar and all the respondents of Jharkhand State accept this report unanimously contrary to report of 2018 of their own Divisional

- 10 -

Forest Officer of Jharkhand certifying a distance of 900 meters from protected forest coupled with specific report of no wildlife sanctuary within 10 Km distance. The report of Divisional Forest Officer of Bihar cannot be considered in the state of Jharkhand. The counter affidavit dated 14.05.2024 of JSPCB is conspicuously silent on this contradiction on reports of two DFOs of Jharkhand and Bihar.

13. That the Applicant has plotted the latitude-longitude of Pachadumar sand mining project over map of eco sensitive zone available in the final gazette notification of Kaimur Wildlife Sanctuary dated 30.12.2015 and the nearest distance of Kaimur Wildlife Sanctuary from the Pachadumar sand mining project comes out to be 243 meters. A coloured copy of Pachadumar sand mining project plotted over final notified map of ESZ of Kaimur Wildlife sanctuary is annexed along with the representation dated 12.04.2024 of Applicant filed before Member Secretary, JSPCB with a copy to all members of the committee a copy of which is at Annexure- C of this rejoinder affidavit. Respondents have neither accepted nor denied the correctness of map prepared by Applicant and attached with his representation dated 12.04.2024 before committee members.

14. That the applicant humbly submits before National Green Tribunal that the respondents cannot rely on any document created after 31.08.2018 to defend their environment clearance of 31.08. 2018. Respondents could be permitted to rely on those documents only which is available before SEIAA on or before

- X -

31.08. 2018. Any new document of successive date cannot be allowed to be relied on while defending an environment clearance of previous date. In any view of the matter, the respondents of Jharkhand cannot rely on a report of DFO of Bihar of the year 2022 to insist on correctness of their environment clearance of 2018 of Jharkhand.

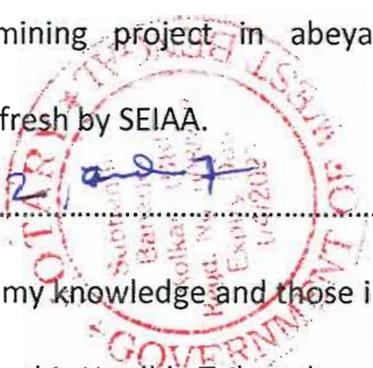
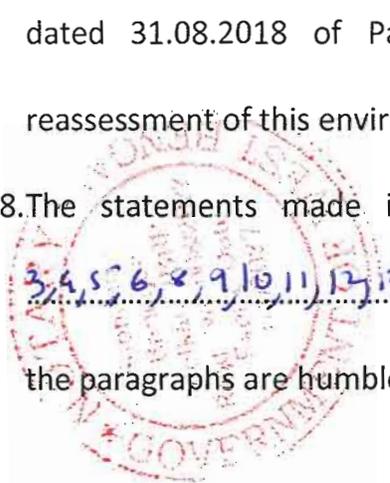
15. I say that now dealing with the Affidavit in para wise manner with regard to paragraph 1,2,3,4,5,6 7 & 8 , I say that the committee have failed to appreciate that the report of Divisional Forest Officer, Kaimur Forest Division, Bhabhua, Bihar dated 07.06.2022 cannot be used as a shelter while defending an environment clearance dated 31.08. 2018. I again at the cost of repetition say that the Environment Clearance to Pachadumar sand mining project was granted by SEIAA vide order No. EC/SEIAA/2018-19/2074/2018/205 dated 31.08.2018 based upon the revised report No. 3012 dated 02.06.2018 of Divisional Forest Officer, Garhwa North. I repeat that One of the member of the committee representing "*District Mining Officer, Government of Jharkhand or his nominee being an Officer of Senior rank*" who is also custodian of all the original records of Pachadumar sand ghat has been represented by a non-gazetted staff of the rank of Mines Inspector, posted as in-charge Assistant Mining Officer, Garhwa. This member namely Mr. Nand Deo Baitha , a Mines Inspector , is a non-gazetted staff has signed falsely as District Mining Officer (DMO), Garhwa vitiating the entire inspection report.

- 12 -

16. That it appears that the respondents have initiated a belated communication with Divisional Forest Officer, Kaimur Forest Division, Bhabhua, Bihar in the year 2022 which is outside their jurisdiction; at the behest of Project Proponent and its mine development operators as an afterthought once the Petitioner has raised this issue before NGT.

