

Justice D.P. Singh
Former Judge Allahabad High Court
Chairman, Eastern UP Rivers
and Water Reservoirs Monitoring Committee
(Constituted by National Green Tribunal
Principal Bench, New Delhi Dtd. 03.10.18
in OA No. 116/2014)



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Ref: No. 406 /EUPRWRMC/2019

Dated: July 29, 2019

IN RE: SAND MINING IN DISTRICTS JALAUN AND HAMIRPUR, UP

PENDING MATTER

SOLID WASTE
MANAGEMENT

BUNDELKHAND
REGION

(FINAL REPORT)

The Eastern U.P. River and Water Reservoirs Monitoring Committee has been constituted under the orders of Hon'ble NGT dated 23.08.2018 passed in **OA No. 116 of 2014** in re: *Meera Shukla versus Municipal Corporation, Gorakhpur* with a view to check pollution in certain rivers and water reservoirs in Eastern Uttar Pradesh. The instant report is with regard to Sand Mining in Districts Jalaun and Hamirpur, UP.

One Anchal Dwivedi submitted a complaint pointing out with regard to illegal mining in Bundelkhand region by use of heavy machines which in due course is likely to change the course of river apart from causing air pollution. He also pointed out that out of 13000 ponds (water reservoirs), only 1150 ponds are left and the rest have been encroached upon by land Mafias having nexus with the executive authorities. The alleged illegal mining is not only in Government allotted mines but also on land of farmers as well as village land, as noted by the National Green Tribunal itself issuing notices to 22 lease holders but without any outcome. Because of exploitation and unsystematic sand mines, the Bundelkhand region is facing underground water deficit, ultimately reducing the water level causing water scarcity. The Government officers and the land grabbers/Mafias are in hand-in-gloves to exploit the environment and disturb the ecology of Bundelkhand region and sometimes on objection being raised by whistle-blowers to these illegal activities, they are run over by trucks. On NH-34 Sagar Kanpur Highway, there is average of 35 deaths in a month, which take place for extraneous reasons. The complainant is also

having threat perception from land Mafias and antisocial elements who are involved in these illegal activities. The complaint of Shri Anchanl Dwivedi in toto is reproduced as under:

"To,

The Chairman,
Monitoring Committee, UP Chapter
(National Green Tribunal of India)
New Delhi.

Respected Sir,

1. Bundelkhand which comes in eastern U.P. & comprises of 7 districts Jhansi, Mahoba, Banda, Chitrakoot, Hamirpur, Jalaun, Lalitpur gives 40 percent revenue of the state but is totally ignored in terms of environmental conservation & has become an abode for loot of illegal mining.
2. Infact illegal mining gives birth to so many problems consequently. Due to over exploitation of sand mines now Bundelkhand is facing crisis of underground water despite of several rivers as the sand which helps in percolating the rain water in the earth is missing now. Falling of normal boring even the deep bored water tubewells have failed. Productivity of crops is at so much down that not only animals even the human population is facing crisis of grains. Free cattle even grazes the left over crops & poor peoples of the region are bound to eat breads of Grass.
3. Illegal mining is at peak now. Even Bogus MM11 receipt is issued to deceive the mines department with nexus of corrupt Officers. Despite of total ban on pokland Machines by Hon'ble supreme court rampant illegal mining is continue by using pokland machines which has totally changed the course of rivers & it's natural current. Illegal dams has been made on rivers. Nature, environment, ecology all of the Bundelkhand is on verge of the devastation.
4. These Mining mafia are so much powerful & has connections with district administration specially police Officers that nobody can dare to oppose them. If any person opposes them police threaten him to

implicate in false cases, mafia run over sometime to whistle blowers by the trucks. These all illegal mining works are done after sunset till the morning. In night illegal mining, overloading is rampant. Overspeeding trucks regularly make several accidental deaths regularly. NH34 that is Sagar Kanpur Highway is witness of atleast 35 deaths in a month on average. Mining Mafia hires anti-social elements as well as criminals in their Gangs to local peoples to keep their mouth shut. Recently I also felt it's bad experience personally.

5. This illegal mining is not only in Government allotted mines but also on land of farmers as well as village land. Recently NGT issued notices to 22 lease holders but nothing happened. Bhulsi mines has several such type of Mining Mafia.

6. In past Bundelkhand had 13000 ponds but now only 1150 ponds is left. Most of the ponds had been encroached by land mafia. By the Nexus with district level Officers land mafia eloped the revenue map & thus barred possibilities of consolidation so that no encroachment of ponds could be removed. Due to lack of water crisis. Even and Mafia has encroached the stadium of Sumerpur Block.

