

National Green Tribunal Bar Association vs. Ministry of Environment & Forests and Ors. (Sand Mining Case)

The judiciary in India, led by the Supreme Court of India (SC), operates at the intersection of public interest, political pressures, and social expectations. The apex court continuously negotiates such undercurrents and attempts to demonstrate ideal conduct for all levels of the judiciary to follow, including itself. This includes managing and balancing the varied expectations and interests of the society and economy and increasingly dealing with complex issues interlinking economics, environment, competition, trade, technology and allied fields.

The Shivshakti judgement noted that the law and economics interface is most relevant today as India is on the path of economic growth and development due to decades of effort. The judges made strong observations to initiate the discourse on economic analysis of law while adjudicating a sensitive economic matter, the consideration of such commentary by the judiciary in its decision-making still requires attention and adoption.

In the above background and context, this study attempts to understand the first-order direct economic impact of the select (five) judicial decisions of the SC and National Green Tribunal (NGT) on the economy and stakeholders. The study also aims to inform an evidence-based approach toward institutionalising comprehensive and balanced thinking in judicial decision-making.

Furthermore, the study intends to inform the human-centricity of economic development and environment sustainability and evaluate the best possible remedy with equal consideration to equity, environment and economy. It is purely an academic exercise and is nowhere intended to interfere with the decision-making process of the judiciary. This is an attempt to assess the economic impact of select decisions of the SC and the NGT.

Background

India is expected to become the third largest construction business market by 2025, after China and the United States of America. The demand for sand in India outstrips the supply. It is estimated that in the period of 2021-2026, the sand market

will increase at the rate of 6-7 percent annually. The demand-supply imbalance, *inter alia*, has led to widespread unauthorised sand mining in the country. Illegal mining is lucrative to unscrupulous miners, their labour, administrators and polity.

While on the one hand, the mining of major minerals is heavily regulated in India and go through a rigorous process of Environmental Impact Assessment (EIA) and clearances, due attention has not been given to the mining of minor minerals, especially when it comes to small-scale mining, given its smaller scale of operation. For instance, as per the EIA Notification of 2006 (EIA 2006), mining leases of less than 05 hectares (ha) did not require an Environmental Clearance (EC), until the same was amended in 2016.

In 2012, the SC in *Deepak Kumar vs the State of Haryana* mandated that leases of all minor minerals for an area with less than 05 ha will be granted only after EC by the Ministry of Environment, Forest and Climate Change (MoEFCC). Before this judgment, MoEFCC notified EIA Notification in 2006, and EC was required only for mining projects with a lease area of 05 ha and above, irrespective of minor or major mineral.

Following the SC judgment in 2012, the National Green Tribunal, on August 05, 2013, ordered that "no person, company, or authority can carry out any mining activity or removal of sand from any riverbed anywhere in the country until an EC from MoEFCC/ State Environmental Impact Assessment Committee (SEIAA) and licence from competent authorities have been obtained".

Objective and Scope

In light of the NGT mentioned above, this study aims to analyse the economic

impact of the sand mining stoppage in Gautam Buddha Nagar, if any, on relevant stakeholders. The period of the study is from August 2013 to September 2017. The study takes a bottom-up approach to understand only the first order's direct impact on key stakeholders such as the government, mining lease holders, associated businesses and labourers/workers, among others.

Economic Impact

UP generally and the Gautam Buddha Nagar district, specifically, have received a lot of attention for rampant illegal mining of sand. Despite the laws and regulations in place and many orders directing stoppage of illegal mining activities along with monitoring of such activities, the state of UP has been largely unsuccessful in curbing such illegalities.

The state of UP was deprived of ₹477.93 crore in 2015-16 because of unauthorised mining operations, according to the Comptroller and Auditor General of India's (CAG) audit report of the Revenue Sector of UP. Moreover, it was also noted that the government suffered a loss of ₹179.57 crore from the extraction of minerals without ECs. On top of all this, the government did not recover a penalty of ₹282.22 crore against lessees extracting minerals without renewing a mining plan, in addition to over-extraction above the approved quantity.