17. That therefore, the counter affidavit dated 14.05.2024 of Respondent No. 6, JSPCB is fit to be rejected and orders be passed to keep the environment clearance dated 31.08.2018 of Pachadumar sand mining project in abeyance for reassessment of this environment clearance afresh by SEIAA.

18. The statements made in Paragraphs 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17 are true to my knowledge and those in rest of the paragraphs are humble submissions before this Hon'ble Tribunal.



Prepared in my office

Panchaboyan
Advocate

Bhumi Adhigrahan Visthapan Avam
Punarwas Kisaan Samiti
Gaurav Singh

Deponent resident

Solemnly Affirmed and
Declared before me U/S.
139 CPC

Banerjee

Notary
Govt. of West Bengal

16.07.2024



SUBHENDU BANERJEE
Notary, Govt. of W.B.
Regd. No.-008/2022
Advocate High Court, Calcutta

16 JUL 2024

झारखण्ड सरकार
खान एवं भूतत्व विभाग
अधिसूचना

1. अधिसूचना संख्या-ख०नि०(स्था०)-27/2018 श्री नंददेव बैठा, खान निरीक्षक सम्प्रति प्रभारी सहायक खनन पदाधिकारी, देवघर को कार्यकारी व्यवस्था के तहत अपने ही वेतनमान में स्थानान्तरित करते हुए अगले आदेश तक प्रभारी सहायक खनन पदाधिकारी, गढ़वा के पद पर पदस्थापित किया जाता है।

श्री योगेन्द्र बड़ाईक, खान निरीक्षक सम्प्रति प्रभारी जिला खनन पदाधिकारी, गढ़वा अपना प्रभार प्रतिस्थानी पदाधिकारी को सौंपते हुए तत्काल स्थानान्तरण/पदस्थापन की प्रतीक्षा में खान एवं भूतत्व विभाग, झारखण्ड, राँची में योगदान देना सुनिश्चित करेंगे।

यह आदेश तत्काल प्रभाव से लागू होगा।

झारखण्ड राज्यपाल के आदेश से

ह०/-

सरकार के संयुक्त सचिव

ज्ञापांक-ख०नि०(स्था०)-27/2018

/एम०, राँची, दिनांक-

प्रतिलिपि-अधीक्षक, राजकीय मुद्रणालय, डोरण्डा, राँची को राजकीय अंक में प्रकाशनार्थ प्रेषित।

ह०/-

सरकार के संयुक्त सचिव

ज्ञापांक-ख०नि०(स्था०)-27/2018

/एम०, राँची, दिनांक-

प्रतिलिपि-नोडल पदाधिकारी, ई०-गजट, खान एवं भूतत्व विभाग, झारखण्ड, राँची को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

ह०/-

सरकार के संयुक्त सचिव

ज्ञापांक-ख०नि०(स्था०)-27/2018

/एम०, राँची, दिनांक-

प्रतिलिपि-महालेखाकार, झारखण्ड, राँची को सूचनार्थ प्रेषित।

ह०/-

सरकार के संयुक्त सचिव

ज्ञापांक-ख०नि०(स्था०)-27/2018

/एम०, राँची, दिनांक-

प्रतिलिपि-मुख्यमंत्री के प्रधान आप्त सचिव/मुख्य सचिव के विशेष कार्य पदाधिकारी/अध्यक्ष-सह-प्रबंध निदेशक, झारखण्ड राज्य खनिज विकास निगम लि०, राँची/निदेशक, खान/निदेशक, भूतत्व/सचिव, खान एवं भूतत्व विभाग के प्रधान आप्त सचिव/उपायुक्त, गढ़वा/देवघर/सभी संबंधित उप निदेशक, खान/भूतत्व/वरीय भूतत्ववेत्ता-सह-सहायक निदेशक, भूतत्व/जिला/सहायक खनन पदाधिकारी/भूतत्ववेत्ता/खान निरीक्षक/सभी संबंधित जिला कोषागार पदाधिकारी को को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

ह०/-

सरकार के संयुक्त सचिव

ज्ञापांक-ख०नि०(स्था०)-27/2018 8237

/एम०, राँची, दिनांक- 01/11/21

प्रतिलिपि-सभी संबंधित पदाधिकारी को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