7. Eucalyptus which is well known ecological terrorists & pulls heavy water is grown in Bundelkhand which is already facing water crisis for petty monetary benefits. In U.S.A. eucalyptus is grown on marshy land to absorb extra water but for what reasons forest department & district administration is permitted it in Bundelkhand. I couldn't understand. Even state of Karnataka & Tamil Nadu has banned eucalyptus three years ago after the reports & studies on environment.

8. So called several packages for water conservation, renovation & regeneration for ponds were given in Bundelkhand but only God knows what happened of that money. No utilisation report or audit of such money has been done. Chitrakoot division was given huge package to save the environment & water conservation but that is also galloped by the Officers.

9. Bundelkhand has so many man made environmental problems that it cannot be summarised in a simple application, if monitoring

committee itself visit the Bundelkhand, it will really experience the level of exploitation of nature & fierceness of illegal mining.

*Anchal Dwivedi
(An environmental & Social activist)
Add: 2/425, Munjhupur, Hamirpur
Uttar Pradesh
Phone no. 8787216571
7379733171"*

The matter was placed before the Monitoring Committee on 18.03.2019. A committee consisting of Shri S.C.Yadav, Chief Conservator of Forest, Shri Niraj Kumar, Superintending Engineer, Irrigation Department, Shri Ravi Negi, Senior Geologist, Geological Survey of India and Shri Ajit Sachan, Deputy Director, Agriculture Department was constituted. The Director Mining was requested to monitor the work of the committee as Convenor. The committee submitted its report dated 6th July, 2019, which was considered by the Monitoring Committee in its meeting dated 12.07.2019. The Committee had resolved as under:

"Item No. 2

We have perused the report submitted by the duly constituted committee. It shows that mining has been done without following the norms. However, no comments have been received from the Director mining. He may submit his comments within three days in writing in response to the report submitted by the committee, otherwise the matter shall be forwarded with recommendation to Hon'ble NGT for future course of action."

A deep and cautious study of the aforesaid report of the committee establishes that threat perception to the environment in Bundelkhand region, particularly in district Hamirpur is beyond doubt and the efforts made for water conservation are merely an eye-wash. The committee had visited the spots. However, it appears that the complainant did not cooperate and was not present at the sites of illegal mining, may be because of threat perception, which is also being faced by the whistle-

blowers. A chart has been produced in the report indicating the progress of construction of pond during last three years, which is reproduced as under:

Sl. No.	Name of district	Yearwise progress in construction of field ponds			
		2016-17	2017-18	2018-19	Total
1	Jhansi	310	455	975	1740
2	Jalaun	310	435	590	1335
3	Lalitpur	250	370	512	1132
4	Chitrakoot	250	285	775	1310
5	Banda	250	327	678	1255
6	Hamirpur	250	355	695	1300
7	Mahoba	380	322	775	1477
Total area of ponds in Bundelkhand		2000	2549	5000	9549

In the financial year 2018-19, the total amount fine imposed against illegal mining, as noted by the committee from the office of District Magistrate, Hamirpur was Rs.1,83,57,886/-. As many as 507 vehicles/trucks involved in illegal mining were seized and 140 FIRs were lodged against these illegal activities. This shows the gravity of situation in district Hamirpur. Monthwise details of aforesaid items in the financial year 2018-19 is as under:

Months	Financial Year 2018-19					
	Action taken against illegal mining/transportation					
	No. of vehicles seized		Amount of fine imposed/recovered/deposited		FIRs lodged	
	In the month	By the month	In the month (in Rs)	By the month (in Rs)	In the month	By the month
April	12	12	3,86,400.00	3,86,400.00	03	03
May	15	27	5,07,400.00	8,93,800	18	21
June	66	93	22,50,960.00	31,44,760.00	26	47
July	69	162	24,05,566.00	55,50,326.00	19	66
August	28	190	8,80,000.00	64,30,326.00	12	78
September	21	211	5,85,000.00	70,15,326.00	05	83

October	03	214	99,300.00	71,14,626.00	11	94
November	17	231	5,57,000.00	76,71,626.00	25	119
December	33	264	15,75,160.00	92,46,786	08	127
January	84	340	32,87,850.00	1,25,34,636.00	04	131
February	74	414	22,56,680.00	1,47,91,316.00	02	133
March	93	507	35,66,510.00	1,83,57,886.00	07	140

In the financial year 2019-20, the amount of fine imposed against illegal mining was Rs. 78,18,750/- and the number of the vehicles seized was 212. In this financial year and by 27.06.2019, 09 FIRs were lodged against illegal sand mining. Monthwise details of aforesaid items is as under:

Months	Financial Year 2019-20					
	Action taken against illegal mining/transportation					
	No. of vehicles seized		Amount of fine imposed/recovered/deposited		FIRs lodged	
	In the month	By the month	In the month (in Rs)	By the month (In Rs)	In the month	By the month
April	43	43	16,29,750.00	16,29,750.00	01	01
May	89	132	33,69,480.00	49,99,230.00	05	05
June	80	212	28,19,520.00	78,18,750.00	04	09

