

## BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WEST ZONE BENCH, PUNE

Original Application no.46/2018

Shama Namu Mali & Ors.

...Applicants

V/s.

Principal Secretary, Revenue & Forest  
Department(Forest), Govt. of Maharashtra & Ors.

....Respondents

### WRITTEN NOTES ON BEHALF OF THE APPLICANTS:

1. The grievance of the Applicants is that, the constructions done in reserved forest area by the Respondent no.13 i.e. Murti Nirman Committee, in addition to the 108 ft. Bhagwan Rushabhdev Murti carving, from 6.05.1999 to 12.02.2018, is encroachment on forest land.
2. Central Govt. had diverted 0.80 R of reserved forest land through Forest Clearance dated 06-05-1999 (**Page 66-72**) only for Murti carving. Said 0.80 R area was never identified and demarcated (**Page 230**). However, Resp. No. 13 did not have any forest clearance for making an approach road from the foothills till the Murti site (**Photos Page 95-96**) (**Averments at para 17, page 14, point e**). They cut trees and the hill for making the road. They obtained a post facto Forest Clearance on 12-02-2018 for the said road and for other facilities (**Page 62-65**).

3. By causing blasting activity, they carved out the Murti and the excavated huge boulders and stones were dumped off the cliff on both the sides haphazardly. **(Photos at page 56-61)** This has resulted in destruction of reserved forest for which they are liable to pay compensatory cost.
4. The present application highlights reserved forest destruction and non compliance of mandatory conditions in first forest clearance dated 06-05-1999 **(Page 8-16)** and 12-02-2018 **(Page 31-35)**. There is also dereliction of duty on the part of the Forest Department for these illegalities. **( Prayers are Page no.52)**
5. Sub Divisional Forest Officer, Malegaon, Nashik has submitted an affidavit dated 9<sup>th</sup> August, 2018 in pursuance of the Hon'ble Tribunal's directions dated 9<sup>th</sup> July, 2018. **At page 229 (internal page 2)**, Forest Department has stated, that vide letter dated 06-05-1999, forest land of H 0.80 R of village Bhilwad was diverted for construction of temple and Digambar Jain Murti. And, as per letter dated 02-02-2018, reserved forest land admeasuring 2.73 Hector is diverted for construction of road, electric and water pipeline, parking shed, murti platform etc.
6. Sub – Divisional Forest Officer, Malegaon and Sub – Divisional Officer, Tal. Baglan, Nashik have filed a joint report in the form of an affidavit dated 8<sup>th</sup> February, 2019 **(page 394)** in pursuance of the Hon'ble Tribunal's directions dated 9<sup>th</sup> July, 2018. It contains the identical averments like the ones made in the affidavit dated 9<sup>th</sup> August, 2018, as stated above.

7. In para 3 of the said affidavits, explaining Roads, the State Forest Dept. admits that the RFO, Taharabad made provisions regarding improvement of the Kachha road to the Murti site, based on approval granted by the Collector in the year 2011. According to Ex. D-2 (**Page 306**) annexed by the Forest Department in their Affidavit, letter dated 06/01/2011 by the District Collector, amount of Rs. 10,00,000/- was released for Mangi Tungi Fort Tourist Development works which includes 1. Making road ; 2. Constructing iron grills ; 3. Construction of Pagoda.
8. The Collector gave administrative approval with various conditions. First condition was to utilize the funds specifically for Adivasi improvement works and the same was to be used in Adivasi area only. Second condition specifically says that funds cannot be used outside Adivasi area.
9. Contents of Administrative Approval granted by the District Collector, dated 06/01/2011 are self-contradictory. It is surprising that funds meant for Adivasis as per the conditions of the letter, have been utilized by the Forest Department for developing tourist facilities which are owned, operated and maintained by Resp no. 13. In the said letter, there is no mention of any prior approval granted neither by the State Govt. nor the Central Govt. These works were sanctioned and carried out without any Forest Clearance. Letter by Collector is irrelevant. It does not permit diversion of forest land for non forest purpose. The Collector, Nashik has no power to grant permission for

construction of a road in forest area, so he has exercised his power without any jurisdiction.

10. Further, in para no. 3, sub para 5 of the Forest Affidavit (**page 231, internal page 4**), Govt. of Maharashtra vide letter date 20/01/2016 accorded temporary permission for electric and water supply, usage of natural pathway (said road) and temporary washrooms etc. for Maha Mastak Abhishek ceremony, as per guidelines by Govt. of India dated 07/10/2014. The said letter is annexed at Ex. 1 (**page 316**).

11. Such permission for temporary works accorded by the Central Govt. letter dated 07/10/2014 is an alien concept to the Forest Conservation Act. The Act is very clear, no non forest works can be carried out in Forest Area without prior approval from the Central Govt. in the form of Forest Clearance. Central Govt.'s letter dated 07/10/2014 and State Govt.'s letter dated 20/01/2016 are totally violative of the provisions of the Act. Copy of the Central Govt.'s Guidelines dated 07/10/2014 is on (**Page 589**).

12. The said letter has been discussed by the Principal Bench of this Hon'ble Tribunal in OA No. 87/2015, Social Action for Forest and Environment (SAFE) v. Union of India, dated 10/12/2015. (**The letter dated 7<sup>th</sup> October, 2014 is referred at page no. 636, internal page 46 of the said judgment.**) –

*“ 50. ... Thereafter, MoEF vide its letter dated 7th October, 2014 issued guidelines for diversion of forest land for non-forest*

*purposes or execution of temporary work in the forest land. This was a letter generally issued by MoEF as it had received representation from different quarters. Vide this letter it clarified that the work which does not involve any tree cutting, is a temporary work and the approval as contemplated under Section 2 of the Conservation Act is not required. However, it clarified that temporary work in the forest land which does not involve breaking up or clearing of any forest land or portion thereof assigned by way of lease or otherwise to any person or using forest land does not create any right on such forest land or such will not require prior approval.*

*51. Principally, it was on the strength of these two letters issued by MoEF that the State of Uttarakhand had been issuing permits and do not insist upon approval from the Central Government in terms of Section 2 of the Conservation Act. ... (page 636)*

*55. ... In the case of Ambica Quarry Works vs. State of Gujarat (1987) 1 SCC 213 and Nature Lovers Movement vs State of Kerala (2009) 5 SCC 373 it was clearly held that primary purpose of the Act is to prevent further de-reservation and ecological imbalance. Further that the State Government cannot suo-moto de-reserve or reserve the forest land and permit the use for nonforest purpose without obtaining prior approval of the Central Government.*

*95. ... The cumulative effect is that the approval of the Central Government, even as a policy matter would be necessary.*

*Compliance to the provisions of Section 2 in these cases is mandatory. The letter of MoEF dated 28th August, 1998 is clearly in conflict with the statutory provisions. An office letter cannot waive what is statutorily covered under the Conservation Act. This Act even does not vest any power in MoEF to exclude non-forest activities in a forest area which do not fall within the specified category in the section itself...*

**(Page 681)**

*... It is a settled principle of law that statutory provisions cannot be amended or varied by office letters, much less the letters which could not be implemented when they are in not conformity with the statutory provisions. (Page 681)*

*Whether utilisation of the forest area has to be permitted or not must essentially follow the legislative provisions contained under Section 2 of the Conservation Act. The Central Government must grant its prior approval in that regard and such condition should regulate measures as they may be necessary for the purposes of protecting the forest and environment both. (Pages 682-683) ”*

13. And therefore, in the present case, the Central Govt.'s Guidelines dated 07/10/2014 and permission given by the State Forest Dept., dated 20/01/2016 need to be quashed and set aside as being ultra vires to the provisions of the Forest Conservation Act.

14. The State Forest Department vide letter dated 20/01/2016 has granted permission for temporary works which were asked for by

Respondent No. 13 in their application dated 17/12/2015 for diversion of 2.73 Ha of reserved forest land for construction of road, electric and water pipeline, parking shade, murti platform etc. Some of these works were already done by the Revenue & Forest Dept. and Respondent No. 13 by taking the umbrage of Collector's administrative approval dated 06/01/2011 (Exh-D-2) **(Page 306)**, State Forest Dept.'s approval dated 20/01/2016 (Exh-E-1) **(Page 316)** and funds release letter by the Collector, dated 07/01/2016 (Exh-E-3) **(Page 325)**.

15.State Forest Dept. granted Ex – Post Facto Forest Clearance on 12/02/2018 for the same works which were already undertaken and completed in the year 2016, based on permission granted on 20/01/2016.

16.In paragraph no. 3, sub – para no. 6 of their affidavit, as per Ex-E-3, Funds release letter by Collector dated 07/01/2016, there is mention of releasing funds for pathway, road works, iron railings, etc. Whereas, in the same paragraph no. 3, sub – para no. 4, the State Forest Dept. granted permission for the said works later on 20/01/2016 as per Exh. E-1. It is strange to see that funds for a particular project are released even before the said project is granted permission to be undertaken. Normally, approval for any project is granted first and then funds are released, but in the present case it seems to be the other way round. Forest Dept. is put to strict proof thereof.

17. In paragraph no. 5 of their affidavit (**Page 232**), the Boulders lying at site, there is clear admission by the State Forest Dept., that “Dumping of stones and boulders out of carving of Jain Murti from the hill are found in eastern and western side to the extent of Eastern side an area of 3.179 Ha and area of 3.591 Ha at Western side, total area is 7.310 Ha. The material i.e., stone and boulders are found to be derived from the carving of murti at hill from the sanctioned 0.80 Ha.”

18. Resp. No. 13 has constructed 14-15 rooms at the foothills. (**Page 31, para 55, condition xi**). They never had forest clearance for the said construction. According to the in-principle approval granted by the Govt. of India dated 5<sup>th</sup> July, 2017 (**Page 165-168**), for diversion of 2.73 Ha of reserved forest land in favour of Resp. No. 13, for constructing road and other facilities, one of the important condition was, no labor camp should be established (**Condition no. xi, page 167**). Resp. No. 13 has also given an undertaking to that effect (**Page 176**). They have also given undertaking that no construction of house or other dwelling structures will be done on the project area (**Page 177**). They have also given an undertaking that forest land will not be used for any other purpose other than the one specified in the proposal dated 06-11-2017 (**Page 180**).

