

BEFORE THE HONBLE NATIONAL GREEN TRIBUNAL PRINCIPAL BENCH NEW DELHI

OA No 163 of 2024 and IA No

Rasikh Rasool Bhat

.....Applicant

VS

UT Govt of J&K through Chief Secretary and others

.....Respondents

In the matter of: ADDITIONAL DOCUMENTS BY APPLICANT

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Dated 7th of April 2026

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ANNEXURE A

PROJECTS CLEARED WITHOUT PRIOR PAYMENT OF ENVIRONMENTAL LEVIES

82,000 trees felled, Rs 49 crore unpaid: J&K govt cites 2019 decision to NGT

Vineet Bhalla

New Delhi, February 17

THE JAMMU and Kashmir administration has acknowledged, in a report filed with the National Green Tribunal (NGT) on December 23, that a policy decision taken just days before the reorganisation of the erstwhile state in 2019 allowed government projects to divert forest land without prior payment of mandatory environmental levies.

As a result, while over 82,000 trees have been felled for various infrastructure projects since then, user agencies such as the Public Works Department and the Pradhan Mantri Gram Sadak Yojana are yet to deposit over Rs 49 crore in statutory dues intended for forest regeneration.

This information is present in a compliance report filed by J&K Chief Secretary Atal Dulloo before the NGT in the case of *Rasikh Rasool Bhat v. Union Territory of J&K*. While the original case pertains to alleged violations in the construction of the Handwara-Bangus road that was sanctioned in 2017 and work for which began in 2019, the government's affidavit has brought to light an issue affecting 154 projects across the UT.

Under the Forest (Conservation) Act, 1980, any agency seeking to divert forest land for non-forest purposes must first

Policy decision taken just days before abrogation of Article 370, says report



The complainant has argued before the tribunal that the 'polluter pays' principle cannot be suspended by any administrative order

pay the Net Present Value – the monetised value of the forest being cleared – and charges for Compensatory Afforestation. Final approval is granted only after these funds are deposited.

However, the chief secretary's report reveals that on July 30, 2019 – less than a week before the abrogation of Article 370 of the Constitution – the State Administrative Council (SAC) headed by the then Governor passed a decision that for government-executed projects, the sanction for diversion of forest land "shall be issued... without imposing the condition of prior payment of compensatory levies by the indenting agencies".

The report states that following this decision, cases that were earlier held up solely due to non-payment "were cleared and sanction orders were issued".

The impact of this policy is detailed in a 12-page list in the report titled "Projects with outstanding compensatory levies where felling is done". *The Indian Express* analysed details of the 154 listed projects and found that a total of 82,511 trees were felled. While the total liability for these projects was approximately Rs 84.82 crore, the outstanding dues currently stand at Rs 49.07 crore.

In the compliance report, the J&K chief secretary at-

tributes the delay in remitting these funds to the "administrative transition following the reorganisation of the erstwhile state of Jammu and Kashmir with effect from 05.08.2019", coupled with disruptions caused by the Covid pandemic.

The chief secretary has submitted that the government is now "actively pursuing recovery" of these outstanding levies. The report notes that in recent meetings held in July and December 2025, specific directions were issued for the reconciliation of dues.

The administration has also signalled a reversal of the 2019 policy. The report states that a "categorical and prospective policy decision" has now been taken that no future cases for forest land diversion will be processed unless all outstanding levies are fully cleared. Twenty-three fresh proposals from the Jal Shakti, Public Works and Rural Development departments have been returned due to pending payments.

The applicant, Bhat, however, argued in an objection filed to the report that the 2019 policy was legally untenable from the outset, asserting that the "polluter pays" principle cannot be suspended by an administrative order, regardless of the urgency of infrastructure projects.

The NGT has listed the matter for final hearing on April 9.

ANNEXURE B

THE JAMMU AND KASHMIR FOREST (CONSERVATION) ACT, 1997

(Act No. XXX of 1997)
[29th September, 1997]

An Act to provide for the conservation of forests and for matters connected therewith or ancillary or incidental thereto.

Be it enacted by the Jammu and Kashmir State Legislature in the Forty-eighth Year of the Republic of India as follows:

1. Short title, extent and commencement

- (1) This Act may be called the Jammu and Kashmir Forest Conservation) Act, 1997.
- (2) It extends to the whole of the State of Jammu and Kashmir.
- (3) It shall come into force at once.
- (4)

2. Restriction on denotifying of demarcated forest or deservation or use of Forest land for non-forest purpose

Notwithstanding anything contained in any other law for the time being in force,

(a) the Government shall not, except on a resolution of the [the Council of Ministers based on the advice of the Advisory Committee constituted under section 3 of the Act].