Jang
01/11/21
सरकार के संयुक्त सचिव

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (C) No.3619 of 2021

Kanhaiya Kumar Mishra **Petitioner**

Versus

1. The State of Jharkhand through the Chief Secretary,
Govt. of Jharkhand, Ranchi
2. The Secretary, Department of Forest, Environment & Climate
Change, Govt. of Jharkhand, Ranchi
3. The Under Secretary, Department of Forest, Environment
& Climate Change, Govt. of Jharkhand, Ranchi
4. Y.K. Das presently working as Member Secretary (Additional Charge),
Jharkhand Pollution Control Board-cum-Regional Chief
Conservator of Forest, Ranchi **Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH KUMAR

For the Petitioner : Mr. Navin Kumar, Adv.
Mr. Harsh Chandra, Adv.
For the Resp.-State : Mr. Awnish Shankar, A.C. to A.G.
For the Resp. No.4 : Mr. A.K.Mehta, Adv.
Mr. Manish Kumar, Adv.

14/Dated: 23rd April, 2024

1. Heard the parties.
2. The present writ petition has been filed in the nature of quo-warranto whereby the functioning of respondent No.4 has been questioned.
3. From the pleadings and arguments of learned counsel for the parties, it appears that respondent No.4 has been given additional charge of Full Time Member Secretary of the Jharkhand Pollution Control Board, Ranchi vide notification dated 13.07.2021 (Annexure-2).

The said notification reads as under:-

अधिसूचना

रांची, दिनांक 13/07/2021

संख्या 2 भा0व0से0(स्था0)-12-/2021-1890/व0प0 श्री बाई0 के0 दास भा0व0से0 (झ 94) संप्रति क्षेत्रीय मुख्य वन सरक्षक, रांची अगले आदेश तक सदस्य सचिव, झारखंड राज्य प्रदूषण रांची के अतिरिक्त प्रभार मे रहेंगे।

झारखंड राज्यपाल के आदेश से

ह0/-

(मनोज कुमार झा)

सरकार के अवर सचिव

4. Learned counsel for the petitioner has submitted that this is nothing but fraud upon the statute.

Section 12 (1) of the Water (Prevention and Control of Pollution) Act, 1974 is relevant which is quoted hereinbelow:-

“12.1 The terms and conditions of service of the member-secretary shall be such as may be prescribed”.

5. As per the above section, the terms and conditions of the service of the Member Secretary, Pollution Control Board has to be prescribed by making Rules. The rules have been framed and that has been brought on record by filing counter affidavit through the Under Secretary, Dept. of Forest, Environment and Climate Change, Jharkhand. The rule has been notified on 05.08.2021

6. Rule 6 is relevant which is quoted hereinbelow:-

“कार्यकाल-सदस्य, झारखंड राज्य प्रदूषण नियंत्रण पार्षद का पूर्ण कार्यकाल 3 वर्षों की एकल कार्यवधि का होगा, जिसका विस्तार नहीं किया जाएगा”

7. Thus, law provides that the post of Full Time Member Secretary can be hold by a person only for a period of three years and that cannot be extended.

8. In the present case, the respondent No.4 has been allowed to continue on ad-hoc basis about three years.

Rule 8 provides the qualification and Rule 9 is the process of appointment which reads as under:-

- X -

“8. शैक्षणिक योग्यता एवं अनुभव-केन्द्र सरकार/राज्य सरकारों / सार्वजनिक उपक्रमों / विश्वविद्यालयों / मान्यता प्राप्त शोध संस्थानों / स्वायत्तया अर्द्ध सरकारी या वैधानिक या निजी संस्थानों के व्यक्ति, जो निम्न अहर्ता रखते हों :-

(क) अहर्ता:-

- (i) पर्यावरण से सम्बद्ध विषय पर अभियंत्रण / प्रौद्योगिकी में स्नातक अथवा किसी मान्यता प्राप्त विश्वविद्यालय या संस्थान से विज्ञान में स्नातकोत्तर अधिमानतः पर्यावरण से संबंधित।
- (ii) पर्यावरण संरक्षण और प्रदूषण नियंत्रण प्रबंधन के क्षेत्र में सक्षम, योग्य, वांछनीय ज्ञान और कम से कम 10 साल का व्यावहारिक अनुभव।