As per a 2013 news report, the district administration of Gautam Buddha Nagar pegged the illegal sand mining business at ₹100 crore monthly, out of which, as per

the administration, the government hardly gets ₹1 crore as royalty. Another 2013 media report mentioned that the sale of illegally mined sand stood at ₹100 to ₹200 crore a month in Noida and Greater Noida, a major market for sand from Gautam Buddha Nagar. Banning sand mining restricts the supply of already scarce sand, driving prices and incentivising illegal mining.

After August 05, 2013, order of the NGT, people from the construction sector expressed fears of a steep rise in sand prices and foresaw delays in the completion of projects. A Confederation of Real Estate Developers' Associations of India (CREDAI) spokesperson projected real estate construction costs to increase three-fold, as sand would have to be imported from Cambodia and Pakistan and such cost increases are ultimately passed on to the buyers.

Additionally, employment in the construction sector also falls due to construction activity, as seen in many states. For instance, the Builders Association of India (Mumbai Centre) estimated employment loss for 10 million construction workers in Maharashtra due to a sand mining ban ordered by Mumbai High Court in September 2010.

Primary Findings

Information gathered by CUTS from Gautam Buddha Nagar regarding active leases at the time of the NGT order dated August 05, 2013, revealed that all sand mining leases in Gautam Buddha Nagar had expired on May 01, 2013. Hence, no

leaseholders in the district were legally mining at that time. No new leases were granted thereafter till 2017, when the new State Mineral Policy was implemented. However, sand mining might have continued under short-term permits.

An analysis of the amount of royalty received by the revenue department of Gautam Buddha Nagar shows a downtrend in royalty collection from 2012-13 to 2016-17. As per CUTS' calculations, the state government, on average, suffered an annual loss of ₹368 lakhs in royalty earnings from sand mining in Gautam Buddha Nagar, adding up a total royalty loss of ₹1,288 lakhs during the assessment period that is, from August 2013 to September 2017.

While CUTS could engage with current leaseholders in a limited manner, due to poor data availability and unwillingness to engage, contacting previous lease and permit holders to understand their impact was challenging. However, what is clear is that sand mining continued in Gautam Buddha Nagar under short-term permits. It could not be confirmed if any business that mined sand under a lease before the assessment period went out of business owing to no new leases being granted.

During the stakeholder interaction in the field, a current and active leaseholder highlighted the difficulties in obtaining leases. It was reported that while applying for a lease is now completely online through the e-tendering process, documentation, completion and registration take up more than two to three months due to challenges such as

lack of technical knowledge and typical governmental inertia.

It was found that the associated businesses of cement and construction industries faced sand shortage and additional costs incurred in procuring illegal sand at a higher price due to the stoppage of sand mining by NGT. This, compared to the alternatives such as manufactured sand (M-sand) or crushed rocks, was a more feasible and acceptable alternative for them. A credible source from a cement dealers' association cited that during the assessment period, illegally mined sand was procured at a price which was approximately ₹40 to 45 higher than the price of legally mined sand.

The impact on workers during the assessment period effectively meant losing their income source. However, the sand mining industry in Gautam Buddha Nagar saw the increased activity of the nexus advancing illegal sand mining, as has been highlighted in many news reports. With most labourers involved in legal sand mining being paid ₹300 to 400 per day, as per interactions with current leaseholders, illegal mining, although risky, was far more lucrative for them.

Through stakeholder interaction, it was further found that the pay for illegal sand mine labour was ₹150 for every trolley of sand mined. With each trolley making approximately 15-20 trips per day, each labourer, on average, earned close to ₹2,000 daily.

Recommendations and Conclusion

The findings of this study are used to provide the following recommendations with equal consideration to the society-development-environment.

1. Reanalysing and Redesigning Environmental Impact Assessment Framework:

Designed as a decision-making tool, EIAs ideally should compare alternatives for a project whilst identifying the one that best represents the combination of economic and environmental costs and benefits.¹ Properly conducted EIAs also have the potential to minimise conflicts by promoting community participation, informing decision-makers and laying the base for environmentally sound projects.