(i) make or issue any order or notification directing that any demarcated forest or any portion thereof shall cease to be a demarcated forest;

(ii) make any order directing that any forest land or any portion thereof may be used for any non-forest purpose;

(b) no officer of the Government or other authority shall have power to make or issue any order or notification in respect of any matter specified in clause (a):

(1) Provided that the Administrative Department (Forest) shall be competent authority to accord permission after obtaining the approval of the Minister Incharge on the recommendations of the Advisory Committee constituted under section 3 of this Act, for the construction of Border/R & B/Irrigation roads when passing through the demarcated or undemarcated forest lands;

(2) Provided further that the Principal Chief Conservator of Forests may, on the recommendations of a Committee comprising the concerned Chief Conservator of Forests, Conservator of Forests, District Development Commissioner and the Divisional Forest Officer, accord permission for construction of,

(i) rural roads not exceeding 5 hectares of forest land; and

(ii) Border/R&B roads: and irrigation works not extending 2.5 hectares of forest land, when passing through the demarcated or undemarcated forest land subject to the condition that:

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ANNEXURE B

- a) permission shall be accorded only once in a case and no further extension shall be granted;
- b) permission shall be accorded only when the Principal Chief Conservator of Forests satisfies himself that the road is needed for the upliftment of the rural people and does not have any, adverse impact on eco-system of the area; and
- c) all other conditions as laid down in this Act are complied with:

Provided also that the Chief Conservator of Forests may, on the recommendation of a Committee comprising the concerned Conservator of Forests, District Development Commissioner and Divisional Forest Officer, accord permission for construction of rural roads not exceeding 2.5 hectares of forest land when passing through the demarcated or undemarcated forest land subject to the conditions that

- (i) permission shall be accorded only once in a case and no further extension shall be granted;
- (ii) no permission shall be accorded unless the Chief Conservator of Forests satisfies himself that the road is needed for the upliftment of the rural people and does not have any adverse impact on eco-system of the area; and (iii) that all other conditions as laid down in this Act are complied with.]

Explanation I. - For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for -

- (a) the cultivation of oil bearing plants, horticultural crops or medicinal plants;
- (b) any other purpose other than re-afforestation but does not include any work relating or ancillary to conservation, development and management of forest and wildlife, namely, the establishment of check posts fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholds, trench marks, boundary marks, pipe lines or other like purposes.

Explanation II. - For the purposes of this section,

- (a) "demarcated forest" and "undemarcated forest" shall have the same meaning as assigned to them in the Jammu and Kashmir Forest Act, Samvat 1987 (1930 A.D.);
- (b) "rural roads" means the roads including paths to be constructed by the District Rural Development Agency under the technical and administrative control of the concerned District Development Commissioner; and
- (c) "border roads" means any kind of roads to be constructed mainly for the defence purpose by the Army or Border Roads Organization or any of its agencies.

Constitution of Advisory Committee

The Government may constitute a Committee consisting of such number of persons as it may deem fit to advise the Government with regard to

- (i) any matter referred to in section 2;
- (ii) any other matter connected with the conservation of forests which may be referred to it by the Government:

4. Penalty for contravention of the provisions of the Act

Whoever contravenes or abets the contravention of any of the provisions of section 2

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shall be punishable with simple imprisonment for a period which may extend to fifteen days.

5. Offences by authorities and Government Department

- (1) Where any offence under this Act has been committed
- (a) by any department of Government, the Head of the Department; or
- (b) by any authority, every person who, at the time of offence was committed, was directly in charge of and was responsible to the authority for the conduct of the business of the authority as well as the authority, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;
- Provided that nothing contained in this sub-section shall render the head of the Department; or any person referred to in clause (b) liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.
- (2) Notwithstanding anything contained in sub-section (1), where an offence punishable under this Act has been committed by a Department of Government or any authority referred to in clause (b) of sub-section (1) and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the Head of the Department or in the case of any authority, any person other than the persons referred to in clause (b) of sub-section (1) such officer or persons shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

5-A. Cognizance of the offences

The cognizance of the offences under this Act shall be taken by the Forest Officers in the same manner as is done under the provisions of the Jammu and Kashmir Forest Act, Samvat 1987 (1930 A.D.) and the procedure laid down therein shall mutatis mutandis apply to cognizance of such offences.

Explanation: - For purposes of this section, "Forest Officer" shall have the same meaning as assigned to it under clause (f) of section 2 of the Jammu and Kashmir Forest Act, Samvat 1987 (1930 A.D.).

6. Power to make rules

The Government may, by notification in the Government Gazette, make rules for carrying out the purpose of this Act.

7. Repeal and saving

- (1) The Jammu and Kashmir Forest Conservation) Act, 1992 (President's Act No.5 of 1992) is hereby repealed.
- (2) Notwithstanding such repeal, anything done, any action or any order issued or any rule made under the said Act shall be deemed to have been done, taken, issued or made under this Act.

Q. M.

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BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Original Application No. 142 of 2022 (SZ)
(Through Video Conference)

IN THE MATTER OF

Sarvabhoom Bagali,

S/o Late Satagouda,
R/o Kachari Road,
Opp. Head Post Office, Indi,
Vijayapur District, Karnataka- 586101

...Applicant(s)

Versus

1. State of Karnataka

Through its Director,
Department of Mines and Geology,
49, Khaniya Bhawan,
Race Course Road, Bengaluru- 560001

2. Ministry of Environment, Forests and Climate Change,

Through its Secretary,
Indira Paryavaran Bhavan,
Jorbagh, New Delhi- 110003.

