

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

Original Application No. 23/2022(WZ)

**IN THE MATTER OF:**

**SANJAY CHANDRAKANT KELUSKAR**

06, Tondavali, Talashil, Hadi,  
Hadi Malwan Sindhudurg,  
Maharashtra- 416626

....Applicant(s)

Versus

- 1. STATE OF MAHARASHTRA,**  
Through its Chief Secretary,  
CS Office Main Building, Mantralaya,  
6<sup>th</sup> Floor, Madame Cama Road,  
Mumbai-400 032.
- 2. SEIAA, MAHARASHTRA,**  
Through its Chairperson,  
601, 6<sup>th</sup> Floor, NKM International House,  
Behind LIC Yogakshema Building,  
177 Babubhai Chinoy Marg,  
Nariman Point, Mumbai – 400 020.
- 3. DISTRICT COLLECTOR, SINDHUDURG**  
Police Line, Oros, Sindhudurg District,  
Maharashtra-416 812.
- 4. DISTRICT MINING OFFICER, SINDHUDURG,**  
District Collector Officer, Oros,  
Taluka Kudal, District-Sindhudurg – 416 812.  
Maharashtra
- 5. MAHARASHTRA COASTAL ZONE MANAGEMENT AUTHORITY,**  
Through its Member Secretary,  
Environment Department, Govt. of Maharashtra,  
2<sup>nd</sup> floor, Room No. 217, Annexe Building,  
Mantralaya, Mumbai-400 032, Maharashtra

.....Respondent(s)

**Counsel for the Applicant(s):**

Applicant(s) : Mr. Ritwick Dutta and Mr. Rahul Choudhary, Advocates

**Counsel for the Respondent(s):**

Respondent(s): Mr. Aniruddha S. Kulkarni, Advocate for R-2 & 5

**PRESENT:**

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

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**Reserved on : 26.05.2022**

**Pronounced on : 30.05.2022**

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**JUDGMENT**

1. This matter relates to illegal sand mining taking place near Tondavali and Talashil Village in Kalvali Creek of Gad River, Sindhudurg District- Maharashtra. These Villages are located between Arabian Sea and Gad River. Due to rise in sea level and soil erosion due to sand mining, the width of the Village land has reduced to about 50-70 mtrs. On this small piece of land, approximately 200 houses are situated with around 250 families residing there. In Talashil Village, a population of around 1000 people mostly depending on fishing for their livelihood resides, which is adversely impacted by cyclones, hurricanes and high tides. The illegal mining is being resorted to which is causing huge erosion and threat to villages from flooding. The sand mining is said to be conducted completely in disregard to environmental norms and in violation of the provisions of the District Survey Report (DSR) of Sindhudurg District which prohibits mining in the light of EIA Notification, 2006, the CRZ Notification, 2011 and the directions of this Tribunal as well as various Hon'ble High Courts and the Hon'ble Supreme Court.

2. Therefore, prayer is made in the present application moved under Section 14, 15 read with Section 20 of the National Green Tribunal Act, 2010 for direction to be issued to the District Mining Officer not to allot sand mining leases in violation of the District Survey Report (DSR) in District Sindhudurg and Respondent No. 1 to 5 be directed to take immediate steps to stop illegal and unscientific mining in the area. Further, Respondent No. 1 be directed to take proper steps for protection of the villages from soil erosion

and for restoration of the area to its original position and protecting the village and its agricultural fields from ingress of saline water.

3. This application was received on 04.03.2022 and vide order dated 15.03.2022, a joint committee was constituted to visit the place and submit a factual and action taken report. The said report has been submitted which is reproduced herein below for the sake of convenience:-

**“Preamble:**

***The Original Application No. 23/2022 is filed before the Hon’ble National Green Tribunal, Pune by Mr. Sanjay Chandrakant Keluskar versus State of Maharashtra & Ors. The issue raised in the application is about illegal sand mining taking place near Talashil and Tondavali village in the Kalvali Creek of Gad River, Sindhudurg District of Maharashtra, located between Arabian Sea and Gad River. Hon’ble NGT has passed an Order, dated 15.3.2022, calling for a report from the Joint Committee consisting of (i) District Collector, Sindhudurg (ii) Representative of the State Environment Impact Assessment Authority (SEIAA) (iii) Representative of the Maharashtra Coastal Zone Management Authority (MCZMA). The Committee is directed to visit the place and submit a factual and action taken report within six weeks. The SEIAA will be nodal agency for coordination and logistic support.***