(ख) कार्य अनुभव:-

- (i) सप्तम वेतनमान के अनुरूप Level-13A in the Pay Matrix या षष्ठम वेतनमान PB IV- 37400-67000, ग्रेड पे-8900 में सदृश पद धारण / पूर्व में नियमित रूप से धारित करने वाले अथवा समकक्ष।

अथवा

सप्तम वेतनमान के अनुरूप Level-13 in the Pay Matrix या षष्ठम वेतनमान रू० 37,400-67,000 ग्रेड पे-8700 के वेतनमान वाले पदों पर पांच वर्ष की नियमित सेवा अथवा समकक्ष

- (ii) पर्यावरण संरक्षण और प्रदूषण नियंत्रण के क्षेत्र में कम से कम 10 साल के व्यावहारिक अनुभव के साथ केन्द्र सरकार / राज्य सरकार / सार्वजनिक क्षेत्र के उपक्रम / विश्वविद्यालय / मान्यता प्राप्त अनुसंधान संस्थान / स्वायत्त या अर्द्ध सरकारी या वैधानिक या निजी संस्थानों में प्रशासनिक या प्रबंधन के स्तर पर 16 साल का अनुभव।

9. नियुक्ति की प्रक्रिया-

(क) झारखण्ड राज्य प्रदूषण नियंत्रण पर्षद के सदस्य सचिव की नियुक्ति के लिए नियुक्ति प्राधिकार [**] तीन (03) सदस्यीय चयन समिति का गठन करेगा।

(ख) रिक्ति के विरुद्ध चयन समिति सदस्य सचिव के चयन की प्रक्रिया तीन माह के भीतर पूर्ण करेगी।

- 1X -

(ग) प्रतिनियुक्ति/संविदा/सीधी भर्ती के मामले में विज्ञापन के साधार पर प्राप्त आवेदनों की जाँच चयन समिति द्वारा की जाएगी और राज्य सरकार चयन समिति के अनुशंसित पैनल से सदस्य सचिव की नियुक्ति करेगी।

(घ) चयन समिति रिक्ति के लिए तीन नामों के पैनल की अनुशंसा करेगी।

(ङ) किसी व्यक्ति को सदस्य सचिव के रूप में नियुक्त करने की अनुशंसा करने से पूर्व, चयन समिति आश्वस्त हो लेगी कि ऐसे व्यक्ति का कोई ऐस आर्थिक या अन्य हित नहो, जो अध्यक्ष के रूप में अपने कर्तव्यों को पूर्वाग्रह से प्रेरित होकर प्रभावित कर सकता है। (अभ्यर्थी की स्व-घोषणा)

(च) चयन समिति द्वारा की गई तीन नामों की अनुशंसा में से सदस्य सचिव के पद पर नियुक्ति, नियुक्ति प्राधिकार के अनुमोदन के पश्चात् की जायेगी।

9. Learned counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court passed in **Civil Appeal No.1359 of 2017** in the case of **Techi Tagi Tara Vrs. Rajendra Singh Bhandari & Ors.**

Paragraphs 8, 9 and 33 of the above judgment are quoted hereinbelow-

"8. The SCMC has found that in several States, persons from IFS or from the PWD especially from the PHE departments, are either being appointed or deputed to the post of Member Secretary without the necessary statutory qualifications. Members:-

9. No effort is being made to appoint persons with adequate scientific, technical or legal background from the environmental field as members of the Board. Board members are increasingly being appointed for political purposes. This is leading to ineffective and inefficient functioning of SPCBs/PCCs.

33. Keeping the above in mind, we are of the view that it would be appropriate, while setting aside the judgment and order of the NGT, to direct the Executive in all the States to frame appropriate guidelines or recruitment rules within six months, considering the institutional requirements of the SPCBs and the law laid down by statute, by this Court and as per the reports of various committees and authorities and ensure that suitable professionals and experts are appointed to the SPCBs. Any damage to the environment could be permanent and irreversible or at least long-lasting. Unless (2007) 6 SCC

~~18~~

586 corrective measures are taken at the earliest, the State Governments should not be surprised if petitions are filed against the State for the issuance of a writ of quo warranto in respect of the appointment of the Chairperson and members of the SPCBs. We make it clear that it is left open to public spirited individuals to move the appropriate High Court for the issuance of a writ of quo warranto if any person who does not meet the statutory or constitutional requirements is appointed as a Chairperson or a member of any SPCB or is presently continuing as such.”