3. Karnataka State Environment Impact Assessment Authority (SEIAA),

Through its Member Secretary,
Room No. 709, VII Floor, IV Gate, M.S. Building,
Bengaluru- 560001.

4. Deputy Commissioner- Dakshina Kannada District,

Deputy Commissioner's Office,
Mangalru, Dakshina Kannada District,
karnataka- 575001.

5. Karnataka State Minerals Corporation Ltd.,

Through its Managing Director,
Registered office at:
V Floor, 'A'Block, TTMC Building,
BMTCL, Shanthinagar, Bengaluru
Karnataka- 560027.

...Respondent(s)

For Applicant(s):

Mr. Aagney Sail

For Respondent(s):

Mr. Rajat Jonathan Shaw for

Mr. Darpan K.M. for R1.

Mr. H.K. Vasanth for R3.

Mr. R. Bharadwajaramasubramaniam for R5.

Judgment Reserved on: 15th February, 2023.

Judgment Pronounced on: 23rd March, 2023.

CORAM:**HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER****HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER****JUDGMENT*****Delivered by Smt. Justice Pushpa Sathyanarayana, Judicial Member***

1. The interesting question that arise for consideration is whether the exemption granted under EIA Notification, 2006 to dredging and de-silting of dams is applicable when it involves sand/silt mining i.e., when sand/silt is sold for commercial purpose/use of Government agencies, instead of limiting the dredging/desilting for maintenance, upkeep and disaster mitigation as stipulated in the Sustainable Sand Mining Guidelines.
2. The applicant has stated that on 21.05.2020 the State of Karnataka published in State Gazette the New Sand Policy, 2020 of the Government of Karnataka issued vide Government Order dated 05.05.2020. Later on 27.11.2020, the work order was issued by the District Sand Monitoring Committee to Karnataka State Mineral Corporation Ltd. (KSMCL), which is the 5th respondent herein, for de-siltation work involving extraction of 14,51,680 MT of sand from backwaters of Adhyapadi Dam on Phalguni River In Managluru Taluka and Shamburu Dam on Nethravathi River in Bantwal Taluka, both located in Dakshin Kannada District, Karnataka.
3. While the work order was issued, there was no condition to obtain Environmental Clearance. The said work order dated 27.11.2020 was published online by the authorities for any locals to make any objection. On 01.12.2021 an amendment was brought in the

Karnataka Minor Mineral Concession Rules, 1994 incorporating Sand Mining Policy, 2020. The Deputy Commissioner, Dakshina Kannada District, who is the 4th respondent, had given a statement on 23.05.2022 that dredging of the Adhyapadi and Shamburu Dams are allowed and sand collected will be sold commercially. As any sand mining attracts requirement of an Environmental Clearance, the applicant had approached the Deputy Commissioner by giving a representation on 11.10.2022 highlighting the illegal sand mining being carried out in Adhyapadi and Shamburu Dams in the guise of dredging and de-silting without prior Environmental Clearance requesting to stop the same. Since there was no response the above Original Application is filed.

4. The case of the applicant is that:

- (i) The work order dated 27.11.2020 issued by the Sand Mining Committee is not sustainable as it is in direct violation of the EIA Notification, 2006 which prohibits dredging and de-silting of dams without obtaining prior Environmental Clearance. Admittedly in the present case 14,51,680 MT of sand is going to be extracted from the silt and the sand extracted is to be sold commercially. When the EIA Notification, 2006 exempts dredging and de-silting of the dams only for the purpose of maintenance, upkeep and disaster management, it should not involve commercial sand mining. Once commercial sand mining is involved, the same can be done only by obtaining Environmental Clearance which involves several stages of screening, scoping etc.

- (ii) The Sustainable Sand Mining Guidelines, 2016 (for short 'SSM Guidelines') issued by the MoEF&CC describes de-silting activity involving extraction of sand involves mining operation. The mining operation means any operation undertaken for the purpose of winning any mineral. Hence, the exemption given under Appendix-IX of EIA Notification, 2006 has to be read with Sustainable Sand Mining Guidelines, 2016.
- (iii) The work order dated 27.11.2020 is issued without preparing the District Survey Report which is an important initial step before grant of the mining lease.
- (iv) Even as per Rule 3A(a) of the Karnataka Minor Mineral Concession Rules, 1994 (for short 'KMMC Rules') de-silting of ponds or tanks and disposal of minor minerals extracted thereof, other than sand, is exempted from obtaining Environmental Clearance. In this case, there is extraction of sand to be used for commercial purpose which requires an Environmental Clearance.
5. On the above said grounds, the applicant has sought for a declaration that the activity of dredging and de-silting of dams and other water bodies for the purpose of mining any mineral is not qualified for exemption from obtaining the prior Environmental Clearance and to declare the work order issued on 27.11.2020 is in violation of EIA Notification, 2006.
6. In response to the above application an affidavit has been filed on behalf of the **1st respondent, which is the Department of Mines and Geology, Bengaluru**. It is contended that the dredging and de-silting of dams has arisen on account of gathering