**Site inspection:**

***The Joint Committee comprising (i) Mr. Shankar Barge, Additional District Collector, Sindhudurg (ii) Mr. Pankaj Joshi, Expert Member, SEIAA as Representative of SEIAA 3) Mr. Rupesh Mahale, Project Officer, as Representative of Maharashtra Coastal Zone Management Authority (MCZMA) visited the stretch of Kalvali Creek at Talashil and Tondavali villages, Sindhudurg District on 24<sup>th</sup> May, 2022.***

***Prior to the site visit, the Joint Committee took a meeting at Grampanchayat, Tondavali with concerned officials from the Govt offices such as District Collector, Sindhudurg, District Mining Officer, Maharashtra Maritime Board (MMB), Fisheries Dept, Groundwater Survey and Development Agency (GSDA). For the said meeting, at the Sarpanch’s office, Tondavali, local residents were also present. Various issues as stipulated in the Order of the Hon’ble High Court were deliberated in the said meeting.***

**Observations and Recommendations of the Joint Committee:**

***1. The Joint Committee noted that as per the Approved Coastal Zone Management Plan (CZMP) under CRZ Notification, 2011, the creek stretch at village Tondavali and Talashil is situated in CRZ IV-B area. Further, the said stretch of Kalvali creek is in and along close proximity of***

***the Critically Vulnerable Coastal Area (CVCA) i.e. ecologically sensitive area, as indicated in said approved CZMP. As per the CRZ Notification, 2011, mining of sand is prohibited activity. However, clearing of the waterways for the purpose of navigation may be permissible activity, subject to approval from the Maharashtra Coastal Zone Management Authority (MCZMA). Further, there is as an Office Memorandum (OM) dated 8.11.2011 of the MoEF, New Delhi, as per which, Committee at District Collector level may permit removal of sand bar in the CRZ of rivers/ estuaries by manual method by traditional communities, subject to certain conditions in the said OM.***

***During the site visit, as discussed with the concerned officials, the Joint Committee noted that Maharashtra Maritime Board (MMB) had been carrying out a survey in the creek every year and had recommended the removal of sand by Hatpati method, for the clearing of the navigation channel. Thereafter, Permits for sand removal/ mining for Hatpati (Manual) is granted by the District Committee every year, considering the above said OM, dated 8.11.2011. Accordingly, sand removal by Hatpati (Manual) method is being done at Kalvali Creek. The Committee observed that boats were anchored at the bank of the Kalvavli Creek with heaps of freshly extracted sand near these anchored boats. Moreover, boats were also seen on the opposite bank of the creek with on going sand removal.***

***The Committee also observed that geographical and ecological settings of Talashil and Tondivali villages are unique from the Coastal Environment point of view. There is Kalvali Creek of Gad River on the left side and Arabian Sea on right side. It was further observed that old bandharas (retaining structures) along the creek's banks have been washed out and damaged. Villagers informed that considering the urgency, MMB has initiated construction of a retaining structure at small portions of the creek bank. The Committee also observed that several stretches of the creek's bank are experiencing serious erosion resulting in loss of land.***

***The Joint Committee noted that Applicant has claimed that District Mining Survey Report, 2017 prohibits sand mining in the creek. Taluka Disaster Management Cell, Malvan agreed that the sand extraction has caused washout of the land area at Talashil. The Joint Committee noted that the District Revenue Authorities and District Mining Officer should take into consideration the said reports.***

***In light of the above, the Joint Committee strongly recommended that sand extraction activities in the Kalvali creek at Talashil & Tondavali should be stopped forthwith until a comprehensive Hydrology and Hydrography Survey/ Examination is done. The Office of the District Collector, Sindhudurg should ensure the same. District Coastal Zone Monitoring Committee (DCZMC) should take action against irregular sand extraction work in the creek without prior CRZ clearance / EC, as per Environment (Protection) Act, 1986 read with CRZ Notification, 2011.***