19. However, Resp. no. 13 constructed 14-15 rooms at the foothills (**photos page 74-75**), the said rooms bears the name of one of the senior religious figures of Resp. No. 13 trust. Resp. No. 13

have also constructed rooms on the Mangi hill near to the Murti site (**Page 76**). All those rooms at the foothills and on the hill have been used as labour camps, which is in violation of the condition of letter dated **05-07-2017 (Page 165-168) and 02-02-2018 (Page 208-210)**. Even after giving photographic evidence, all committee reports have denied their existence.

20. Condition no. 2 of the letter dated 06-05-1999 states that atleast 500 Hectors of degraded forest land should be rehabilitated. By now thick vegetation should have developed, however the area has hardly any tree growth.

21. One of the important conditions on which 2.73 Ha of forest diversion was granted by the Central Govt., was that the proposed activity should not affect any structure of religious or archeological importance. But Respondent no. 1 to 12 misled the Govt. of India to take permission for 2.73 Ha reserved forest land hiding the existence of ancient caves at same place.

22. The Sub – DFO Malegaon issued certificate on 17/12/2015 (**Page 81**) stating that the proposed facilities at the Murti site is not going to affect any monument site of cultural, historical, religious, archeological or recreational purpose. Whereas he was not only aware of their existence, but was even aware of the destruction which was being caused by the boulders sliding and running down. Photos showing destruction of ancient archeological sites (**page 82-85**).

Certificates of the archeological sites are at (**page 701-719**).

Objections filed by the Applicants to the joint committee report are at **Page 564-579**.

23. On 01-07-2020, the Hon'ble Tribunal constituted a joint committee of MPCB and Forest Department to submit a report. Accordingly, a report dated 12/10/2020 was submitted (**Page 720-723**). Important observations of the said report are as follows –

- 1) The Forest Department accepts that the Murti area is part of reserved forest.
- 2) The Forest Department accepts that boulders lying at the site are derived from the carving of the Jain Murti.
- 3) The Forest Department admits that the Resp. No. 13 has constructed the approach road to the Murti site is allocated to them for Murti construction according to the 06/05/1999 forest clearance. In reality it needs to be observed that the said road is in excess of the 0.80 Ha. Resp. No. 13 has obtained post facto forest clearance dated 12/02/2018 for the said road and other amenities.
- 4) The Forest Department has given two contradictory findings in two different reports submitted by them on 09/08/2018 and 08/02/2019. In both those reports, the Forest Department states that Respondent No. 13 has occupied an area of 0.787 Ha. instead of 0.80 Ha. Whereas in the current joint report, it states that the Murti and the kaccha road is occupying 0.80 Ha.

- 5) It needs to be observed that 0.80 Ha was allocated exclusively for Murti construction. Forest Department is wrongly trying to include the approach road in the said 0.80 Ha. In reality, the approach road is in excess of 0.80 Ha.
- 6) The Forest Department accepts that the boulders have caused destruction of forest and biodiversity.
- 7) The Forest Department is plainly stating that removal of boulders is highly expensive and practically not feasible. It shows the intention of the Forest Department that they don't want to remove the said boulders encroaching the forest land and don't want to restore the forest land to its original state.

Objections filed by the Applicants to the joint committee report is at **Page 762-765**.

24. MoEF & CC, Govt. of India has issued Guidelines on 29-01-2018, for imposition of penalty on User Agencies for violation of FCA wherein proposal is under consideration for grant of Forest Clearance and forest land is diverted before grant of Forest Clearance. **(Page 580-582)**

25. According to Guideline B, penalty for violation shall be equal to NPV of forest land per hectare for each year violation from the date of actual diversion as reported by the inspecting officer with maximum upto five times of NPV penalty plus 12 % simple interest till the deposit is made. In the present case, forest land is

damaged by Resp. No. 13 from the year 1999 till date and the NPV needs to be recovered jointly from State Forest Department as well as Resp. No. 13.

26. According to Guideline C, violation/non – compliance of any conditions imposed while granting approval under FCA, penalty has to be imposed by the APCCF, for violation committed over forest area, without approval, equal to the normal NPV. Guidelines of the Govt. of India letter dated 29/01/2018 need to be considered while imposing penalty on Resp. No. 13 and State Forest Department.

27. On 05-09-2022, Hon'ble Tribunal constituted a joint committee consisting of officers from MoEF&CC and State Forest Department. The said committee submitted its report at **Page 1449-1451.**

Observations of the joint committee report are as follows –

- 1) There is environmental destruction caused due to dumping of debris of the rocks cut for the establishment of statute. The area affected is 7.310 Hectors.
- 2) 0.29 Ha encroachment by villagers has been removed.
- 3) 0.0134 Ha encroachment is done by the Old Trust. Case is pending with the Sessions Court at Malegaon.
- 4) Density of adjoining area where debris has been dumped is less than 0.4.
- 5) It is difficult to remove the debris dumped on forest area.

- 6) The committee has opined that as it is difficult to remove the debris without further affecting the adjoining forest area, Net Present Value to the tune of Rs. 3,50,06,860/- should be recovered from the User Agency i.e., Resp. No. 13.
- 7) Committee opined to arrest the rolling boulders, Gabion wall should be constructed on lower side of the debris area. Estimate for the same is Rs. 1,98,662.
- 8) Forest Department should undertake plantation on equivalent area that is 7.310 Ha and the cost of plantation should be recovered from the User Agency. Estimate for the said plantation has been calculated to Rs. 28,69,312.

28. The Applicants have filed objections to the said committee report (**Page 1452-1456**). Applicants have contended –

- 1) Although the Committee was tasked to give prior notice to all the parties, the Committee gave notice only to Resp. No. 13, who remained present on 19-10-2022. Office bearers of the Resp. No. 13 Trust came from New Delhi and Hastinapur and accompanied the committee members and caused unilateral joint inspection, without any applicants present.
- 2) This fact was brought to the fact of the Hon'ble Tribunal and accordingly re-inspection was ordered. During re-inspection, committee members didn't revisit the spot

alongwith the applicants. They held a meeting at the Taharabad Govt. Rest House.

- 3) Committee members are not experts in civil engineering. They cannot give solutions for removing those boulders. Construction of Gabion Wall for arresting the rolling down of the boulders during monsoons is no solution. Gabion Wall constructed on hill slope won't remain intact due to change in weather.
- 4) The Applicants fear that if there are very heavy rains, the Gabion Wall might not be able to withhold the pressure of mud and huge boulders and it might burst open, thereby causing destruction of the entire village downhill. Removal of those boulders is the only solution.
- 5) Therefore it is necessary to appoint NEERI, National Highways Authority of India, Maharashtra State Road Development Corporation, Border Research Organisation or any other Civil Engineering Research Institute to suggest ways of removing those boulders.
- 6) The Committee was directed to do spot visit of the entire area. The scope of work included visiting the unauthorized road, construction of 14-15 rooms at the foothills and unauthorized constructions near to the Murti, as well. Whereas it seems that, they have visited only the dumped debris and boulders and given their opinion thereupon.

7) The said 14-15 rooms don't have Forest Clearance even today. Photos of the said rooms are at **(page 74-76)**.

8) Committee has neither measured nor given any opinion of the unauthorized kaccha road constructed by Respondent no. 13 from the foothills till the Murti site.

9) Committee has not calculated the Environmental Compensation to be levied on Respondent no. 13 for causing Reserved Forest Destruction due to dumping of boulders, construction of unauthorized road by doing tree cutting and hill cutting, construction of 14-15 rooms at the foothills and unauthorized constructions near to the Murti.

29. Dr. Pannalal Papdiwal and his son Mr. Sanjay Papdiwal, the representatives of the Resp. No. 13 trust are from Paithan, Aurangabad. Both of them are not residents of the Village Bhilwad, Mangi Tungi as they are not registered voters over there. Voter registration details as available on the websites of National Voters Service Portal of the Election of India and Chief Electoral Officer, Maharashtra show that both Dr. Pannalal Papdiwal and his son Mr. Sanjay Papdiwal are registered as voters in Paithan Assembly Constituency, Aurangabad. Voter registration details of both Dr. Pannalal Papdiwal and his son Mr. Sanjay Papdiwal are at **(Page 783-792)**.

30. According to the guidelines issued by the Govt. of Maharashtra GR No. SLF-1091/CR-119/91/F-11 dated 16/03/1992, Govt. of India's GR No. 22.8/2000-JFM (FPD) dated 25/04/2000 **(Page**

793-806), and the Handbook issued by the MoEF & CC on JFMC (Page 807-815), members of the Joint Forest Management Committee should comprise of local villagers who are members of the Gram Sabha. Dr. Pannalal Papdival is not a local resident of the Village Bhilwad, Mangi Tungi. Dr. Pannalal Papdival was Vice President of the previous Joint Forest Protection Committee (JFPC) and also represented the Respondent No. 13. By acting in dual capacity, he abused his position as the Vice President of the previous JFPC and dominated the former JFPC and got all the works done in favour of Respondent No. 13. Details of the same are given in Para 17 (2) page 8 onwards of the Compilation I of the present Original Application.

31. Dr. Papdival claimed that Murti Nirman works were authorised by the former JFPC. Whereas JFPC hadn't undertaken any such work. Instead of protecting the forest and undertaking plantation activities, Respondent No. 13 cut down hundreds of trees and the hill by using heavy machinery. Therefore the then JFPC removed him as the Vice President of JFPC on 28-02-2002 (Page 816-820).