of silt/sand in the reservoir area of the dam thereby reducing the carrying capacity of the dam. After analysis and after ascertaining the quantity, it was identified that a fixed area has gathered silt/sand. The experts have assessed through Google Image that there is deposit of silt/sand in Adyapady Dam measuring 2000 meters in length and 100 meters in width with one meter depth. There is a collection of 3.44 lakhs MT of silt/sand. Similarly, in Shamburu Dam, the experts had assessed the collection of silt/sand as 2800 meters in length and 230 meters in width with one meter depth. In order to remove the silt/sand so accumulated in the above mentioned dams, the work order was issued on 27.11.2020 by the District Sand Monitoring Committee as per the Karnataka Minor Minerals Concession (Amendment) Rules, 2021.

7. The 1st respondent further had stated that the work order issued in favour of the 5th respondent was only for removing the silt/sand i.e. deposited in the dam and not for sand mining in the river. A distinction was drawn between removal of silt and sand blocks in the river beds. The impugned work order was issued to remove the silt to the tune of 14,51,680 MTs. De-siltation has to be done by machines and if they are not removed again there will be silt deposits during the rainy seasons. It is stated that the deposit of silt being a continuous process using the scientific and technical methods to remove the silt without violation of the terms and conditions of the work order dated 27.11.2020 was issued. It is categorically stated that the work order is not issued for removal of sand blocks but it is issued for removal of silt and that de-siltation cannot be construed as sand mining. Since, the 5th respondent is a Corporation established by the State Government,

there is no private interest involved in the said process and the order is only as per the Sustainable Sand Mining Management Guidelines, 2016.

8. It was also pointed out the notification issued by the 2nd respondent dated 15.01.2016 and 28.03.2020 exempts the requirement of Environmental Clearance in certain cases wherein dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management are involved. The 1st respondent also place reliance on Appendix -IX of the MoEF&CC Notification dated 28.03.2020 and contended that the work order is perfectly in order. As the work order did not involve specific sand mining it was contended that the prior Environmental Clearance is not required and that the work order issued was in compliance with the EIA Notification, 2006.
9. The reply of **the Deputy Commissioner, Dakshina Kannda, who is the 4th respondent**, also has stated that the dredging and desilting of the dams has arisen on account of gathering of silt/sand in the reservoir area of the dam which has reduced the carrying capacity of the dam and that necessitated the dredging activity which was decided as per the Google Image. The Deputy Commissioner also has repeated the same reasons given by the Department of Mines and Geology.
10. The **5th respondent, who is the project proponent, Karnataka State Minerals Corporation Ltd.,** has filed its reply. It is stated that the Government of Karnataka adopted a new Sand Policy,

2020 on 05.05.2020. In furtherance thereto the Government of Karnataka had amended the KMMC Rules with effect from 05.05.2020. The amended KMMC Rules provides for the constitution of the District Sand Committee, Taluk Sand Committee, Powers and Functions of the District Sand Committee, Replenishment Study, Prohibition of Stocking of Sand and Appeals and Revisions arising out of orders of the District Sand Committee etc.

11. The 5th respondent was appointed to take up the entire responsibility of removal of sand obtained by de-silting and transport it to the stockyard and sell it to the costumers in IV, V and VI class streams/rivers, dam/reservoir/ barrages and backwater areas of the dam in the allotted districts of Bengaluru and Mysuru division. According to the 5th respondent the conjoint reading of the SSM guidelines, New Sand Policy, 2020 and the amended KMMC Rules would amply disclose that all the modules of regulations/policy statements recognise the fact that extraction of sand by dredging and de-silting does not tantamount to extraction of sand blocks in other cases that would warrant obtaining Environmental Clearance as stipulated in the SSM Guidelines.

12. The 5th respondent further contended that the de-siltation is done as per the due process of law as specified in Rule 31(V) of Karnataka Minor Minerals Concession (Amendment) Rules, 2021. As per the said Rule 31(V), there is no requirement of Environmental Clearance on the part of the 5th respondent as it is exempted under the SSM Guidelines. The 5th respondent also reiterated that the exemption provided under EIA Notification,

2006 is applicable in the present case as it exempts dredging and de-silting of dams etc., only for the purpose of its maintenance, upkeep and disaster management. In the impugned work order also it is mentioned that the dredging and de-silting is being done to increase the capacity of water storage in Adyapadi Dam, Mangalore Taluka and Shamburu Dam in Bantwala Taluka which amounts to maintenance, upkeep and disaster management. With the increase in the capacity of the dam, there will be greater storage capacity and less chances of flooding. Therefore, it is stated that the work order involves only process of dredging and de-silting and not quarrying. The 5th respondent also had specifically denied that there is no commercial sand mining as per the work order.

