

In the Court of Sameer Kumar Mishra, Judicial Magistrate First Class,
District Court Mandsaur, Distt. Mandsaur (Madhya Pradesh)

(Crime no. 130/2020 of Police Station Bhaugarh, Mandsaur (M.P.) under Sec. 379, 414, IPC, Section 4/21 of Mines and Minerals (Development And Regulation) Act, 1957 and Rule 18 of Madhya Pradesh Minerals (Prevention Of Illegal Mining, Transportation And Storage) Rules, 2006)

04-12-2020

Shri Nitesh Krishnan, Assistant District Prosecution Officer for State.

1- The case is fixed for presenting relevant report by SHO, P.S. Bhaugarh in compliance with the show cause notice issued vide order dated 23.10.2020 passed in Case bearing no. UNCR/5266/2020.

2- Shri Kailash Saini, Head Constable of P.S., Bhaugarh has produced alleged explanation/report on behalf of erring Police Officer Shri Shyamlal Utwal, Assistant Sub Inspector, P.S. Bhaugarh. Shri Saini has orally prayed to defer the matter for few days so as to facilitate Shri Utwal to argue his oral defence too. Looking to the facts and circumstances, the oral request is admitted and thereby an opportunity to produce oral defence with regard to written explanation is granted accordingly.

3- It is pertinent to note herein that vide order dated 23-10-2020, a report containing details on certain points with regard to the proceedings of Mining department, Mandsaur, in which along with other information, it was further called for the detail of the relevant Act and Rules, under which the person involved in illegal transportation of sand mineral via vehicle bearing no. M.P. 14 A.B. 1629, for which the alleged person has been booked for offences under Sec. 379, 414, IPC along with other Mining offences under Crime no. 130/2020 of P.S. Bhaugarh, Mandsaur (M.P.), was penalized or undergone for compounding for the same. In reply, a report bearing no. 3808/खनिज/2020 Mandsaur dated 03-11-2020, has been produced before this Court by Mining Officer, Mandsaur. In the alleged report, it is substantially intimated and disclosed that the alleged matter has been compounded by levying compounding fee total 10,000/- Rs. under Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rule, 2019 only and no compounding fee has been levied under Section 4/21 of Mines and Minerals (Development And Regulation) Act, 1957, Rule 18 of Madhya Pradesh Minerals (Prevention Of Illegal Mining, Transportation And Storage) Rules, 2006, Rule 53 of Madhya Pradesh Minor Mineral Rules, 1996; nor compensation has been directed to be paid in the light of orders passed by the Hon'ble National Green Tribunal, Delhi in cases of Mushtakeem Vs MoEF and C.C. and others, O.A. No. 44/16, order dated 19-02-2020 and Yaduraj Singh Jat Vs State of Rajasthan, O.A. no. 575/2019, order dated 24-06-2020.

4- It is notable that as per order dated 05.04.2019 passed in O.A No. 44/2016, Mushtakeem v. MoEF & CC & Ors, the Hon'ble Tribunal laid down following scale of compensation to be recovered for release of vehicle in violation of environmental norms :

"Re (v): Scale of Compensation 55. We have held that the scale of compensation proposed by the State of Gujarat does not fully comply with the 'Polluter Pays' principle which envisages that polluter is required to pay for complete restoration of the environment. This principle has been articulated further by the Hon'ble Supreme Court of India in T.N. Godavarman Thirumulpad vs Union Of India & Ors, (2006) 1 SCC 1 in the context of forests. In this matter, the Hon'ble Supreme Court appointed a committee of experts and following directions were given:

i. To identify and define parameters (scientific, biometric and social) on the basis of which each of the categories of values of forest land should be

575/2019



Signature.....	Dairy No.....	11 DEC 2020	RECEIVED	NATIONAL GREEN TRIBUNAL Principal Bench, New Delhi Receipt & Issue Branch

1078/DAC/1
14/12/2020
04/5/19
Constable 44/19
All present
h₂
JA-6/12

Ld. R.G.
11-12-2020 Ld. B.R.
14/12/20

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- ii. To formulate a practical methodology applicable to different biogeographical zones of India for estimation of the values in monetary terms in respect of each of the above categories of forest values.
- iii. To illustratively apply this methodology to obtain actual numerical values for different forest types for each biogeographical zone in the country.
- iv. To determine on the basis of established principles of public finance, who should pay the costs of restoration and /or compensation with respect to each category of values of forests.
- v. Which projects deserve to be exempted from payment of NPV.

5- 56. Similar criteria may have to be taken into account for arriving at an approximate scale of compensation. The compensation is to include not only the full value of the illegally mined material but also cost of restoration of environment as well as cost of ecological services foregone forever. It should be deterrent so as not to render such illegal activity profitable. In *Sudarsan Das Vs. State of West Bengal & Ors.* (Supra), it was held that full value of the material, the cost of restoration and the NPV should form part of the compensation to be recovered. There has also to be action against the polluters and the erring officers. The vehicles or any other equipment used for illegal mining are required to be confiscated and to be released only on payment of atleast 50% of the showroom value as laid down in Original Application No.110(THC)/2012, Threat to life arising out of coal mining in South Garo Hills District v. State of Meghalaya & Ors. This scale can then apply for all States, as far as possible.”

6- Thus, in the light of order dated 05.04.2019 passed in the case of **Mushtakeem** (Supra), it has substantially been laid down that ‘Polluter Pays’ principle which envisages that polluter is required to pay for complete restoration of the environment, is to be implimented with regard to release of the vehicles or any other equipment used for illegal mining which includes the full value of the illegally mined material, cost of restoration of environment as well as cost of ecological services foregone forever.