Citations in support :

1. Appeal No. 26/2021 Mr. Narayan Motiram Hindalekar v SEIAA, Common Judgment passed Appeal 27/2021 to Appeal No. 31/2021 and Appeal No. 05/2022 Jagannath Pandurang

# 1537

Sinnari v SEIAA, all passed on 28/02/2023. **(Annexed collectively as Annexure 1)**

Pune

Date : 28-01-2024



Aniruddha S Kulkarni  
Advocate for the Applicants

**BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

**Appeal No. 26/2021 (WZ)**

**IN THE MATTER OF :**

**1. Mr. Narayan Motiram Hindalekar,**

Gut No. 893, Village- Lingdal,  
Tal- Devgad, Dist- Sindhudurg,  
Maharashtra 416611  
Email: ssparab2700@gmail.com

**.....Appellant**

**Versus**

**1. State Environment Impact Assessment Authority-  
Maharashtra(SEIAA)**

Through Member Secretary,  
Environment Department,  
Room No. 217, 2<sup>nd</sup> floor,  
Mantralaya Annexe, Mumbai-400032, Maharashtra  
E-mail: psec.env@maharashtra.gov.in

**2. Ministry of Environment, Forest and Climate Change,**

Through its Secretary,  
Indira Paryavaran Bhavan, Jorbagh Road,  
New Delhi 110001.  
Email: secy-moef@nic.in

**....Respondent(s)**

**Counsel for Appellant(s):**

Mr. Saurabh Kulkarni, Advocate

**Counsel for Respondent(s):**

Mr. Aniruddha Kulkarni, Standing Advocate for R-1  
Mr. Rahul Garg, Advocate for R-2

**PRESENT:**

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

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**Reserved on : 21.02.2023**

**Pronounced on : 28.02.2023**  
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**Judgment**

1. This appeal has been filed against the order dated 13.08.2021, passed in the minutes of the meeting of the same date of Respondent No.1- SEIAA-Maharashtra.

2. The brief facts of the case are as follows:

The appellant, who is businessman by profession and is the owner of the land bearing Gat No. 893, Village: Lingdal, Taluka- Devgad, District- Sindhudurg is operating quarry of laterite stones, which lies in category B2 of the EIA Notification, 2006. The Appellant is excavating the laterite stone approximately upto 4 to 6 mtrs., depending upon availability of hard strata through blade cutting mechanism, without blasting and drilling and process is environmentally friendly. After removal of the laterite stone, the same would be used for construction and the soil strata is utilized for mango and cashew plantation. The appellant is operating the said quarry under temporary consent granted from time to time up to 7<sup>th</sup> April, 2013, which provided employment to approximately 10 villagers from Lingdal and nearby villages. The Appellant had incurred huge investment on this project to the tune of Rs. 25 lakhs. The Government of India appointed the Western Ghats Ecology Expert Panel (WGEEP) headed by Prof. Madhav Gadgil to demarcate the ecologically sensitive zones of Western Ghat region and suggest measures to project and rejuvenate the ecology, which has submitted its Report dated 15<sup>th</sup> April 2013. This Tribunal on 12<sup>th</sup> November, 2013, passed an interim order in M. A. No. 868 of 2013 in Original Application No. 26 of 2012 to the effect that it is not mandatory for the MoEF to decide the application for any clearances in the permissible area of the Western Ghats only with reference to Gadgil Report. They are free to take into consideration either the Report or other relevant factors in accordance with law. Accordingly, the Respondent No.2-MoEF&CC had issued directions under Section 5 of the Environment (Protection) Act, 1986 on 13<sup>th</sup> November, 2013 and annexed the list of the villages in Eco Sensitive area of the Western Ghats which is also showing village Lingdal under ESA. The State Level

Assessment Committee was not considering the Application of the Appellant, thus the appellant sought status of the proposal under the RTI Act which has stated that the appellant's proposal was kept pending on account of the draft notification of the ESZ of Western Ghats. Thereafter, the appellant approached this Tribunal by filling appeal No. 42 of 2015 challenging the said communication and vide judgment dated 17<sup>th</sup> August, 2015 the State Level Impact Assessment Authority was directed to decide the application of the Appellant within three months, but even then no decision was taken thereon. Thereafter, the Appellant filed an Execution Application No.23 of 2016 before the Tribunal. During the pendency of the Execution Application, the said Authority took a decision and deferred the proposal of the Appellant. Subsequently, the Appellant filed an application under Section 14 of the National Green Tribunal Act, 2010, seeking directions for expeditious decision in his case, which was decided by the Tribunal vide order dated 27<sup>th</sup> December, 2016 directing the Government of India to take a decision within three months. The Tribunal had also issued show cause notice to the Member Secretary of the State Environment Impact Assessment Authority seeking explanation of this delay. The EAC of the Government of India did not take decision within three months and kept the proposal pending again and again. On 15.11.2017, the Committee directed the appellant to submit the online proposal, which was complied with and the proposal came up for consideration on 21<sup>st</sup> and 22<sup>nd</sup> December, 2017, but the same was rejected on the ground that it was received after 17<sup>th</sup> April, 2013 and was not found to be covered under the exemption as stated in the directions dated 13<sup>th</sup> November, 2013. The Government of Maharashtra after conclusion of the meeting addressed a letter to the EAC, MoEF, GOI seeking the exact date of submission of proposal of the appellant. The Government of Maharashtra vide its letter dated 2<sup>nd</sup> April, 2018 clarified that the proposal of the appellant was received by them on 12<sup>th</sup> April, 2018 which was well within the cut- off date. Thereafter, the

appellant challenged the said order before this Tribunal by filing an appeal under Section 16 of the National Green Tribunal Act, 2010 and this Tribunal had remanded the matter to the Respondent to decide the same within three months. Thereafter case of the appellant was placed before the State Environment Assessment Committee, Government of Maharashtra (SEAC) on 10<sup>th</sup> February, 2021 and the Committee recommended the proposal for grant of EC. Thereafter, the appellant's case was placed before the Respondent (It appears to be SEIAA) on 13<sup>th</sup> August, 2021. It was observed by it that the proposal was received before the cut-off date 17<sup>th</sup> April, 2021. But even then the proposal was rejected on the ground that the quarry of the Appellant falls within the Eco-Sensitive Zone. In the case in hand the appellant's proposal was not decided for a period of about 8 years resulting in loss of the revenue to the appellant and appellant was aware of the fact that the quarry of the appellant will be phased out after a period of five years. The fact that the Notification of the Eco Sensitive Zone is yet to be finalized, **has not been considered by the Respondent and yet the proposal has been rejected on the basis of draft Notification.** The draft Notification was issued by the Government of India regarding Eco-Sensitive Zone on 10<sup>th</sup> March, 2014, 4<sup>th</sup> September, 2015 and 27<sup>th</sup> February, 2017 and finally on 3<sup>rd</sup> October, 2018 and yet it is not finalized. The Respondent No.1 has recommended the grant EC to other projects in the same district. Hence, the above prayer has been made.

3. The stand of **Respondent No.1-SEIAA** is as follows:

In the meeting of SEIAA held on 10.12.2021, it was observed that the mining proposal fell in Western Ghat Eco-Sensitive zone as per MoEF&CC draft notification for Western Ghat ESA. It was observed by the answering Respondent that the said draft notification completely prohibits mining, quarrying and sand mining etc., in order to protect, preserve and nurture the rich biodiversity and environmental integrity of the Western Ghats and also to check further degradation of the fragile

ecology of the said area. The draft Notification also mandated that all existing mines be phased out within five years from the date of final notification or on the expiry of the existing mining lease, whichever is earlier. In view of the above, the answering Respondent decided to reject the proposal.

4. The stand of **Respondent No.2- MoEF&CC** is as follows:

From the side of MoEF&CC at the time of argument learned counsel Mr. Rahul Garg stated that reply affidavit which has been filed by it in Appeal No. 05/2022 should be read as reply in this case as well.

The answering Respondent re-published draft of Western Ghats Ecological Sensitive Area Notification on 06.07.2022, since the earlier draft dated 03.10.2018 could not be finalized and consequently lapsed on 30.06.2022. The said draft notification prescribes for projects and activities to be prohibited or regulated in the Eco-Sensitive areas. It laid down that the projects and activities shall be prohibited in Eco-sensitive Area except those proposals which have been received by Expert Appraisal Committees or the Ministry of Environment, Forest and Climate Change or State Level Expert Appraisal Committees or the State Level Environment Impact Assessment Authorities before 17<sup>th</sup> April, 2013, the date on which the High Level Working Group report was uploaded on the website of the Ministry and are pending consideration. Such proposals shall be dealt with in accordance with the guidelines and rules in existence at that time. It also prescribes that mining activity in the ESA of Western Ghats would be prohibited activity, the relevant part of the paragraphs reproduced hereinabove :-

*“(a) Mining- There shall be a complete ban on mining, quarrying and sand mining in Ecologically Sensitive Area and all existing mines shall be phased out within five years from the date of issue of the final notification or on the expiry of the existing mining lease, whoever is earlier.”*

Further, it is submitted that as per the provision of Section 23(c) of Mines and Mineral (Development and Regulation) Act (MMDR Act), the

State Government is empowered to make rules for preventing illegal mining, and transportation & storage of illegal minerals and all such activities shall be dealt with under the provision of the said Act. Further, it is mentioned that State Pollution Control Board (SPCB) is the nodal agency to deal with cases related to Pollution or environment management coming under the purview of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment Protection Act, 1986, which shall initiate appropriate action under the relevant provision.