13. From the above pleadings the questions that arise for determination are:

- (i) Whether prior Environmental Clearance is mandatory for de-siltation of dams when extraction of sand for commercial use is envisaged as per Karnataka Minor Mineral Concession Rules, 1994?
- (ii) Whether the exemption granted under EIA Notification, 2006 to dredging and de-silting of dam is applicable when it involves mining of sand or silt intended for commercial purpose/Government use?

14. The entire case revolves around the work order dated 27.11.2020 issued by the District Sand Mining Committee in favour of the 5th respondent. The subject in the work order dated 27.11.2020 reads as "work Order to Karnataka State Mineral Corporation Limited (KSCL) for excavation of sand from silt in backwater of Adhyapadi

Dam in Mangaluru Taluka and Shamburu Dam in Bantwal Taluka-regarding". The work order reads as follows:

"The District Sand Monitoring Committee, in consideration of State Sand Policy 2020 and Geographical, Geological and administrative factors, has taken decision to excavate sand from silt from the backwater of Adhyapadi Dam Mangaluru Taluka and Shamburu Dam in Bantwal taluka, to make sand available regularly and easily at lower rates to Government and public construction works and to increase capacity of water storage in Adhyapadi Dam Mangaluru Taluka and Shamburu Dam in Bantwal Taluka. The District and Taluka Sand Monitoring Committee have identified areas from where sand can be extracted from the silt in backwaters of Adhyapadi Dam Mangaluru Taluka and Shamburu Dam in Bantwal Taluka. The technical officer's have informed to District Sand Monitoring Committee that in Adhyapadi Dam nearly 3,44,000 metric tons and Shamburur Dam nearly 11,07,680 metric tons of silt mixed with sand is available. As per the reference, execution of the work of silt excavation has been given to Karnataka State Mineral Corporation Limited Bengaluru (KSCL) and work order is issued for period of 5 years or until sand extraction is completed in following areas as per the conditions of work order....."

15. In the conditions prescribed in the work order, it is specifically stated that the work should be executed as per the guidelines of Ministry of Environment and Forest and Climate Change and Sustainable Sand Mining Guidelines, 2016. The condition no. 3 says the sand available in silt should be sold at the rate fixed by the Government. Condition No. 4 reads that the sand obtained during excavation of silt should be stored in stockyard and should be sold to the Government and public works at the rate fixed by Government and District Sand Monitoring Committee.

16. From the above work order, it is evident that it is not only dredging or de-silting but also mining of the sand to increase the capacity of water storage in the dams referred above. Reading of the above work order and conditions makes it clear that the work order is issued to (i) increase the capacity of the water storage, (ii) sell the sand available at the rate fixed by the Government by storing the same in the stockyard. The sale should be only in

favour of Government and public works at the rate fixed by the Government and the sand Monitoring Committee.

17. Now, it would be appropriate to advert to the Clause 7 of the EIA Notification, 2006. Clause 7 of the EIA Notification provides for the stages in the prior Environmental Clearance process for new projects which are in four stages, namely, screening, scoping, public consultation and appraisal. Appendix IX provides for the cases which are exempted from prior Environmental Clearance as per Clause 7(1)(B). Clause 6 of the Appendix IX states that

"dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management are exempted".

The said exemption of dredging and de-silting of the dams are only for the purpose of maintenance, upkeep and disaster management and if the said activity involves commercial sand mining, then the exemption is not attracted. It would be relevant to advert to the Sustainable Sand Mining Guidelines, 2016 issued by the MoEF&CC on de-silting activity which involves extraction of sand.

18. The Sustainable Sand Mining Guidelines provide for the management of sand deposited after flooding. The Standing Committee on water resource on issues, concerning flood management, compensation, and status of ownership of submerged and eroded land in the country including compensation to farmers for loss of their crops destroyed by floods and right to disposal of the sand left in the fields of farmers in its meeting held on 29.04.2015 observed as follows:

"The Committee further observed that due to the floods, the agricultural land of farmer is destroyed and rendered infertile. Further the farmer loses his livelihood as the produce of his land is

destroyed by flood and become unsalable. The farmer is also deprived of the right of lifting sand from his land. He is therefore, left helpless and destitute and leave their land in search of job."

19. The Committee observed that "mining operation means any operation undertaken for the purpose of winning any mineral. Accordingly, if desilting is undertaken per se with the objective of winning a mineral then it will be construed as a mining operation. Apparently, if the desilting is undertaken not for winning any mineral, it will not be construed as mining operation and therefore, the farmer can remove the sand from the land without requiring the requisite permits. However, the Committee strongly feels that the farmer be given the right to use and dispose-off the sand accumulated over their land post flood, by incorporating the necessary provisions in the Mines and Mineral (Development and Regulation) Act, 1957".
20. Similarly, the said guidelines discussed about the de-silting of reservoirs, barrages, annecuts, lakes and canals which is extracted as follows:

"These structures are generally in possession and maintenance of Irrigation Department / Minor Irrigation Department / PHED of State Governments. The dams and reservoirs can be a significant source of sand. Many such structures are silted and their water holding capacity has gone down considerably. In some instances to compensate for silted capacity raising of height of dam or construction of new structures is proposed which further leads to submergence of new areas of agricultural field and forests. Taking up desilting of such projects can serve dual purpose of increasing the water holding capacity and making available the sand for other usage. In some States the Irrigation Department is permitted to use it for the departmental works free of charge and balance can be disposed of in market after paying the due royalty. A detailed study is required to be carried out to verify economic viability and environmental sustainability before contemplating dredging of storage reservoirs for sand / gravel mining. The de-silting of reservoir, dredging for upkeep and maintenance of structures, channels and averting natural disasters will not be treated as mining for the purpose of environmental clearance."