*The Joint Committee further felt that if at all, there is a necessity of clearing of the waterways in the creek, for navigation of the boats of the local fishing community, then MMB after carrying out proper survey / study & confirming the necessity with fishing community and other stakeholders, may submit the proposal for clearing of waterway to MCZMA, in accordance with CRZ Notification, 2011 and avail the essential CRZ clearance / EC from competent authority.*

*2. During the site visit, the Committee discussed the impact on fishing including decreasing yield and loss of certain species in the creek with the Asst. Commissioner, Fisheries and Sarpanch, Tondavli. From the deliberations it was noted that there is a possibility of serious disturbance to breeding sites of fishes / crustacean and in turn reduced fishing yield produce. Fisheries Dept. offered to submit a report after examining the same.*

*3. Regarding salinity ingress and contamination in water wells in the villages, the Joint Committee during the site visit requested the facts from the Sr. Geologist, GSDA. He informed that water quality in the public wells situated in villages is within the prescribed drinking water standards. The Joint Committee asked Sr. Geologist to provide the said report along with their comments for all the wells in these areas, whether public or private.*

*4. Regarding the Bandharas (retaining structures) along the Kalvali Creek, the Officials from the Kharland Dept during the site visit informed that there is around 1 km bandhara at Tondavali village being protected by the Kharland Dept. He further informed that there is an approximately 7 km long, old bandhara constructed by the Harbour Division, PWD, which has washed out in several locations and is in a dilapidated / broken condition. The Committee visited the site of bandhara and observed that landmass near the bandhara is unstable due to probable scouring of sand below the structure. The Committee felt that in addition to the dilapidation of Bandharas due to its age and strong tidal action of currents, sand extraction in the creek has and may further aggravate the problem of erosion of banks of the creek and with a possibility of complete wash out of these age old Bandharas”.*

4. The record reveals that as per the service affidavit, all the Respondents have been served but today from the side of Respondent Nos. 2 & 5- only Mr. Aniruddha Kulkarni, Learned Counsel has appeared and argued the matter. He brought to our notice Minutes of Meeting of District Sand Monitoring Committee dated 15/05/2022. In the said meeting it was decided that sand mining in village Tondavali-Talashil Taluka Malvan will be stopped and no fresh permissions will be granted till NGT decision in O.A. No. 23/2022. No

reply affidavit has been filed by the Learned Counsel for Respondent Nos. 2, 4 & 5 nor did he intend to file the same when inquired in open court as to whether he would like to file the same.

5. From the side of Respondent No. 1, 3 & 4, no Counsel appeared through video conferencing, however, some office staff was found sitting but no communication could be made with them nor any written reply affidavit have been filed from their side.

6. In the light of the above evidence on record, it has been argued by the Learned Counsel for the Applicant that as per Joint Committee report conducted on 24<sup>th</sup> May, 2022, it is apparent that as per the approved Coastal Zone Management Plan (CZMP) under Coastal Regulation Zone (CRZ) Notification, 2011, the creek stretch at Village Tondavali and Talashil are found situated in CRZ IV-B area and that Kalvali creek is in the proximity of the Critically Vulnerable Coastal Area (CVCA) i.e. ecologically sensitive area as indicated in the approved CZMP. As per the CRZ Notification, 2011, the sand mining is prohibited activity in the said area, however, for clearing of waterways for the purposes of navigation, permission may be granted subject to approval from the Maharashtra Coastal Zone Management Authority (MCZMA). It is also apparent from the said report that there is an Office Memorandum (OM) dated 8.11.2011 of the MoEF, New Delhi, by which the Committee at District Collector level may permit removal of sand bar in CRZ of rivers/ estuaries by manual method by the traditional communities, subject to certain conditions. But according to him, (Learned Counsel for the Applicant), the mining work is still going on not manually but mechanically as well which is a violation of the Coastal Regulation Zone (CRZ) Notification, 2011. Therefore, he has prayed that a direction be issued for stopping such sand mining by mechanical means forthwith. It is further argued by him that in the same report, it has been observed that the old bandharas (retaining

structures) alongwith the creek's banks have been washed out/damaged and that several stretches of the creek's bank are experiencing serious erosion resulting in loss of land. Therefore, the Respondents should be directed to ensure that those Bandharas which have washed out, should be directed to be restored at the earliest so that there is no further damage caused to the environment and ecology of the said river. According to him, this damage to the Bandharas is done only because of sand extraction which needs to be stopped forthwith. Further, it is argued that already the committee has made site inspection and has noticed that the sand mining is going on with manual method as per OM dated 08.11.2011 which is permissible activity.