5. From the pleadings stated above, it is absolutely clear that the appellant is aggrieved by the passing of order dated 21<sup>st</sup> December, 2021 by way of minutes of meeting by SEIAA declining the revalidation of earlier granted EC dated 16.01.2016 for stone quarry in the above mentioned area on the ground that the said decision was taken on the basis of draft Notification issued by the MoEF&CC regarding Western Ghat Eco-Sensitive Zone, wherein it is observed that the mining proposal in question falls in Western Ghat Eco-Sensitive zone and that SEIAA observed that in order to protect, preserve and nurture the rich biodiversity and environmental integrity of the Western Ghats and to further prevent degradation of the fragile ecology of the Western Ghats, the said notification completely prohibits Mining quarrying activity and that as per direction (being said to be notification by the SEIAA) dated 13.11.2013 which is annexed Page No. 23 to 25 of the paper book, all existing mines were to be phased-out within five years from the date of final notification or on the expiry of the existing mining lease, which is earlier.
6. The main argument which has been made by the learned counsel for the appellant is that the Respondents have failed to finalize the Eco-Sensitive areas in Western Ghat because the matter is said to be under consideration since the issuance of first draft notification in this regard on 10<sup>th</sup> March, 2014, which was allowed to be lapsed and second draft

notification was issued in this regard on 3<sup>rd</sup> October, 2018, but till then it could not be finalized and a fresh draft notification has been issued thereafter on 30<sup>th</sup> June, 2022. Therefore, it indicated that they are keeping this matter undecided deliberately which has resulted in lot of inconvenience and financial loss to the appellant which had already been granted EC on 16.01.2016 for the quarry in question for five years which should further extended for seven (7) years by Office Memorandum dated 12.04.2016 issued by the Respondent No.4 and that since the mining lease dated 10.10.2016, granted to the appellant came to an end, the appellant had to approach Respondent No.4 for approval of its renewal but he was directed to seek revalidation of EC, which has been illegally rejected on the basis of draft notification stated above. It is also urged by him that in case Tribunal is not agreeable to allow the appeal, whatever material already been mined which is kept on the place, the same should be allowed to be taken away by the appellant so that he may not incur any further loss. He also urged that he had made a number of efforts for procuring the EC as well as various consents from relevant authority and had to approach this Tribunal again and again and despite the Tribunal having passed several order regarding consideration of the application of the appellant, no positive decision has been taken by the authority. Only to harass the appellant shelter is taken of the draft notification cited above laying down that the mining project in the area where the appellant is seeking mining project to be operated falls in eco-sensitive zones of Western Ghats despite the fact that no final notification has come into force. It is settled law that the provision of draft notification would not be enforceable till the same is finalized. It is further emphasized that the area where the appellant is seeking permission for mining, has been proposed to be excluded from the list of villages which are falling in eco sensitive area of Western Ghat and attention is drawn to the document in this regard annexed at Page No. 63 to 65 of the paper book.

7. On the other hand from the side of learned counsel for the Respondent Nos. 1, 2 and 3, it is vehemently argued that the draft notification classifies the area in question to fall in highly eco-sensitive zone in Western Ghat and that the said area needs to be protected strongly and that no mining activity can be allowed to take in the said area in order to keep intact the integrity of the ecology of the said area. It is further emphasized that the finalization of the draft is under process which is a long term process. Sincere the efforts are going on in order to finalize the same since the year 2014, the process being extremely tedious and sensitive. An extreme cautious approach is being adopted. It cannot be said that no action is being taken for early finalization of the draft and that the appellant is being deliberately harassed. It is also emphasized that 'Precautionary Principle' needs to be adopted in the present case looking to the highly eco-sensitivity of the area in question and that no such permission should be allowed to mine mineral from the said area even if the final notification is yet to be issued.
8. We, after having considered the rival contentions, are of the view that the draft Notification dated 06.07.2022 contains that earlier notifications were issued in 10<sup>th</sup> March 2014 and 5<sup>th</sup> December, 2018 and that in the draft notification, it has been clearly laid down that the village in question where the appellant is seeking permission for quarrying is falling in eco-sensitive zone of the Western Ghat, therefore, taking into consideration the precautionary principle, it would be advisable not to permit any mining activity. Simply because the final notification is yet to come, does not mean that the draft notification should be ignored.
9. We may rely in this regard upon the judgment of the Hon'ble Supreme Court in **Godavarman Thirumulpad Vs. Union of India, (2012) 3 SCC 277 and M. C. Mehta Vs. Kamal Nath, (1997) 1 SCC 388**, where-in in para 8, it has been laid down that "no mining operation of any kind in the Western Ghat is to be countenanced". We may also rely on judgment

passed by this Tribunal in **Goa foundation vs. Union of India 2018**

**SCC OnLine NGT 1320** where-in in para 11 following is held:

“11. It is well acknowledged that ecology of the Western Ghat region is under serious stress. In *t. N. Godavarma Thirumulpad V. Union of India, (2006) 1 SCC 1* it was noted that Western Ghats region is one of the richest biodiversity area which needs to be conserved. In *T. N. Godavarm Thirumulpad Vs. Union of India, (2013) 8 SCC 228, mining operations in sensitive Western Ghats were directed to be restricted.*”

Further, we may rely upon the judgment of this Tribunal passed in Execution Application No. 19/2019 In O. A. No. 597/2018 (M. A. No. 121/2019 & I. A. No. 703/2019) where-in the issue under consideration was the remedial steps to be taken for protection of ecology of Western Ghats which is an eco-sensitive area within the meaning of relevant notification under the Environment (Protection) Act, 1986 where-in following is held :

6. *“Having regard to the earlier delay and violation of undertaking given to this Tribunal and need for speedy finalization of the notification, the ongoing proceedings cannot be unending and need to be suitably curtailed. In any case, matter must not remain hanging beyond the schedule now proposed. Accordingly, we direct that if there is a further default and delay beyond 31.03.2020, we may have to direct the Advisor, ESZ Division will not be entitled to salary till compliance and that the draft notification be deemed to the final from 01.04.2020.”*

We may also place reliance on the judgment dated 06.04.2022 passed in **O. A. 801/2018 in Jasmeet Singh Vs. State of Himachal Pradesh** with connected with Original Application No. 136/2020, **Veterans Forum for Transparency in Public Life Vs. State of Himachal Pradesh & Ors.**, where-in the matter which came up for consideration was remedial action against the failure of the authorities in the State of Himachal Pradesh in preventing pollution of rivers in the Solan District, where-in in para 15 it has been recorded that “we consider it appropriate to direct under Section 15(1) of the NGT Act that pending finalisation by the MoEF&CC, standards proposed in the draft Notification dated

23.01.2020, which are based on expert studies, be strictly followed by all concerned.”

10. We can take assistance from the above decision wherein draft notification had been directed to be followed by this Tribunal in the above mentioned cases in the present case as well, since the draft notification has been prepared based on expert study, till the finalization of the same, we can take assistance of it, as regards holding the area in question to be eco-sensitive area of Western Ghat where no mining activity may be permitted.
11. We have also considered the prayer made by the learned counsel for the appellants that whatever mined material is lying at the spot should be permitted to be carried away by the appellants so that the appellants do not suffer on that count. In this regard our view is that since no mining activity is permissible in the area, we do not deem it appropriate to allow this prayer of the appellants, rather we direct the appellant to put back the mined material in the area from where it has been excavated so that said area is restored to its original position, within a period 2 months from today and that Maharashtra Pollution Control Board shall ensure that the said direction is complied with. The MPCB shall also submit its report in this regard before this Tribunal within a period one month thereafter.
12. Based on above citations and the position of law as also taking into consideration the precautionary principle, we are of the view that the present appeal deserves to be rejected having no force and it is accordingly rejected. No order as to costs.

Dinesh Kumar Singh, JM

Dr. A. Senthil Vel, EM

February 28, 2023.  
Appeal No. 26/2021  
Sachin J.

**BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

**Appeal No. 27/2021 (WZ)**

- 1. Mr. Chandrakant Vishnu Poojare,**  
Gut No. 1201,1210,1211, Village- Mine,  
Tal-Kankavali, Dist- Sindhudurg,  
Maharashtra 416602  
Email: ssparab2700@gmail.com

**.....Appellant**

**Versus**

- 1. State Environment Impact Assessment Authority-  
Maharashtra(SEIAA)**  
Through Member Secretary,  
Environment Department,  
Room No. 217, 2<sup>nd</sup> floor,  
Mantralaya Annexe, Mumbai-400032, Maharashtra  
E-mail: psec.env@maharashtra.gov.in

- 2. Ministry of Environment, Forest and Climate Change,**  
Through its Secretary,  
Indira Paryavaran Bhavan, Jorbagh Road,  
New Delhi 110001.  
Email: secy-moef@nic.in

**....Respondent(s)**

**With**

**Appeal No. 28/2021 (WZ)**

- 1. Mr. Sadashiv Mahadev More,**  
Gut No. 1381, Village- Mine,  
Tal-Kankavali, Dist- Sindhudurg,  
Maharashtra 416602  
Email: ssparab2700@gmail.com

**.....Appellant**

**Versus**

- 1. State Environment Impact Assessment Authority-  
Maharashtra(SEIAA)**  
Through Member Secretary,  
Environment Department,  
Room No. 217, 2<sup>nd</sup> floor,  
Mantralaya Annexe, Mumbai-400032, Maharashtra  
E-mail: psec.env@maharashtra.gov.in

**2. Ministry of Environment, Forest and Climate Change,**

Through its Secretary,  
Indira Paryavaran Bhavan, Jorbagh Road,  
New Delhi 110001.  
Email: secy-moef@nic.in

**...Respondent(s)**

**With**

**Appeal No. 29/2021 (WZ)**

**2. Mr. Pramod Sadanand Kambli,**

Gut No. 1091, Village- Mine,  
Tal-Kankavali, Dist- Sindhudurg,  
Maharashtra 416602  
Email: ssparab2700@gmail.com

**.....Appellant**

**Versus**

**3. State Environment Impact Assessment Authority-  
Maharashtra(SEIAA)**

Through Member Secretary,  
Environment Department,  
Room No. 217, 2<sup>nd</sup> floor,  
Mantralaya Annexe, Mumbai-400032, Maharashtra  
E-mail: psec.env@maharashtra.gov.in

**4. Ministry of Environment, Forest and Climate Change,**

Through its Secretary,  
Indira Paryavaran Bhavan, Jorbagh Road,  
New Delhi 110001.  
Email: secy-moef@nic.in

**...Respondent(s)**

**With**

**Appeal No. 30/2021 (WZ)**

**3. Mr. Mahadev Balkrishna Parkar,**

Gut No. 974(Part), Village- Mine,  
Tal-Kankavali, Dist- Sindhudurg,  
Maharashtra 416602  
Email: ssparab2700@gmail.com

**.....Appellant**

**Versus**

**5. State Environment Impact Assessment Authority-  
Maharashtra(SEIAA)**

Through Member Secretary,  
Environment Department,  
Room No. 217, 2<sup>nd</sup> floor,  
Mantralaya Annexe, Mumbai-400032, Maharashtra  
E-mail: psec.env@maharashtra.gov.in