21. Admittedly in the given case the desilting is done not only for the upkeep and maintenance of the dams but to extract the sand from the silt to be sold at the rate fixed by the Government which is admittedly a commercial activity. As mentioned above, the mining operation means any operation undertaken for the purpose of winning any mineral. Here along with the silt, the sand which is available is extracted which is also quantified as 11,07,680 metric tons in Nethravathi River Bantwal Taluka, and 3,44,000 metric tons in Phalguni River Managluru Taluka, and in an extent of 64.4 and 20 ha. respectively. As it involves the commercial activity by any stretch of imagination, it cannot be stated that the dredging activity is exempted as provide in Clause 6 of Appendix IX of EIA Notification, 2006. Therefore, the said impugned work order dated 27.11.2020 is contrary to the EIA Notification, 2006 for not having obtained the Environmental Clearance.

22. It is to be note that the Karnataka Sand Policy was brought out in the year 2011 and as such amendments to Karnataka Minor Mineral Concession Rules, 1994 were made in the year 2011 and a separate chapter IVB for sand mining was introduced under Rule 31-R. In addition to that pursuant to the Judgement in Deepak Kumar's case by the Hon'ble Supreme Court model guidelines were issued by the Government of India for environment management of mining of minor minerals. Thereafter, an amendment to the Karnataka Minor Mineral Concession Rules, 1994 was brought on 16.12.2013 incorporating a new Chapter II A applicable to all minor minerals on systematic, scientific mining protection of environment, wherein Quarrying Plan, Environmental Management Plan and Environmental Clearance are made mandatory.

23. Amendments to Rule 31-R were also made wherein the Government, Public Works Department was entrusted with sand mining, storage and transportation under District Sand Monitoring Committee and Taluk Sand Monitoring Committee.

24. Once it becomes mandatory that such work order has to be preceded by an Environmental Clearance, all the other requirements as defined in Clause 7 of EIA Notification, 2006 have to be followed. Primarily the Sustainable Sand Mining Guidelines, 2016 requires preparation of DSR which is the first step before granting mining lease. In order to make a inventory of river bed material a detailed survey of the district needs to be carried out to identify the source of river bed material and alternative source of sand.

25. In the reply of the Mines and Geology Department, it is stated that assessment has been done only through Google Image that there is deposit of silt in both the dams and they have quantified the length, breadth and depth of the deposit of silt. They have not done the detailed survey as required by the EIA Notification, 2006. Rule 31(V) of Karnataka Minor Mineral Concession Rules, 2021 reads as follows:

"Rule 31-V Regulation of sand extraction from de-siltation of dams or reservoirs or barrages-

- 1) De-siltation of dams, reservoirs and barrages shall only be done through the Government Department or Government owned Corporation or Board.
- 2) The District Sand Committee shall conduct inspection jointly through the officers comprising the Deputy Director or Senior Geologist concerned, the executive Engineer, Water Resource Department, Range Forest Officer of Forest Department and shall quantify the sand likely to be sourced by de-silting process.
- 3) The Joint inspection team shall submit inspection report with recommendations to the District sand Committee for the purpose of reserving the area of extraction of sand through the Government Department or Corporation or Board, which

have been notified by the State Government for sale of sand or for the purpose of the Central Government or State Government Development work.

- 4) After the approval of the District Sand Committee, the concerned department or Government owned Corporation or Board authorized shall take up de-siltation activities in dams, reservoirs, barrages and large tanks.
- 5) During de-siltation, the concerned Government department of Government owned Corporation or Board shall pay rate as specified by the State Government from time to time in advance and obtain minerals Dispatch permit for transportation of de-silted sand to stockyard.
- 6) The permission holder shall establish the office, computer facility, electricity supply, closed-circuit camera, weigh bridge and security at the dump yard or stock yard of sand.
- 7) The permission holder shall maintain an inward and dispatch register and stock register in the stock yard office and allow for inspection by the official of the District and Taluk sand Committee and such other officer authorised in this regard by the State Government.
- 8) The permission holder shall be adopted and obtain booking of sand from the end user general public through an app called as "Maralu Mitra" in the manner specified in rule 31U(13):
Provided that this provision shall not be applicable for the Central or the State Government agencies having the sand blocks for their own use.
- 9) The work executing Government department or Government owned Corporation or Board shall put in place a suitable administrative mechanism, under these rules, at the field level to efficiently supervise the de-siltation process, monitoring of dispatched sand and also to prevent any misuse of sand sourced from de-siltation.
- 10) The work executing Government department or Government owned Corporation or Board shall furnish month wise statement of de-siltation activities on the quantity of sand de-silted and transported to stockyard, as well as sand sold and dispatched from the stockyard to the consumers:
Provided that, this provision shall not be applicable for the Central or the State Government agencies having the sand blocks for their own use."