10. On the strength of above rules and the judgment of Hon’ble Apex Court, it has been argued by learned counsel for the petitioner that it is nothing but fraud upon the statute. A person has to be selected on the recommendation of specialised committee.

11. In the present case, the Act and Rules have been violated by making ad-hoc appointment and that too for such a long period.

12. Learned counsel for the State has taken the plea that they have issued the advertisement twice i.e. on 05.08.2021 and 04.11.2022 but those selection process has not culminated in appointment assigning the reason that no suitable candidate has been found.

13. Now the stand has been taken by the State with regard to issuance of the advertisement for the third time and for that the State has sought permission from the Election Commission of India.

14. From the above discussion and the sequence of fact and the law as discussed above, it appears that a person has been allowed to continue on the post of Member Secretary, State Pollution Control Board for a petty long period, and especially considering the fact that the effective Pollution Control Board is required, as there are so many mining activities in the State of Jharkhand.

15. Suitability of candidate has to be considered by specialised selection committee. Doctrine of necessity may be applied for ad-hoc arrangement, but in the garb of ad-hoc arrangement permanent appointment cannot be made.

~~1~~ -

Suitability of present incumbent has not been considered by selection committee but in the name of non-availability of suitable candidate, present incumbent is about to complete maximum period prescribed under the law.

16. Considering the peculiar circumstances, the State and the concerned authorities are directed not to continue with the ad-hoc arrangement any further with the same person.

17. Accordingly, the respondent No.4 is, hereby, restrained from functioning as the Member Secretary, Jharkhand State Pollution Control Board, henceforth.

18. The State is at liberty to make further arrangement and the State is further directed to make a regular appointment as early as possible.

19. As prayed for, put up this case on 10.06.2024.

(Rajesh Kumar, J.)

Shahid/
Uploaded

~~20~~ - Annexure - 'C'

12 th April, 2024

To,

The Member Secretary

Jharkhand State Pollution Control Board

H.E.C Dhurwa, Ranchi-834004

ranchijspcb@gmail.com

**Sub: Original Application No. 137/2023/EZ before NGT,
Kolkata in the matter of Bhumi Adhigrahan Visthapan Avam
Punarwas Kissan Samiti Vrs State of Jharkhand & Others**

Sir,

1. You are aware that National Green Tribunal Kolkata (NGT) has constituted a committee comprising of (i) Senior Scientist, Jharkhand State Pollution Control Board (JSPCB) (ii) Collector cum District Magistrate, Garhwa (iii) District Mining Officer, Government of Jharkhand (iv) Senior Scientist, SEIAA, Jharkhand (v) Divisional Forest Officer, Garhwa North Division vide order dated 05.10.2023 in O.A. No. 137/2023/EZ to visit the site and submit its report with regard to allegations made in the Original Application.

~~2~~

2. That the NGT has again passed order dated 10.04.2024 in O.A. No. 137/2023/EZ whose operative part is reproduced below for ready reference

“6. The Committee in its Report shall also state specifically the distance of the mining lease area from the Kaimur Wildlife Sanctuary/Eco-Sensitive Zone.”

3. The mining lease area of Pachadumar sand mines has already been defined and given in counter affidavit dated 06.04.2024 of DFO, Garhwa, North at Para 1/Page 2 and also given in counter affidavit dated 09.04.2024 of SEIAA at Para 10/Page 11.

4. Accordingly, the Petitioner has superimposed the latitude-longitude of Pachadumar sand mines as given above over final eco sensitive zone map of Kaimur Wildlife Sanctuary published in MoEFCC Gazette Notification S.O. 3549 (E) dated 30.12.2015. The said superimposed map is annexed at **Annexure-1** which gives a nearest distance of 243 meters from sand lease to sanctuary/ESZ. The committee may redo/verify this exercise at its own level also and then file necessary report before NGT before next date of hearing fixed on 15.05.2024.