7- Subsequently, as per order dated 19.02.2020 passed in the case of **Mushtakeem** (Supra), the Tribunal laid down following scale of compensation to be recovered for release of vehicle in violation of environmental norms :

Sr. No.	Category of Vehicle	Penalty Amount
1	Vehicles/ Equipments /Excavators with showroom value more than Rs. 25 lacs and less than 5 years old.	Rs. 4 lacs
2	Vehicles/ Equipments/ Excavators with showroom value more than Rs. 25 lacs and more than 5	Rs. 3 lacs



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	years but less than 10 years old.	
3	For the remaining Vehicles older than 10 years/Equipments/ Excavators which are otherwise legally permissible to be operated and not covered by Serial No. 1 and 2.	Rs. 2 lacs

Note - I: On repetition of the offence by the same vehicle/equipment, Order dated 05.04.2019 will be applicable.

Note - II: The option of release may be available for a period of one month from the date of seizure and thereafter, the vehicles may be confiscated and auctioned.



8- Recently, As per order dated 24.06.2020 passed in O.A No. 575/2019, Yaduraj Singh Jat Versus State of Rajasthan; Madhya Pradesh, the Hon'ble Tribunal while considering the issue relating to illegal sand mining in Banas River and other rivers at Showpur, Shivpuri, Guna, Madhya Pradesh, has approved the scale of compensation to be recovered for release of vehicle as provided by the order dated 05.04.2019 passed in the case of Mushtakeem (Supra). Nevertheless, as evident from the report bearing number 3808/खनिज/2020 Mandsaur dated 03-11-2020 submitted by the Mining Officer, Mandsaur; it insinuates that the concerned proceedings before Collector has been disposed of merely by levying fine/penalty/compounding fee under Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rule, 2019 i.e., no compounding fee has been levied under Section 4/21 of Mines And Minerals (Development And Regulation) Act, 1957, Rule 18 of Madhya Pradesh Minerals (Prevention Of Illegal Mining, Transportation And Storage) Rules, 2006 and Rule 53 of Madhya Pradesh Minor Mineral Rules, 1996; nor compensation has been directed to be paid in the light of orders passed by the Hon'ble National Green Tribunal, Delhi in cases of Mushtakeem (Supra) and Yaduraj Singh Jat (Supra).

9- The Mining Officer, Mandsaur has stated no reasons for failure to recover the compounding fee or compensation mentioned herein above, nor it is disclosed that the alleged person involved in illegal transportation of sand mineral had refused to compound for the same and that is why, the complaint required under Sec. 22 of Mines And Minerals (Development And Regulation) Act, 1957 would be subsequently produced before the competent Court.

10- Coincidentally, Hon'ble Apex Court has, in the case of Jayant Etc. Vs The State of Madhya Pradesh, SLP (Criminal) No. 2640-2641/2020, Judgment dated 03-12-2020, has laid down that violators relating to illegal Mining can not be permitted to go scot free on payment of penalty only. Thus, the Hon'ble Supreme Court has also approved the fact of parallel proceedings against the violators under all relevant Acts and Rules. Hence, it is evident that the Mining Officer, appearing on behalf of the State itself, has produced no reasons for failure to comply with the legal requirements mentioned herein above, nor submitted explanation to let off the binding precedents of Hon'ble Tribunal and Court. Hon'ble Apex Court has, in the case of ANIL RATAN SARKAR V/S HIRAK GHOSH, 2002 (4) SCC 21, laid down that "(20)...The Court's orders are to be observed in its

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observance, rather than in its breach."

11- The aforesaid state of affairs disclose culpable negligence on the part of the law enforcement agency in compliance with the lawful order passed by the Court and Hon'ble Tribunal. It is relevant to mention that lawful orders passed by the Judicial Authority are required to be scrupulously enforced by the enforcement agency in letter and spirit, yet for no reasons whatsoever the competent agency failed to comply with the same.

12- Thus, in the light of entire gamut of the case and the appreciation made herein above, it is apposite to send the copy of this order along with the order dated 23-10-2020 and report bearing no. 3808/खनिज/2020 Mandsaur dated 03-11-2020 sent by the Mining Officer in compliance with the alleged order to The Hon'ble Chairman, Hon'ble National Green Tribunal, Principal Seat at New Delhi through the Learned Registrar General of Hon'ble National Green Tribunal, Principal Seat at New Delhi, Faridkot House, Copernicus Marg, near India Gate, New Delhi, 110001 for information and necessary action. Looking to the pandemic of COVID-19, these orders be supplied through Electronic medium by E-mail at **judicial-ngt@gov.in** preferably in the form of searchable PDF/ OCRSupport PDF and not in the form of Image PDF.

The execution clerk is hereby directed to ensure the prompt dispatch and supply of the current order to the Hon'ble Tribunal.

The matter is fixed for considering the explanation dated 04-12-2020 of Learned Investigating Officer, as on 17.12.2020.

Sd/-

(Sameer kumar Mishra)
Judicial Magistrate First Class
Distt. Mandsaur (M.P.)

D.No. 1062.../Court/2020
Copy to-

Mandsaur, Date 04-12-2020

1- The Hon'ble Chairman, Hon'ble National Green Tribunal, Principal Seat at New Delhi for information and necessary action.

04/12/2020

(Sameer kumar Mishra)
Judicial Magistrate First Class
Distt. Mandsaur (M.P.)