26. According to the 1st and 4th respondent the impugned work order is in consonance with the above rule. As per the said Rule, the project proponent is allowed to pay the rate as specified by the State Government from time to time in advance to obtain the mineral dispatch permits for transportation of de-silted sand to the stockyard. Therefore, it is contended that it is in consonance with the appendix IX of EIA Notification, 2006. But the same is assailed by the Learned Counsel for the applicant stating that even as per Rule 3(A)(a) of the KMMC Rules, 1994 desilting of ponds or tanks and disposal of minor mineral extracted thereof other than sand is

exempted from obtaining quarry lease and Environmental Clearance. Rule 3(A) of KMMC Rules reads as follows:

"31(A) Exemption of certain Rules in certain cases-

The following activities are exempted from obtaining quarry lease and from provisions of sub-rule 1(A) of Rule 8 and Chapter 2(A) namely-

(a) The digging of wells for water [desilting ponds or tanks other than sand] and digging of earth for foundation of building and disposal of the minor mineral extracted thereof."

27. In the above rule, the words "desilting of ponds and tanks other than sand" was inserted by the amendment dated 18.07.2017. Therefore, even for the purpose of desilting which involves disposal of sand extracted from desilting prior Environmental Clearance, approved mining plan and quarry lease are mandatory as required under Rule 8(1)(A) and Chapter 2(A). As the work order itself speaks about the extraction of sand from the silt which is to be sold commercially by a rate fixed by the Government without having a prior Environmental Clearance, the said activity cannot be done.

28. In this regard, **the SEIAA, Karnataka, which is the 3rd respondent, has filed their reply.** In Para-10 of their reply, the SEIAA has stated de-silting/dredging in dams and reservoirs, barrages, river, canals cannot be construed as sand mining since the primary purpose of both are different. The Primary purpose of de-silting/dredging in dams and reservoirs, barrages, river, canals is maintenance, upkeep and disaster management. The primary purpose of sand mining is winning the mineral for commercial purpose which requires prior Environmental Clearance as per EIA Notification, 2006.

29. If that be so, the work order specifically states that silt mixed with sand is available and the same can be extracted from the silt in the backwaters as identified by the District Sand Monitoring Committee and the sand available in the silt can be sold at the rate fixed by the Government after transporting the same to the stockyard and sand available in the stockyard should be transported with mineral dispatch permit in vehicles fixed with GPS. So, the work order itself is very clear that in the garb of dredging and desilting, sand mining is being done and already it is being defined as to what is mining operation. When there is sand mining involved for commercial purpose and as stated by the SEIAA prior Environmental Clearance is required and the 5th respondent should be permitted only after obtaining an Environmental Clearance preceded by the necessary approvals, mining lease etc. In spite of the same, the SEIAA remains as a mute spectator.

30. To be noted is the decision of the Hon'ble Karnataka High Court in W.P No. 5031 of 2021 which was a challenge to the impugned E-tender invitations dated 07.11.2020 for de-silting of sand in Shamburu Dam and tender notice dated 07.12.2020 for de-silting of and in Adhyapadi Dam. The Hon'ble High Court has found that there is no sand block which is being identified or mentioned in the tender notification. The dredging and desilting of the dams have arisen on account of gathering of silt in the reservoir area of the dam thereby reducing the carrying capacity of the dam. Since, it has been ascertained that there is a fixed area which has gathered silt the quantity has also been ascertained and identified by experts dealing with the same. The Hon'ble High Court also referred to the identification of the quantified sand and the location

with the Google Image. The Hon'ble High Court has only stated that there is no sand block which will be involved in the dredging or desilting in the reservoir area, therefore, it would not be a quarrying activity.

31. The Hon'ble High Court has only opined whether the restrictions imposed under Rule 31(R) and 31(ZB) of the Rule would apply to the work contemplated under the E-tender which was challenged under the proceedings and the order is passed without any reference to the EIA Notification, 2006, therefore, the said order will not be of any assistance to the respondents especially when desilting/dredging is done for commercial purpose be it sale for public or use in Government projects.

32. In the above circumstances, we are of the view that:

- (i) The work order issued on 27.11.2020 in favour of the 5th respondent is in violation of EIA Notification, 2006 as the said activity requires prior Environmental Clearance.
- (ii) Dredging and desilting of dams is not exempted from obtaining prior Environmental Clearance as the sand is being extracted for commercial purpose.
- (iii) It is open to the 1st respondent to apply for a prior Environmental Clearance as contemplated under EIA Notification, 2006 for sand mining while involving in the dredging and de-silting activities by following the procedure.