- 2X -

5. The counter affidavit dated 06.04.2024 of DFO, Garhwa North and counter affidavit dated 09.04.2024 of SEIAA, Jharkhand before NGT has relied on a report of DFO, Kaimur Forest Division, Bhabhua wherein it has been reported that the nearest distance between the Kaimur Wildlife Sanctuary and the project site is 1.8 kilometre.
6. This is to bring to your kind notice that DFO, Kaimur Forest Division, Bhabhua is neither a respondent before NGT nor a member of the committee appointed by NGT and as such the DFO, Garhwa North and SEIAA, Jharkhand should not have relied on his report and this exercise appears to be influenced by the business interest of mining lessee and its contractors.
7. JSPCB being Nodal Body of the committee is also requested to examine the correctness of Environment Clearance No. EC/SEIAA/2028-19/2074/2018/205 dated 31.08.2018 granted by SEIAA based upon report of DFO, Garhwa North No. 873 dated 22.03.2018 (**Annexure-2**) wherein it was stated that there is no sanctuary within 10 Km distance of Pachadumar sand mining project.

- 22 -

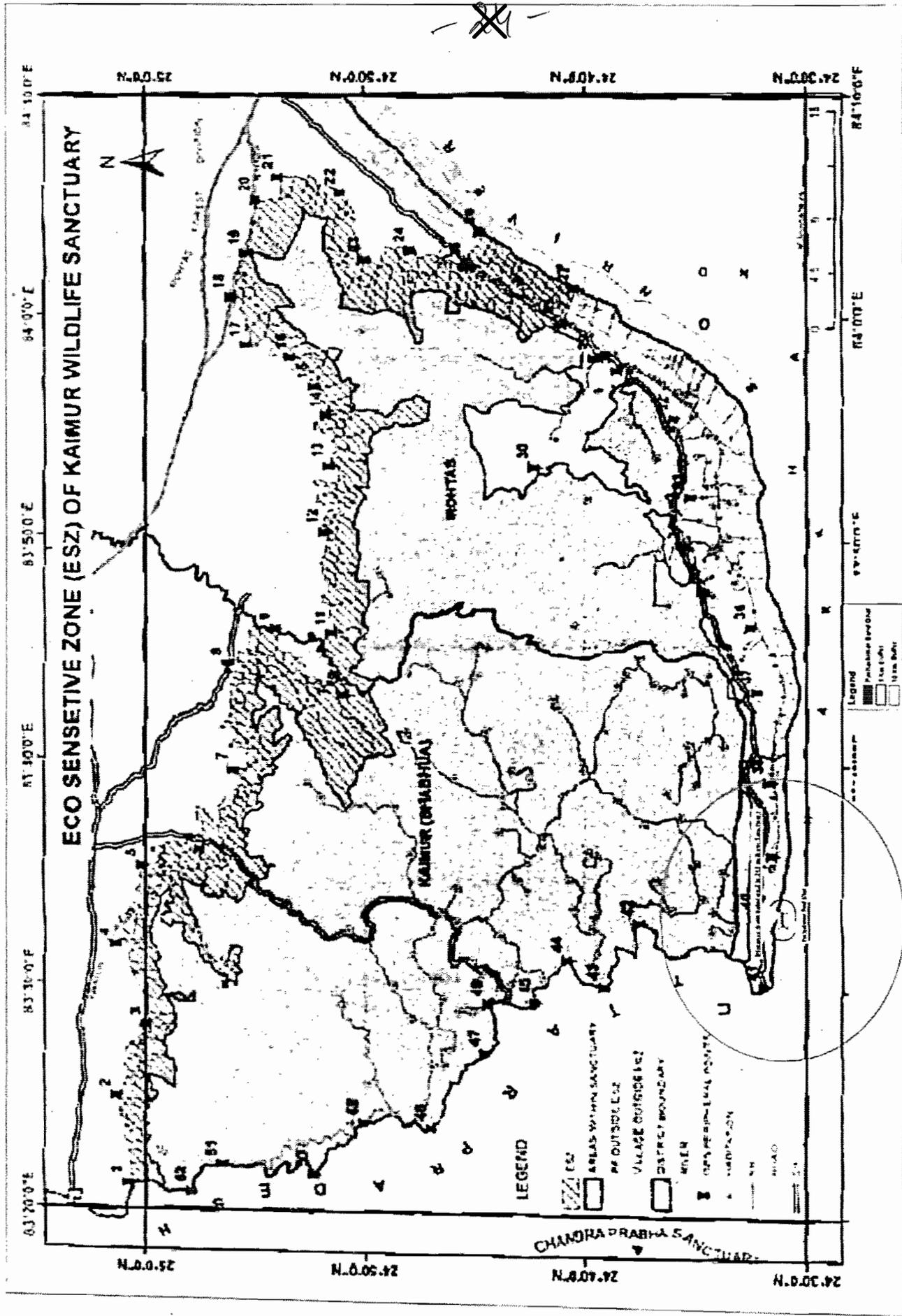
8. Petitioner in O.A. No. 137/2023/EZ hopes and trust that the Nodal Body (JSPCB) appointed by NGT shall examine the issues involved in this proceeding between committee members itself relying on internal documents only and without being influenced by external report of non-member/non-respondent like DFO, Kaimur Forest Division, Bhabhua as is being done by SEIAA, Jharkhand and DFO, Garhwa North in contravention to orders of NGT.