7. We would like to rely upon the law laid down by the Hon'ble Supreme Court of India in (2012) 4 SCC 629 *Deepak Kumar & Others Vs State of Haryana & Ors.*, case relevant portion of which is quoted herein below for the sake of convenience:-

***"19. For an easy reference, we may extract the issues and recommendations made by MoEF, which are as follows:***

***"4.0 ISSUES AND RECOMMENDATIONS***

***4.1 Definition of Minor Mineral:***

***The term minor mineral is defined in clause (e) of Section 3 of MMDR Act, 1957 as :***

***'3. (e) "minor mineral" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes and any other material which the Central Government may, by Notification in the Gazette of India declare to be a minor mineral;'***

***The term 'ordinary sand' used in clause (e) of Section 3 of the MMDR Act, 1957 has been further clarified in rule 70 of the MCR, 1960 as:***

***'70. Sand not be treated as minor mineral when used for certain purposes.- Sand shall not be treated as a minor mineral when used for any of the following purposes, namely:***

- i) purposes of refractory and manufacture of ceramic;***
- ii) metallurgical purposes;***
- iii) optical purposes;***
- iv) purposes of stowing in coal mines,***
- v) for manufacture of silvicrete cement;***
- vi) manufacture of sodium silicate and***
- vii) manufacture of pottery and glass.'***

**Additionally, the Central Government has declared the following minerals as minor minerals: (i) boulder, (ii) shingle, (iii) chalcedony pebbles used for ball mill purposes only, (iv) limeshell, kankar and limestone used in kilns for manufacture of lime used as building material, (v) murrum, (vi) brick-earth, (vii) fuller's earth, (viii) bentonite, (ix) road metal, (x) reh-matti, (xi) slate and shale when used for building material, (xii) marble, (xiii) stone used for making household utensils, (xiv) quartzite and sandstone when used for purposes of building or for making road metal and household utensils, (xv) saltpeter and (xvi) ordinary earth (used or filling or levelling purposes in construction or embankments, roads, railways building).**

**It may thus be observed that minerals have been classified into major and minor minerals based on their end use rather than level of production, level of mechanization, export and import etc. There do exist some minor mineral mines of silica sand and limestone where the scale of mechanization and level of production is much higher than those of industrial mineral mines.**

**Further, in terms of the economic cost and revenue, it has been estimated that the total value of minor minerals constitutes about 10% of the total value of mineral production whereas the value of non metallic minerals comprises only 3%. It is, therefore, evident that the operation of mines of minor minerals need to be subject to some regulatory parameters as that of mines of major minerals.**

**Further, unlike India there does not exist any such system based on end usage in other countries for classifying minerals into major and minor categories. Thus, there is a need to re-look at the definition of "minor" minerals per se.**

**It is, therefore, recommended that Ministry of Mines along with Indian Bureau of Mines, in consultation with the State Governments may re-examine the classification of minerals into major and minor categories so that the regulatory aspects and environment mitigation measures are appropriately integrated for ensuring sustainable and scientific mining with least impacts on environment.**

#### **4.2 Size of the Mine Lease:**

**Area for grant of mine lease varies from State to State. Maximum area which can be held under one or more mine lease is 2590 ha or 25.90 sq.miles in Jammu & Kashmir. Rajasthan prescribed a minimum limit of 1 ha for a lease. Maximum area prescribed for permit is 50x50 m. In most of the States area of permit is not specified in the rules. It has recently been observed by Punjab and Haryana High Court in its order dated 15.5.2009 that State Government are apparently granting short term permits by dividing the mining area into small zones in effect avoids environmental norms.**