**6. Ministry of Environment, Forest and Climate Change,**

Through its Secretary,  
Indira Paryavaran Bhavan, Jorbagh Road,  
New Delhi 110001.  
Email: secy-moef@nic.in

....Respondent(s)

**With**

**Appeal No. 31/2021 (WZ)**

**4. Mr. Shailesh Shashikant Parab,**

Gut No. 1222, Village- Mine,  
Tal-Kankavali, Dist- Sindhudurg,  
Maharashtra 416602  
Email: ssparab2700@gmail.com

.....Appellant

**Versus**

**7. State Environment Impact Assessment Authority-  
Maharashtra(SEIAA)**

Through Member Secretary,  
Environment Department,  
Room No. 217, 2<sup>nd</sup> floor,  
Mantralaya Annexe, Mumbai-400032, Maharashtra  
E-mail: psec.env@maharashtra.gov.in

**8. Ministry of Environment, Forest and Climate Change,**

Through its Secretary,  
Indira Paryavaran Bhavan, Jorbagh Road,  
New Delhi 110001.  
Email: secy-moef@nic.in

....Respondent(s)

**Counsel for Appellant(s):**

Mr. Saurabh Kulkarni, Advocate

**Counsel for Respondent(s):**

Mr. Aniruddha Kulkarni, Standing Advocate for R-1  
Mr. Rahul Garg, Advocate for R-2

**PRESENT:**

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

**Reserved on : 21.02.2023  
Pronounced on : 28.02.2023**

**Judgment**

1. All above appeals have been filed against the order dated 12.03.2021 passed in the minutes of the meeting of the Respondent No.1-SEIAA.
2. Since all the above appeals have been filed challenging common order, we are disposing them of by a common judgment.
3. In Appeal No. 27/2021, Gat No. 1201,1210,1211, Village: Mine, Taluka- Kankavli, District- Sindhudurg is concerned; In Appeal No. 28/2021, Gat 1381, Village: Mine, Taluka- Kankavli, District- Sindhudurg is concerned; In Appeal No. 29/2021, Gat No. 1091, Village: Mine, Taluka- Kankavli, District- Sindhudurg is concerned; In Appeal No. 30/2021, Gat No. 974(Part), Village: Mine, Taluka- Kankavli, District- Sindhudurg is concerned; In Appeal No. 31/2021, Gat No. 1222, Village: Mine, Taluka- Kankavli, District- Sindhudurg is concerned.

4. The brief facts of the case are as follows:

All above appellants are businessmen by profession owning the above Gat numbers and are operating quarries of laterite stones, which lie in category 'B2' of the EIA Notification, 2006. The Appellants are excavating the laterite stone approximately upto 4 to 6 mtrs., depending upon availability of hard strata through blade cutting mechanism, without blasting and drilling, which process is environmentally friendly. After removal of the laterite stone, the same would be used for construction and the soil strata shall be utilized for mango and cashew plantation. The appellants are operating the said quarries under temporary consent granted from time to time up to 7<sup>th</sup> April, 2013, which provided employment to approximately 10 villagers from Mine and nearby villages.

The Appellants had incurred huge investment on this project to the tune of Rs. 25 lakhs. The Government of India appointed the Western Ghats Ecology Expert Panel (WGEEP) headed by Prof. Madhav Gadgil to demarcate the ecologically sensitive zones of Western Ghat region and suggest measures to protect and rejuvenate the ecology, which has submitted its Report dated 15<sup>th</sup> April 2013. This Tribunal on 12<sup>th</sup> November, 2013, passed an interim order in M. A. No. 868 of 2013 in Original Application No. 26 of 2012 to the effect that it is not mandatory for the MoEF to decide the application for any clearances in the permissible area of the Western Ghats only with reference to Gadgil Report. They are free to take into consideration either the Report or other relevant factors in accordance with law. Accordingly, the Respondent No.2-MoEF&CC had issued directions under Section 5 of the Environment (Protection) Act, 1986 on 13<sup>th</sup> November, 2013 and annexed the list of the villages in Eco Sensitive area of the Western Ghats which is also showing village Lingdal under ESA. The State Level Assessment Committee was not considering the Applications of the Appellants, thus the appellants sought status of the proposals under the RTI Act which has stated that the appellants' proposals were kept pending on account of the draft notification of the ESZ of Western Ghats. Thereafter, the appellants approached this Tribunal by filing appeal No. 42 of 2015 challenging the said communication and vide judgment dated 17<sup>th</sup> August, 2015, the State Level Impact Assessment Authority was directed to decide the applications of the Appellants within three months, but even then no decision was taken thereon. Thereafter, the Appellants filed an Execution Application No.23 of 2016 before the Tribunal. During the pendency of the Execution Application, the said Authority took a decision and deferred the proposals of the Appellants. Subsequently, the Appellants filed applications under Section 14 of the National Green Tribunal Act, 2010, seeking directions for expeditious decision in his case, which were decided by the Tribunal vide order dated 27<sup>th</sup>

December, 2016 directing the Government of India to take a decision within three months. The Tribunal had also issued show cause notice to the Member Secretary of the State Environment Impact Assessment Authority seeking explanation of this delay. The EAC of the Government of India did not take decision within three months and kept the proposal pending again and again. On 15.11.2017, the Committee directed the appellants to submit the online proposal, which was complied with and the proposals came up for consideration on 21<sup>st</sup> and 22<sup>nd</sup> December, 2017, but the same were rejected on the ground that they were received after 17<sup>th</sup> April, 2013 and were not found to be covered under the exemption as stated in the directions dated 13<sup>th</sup> November, 2013. The Government of Maharashtra after conclusion of the meeting, addressed a letter to the EAC, MoEF, GOI seeking the exact date of submission of proposals of the appellants. The Government of Maharashtra vide its letter dated 2<sup>nd</sup> April, 2018 clarified that the proposals of the appellants were received by them on 12<sup>th</sup> April, 2018 which were well within the cut-off date. Thereafter, the appellants challenged the said order before this Tribunal by filing an appeal under Section 16 of the National Green Tribunal Act, 2010 and this Tribunal had remanded the matter to the Respondent to decide the same within three months. Thereafter cases of the appellants were placed before the State Environment Assessment Committee, Government of Maharashtra (SEAC) on 10<sup>th</sup> February, 2021 and the Committee recommended the proposal for grant of EC. Thereafter, the appellants' cases were placed before the Respondent (It appears to be SEIAA) on 13<sup>th</sup> August, 2021. It was observed by it that the proposals were received before the cut-off date 17<sup>th</sup> April, 2021, but even then the proposals were rejected on the ground that the quarries of the Appellants fall within the Eco-Sensitive Zone. In the case in hand the appellants' proposals were not decided for a period of about 8 years resulting in loss of the revenue to the appellants and appellants were aware of the fact that the quarry of the appellants will be phased out

after a period of five years. The fact that the Notification of the Eco Sensitive Zone is yet to be finalized, **has not been considered by the Respondent and yet the proposals have been rejected on the basis of draft Notification.** The draft Notification was issued by the Government of India regarding Eco-Sensitive Zone on 10<sup>th</sup> March, 2014, 4<sup>th</sup> September, 2015 and 27<sup>th</sup> February, 2017 and finally on 3<sup>rd</sup> October, 2018 and yet it is not finalized. The Respondent No.1 have recommended the grant EC to other projects in the same district. Hence, the above prayer has been made.

5. The stand of **Respondent No.1-SEIAA** is as follows:

In the meeting of SEIAA held on 10.12.2021, it was observed that the mining proposal fell in Western Ghat Eco-Sensitive zone as per MoEF&CC draft notification for Western Ghat ESA. It was observed by the answering Respondent that the said draft notification completely prohibits mining, quarrying and sand mining etc., in order to protect, preserve and nurture the rich biodiversity and environmental integrity of the Western Ghats and also to check further degradation of the fragile ecology of the said area. The draft Notification also mandated that all existing mines be phased out within five years from the date of final notification or on the expiry of the existing mining lease, whichever is earlier. In view of the above, the answering Respondent decided to reject the proposal.

6. From the side of **Respondent No.2 MoEF&CC** at the time of argument learned counsel Mr. Rahul Garg stated that reply affidavit which has been filed by it in Appeal No. 05/2022 should be read as reply in this case as well, which is as follows:

The answering Respondent re-published draft of Western Ghats Ecological Sensitive Area Notification on 06.07.2022, since the earlier draft dated 03.10.2018 could not be finalized and consequently lapsed on 30.06.2022. The said draft notification prescribes for projects and activities to be prohibited or regulated in the Eco-Sensitive areas. It laid

down that the projects and activities shall be prohibited in Eco-sensitive Area except those proposals which have been received by Expert Appraisal Committees or the Ministry of Environment, Forest and Climate Change or State Level Expert Appraisal Committees or the State Level Environment Impact Assessment Authorities before 17<sup>th</sup> April, 2013, the date on which the High Level Working Group report was uploaded on the website of the Ministry and are pending consideration. Such proposals shall be dealt with in accordance with the guidelines and rules in existence at that time. It also prescribes that mining activity in the ESA of Western Ghats would be prohibited activity, the relevant part of the paragraphs reproduced hereinabove :-

*“(a) Mining- There shall be a complete ban on mining, quarrying and sand mining in Ecologically Sensitive Area and all existing mines shall be phased out within five years from the date of issue of the final notification or on the expiry of the existing mining lease, whoever is earlier.”*

Further, it is submitted that as per the provision of Section 23(c) of Mines and Mineral (Development and Regulation) Act (MMDR Act), the State Government is empowered to make rules for preventing illegal mining, and transportation & storage of illegal minerals and all such activities shall be dealt with under the provision of the said Act. Further, it is mentioned that State Pollution Control Board (SPCB) is the nodal agency to deal with cases related to Pollution or environment management coming under the purview of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment Protection Act, 1986, which shall initiate appropriate action under the relevant provision.