Moreover, the EIA process in developed countries follows an integrated approach by considering social and health aspects. However, the Indian EIA regulations have no provision to enable such an integrated approach, which is important to holistically understand the costs and benefits of a project.

2. Factor in Cumulative Impact: In addition to institutionalising an integrated approach in the EIA process, it is also important for the EIA framework and other central and state

¹ 'Understanding EIA', Centre for Science and Environment,
<https://www.cseindia.org/understanding-eia-383>

environmental regulations and sand mining to consider cumulative effects. This would enable regulators and authorities to assess the impacts of mining leases not in silos but in groups. In that regard, the concept of 'clusters' introduced in the EIA Amendment 2016 takes into account the environmental impact of a group of closely situated mining leases, rather than looking at each lease individually.

Furthermore, citizens should be involved and invited to participate in the decision-making process to capping the number of leases that could be granted in a particular area. This could ensure that the cumulative impact is minimal and that economic activity is continued.

3. Disincentivise Illegal Mining and Incentivise Legal Mining: While amending and redesigning the EIA and other relevant laws and regulations, it is important to establish measures to ensure that illegal sand mining can be curbed. In that regard, it becomes essential to ensure that the existing regulations are implemented adequately and effectively to mitigate the nexus of police, administration and sand mafia.

As the situation stands now, specifically in Gautam Buddha Nagar, the existence and dominance of the nexus overshadow the legal sand mining activities, as the sand mafia can influence the cost and final prices. Therefore, the miners and workers see

no apparent disincentive in engaging in illegal sand mining, with weak enforcement and implementation of laws. At the same time, legal sand mining is also touted as expensive and cumbersome.

Thus, one way to incentivise legal sand mining could be for state governments to reduce/cap the prices of legally mined sand. Another way is to simplify the procedure for obtaining permissions, leases, transportation and storage permits for legal sand mining. That would require stronger political will and a coordinated approach.

4. Promoting the use of Alternatives:

Given the high projected demand for sand and rapidly depleting resources, alternatives to sand must be found and promoted. One such alternative is manufactured sand (M-sand). During field interviews, it was informed that different state governments have been creating awareness of using M-Sand as an alternative to river sand.

Many builders are wary about its usage due to the fear that M-Sand is adulterated with quarry dust, making it unsafe for buildings. There should be efforts to tackle such fears and refine the technology for producing M-sand to improve its performance in construction.

Recently, the Government of Rajasthan launched the manufactured sand policy to incentivise and promote the production and use of M-sand. Other states, such as Tamil Nadu, have

also declared intentions to promote and regulate M-sand. More such efforts are needed at the national level.

5. Institutionalising Robust Review, Monitoring and Feedback

Mechanisms: Courts across jurisdictions can institutionalise a comprehensive and robust institutional mechanism to review, monitor and assess the implementation of their orders. This can be done by leveraging the existing administrative machinery and line departments, which can be organised as an *ad-hoc* task force, or any other standing body as part of the relevant courts.

Another key feature of such an institutional setup must be to assess the implementation challenges on a case-by-case basis to form a feedback loop and inform the courts and other authorities about prospective challenges that might affect any future orders and their implementation.

For instance, in sand mining, the SC and the NGT could have developed such review and monitoring mechanisms that would have enabled

them to take stock of the extent of implementation of their orders. This would also mean reviewing the existing legislations and assessing whether they are equipped to allow stakeholders to implement judicial orders. Such review and assessment mechanisms can then ensure that environmental and social concerns are addressed, thus enabling the continuance of economic activity.

6. Adequate Regulatory Capacity and Resource Allocation:

The challenges to regulatory capacity and lack of resources must be addressed to implement the recommendations mentioned above. For instance, even though the District Survey Report is a good measure and, if implemented well, can help mitigate environmental impacts due to sand mining.

It must also be taken into account that the district and state-level authorities and committees constituted to undertake such tasks have limited capacity and resources. To overcome the same, the District Mineral Foundation fund must be utilised optimally for such capacity building.

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