**There is, thus a need to bring uniformity in the extent of area to be granted for mine lease so as to ensure that eco friendly scientific mining practices can be adopted. It is recommended that the minimum size of mine lease should be 5 ha. Further, preparation of comprehensive mine plan for contiguous stretches of mineral deposits by the respective State Governments may also be**



*encouraged. This may suitably be incorporated in the Mineral Concession Rules, 1960 by Ministry of Mines.*

#### **4.3 Period of Mine Lease:**

*The period of lease varies from State to State depending on type of concessions, minerals and its end use. The minimum lease period is one year and maximum 30 years. Minerals like granite where huge investments are required, a period of 20 years is generally given with the provisions of renewal. Permits are generally granting for short periods which vary from one month to a maximum one year. In States like Haryana, minor mineral leases are auctioned for a particular time period. Mining is considered to be capital intensive industry and considerable time is lost for developing the mine before it attains the status of fully developed mine. If the tenure of the mine lease is short, it would encourage the lessee to concentrate more on rapid exploitation of mineral without really undertaking adequate measures for reclamation and rehabilitation of mined out area, posing thereby a serious threat to the environment and health of the workers and public at large.*

*There is thus, a need to bring uniformity in the period of lease. It is recommended that a minimum period of mine lease should be 5 years, so that eco friendly scientific and sustainable mining practices are adopted. However, under exceptional circumstances arising due to judicial interventions, short term mining leases/contracts could be granted to the State Agencies to meet the situation arising there from.*

#### **4.4 Cluster of Mine Approach for Small Sized Mines:**

*Considering the nature of occurrence of minor mineral, economic condition of the lessee and the likely difficulties to be faced by Regulatory Authorities in monitoring the environmental impacts and implementation of necessary mitigation measures, it may be desirable to adopt cluster approach in case of smaller mine leases being operated presently. Further, these clusters need be provided with processing/crusher zones for forward integration and minimizing excessive pressure on road infrastructure. The respective State Governments / Mine Owners Associations may facilitate implementation of Environment Management Plans in such cluster of mines.*

#### **4.5 Requirement of Mine Plan for Minor Minerals:**

*At present, most of the State Governments have not made it mandatory for preparation of mining plan in respect of minor minerals. In some States like Rajasthan, eco friendly mining plans are prepared, which are approved by the State Mining Department. The eco friendly mining plans so prepared, though conceptually welcome, are observed to be deficient and need to be made comprehensive in a manner as is being done for major minerals. Besides, the aspects of reclamation and rehabilitation of mined out areas, progressive mine closure plan, as in vogue for major minerals could be introduced for minor minerals as well.*

*It is recommended that provision for preparation and approval of mine plan, as in the case of major minerals may appropriately be provided in the Rules governing the mining of minor minerals by the respective State Governments. These should specifically include the*

*provision for reclamation and rehabilitation of mined out area, progressive mine closure plan and post mine land use.*

#### **4.6 Creation of Separate Corpus for Reclamation / Rehabilitation of Mines of Minor Minerals:**

*Mining of minor minerals, in our country, is by and large unorganized sector and is practiced in haphazard and unscientific manner. At times, the size of the leasehold is also too small to address the issue of reclamation and rehabilitation of mined out areas. It may, therefore, be desirable that before the concept of mine closure plan for minor minerals is adopted, the existing abandoned mines may be reclaimed and rehabilitated with the involvement of the State Government. There is thus, a need to create a separate corpus, which may be utilized for reclamation and rehabilitation of mined out areas. The respective State Governments may work out a suitable mechanism for creation of such corpus on the 'polluter pays' principle. An organizational structure may also need to be created for undertaking and monitoring these activities.*

#### **4.7 Depth of Mining:**

*Mining of minerals, whether major or minor have a direct bearing on the hydrological regime of the area. Besides, affecting the availability of water as a resource, it also affects the quality of water through direct run off going into the surface water bodies and infiltration / leaching into groundwater. Further, groundwater withdrawal, dewatering of water from mine pit and diversion of surface water may cause surface and sub surface hydrologic systems to dry up. An ideal situation would require that quarrying should be restricted to unsaturated zone only above the phreatic water table and should not intersect the groundwater table at any point of time. However, from the point of view of mineral conservation, it may not be desirable to impose blanket ban on mining operation below groundwater table.*