Yours faithfully

Bhumi Adhigrahan Visthapan Avam
Punarvas Kisaan Samiti

Gaurav Singh
President

Copy to: Deputy Commissioner, Garhwa/Divisional Forest Officer, Garhwa, North/District Mining Officer, Garhwa/SEIAA, Jharkhand (Members of the committee appointed by NGT)



~~X~~

कार्यालय :- वन प्रमण्डल पदाधिकारी, गढ़वा उत्तरी वन प्रमण्डल।

पत्रांक :- 873

प्रेषक,
वन प्रमण्डल पदाधिकारी
गढ़वा उत्तरी वन प्रमण्डल।

[Signature]
23-03-18

सेवा में,
जिला खनन पदाधिकारी
गढ़वा।

विषय :- गढ़वा/दिनांक :- 22-03-2018
नौजा-पाचाडूमर, अंचल-केतार, थाना-केतार के प्लॉट नं०-²³⁶³2563 (अंश) पुराना,
रकबा-50.01 एकड़ पर बालू घाट के प्रो० जे० एस० एम० डी० सी० लि० द्वारा बालू
घाट के पर्यावरणीय स्वीकृति हेतु जाँच प्रतिवेदन के संबंध में।

प्रस्ताव :- आपका पत्रांक-495/एम०, दिनांक-19.03.2018

संदर्भ :-

उपर्युक्त विषयक प्रासंगिक पत्र के संदर्भ में सूचित करना है कि प्रो० जे० एस० एम०
डी० सी० लि० के नौजा-पाचाडूमर, अंचल-केतार, थाना-केतार, थाना नं०-30 के प्लॉट नं०-2563
(अंश) पुराना, रकबा-50.01 एकड़ क्षेत्र पर बालू घाट के पर्यावरणीय (E.C.) हेतु बिन्दुवार प्रतिवेदन
निम्नवत है :-

क्र० नं०	निर्धारित बिन्दु	प्रतिवेदन
1	आवेदित क्षेत्र वन भूमि है या नहीं?	आवेदित क्षेत्र वन भूमि नहीं है।
2	आवेदित क्षेत्र वन सीमा की दूरी क्या है?	सीमांकित वन भूमि से आवेदित क्षेत्र की दूरी 900 (नौ सौ) मीटर है।
3	10 कि०मी० की परिधि में कोई नेशनल पार्क स्थित है या नहीं?	नहीं।
4	10 कि०मी० की परिधि में कोई अभ्यारण स्थित है या नहीं?	नहीं।
5	10 कि०मी० की परिधि में कोई घोषित जैव विविधता स्थित क्षेत्र है या नहीं?	नहीं।

आपका विश्वासी

[Signature]
22-03-18
वन प्रमण्डल पदाधिकारी
गढ़वा उत्तरी वन प्रमण्डल।
22-03-18

~~20~~

भारतीय डाक



EP00726901K INF:6974007269
DP DALTONGANI HP (821101)
Counter No:12/04/2024,14:11
To:THE MEMBER SECRETARY,
PIN:821104, Garwa SC
From:GAURAV SINGH,
Wt:50gms
Amt:41.30(Cash)Tax:4.30
Track on www.indiapost.gov.in
Dial:1800266666 -Wear Mask, Stay Safe