- (iv)** The respondents can proceed with their activity only after obtaining proper Environmental Clearance for the dredging and de-silting in Adhyapadi and Shamburu Dams.
- (v)** Till such time Environmental Clearance is obtained the 5th respondent is restrained from carrying on the activity pursuant to the work order dated 27.11.2020.
- (vi)** The de-siltation/extraction of sand from silt for sale undertaken is held as illegal.
- (vii)** A penalty of Rs.50 crores is to be paid by the Irrigation Department, Government of Karnataka to Central Pollution Control Board and the said amount will be utilised for pollution abatement in river stretches with priority to stretches in and around Bengaluru.
- (viii)** In spite of the orders of the National Green Tribunal holding repeatedly that Environmental Clearance is required when de-silted material is used for commercial purpose, the current orders of the District Collector is in gross violation of the same for which the Chief Secretary is directed to issue orders to Collectors to follow all the rules and regulations scrupulously and strictly instruct them that desilting/dredging of water bodies/rivers/reservoirs/waterways shall not be permitted without the prior Environmental Clearance when the de-silted/dredged material be it silt, sand or

any other mineral is sold either to the public or for Government projects.

33. With the above directions, Original Application is disposed of.

Sd/-

.....J.M.
(Smt. Justice Pushpa Sathyanarayana)

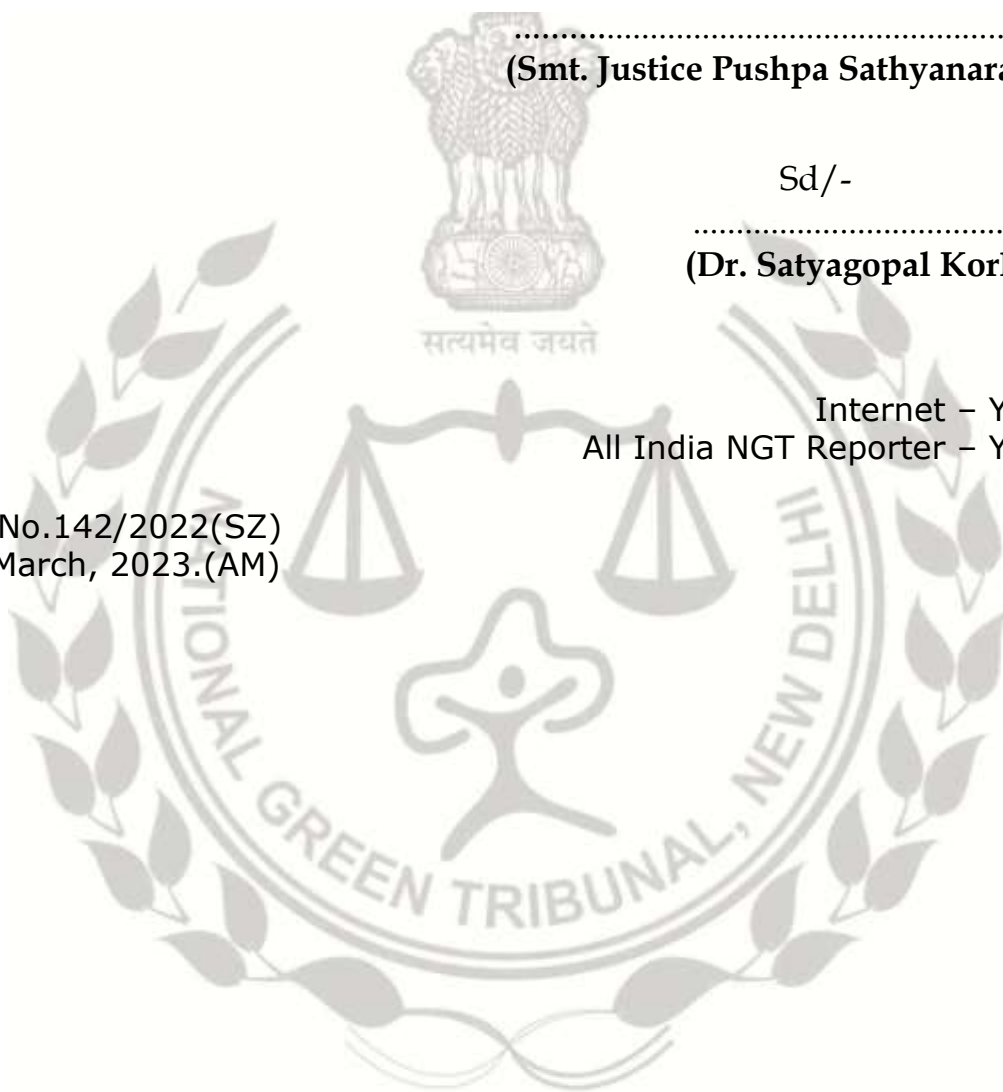
Sd/-

.....E.M.
(Dr. Satyagopal Korlapati)

Internet – Yes/No

All India NGT Reporter – Yes/No

O.A. No.142/2022(SZ)
23rd March, 2023.(AM)



NGT