*It is, therefore, recommended that detailed hydro-geological report should be prepared in respect of any mining operation for minor minerals to be undertaken below groundwater table. Based on the findings of the study so undertaken and the comments/recommendations of Central Ground Water Authority/State Ground Water Board, a decision regarding restriction on depth of mining for any area should be taken on case to case basis.*

#### **4.8 Uniform Minor Mineral Concession Rules:**

*The economic value of the minor minerals excavated in the country is estimated to contribute to about 9% of the total value of the minerals whereas the non metallic minerals contribute to about 2.8%. Keeping in view the large extent of mining of minor minerals and its significant potential to adversely affect the environment, it is recommended that Model Mineral Concession rules may be framed for minor minerals as well and the minor minerals may be subjected to a simpler regulatory regime, which is, however, similar to major minerals regime.*

#### **4.9 River Bed Mining:**

*4.9.1 Environment damage being caused by unregulated river bed mining of sand, bazari and boulders is attracting considerable*

**attention including in the courts. The following recommendations are therefore made for the river bed mining.**

**(a) In the case of mining leases for riverbed sand mining, specific river stretches should be identified and mining permits/lease should be granted stretch wise, so that the requisite safeguard measures are duly implemented and are effectively monitored by the respective Regulatory Authorities.**

**(b) The depth of mining may be restricted to 3m/water level, whichever is less.**

**(c) For carrying out mining in proximity to any bridge and/or embankment, appropriate safety zone should be worked out on case to case basis, taking into account the structural parameters, locational aspects, flow rate etc. and no mining should be carried out in the safety zone so worked out.**

#### **5.0 Conclusion:**

**Mining of minor minerals, though individually, because of smaller size of mine leases is perceived to have lesser impact as compared to mining of major minerals. However, the activity as a whole is seen to have significant adverse impacts on environment. It is, therefore, necessary that the mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of the mined out areas. Further, while granting mining leases by the respective State Governments "location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked Rules/Notifications governing such zones and the judicial pronouncements, if any, need be duly noted.**

**The Union Ministry of Mines along with Indian Bureau of Mines and respective State Governments should therefore make necessary provisions in this regard under the Mines and Minerals (Development and Regulation) Act, 1957, Mineral Concession Rules, 1960 and adopt model guidelines to be followed by all States.**

**20. The report clearly indicates that operation of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals. It was also felt necessary to have a re-look to the definition of "minor" minerals per se. The necessity of the preparation of "comprehensive mines plan" for contiguous stretches of mineral deposits by the respective State Governments may also be encouraged and the same be suitably incorporated in the Mineral Concession Rules, 1960 by the Ministry of Mines.**

**21. Further, it was also recommended that States, Union Territories would see that mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of mined out areas. Mining Plan should take note of the level of production, level of mechanisation, type of machinery used in the mining of minor minerals, quantity of diesel consumption, number of trees uprooted, export and import of mining minerals, environmental impact, restoration of flora and host of other matters referred to in 2010 rules. A proper framework has also to be evolved on cluster of mining of minor mineral for which there must be a Regional**

**Environmental Management Plan. Another important decision taken was that while granting of mining leases by the respective State Governments, location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked Rules/Notifications governing such zones and the judicial pronouncements, if any, need to be duly noted.**

**22. The Minister for (E & F) wrote DO letter dated 1st June, 2010 to all the Chief Ministers of the States to examine the report and to issue necessary instructions for incorporating the recommendations made in the report in the Mineral Concession Rules for mining of minor minerals under Section 15 of Mines and Mineral (Development and Regulation) Act, 1957. Following are the key recommendations reiterated in the letter:**