भारतीय डाक



EP00726901K INF:6974007269
DP DALTONGANI HP (821101)
Counter No:12/04/2024,14:11
To:THE D.O.,Garwa
PIN:821104, Garwa SC
From:GAURAV SINGH,
Wt:50gms
Amt:41.30(Cash)Tax:4.30
Track on www.indiapost.gov.in
Dial:1800266666 -Wear Mask, Stay Safe

भारतीय डाक



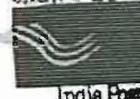
EP00726901K INF:6974007269
DP DALTONGANI HP (821101)
Counter No:12/04/2024,14:11
To:THE D.O.,
PIN:821104, Garwa SC
From:GAURAV SINGH,
Wt:50gms
Amt:41.30(Cash)Tax:4.30
Track on www.indiapost.gov.in
Dial:1800266666 -Wear Mask, Stay Safe

भारतीय डाक



EP00726901K INF:6974007269
DP DALTONGANI HP (821101)
Counter No:12/04/2024,14:11
To:MEMBER SECRETARY,
PIN:821104, Garwa SC
From:GAURAV SINGH,
Wt:50gms
Amt:41.30(Cash)Tax:4.30
Track on www.indiapost.gov.in
Dial:1800266666 -Wear Mask, Stay Safe

भारतीय डाक



EP00726901K INF:6974007269
DP DALTONGANI HP (821101)
Counter No:12/04/2024,14:11
To:THE MEMBER SEC, JHARKHAND STATE
PIN:821104, Garwa SC
From:GAURAV SINGH,
Wt:50gms
Amt:41.30(Cash)Tax:4.30
Track on www.indiapost.gov.in

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 255-257 OF 2023

THE STATE OF UTTARAKHAND & ORS. Appellant(s)

VERSUS

NANDAN SINGH BORA & ORS. Respondent(s)

O R D E R

1. By the impugned judgment and order(s), the High Court has directed that all the case of mining and stone crushers operating within the ten kilometers of Nadhaur Wild Life Sanctuary and within the Eco-Sensitive Zone (hereinafter referred as 'ESZ'), if so notified will be referred to the National Board for Wild Life.

2. Vide order dated 26th April, 2023, this Court had held that the ESZ cannot be the same for all the protected forests and that it will vary from case to case and has to be particular protected forest specific.

3. We had, however, clarified that irrespective

of an area to be notified as ESZ, the mining activities will be prohibited within the radius of one kilometer from the boundaries of the protected forest.

4. In the present case, vide notification dated 24th December, 2020, the Union of India has notified the ESZ areas in so far as the Nadhaur Wild Life Sanctuary is concerned.

5. In that view of the matter, the impugned judgment and order(s) passed by the National Green Tribunal would not be sustainable.

6. The civil appeals are disposed of by quashing and setting aside the impugned judgment and order(s).

7. It is directed that the mining activities shall be prohibited in the areas notified as ESZ areas and, in any case, within a radius of one kilometer from the protected forest.

8. Needless to state that wherever the ESZ areas provides for distance of more than one kilometer, the restriction of mining shall also apply to such a larger area.

~~28~~

9. Pending application(s), if any, stand(s) disposed of.

.....J
(B.R. GAVAI)

.....J
(SANDEEP MEHTA)

New Delhi
February 27, 2024

ITEM NO.26

COURT NO.3

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 255-257/2023

THE STATE OF UTTARAKHAND & ORS.

Appellant(s)

VERSUS

NANDAN SINGH BORA & ORS.

Respondent(s)

(IA No. 14001/2020 - EX-PARTE STAY)

Date : 27-02-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE SANDEEP MEHTA

For Appellant(s)

Mr. Saurabh Trivedi, AOR
Mr. Ashutosh Kumar Sharma, Adv.

For Respondent(s)

Ms. Aishwarya Bhati, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Ms. Alka Agarwal, Adv.
Ms. Ruchi Kohli, Adv.
Mr. Mukul Singh, Adv.
Mr. Aman Sharma, Adv.
Mr. Amit Sharma-b, Adv.

Mr. Vivek Gupta, AOR
Mr. Ankit Verma, Adv.
Mr. Shalabh Kaushik, Adv.

Mr. Sanpreet Singh Ajmani, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. The civil appeals are disposed of in terms of the signed order.
2. Pending application(s), if any, stand disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)

(ANJU KAPOOR)
COURT MASTER (NSH)

[Signed order is placed on the file]