7. From the pleadings stated above, it is absolutely clear that the appellant is aggrieved by the passing of order dated 21<sup>st</sup> December, 2021 by way of minutes of meeting by SEIAA declining the revalidation of earlier granted EC dated 16.01.2016 for stone quarry in the above mentioned area on the ground that the said decision was taken on the basis of draft

Notification issued by the MoEF&CC regarding Western Ghat Eco-Sensitive Zone, wherein it is observed that the mining proposal in question falls in Western Ghat Eco-Sensitive zone and that SEIAA observed that in order to protect, preserve and nurture the rich biodiversity and environmental integrity of the Western Ghats and to further prevent degradation of the fragile ecology of the Western Ghats, the said notification completely prohibits Mining quarrying activity and that as per direction (being said to be notification by the SEIAA) dated 13.11.2013 which is annexed Page No. 23 to 25 of the paper book, all existing mines were to be phased-out within five years from the date of final notification or on the expiry of the existing mining lease, which is earlier.

8. The main argument which has been made by the learned counsel for the appellant is that the Respondents have failed to finalize the Eco-Sensitive areas in Western Ghat because the matter is said to be under consideration since the issuance of first draft notification in this regard on 10<sup>th</sup> March, 2014, which was allowed to be lapsed and second draft notification was issued in this regard on 3<sup>rd</sup> October, 2018, but till then it could not be finalized and a fresh draft notification has been issued thereafter on 30<sup>th</sup> June, 2022. Therefore, it indicated that they are keeping this matter undecided deliberately which has resulted in lot of inconvenience and financial loss to the appellant which had already been granted EC on 16.01.2016 for the quarry in question for five years which should further extended for seven (7) years by Office Memorandum dated 12.04.2016 issued by the Respondent No.4 and that since the mining lease dated 10.10.2016, granted to the appellant came to an end, the appellant had to approach Respondent No.4 for approval of its renewal but he was directed to seek revalidation of EC, which has been illegally rejected on the basis of draft notification stated above. It is also urged by him that in case Tribunal is not agreeable to allow the appeal, whatever material already been mined which is kept on the place, the same should

be allowed to be taken away by the appellant so that he may not incur any further loss. He also urged that he had made a number of efforts for procuring the EC as well as various consents from relevant authority and had to approach this Tribunal again and again and despite the Tribunal having passed several order regarding consideration of the application of the appellant, no positive decision has been taken by the authority. Only to harass the appellant shelter is taken of the draft notification cited above laying down that the mining project in the area where the appellant is seeking mining project to be operated falls in eco-sensitive zones of Western Ghats despite the fact that no final notification has come into force. It is settled law that the provision of draft notification would not be enforceable till the same is finalized. It is further emphasized that the area where the appellant is seeking permission for mining, has been proposed to be excluded from the list of villages which are falling in eco sensitive area of Western Ghat and attention is drawn to the document in this regard annexed at Page No. 63 to 65 of the paper book.

9. On the other hand from the side of learned counsel for the Respondent Nos. 1, 2 and 3, it is vehemently argued that the draft notification classifies the area in question to fall in highly eco-sensitive zone in Western Ghat and that the said area needs to be protected strongly and that no mining activity can be allowed to the take in the said area in order to keep intact the integrity of the ecology of the said area. It is further emphasized that the finalization of the draft is under process which is a long term process. Sincere the efforts are going on in order to finalize the same since the year 2014, the process being extremely tedious and sensitive. An extreme cautious approach is being adopted. It cannot be said that no action is being taken for early finalization of the draft and that the appellant is being deliberately harassed. It is also emphasized that 'Precautionary Principle' needs to be adopted in the present case looking to the highly eco-sensitivity of the area in question

and that no such permission should be allowed to mine mineral from the said area even if the final notification is yet to be issued.

10. We, after having considered the rival contentions, are of the view that the draft Notification dated 06.07.2022 contains that earlier notifications were issued in 10<sup>th</sup> March 2014 and 5<sup>th</sup> December, 2018 and that in the draft notification, it has been clearly laid down that the village in question where the appellant is seeking permission for quarrying is falling in eco-sensitive zone of the Western Ghat, therefore, taking into consideration the precautionary principle, it would be advisable not to permit any mining activity. Simply because the final notification is yet to come, does not mean that the draft notification should be ignored.

11. We may rely in this regard upon the judgment of the Hon'ble Supreme Court in **Godavarman Thirumulpad Vs. Union of India, (2012) 3 SCC 277 and M. C. Mehta Vs. Kamal Nath, (1997) 1 SCC 388**, where-in in para 8, it has been laid down that "no mining operation of any kind in the Western Ghat is to be countenanced". We may also rely on judgment passed by this Tribunal in **Goa foundation vs. Union of India 2018 SCC OnLine NGT 1320** where-in in para 11 following is held:

"11. It is well acknowledged that ecology of the Western Ghat region is under serious stress. In *t. N. Godavarma Thirumulpad V. Union of India, (2006) 1 SCC 1* it was noted that Western Ghats region is one of the richest biodiversity area which needs to be conserved. In *T. N. Godavarm Thirumulpad Vs. Union of India, (2013) 8 SCC 228, mining operations in sensitive Western Ghats were directed to be restricted.*"

Further, we may rely upon the judgment of this Tribunal passed in Execution Application No. 19/2019 In O. A. No. 597/2018 (M. A. No. 121/2019 & I. A. No. 703/2019) where-in the issue under consideration was the remedial steps to be taken for protection of ecology of Western Ghats which is an eco-sensitive area within the meaning of relevant

notification under the Environment (Protection) Act, 1986 where-in following is held :

6. *“Having regard to the earlier delay and violation of undertaking given to this Tribunal and need for speedy finalization of the notification, the ongoing proceedings cannot be unending and need to be suitably curtailed. In any case, matter must not remain hanging beyond the schedule now proposed. Accordingly, we direct that if there is a further default and delay beyond 31.03.2020, we may have to direct the Advisor, ESZ Division will not be entitled to salary till compliance and that the draft notification be deemed to the final from 01.04.2020.”*

We may also place reliance on the judgment dated 06.04.2022 passed in **O. A. 801/2018 in Jasmeet Singh Vs. State of Himachal Pradesh** with connected with Original Application No. 136/2020, **Veterans Forum for Transparency in Public Life Vs. State of Himachal Pradesh & Ors.**, where-in the matter which came up for consideration was remedial action against the failure of the authorities in the State of Himachal Pradesh in preventing pollution of rivers in the Solan District, where-in in para 15 it has been recorded that “we consider it appropriate to direct under Section 15(1) of the NGT Act that pending finalisation by the MoEF&CC, standards proposed in the draft Notification dated 23.01.2020, which are based on expert studies, be strictly followed by all concerned.”

12. We can take assistance from the above decision wherein draft notification had been directed to be followed by this Tribunal in the above mentioned cases in the present case as well, since the draft notification has been prepared based on expert study, till the finalization of the same, we can take assistance of it, as regards holding the area in question to be eco-sensitive area of Western Ghat where no mining activity may be permitted.

13. We have also considered the prayer made by the learned counsel for the appellants that whatever mined material is lying at the spot

should be permitted to be carried away by the appellants so that the appellants do not suffer on that count. In this regard our view is that since no mining activity is permissible in the area, we do not deem it appropriate to allow this prayer of the appellants, rather we direct the appellant to put back the mined material in the area from where it has been excavated so that said area is restored to its original position, within a period 2 months from today and that Maharashtra Pollution Control Board shall ensure that the said direction is complied with. The MPCB shall also submit its report in this regard before this Tribunal within a period one month thereafter.

14. Based on above citations and the position of law as also taking into consideration the precautionary principle, we are of the view that all appeals deserves to be rejected having no force and they are accordingly rejected. No order as to costs.

Dinesh Kumar Singh, JM

Dr. A. Senthil Vel, EM

February 28, 2023.

Appeal No. 26/2021, 27/2021, 28/2021, 29/2021,30/2021,31/2021  
Sachin J.

**BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

**Appeal No. 05/2022 (WZ)**

**IN THE MATTER OF :**

- 1. Mr. Jagannath Pandurang Sinnari,**  
E-85, Fondvem,  
Ribander, Goa-403005  
Email: [jpsinaristonequarry@gmail.com](mailto:jpsinaristonequarry@gmail.com)

**.....Appellant**

**Versus**

- 1. State Environment Impact Assessment Authority-  
Maharashtra(SEIAA)**  
Through Member Secretary,  
Environment Department,  
Room No. 217, 2<sup>nd</sup> floor,  
Mantralaya Annexe, Mumbai-400032, Maharashtra  
E-mail: [mahaseiaa@gmail.com](mailto:mahaseiaa@gmail.com)
- 2. Maharashtra Pollution Control Board,**  
Through Member Secretary,  
Kalptaru Point, 3<sup>rd</sup> Floor, Near Sion Circle,  
Opp. Cine Planet Cinema, Sion(E),  
Mumbai-400022, Maharashtra  
E-mail: [ms@mpcb.gov.in](mailto:ms@mpcb.gov.in)
- 3. Ministry of Environment, Forest and Climate Change,**  
Through its Secretary,  
Indira Paryavaran Bhavan, Jorbagh Road,  
New Delhi 110001.  
Email: [secy-moef@nic.in](mailto:secy-moef@nic.in)

**....Respondent(s)**

**Counsel for Appellant(s):**

Mr. Saurabh Kulkarni, Advocate

**Counsel for Respondent(s):**

Mr. Aniruddha Kulkarni, Standing Advocate for R-1  
Mr. Vilas Jadhav, Advocate for R-2  
Mr. D. M. Gupte, Advocate for R-3

**PRESENT:**

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

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**Reserved on : 21.02.2023  
Pronounced on : 28.02.2023**

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## Judgment

1. This appeal has been filed to seek quashing of order dated 21<sup>st</sup> December, 2021 (Minutes of the Meeting of SEIAA held on 21<sup>st</sup> December, 2021) where-by the application filed by the appellant for revalidation of earlier EC on 16.01.2016 for stone quarry at Gat No. 77/1A, 78/2 Village- Degave, Taluka- Sawantwadi, District- Sindhudurg was rejected.