- "(1) Minimum size of mine lease should be 5 ha.**
- (2) Minimum period of mine lease should be 5 years.**
- (3) A cluster approach to mines should be taken in case of smaller mines leases operating currently.**
- (4) Mine plans should be made mandatory for minor minerals as well.**
- (5) A separate corpus should be created for reclamation and rehabilitation of mined out areas.**
- (6) Hydro-geological reports should be prepared for mining proposed below groundwater table.**
- (7) For river bed mining, leases should be granted stretch wise, depth may be restricted to 3m/water level, whichever is less, and safety zones should be worked out.**
- (8) The present classification of minerals into major and minor categories should be re-examined by the Ministry of Mines in consultation with the States."**

**23. The Ministry of Mines, Govt. of India sent a communication No.296/7/2000/MRC dated 16.05.2011 called "Environmental aspects of quarrying and of minor minerals - Evolving of Model Guidelines" along with a draft model guidelines calling for inputs before 30. 06. 2011. Draft rules called Minor Minerals Conservation and Development Rules, 2010 were also put on the website. Further, it may be noted Section 15(1A)(i) of the Act specifies**

**"15. (1-A) (i) the manner in which rehabilitation of flora and other vegetation, such as trees, shrubs and the like destroyed by reasons of any quarrying or mining operations shall be made in the same area or in any other area once selected by the State Government, whether by way of reimbursement of the cost of rehabilitation or otherwise by the persons holding the quarrying or mining lease."**

**24. We are of the view that all State Governments / Union Territories have to give due weight to the above mentioned recommendations of the MoEF which are made in consultation with all the State Governments and Union Territories. Model Rules of 2010 issued by the Ministry of Mines are very vital from the environmental, ecological and bio-diversity point of view and therefore the State Governments have to frame proper rules in accordance with the recommendations, under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957.**

**25. Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material**

*for the infrastructural development and for the construction industry but excessive in-stream sand and gravel mining causes the degradation of rivers. In stream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics.*

*26. We are of the considered view that it is highly necessary to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long term rational and sustainable use of natural resource base and also the bio-assessment protocol. Sand mining, it may be noted, may have an adverse effect on bio-diversity as loss of habitat caused by sand mining will effect various species, flora and fauna and it may also destabilize the soil structure of river banks and often leaves isolated islands. We find that, taking note of those technical, scientific and environmental matters, MoEF, Government of India, issued various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of Article 48A, Article 51A(g) read with Article 21 of the Constitution.*

*27. The State of Haryana and various other States have not so far implemented the above recommendations of the MoEF or the guidelines issued by the Ministry of Mines before issuing auction notices granting short term permits by way of auction of minor mineral boulders, gravel, sand etc., in the river beds and elsewhere of less than 5 hectares. We, therefore, direct to all the States, Union Territories, MoEF and the Ministry of Mines to give effect to the recommendations made by MoEF in its report of March 2010 and the model guidelines framed by the Ministry of Mines, within a period of six months from today and submit their compliance reports.*

*28. Central Government also should take steps to bring into force the Minor Minerals Conservation and Development Rules 2010 at the earliest. State Governments and UTs also should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MoEF in its Report of March 2010 and model guidelines framed by the Ministry of Mines, Govt. of India. Communicate the copy of this order to the MoEF, Secretary, Ministry of Mines, New Delhi, Ministry of Water Resources, Central Government Water Authority, the Chief Secretaries of the respective States and Union Territories, who would circulate this order to the concerned Departments.*

*29. We, in the meanwhile, order that leases of minor mineral including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from the MoEF. Ordered accordingly.”*

8. Further, we would like to rely on Coastal Regulation Zone (CRZ) Notification 2011, Regulation 3 Sub-clause (iv) & (c), according to which the maintenance or clearing of waterways as in the present case is a permissible

activity in the CRZ area but the same would require permission to be obtained from Maharashtra Coastal Zone Management Authority (MCZMA).

9. As per Mines & Minerals (Development Regulation) Act, 1957, Section 3 Sub-Clause (e) ordinary sand would be covered under Minor Minerals. For Minor minerals, Environmental Clearance would be required to be obtained as per EIA Notification, 2006 under Schedule of the said EIA Notification, project activity 1(a) for mining lease up to 100 hec. in respect of non-coal mine lease (will include sand mines).

10. We have heard the rival contentions and perused the record. It is apparent that the Joint Committee report has noticed that the extraction of sand from the region in question has resulted in old bandharas being washed away/damaged as serious soil erosion is happening as a result of loss of land. The said committee has recommended that sand extraction activity at the place in question should be stopped forthwith until comprehensive Hydrology and Hydrography Survey/ Examination is done which should be ensured by the District Magistrate, Sindhudurg. It is also recommended that District Coastal Zone Monitoring Committee (DCZMC) should also take action against the illegal sand extraction work in the creek without prior CRZ clearance/EC, as per Environment (Protection) Act, 1986 read with CRZ Notification, 2011. Further, it is recommended that in case, it is felt necessary that waterways in the creek for navigation of the boats of the local fishing communities is necessary, then Maharashtra Maritime Board (MMB) after carrying out the proper survey/study and confirming the necessity with the fishing community and other stakeholders, may submit proposal for clearing of waterway to MCZMA, in accordance with CRZ Notification, 2011 and avail the essential CRZ clearance/EC from the competent authority. It is also recorded in the said report that there is a possibility of serious disturbance to the breeding sites of fishes/crustacean which could reduce fishing yield. An offer was given

to the Committee by the Fisheries Department to submit a report after examining the same. It is also noted in the said report that regarding ingress and contamination in water wells in the Villages, the Joint Committee had requested for the facts from the Sr. Geologist, Ground Water Surveys and Development Agency (GWSDA), who informed that water quality in the public wells is within the prescribed drinking water standards. In the light of the above report, we are of the view that this application needs to be disposed of with following directions:-

- i. District Magistrate, Sindhudurg shall ensure that sand extraction activities in the Kalvali creek at Talashil & Tondavali is stopped forthwith until a comprehensive Hydrology and Hydrography Survey/ Examination is done.
- ii. The District Coastal Zone Monitoring Committee (DCZMC) shall take stringent action against those involved in illegal sand extraction work in the creek in question without prior CRZ clearance/EC as per Environment (Protection) Act, 1986 read with CRZ Notification, 2011. The Hydrology and Hydrography Survey/study shall be conducted and completed by October, 2022 positively and it's report shall be taken into consideration with respect to whether the sand mining should be allowed in the area in question? if yes, to what extent? Some guidelines need to be provided in this regard by the Respondent No. 5/ Maharashtra Coastal Zone Management Authority(MCZMA)
- iii. After laying down of these guidelines, in future, they would be ensured to be complied with in respect of permitting sand mining.
- iv. The Respondents shall also ensure that the area in question is a breeding site of fishes/crustacean which has resulted in

reduction of fishing yield, therefore, it shall be ensured by them that no further damage is caused to the fishing site and adequate protection is given to the said area.

- v. An extensive survey shall also be got conducted in the area in question from the Groundwater Survey and Development Agency (GSDA) in order to ascertain as to whether the quality of potable water of public/private wells has deteriorated or not. If it is found to have deteriorated, corrective measures shall be taken forthwith.
- vi. For maintaining navigational channels in coastal areas wherever sand mining is required to be undertaken, Maharashtra Maritime Board (MMB) shall conduct a survey in September every year to determine the locations for sand mining. MMB shall decide available sand reserves in the respective sand deposits, and the depths up to which sand shall be removed. CEO, MMB shall be responsible for obtaining required environmental and Coastal Regulation Zone (CRZ) Clearance
- vii. As the old Bandharas (retaining structures) alongwith the creek's banks in the site in question are found to have washed out/damaged badly because of the sand mining activity being indulged in, Kharland Development Board shall ensure that the said old bandharas are re-constructed/restored at the earliest not later than a period of 06(six) months after obtaining CRZ clearance.

11. If, even after the guidelines having been framed as directed in clause (ii) above, any cause of action survives to the Applicant, he will have liberty to approach this Tribunal.



12. This Original Application is disposed of accordingly.
13. No order as to cost.
14. Let a copy of this Judgment be provided to all the Respondents as well as to the authorities heading Ground Water Survey and Developmental Agency (GWSDA), Maharashtra Maritime Board (MMB) and Kharland Development Board by email and otherwise for compliance.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

May 30, 2022  
Original Application No. 23/2022(WZ)  
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