2. The brief facts of the case are as follows:

The appellant is the lessee of a plot of land bearing Survey No. 77/1A & 78/2 Village- Degave, Taluka- Sawantwadi, District- Sindhudurg, whereon there has been pre-existing small scale Basalt quarry over an area of 4.5 hectare in operation. The said quarry was operational with the help of local villagers from the year 2009 till September, 2012 by way of Transit Passes for minor minerals of the said quarry less than 5 hectars issued by the Respondent No-4-The Collector and that the Appellant has paid all the dues. The said quarry provides employment to approximately 100 villagers from Degave and nearby villages and has incurred from time to time substantial investment by way of salary, machinery hired, transportation, royalty and rent for excavating and operation of the said quarry without causing environmental degradation. The appellant was using method of drilling and controlled blasting in accordance with the judgment of the Hon'ble Supreme Court. The appellant had resubmitted an application to Collector, Sindhudurg for issue of five years quarry lease rights, however the same was kept pending because of the moratorium imposed by the MoEF&CC government of India. Therefore, after the lifting of moratorium, the said application should have been considered, but the same was kept pending in the absence of Environmental Clearance. Because of the quarry falling in the category B2, as per the EIA Notification 2006 read with judgment of the Hon'ble Supreme Court in Deepak Kumar's case, it was required to obtain prior Environmental Clearance despite the fact quarry was having

area less than 5 Ha., but the Collector, Sindhudurg refused to grant the same vide communication dated 24.04.2014, because the village Degave fell under the Eco Sensitive Area as per the Notification dated 13.11.2013. The said document dated 13.11.2013 has been annexed at Page Nos. 23 to 25 of the paper book which is direction issued by the Deputy Director MoEF under Section 5 of the Environment (Protection) Act, 1986 where-in following has been recorded in Para-9:-

*“9. Now therefore, in exercise of powers conferred under Section 5 of Environment (Protection) Act, 1986, the following directions are hereby issued:*

*The following category of new and/ or expansion projects/ activities shall be prohibited in ESA from date of issue of these directions except those cases which have been received by EACs/MoEF or SEACs / SEIAAs before the date of putting HLWG report on the website of the Ministry, i. e. 17.04.2013 and which are pending with EACs / MoEF or SEACs/ SEIAAs. Such projects will be dealt under the guidelines and rules applicable at the time of application before the respective EACs / MoEF or SEACs/ SEIAAs. Apart from such cases, no pending case or any fresh case shall be considered by the EACs/MoEF or SEACs/SEIAAs from the date of issue of these directions.*

*(a) Mining, quarrying and sand mining*

*(b) Thermal Power Plants.*

*(c) Building and construction projects of 20,000 sq.m. area and above with built up area of 1,50,000 sq.m. and above.*

*(d) Red category of industries\**

*(\* The CPCB list of red category industries would be minimum list, Industries not included in the CPCB list but mentioned in the Red Category list of the SPCB of the concerned Western Ghat State shall also be categorized as Red Category for that State.)”*

3. The Collector, Sindhudurg forwarded the Appellant’s application dated 10.12.2013 for EC to the State Environment Assessment Committee (SEAC) for appraisal and issue of EC. The appellant was not given opportunity of hearing and yet the disposal of the said application was done, due to which the Appellant made a representation on 23.03.2014 for considering his application after condoning delay. The Appellant received a letter dated 26.05.2014 from the Respondent No.2-MPCB communicating that his application for grant of EC had been rejected (It appears that instead of Respondent No.2, it should have been Respondent No.1 SEIAA that has passed the rejection order). Thereafter

the Appellant approached this Tribunal under Section 16 of the National Green Tribunal Act, 2010 impugning the communication dated 26.05.2014 by filing Appeal No. 49 of 2014. It was decided vide judgment dated 12.03.2015 directing SEAC and SEIAA, Maharashtra to consider the Application of the appellant on its own merit. Thereafter, the application of the Appellant was considered by the SEAC in its meeting held on 10<sup>th</sup> and 11<sup>th</sup> September, 2015 and decided to recommend the case of the appellant for grant of EC, based on which Respondent No.1-SEIAA granted EC on 16.01.2016 subject to the conditions that the Project Proponent shall obtain all statutory clearances. Thereafter, the Appellant moved an application dated 27.01.2016 under Section 25 and 26 of the Water (Prevention & Control of Pollution) Act, 1974 along with Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 before Respondent No.2-MPCB, pursuant to which the Field Officers of the Respondent No.2 visited the quarry site and submitted their report but nothing happened. Thereafter, the appellant made enquiry from the officers of the Respondent No.2-MPCB and was informed that the matter was under consideration. Thereafter, the Appellant moved representation dated 08.10.2016 to consider his application pointing out therein that the same is pending for last four(4) months, due to which it would be deemed to be granted. Thereafter, the appellant approached this Hon'ble Tribunal, by filing an Original Application No. 171/2016 where-in order dated 05.12.2016 was passed directing Respondent No.2- MPCB to consider the application and pass order within four(4) weeks but even then Respondent No.2-MPCB did not take any decision. Thereafter, the Appellant filed Execution Application No. 05/2017 which was heard on 23.01.2017, and then the counsel for Respondent No.2-MPCB made a statement before the Tribunal that the quarry of the Appellant falls in the orange category and the decision would be taken; during the pendency of the Execution Application the Respondent No.2 rejected the application for grant of consent vide order dated 10<sup>th</sup> February, 2017, on

the ground that the activity of the appellant fell in the Red Category and in the Eco-Sensitive Area as well. Thereafter, the Appellant preferred an appeal challenging the order dated 10<sup>th</sup> February, 2017, however, the Respondent No.2-MPCB, informed the Appellant that they were seeking guidance of the Respondent No.3- MoEF&CC and Respondent No.4- The Collector on the issue hence the appellant should withdraw the Appeal and file a Review Application instead. Thereafter, the Appellant withdrew the Appeal on 29<sup>th</sup> April, 2017 and filed review application before Respondent No.2 on the same day submitting therein that the Notification pertaining to the Eco-Sensitive Area in the Western Ghats was still a draft notification and the same was not finalized as yet. The appellant also submitted the directions of the Respondent No.3 dated 7<sup>th</sup> March, 2016, wherein it was mentioned that the activity of stone crushing fell in orange category. The Respondent No.3 vide its letter dated 14<sup>th</sup> March, 2017 to the Respondent No.1 directed the appellant to seek the approval of the Respondent No.4- District Collector. The Appellant thereafter received a letter dated 28<sup>th</sup> February, 2018 from Respondent No.2 where-in it was submitted that an opinion was sought from Respondent No.3 whether the activity of the Appellant fell into Red Category and in Eco-Sensitive Area. Thereafter, the Appellant approached this Tribunal by moving an application under Section 14 seeking direction to be issued to respondent to decide the application for grant of Consent to Establish, which was disposed of by directing Respondent No.2 to decide the application within 10 days. Thereafter, the Appellant received the Consent to Operate from the Respondent No.2 on 17<sup>th</sup> August, 2021 and the same is valid till 30<sup>th</sup> September, 2030. Further, it is submitted that the Environmental Clearance (EC) dated 16.01.2016 was granted for five years. However, the Respondent No.4- District Collector vide its Office Memorandum dated 12.04.2016 directed that the Environmental Clearance (EC) granted for a period of five years shall stand automatically extended for a period of 7 years. The mining

lease dated 10.10.2016 granted to the Appellant came to an end and he was constrained to approach the Respondent No.4- The Collector for its renewal, but the Respondent No.4- The Collector directed the Appellant to obtain the revalidation of the Environmental Clearance (EC) from the Respondent No.1-SEIAA as EC dated 16<sup>th</sup> June 2016 mentioned as condition No. 6 “the validity period or EC will be 7 years but limited to period or lease. Thereafter the SEIAA rejected the revalidation of EC because the village Degave fell in Eco-Sensitive Area of Western Ghats despite the fact that the said notification was yet to be finalized. It is further mentioned that the Government of Maharashtra vide its letter dated 5<sup>th</sup> December, 2018, has recommended for removing the village Degave from the list of Eco- Sensitive Area of the Western Ghats. The Revised Mining Plan of the Appellant is also approved on 27<sup>th</sup> August, 2021. It is apparent that the Respondent No.1-SEIAA has erroneously applied the notification (direction) dated 13.11.2013 (Supra) and has completely ignored the fact that the finalization of the Eco- Sensitive Area was yet to be done and that the draft notification could not have been implemented. It has resulted in tremendous financial loss to the appellant as the appellant had taken loan from various banks and financial institutions for the project. Further, it has emphasized that the appellant’s possession of the crushed material of approximately 1,33,000 brass valued at Rs. 3 crores is lying idle. Hence, the above prayer has been made.

4. This matter was first taken up on 11.02.2022 when the respondents were directed to be issued notices. Pursuant to the said direction, service affidavit has been filed as per which service on all the Respondents is sufficient.
5. The stand of **Respondent No.1-SEIAA** is as follows:

In the meeting of SEIAA held on 10.12.2021, it was observed that the mining proposal fell in Western Ghat Eco-Sensitive zone as per MoEF&CC draft notification for Western Ghat ESA. It was observed by

the answering Respondent that the said draft notification completely prohibits mining, quarrying and sand mining etc., in order to protect, preserve and nurture the rich biodiversity and environmental integrity of the Western Ghats and also to check further degradation of the fragile ecology of the said area. The draft Notification also mandated that all existing mines be phased out within five years from the date of final notification or on the expiry of the existing mining lease, whichever is earlier. In view of the above, the answering Respondent decided to reject the proposal.

6. The stand of **Respondent No.2-MPCB** is as follows:

The answering Respondent has granted Consent to Operate vide letter dated 17.08.2021 which is valid upto 30.09.2030. The village Degave falls under Eco-Sensitive Zone. The officials of the answering Respondent visited the site of the Appellant on 02.09.2022 and reported as follows:

- (a) During the visit the said industry has found in closed conditions and no crusher is found on site.*
- (b) The industry representative has reported that old plant will be replaced by new machinery/ plant(Crusher)*
- (c) The industry has provided 4.50 ha stone quarry and it was not in operation since June 2021.*
- (d) Industry has obtained Environmental Clearance from environment and Climate Change Department, Government of Maharashtra vide letter dated 16.01.2016.*
- (e) The Industry has not provided DG set having capacity of 125 KVA as per the condition stipulated in consent to operate at site.*
- (f) The industry has not submitted BG of Rs. 5000/- ensuring compliance of operation and maintenance of pollution control system and compliance of consent conditions. A copy of said visit report dated 02.09.2022 is enclosed and marked as an Annexure "B"*

7. The stand of **Respondent No.3-MoEF&CC** is as follows:

The answering Respondent re-published draft of Western Ghats Ecological Sensitive Area Notification on 06.07.2022, since the earlier draft dated 03.10.2018 could not be finalized and consequently lapsed on 30.06.2022. The said draft notification prescribes for projects and

activities to be prohibited or regulated in the Eco-Sensitive areas. It laid down that the projects and activities shall be prohibited in Eco-sensitive Area except those proposals which have been received by Expert Appraisal Committees or the Ministry of Environment, Forest and Climate Change or State Level Expert Appraisal Committees or the State Level Environment Impact Assessment Authorities before 17<sup>th</sup> April, 2013, the date on which the High Level Working Group report was uploaded on the website of the Ministry and are pending consideration. Such proposals shall be dealt with in accordance with the guidelines and rules in existence at that time. It also prescribes that mining activity in the ESA of Western Ghats shall be prohibited activity, the relevant part of it is reproduced hereinbelow :-

*“(a) Mining- There shall be a complete ban on mining, quarrying and sand mining in Ecologically Sensitive Area and all existing mines shall be phased out within five years from the date of issue of the final notification or on the expiry of the existing mining lease, whoever is earlier.”*

Further, it is submitted that as per the provision of Section 23(c) of Mines and Mineral (Development and Regulation) Act (MMDR Act), the State Government is empowered to make rules for preventing illegal mining, and transportation & storage of illegal minerals and all such activities shall be dealt with under the provision of the said Act. Further, it is mentioned that State Pollution Control Board (SPCB) is the nodal agency to deal with cases related to Pollution or environment management coming under the purview of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment Protection Act, 1986, which shall initiate appropriate action under the relevant provision.

8. From the pleadings stated above, it is absolutely clear that the appellant is aggrieved by the passing of order dated 21<sup>st</sup> December, 2021 by way of minutes of meeting by SEIAA declining the revalidation of earlier granted EC dated 16.01.2016 for stone quarry in the above mentioned area on

the ground that the said decision was taken on the basis of draft Notification issued by the MoEF&CC regarding Western Ghat Eco-Sensitive Zone, wherein it is observed that the mining proposal in question falls in Western Ghat Eco-Sensitive zone and that SEIAA observed that in order to protect, preserve and nurture the rich biodiversity and environmental integrity of the Western Ghats and to further prevent degradation of the fragile ecology of the Western Ghats, the said notification completely prohibits Mining / quarrying activity and that as per direction (being said to be notification by the SEIAA) dated 13.11.2013 which is annexed Page No. 23 to 25 of the paper book, all existing mines were to be phased-out within five years from the date of final notification or on the expiry of the existing mining lease, which is earlier.

9. The main argument which has been made by the learned counsel for the appellant is that the Respondents have failed to finalize the Eco-Sensitive areas in Western Ghat because the matter is said to be under consideration since the issuance of first draft notification in this regard on 10<sup>th</sup> March, 2014, which was allowed to be lapsed and second draft notification was issued in this regard on 3<sup>rd</sup> October, 2018, but till then it could not be finalized and a fresh draft notification has been issued thereafter on 30<sup>th</sup> June, 2022. Therefore, it indicated that they are keeping this matter undecided deliberately which has resulted in lot of inconvenience and financial loss to the appellant which had already been granted EC on 16.01.2016 for the quarry in question for five years which stood further extended for seven (7) years by Office Memorandum dated 12.04.2016 issued by the Respondent No.4 and that since the mining lease dated 10.10.2016, granted to the appellant came to an end, the appellant had to approach Respondent No.4 for approval of its renewal but he was directed to seek revalidation of EC, which has been illegally rejected on the basis of draft notification stated above. It is also urged by him that in case Tribunal is not agreeable to allow the appeal, whatever

material already been mined which is kept on the place, the same should be allowed to be taken away by the appellant so that he may not incur any further loss. He also urged that he had made a number of efforts for procuring the EC as well as various consents from relevant authority and had to approach this Tribunal again and again and despite the Tribunal having passed several order regarding consideration of the application of the appellant, no positive decision has been taken by the authority. Only to harass the appellant shelter is taken of the draft notification cited above laying down that the mining project in the area where the appellant is seeking mining project to be operated falls in eco-sensitive zones of Western Ghats despite the fact that no final notification has come into force. It is settled law that the provision of draft notification would not be enforceable till the same is finalized. It is further emphasized that the area where the appellant is seeking permission for mining, has been proposed to be excluded from the list of villages which are falling in eco sensitive area of Western Ghat and attention is drawn to the document in this regard annexed at Page No. 63 to 65 of the paper book.

10. On the other hand from the side of learned counsel for the Respondent Nos. 1, 2 and 3, it is vehemently argued that the draft notification classifies the area in question to fall in highly eco-sensitive zone in Western Ghat and that the said area needs to be protected strongly and that no mining activity can be allowed to the take place in the said area in order to keep intact the integrity of the ecology of the said area. It is further emphasized that the finalization of the draft is under process which is a long term process. Sincere efforts are going on in order to finalize the same since the year 2014, the process being extremely tedious and sensitive. An extreme cautious approach is being adopted. It cannot be said that no action is being taken for early finalization of the draft and that the appellant is being deliberately harassed. It is also emphasized that 'Precautionary Principle' needs to be

adopted in the present case looking to the highly eco-sensitivity of the area in question and that no such permission should be allowed to mine mineral from the said area even if the final notification is yet to be issued.

11. We, after having considered the rival contentions, are of the view that the draft Notification dated 06.07.2022 contains that earlier notifications were issued in 10<sup>th</sup> March 2014 and 5<sup>th</sup> December, 2018 and that in the draft notification, it has been clearly laid down that the village in question where the appellant is seeking permission for quarrying is falling in eco-sensitive zone of the Western Ghat, therefore, taking into consideration the precautionary principle, it would be advisable not to permit any mining activity. Simply because the final notification is yet to come, does not mean that the draft notification should be ignored.

12. We may rely in this regard upon the judgment of the Hon'ble Supreme Court in **Godavarman Thirumulpad Vs. Union of India, (2012) 3 SCC 277 and M. C. Mehta Vs. Kamal Nath, (1997) 1 SCC 388**, where-in in para 8, it has been laid down that "no mining operation of any kind in the Western Ghat is to be countenanced". We may also rely on judgment passed by this Tribunal in **Goa foundation vs. Union of India 2018 SCC OnLine NGT 1320** where-in in para 11 following is held:

"11. It is well acknowledged that ecology of the Western Ghat region is under serious stress. In *t. N. Godavarma Thirumulpad V. Union of India, (2006) 1 SCC 1* it was noted that Western Ghats region is one of the richest biodiversity area which needs to be conserved. In *T. N. Godavarm Thirumulpad Vs. Union of India, (2013) 8 SCC 228, mining operations in sensitive Western Ghats were directed to be restricted.*"

Further, we may rely upon the judgment of this Tribunal passed in Execution Application No. 19/2019 In O. A. No. 597/2018 (M. A. No. 121/2019 & I. A. No. 703/2019) where-in the issue under consideration was the remedial steps to be taken for protection of ecology of Western

Ghats which is an eco-sensitive area within the meaning of relevant notification under the Environment (Protection) Act, 1986 where-in following is held :

6. *“Having regard to the earlier delay and violation of undertaking given to this Tribunal and need for speedy finalization of the notification, the ongoing proceedings cannot be unending and need to be suitably curtailed. In any case, matter must not remain hanging beyond the schedule now proposed. Accordingly, we direct that if there is a further default and delay beyond 31.03.2020, we may have to direct the Advisor, ESZ Division will not be entitled to salary till compliance and that the draft notification be deemed to the final from 01.04.2020.”*

We may also place reliance on the judgment dated 06.04.2022 passed in **O. A. 801/2018 in Jasmeet Singh Vs. State of Himachal Pradesh** with connected with Original Application No. 136/2020, **Veterans Forum for Transparency in Public Life Vs. State of Himachal Pradesh & Ors.**, where-in the matter which came up for consideration was remedial action against the failure of the authorities in the State of Himachal Pradesh in preventing pollution of rivers in the Solan District, where-in in para 15 it has been recorded that “we consider it appropriate to direct under Section 15(1) of the NGT Act that pending finalisation by the MoEF&CC, standards proposed in the draft Notification dated 23.01.2020, which are based on expert studies, be strictly followed by all concerned.”

13. We can take assistance from the above decision wherein draft notification had been directed to be followed by this Tribunal in the above mentioned case. In the present case as well, since the draft notification has been prepared based on expert study, till the finalization of the same, we can take assistance of it, as regards holding the area in question to be eco-sensitive area of Western Ghat where no mining activity may be permitted.

14. We have also considered the prayer made by the learned counsel for the appellant that whatever mined material is lying at the spot should

be permitted to be carried away by the appellant so that the appellant does not suffer on that count. In this regard, our view is that since no mining activity is permissible in the area, we do not deem it appropriate to allow this prayer of the appellant, rather we direct the appellant to put back the mined material in the area from where it has been excavated so that said area is restored to its original position, within a period 2 months from today and that the Respondent No.2 Maharashtra Pollution Control Board shall ensure that the said direction is complied with. The MPCB shall also submit its report in this regard before this Tribunal within a period one month thereafter.

15. Based on above citations and the position of law as also taking into consideration the precautionary principle, we are of the view that the present appeal deserves to be rejected having no force and it is accordingly rejected. No order as to costs.

Dinesh Kumar Singh, JM

Dr. A. Senthil Vel, EM

February 28, 2023.  
Appeal No. 05/2022  
Sachin J.