The aforesaid charts indicate that illegal mining in district Hamirpur as well as in entire Bundelkhand area is a routine factor having nexus with mining Mafias and the same is going on unabated at the cost of environment and life of generations to come. With regard to scarcity of water in the State of UP, the Hon'ble Allahabad High Court while dealing with the matter relating to water bodies, ponds and lake in **Writ Petition No. 3413 (M/S) of 2006** in re: *Rajendra versus Additional Commissioner, Devi Patan Mandal, Gonda and others*, decided on 23.03.2007, reported in **2007 (25) LCD 565**, had observed as under:

"From the data provided by State authorities, it is evident that in case no immediate steps are taken then people residing in the State of U.P after about

200 or 300 years will not get drinking water or water for irrigation to meet out their requirements. After 400 or 500 years some of the districts of State of U.P may be converted into deserts on account of decrease of underground water level at present rate and after 200 years or 300 years all well, tubewell, ponds and lakes of Lucknow may dry up. Situation is alarming and this court expects that government shall awake and fulfill its constitutional obligation to save the coming generation from acute water crises."

Bundekhand comprises seven districts of the State of UP, namely, Jhansi, Jalaun, Lalitpur, Chitrakoot, Banda, Hamirpur and Mahoba. Inspection has been done by the committee at two sites in terms of the complaint (supra) made by Shri Anchal Dwivedi. Only 20% land of the region is under cultivation. The Engineering Geology Division, Geological Survey of India, State Unit, UP in the last five years has done commendable work. It has been a pioneering service provider to the different stakeholders of water resources development projects in Uttar Pradesh for last many decades, but their advice does not seem to have taken the shape at ground level because of illegal mining, damage caused to the course of rivers and spoiling of water resources and owing to that, the region is under suffering from water stress conditions. A brief description attached with the report of the committee indicates the efforts made by the Government, but it is horrible to note that illegal mining in the region is going on at large scale.

The photographs and follow up observations made by the committee in its report in respect of **Bhulsi Mines, Block No. 30/2** indicate how at the mining site, over exploitation of morrum is being carried out. It has been observed that at sporadic locations, the excavation has gone down upto 6-7 meters from the original ground level though it ought to have been only 1.5 meter. It is a matter of grave concern. The observations made by the committee *ipsi dixit* show the dangerous situation which the people of the region are likely to suffer in coming days. The same alongwith photographs are reproduced as under:

- a. *The allotted mining site is alongside the river bank and represents a point bar. A thick succession of morrum, coarse sand and top soil layer is observed with a thickness ranging upto a maximum of 10 m. The top soil thickness ranges between 01 to 03 m in different sections in the mining area.*
- b. *At the mining site, over exploitation of morrum is being carried out. The calculation of maximum thickness allotted to be excavated is 1.595 m which is derived from dividing the total quantity allotted i.e. 582912 m³ by the total area allotted i.e. 36.543 hectare or 365430 m². However, it has been observed that, at sporadic locations, the excavation has gone down upto 6-7 m from the original ground level. While at these locations the soil cover is upto 3 m, still barring ~1.6 m of allotted levels, excavation have gone to 3-4 m deeper levels, resulting in violation of maximum depth/thickness of excavation beyond approved levels.*
- c. *The main stream of Ken river at the time of inspection is confined to a width of about 100-120 m. Exploitation along the bank has led to the removal of the morrum/sand and other newer alluvium and the main stream in these sections have extended to over 150-200 m in width.*
- d. *At some locations where excavation has gone below the level of river, formation of artificial ponds is observed since the local surface water level within the flood plain is approached and exposed.*
- e. *No measures to stabilize the bank/levee slope have been taken and the quarry and open pit have not been filled with the muck after excavation and exploitation of the mineral. The heaps of the overburden material scraped rises above the ground level upto 3-4 m.*
- f. *Avulsion/migration/shift in the channel/river course is not very explicably observed, as claimed in the complaint. However, unscientific mining practices and operations may trigger such shifts at least on very local scales. It may also lead to bank erosion during the rainy season when the discharge of the river is at its peak. Following the guidelines of scientific mining from one end and progressively to the other end may control and avoid such exigencies.*

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PHOTOGRAPHS: BHULSI MINE BLOCK NO. 30/2, HAMIRPUR DISTRICT, UTTAR PRADESH



Figure 1: Mining Machinery at Bhulsi Mines.



Figure 2: Mechanised excavation along the River Bank



Figure 3: River bank deposits (Morrum, Coarse sand and clay bed)



Figure 4: Over-stripping leading to ponding of water

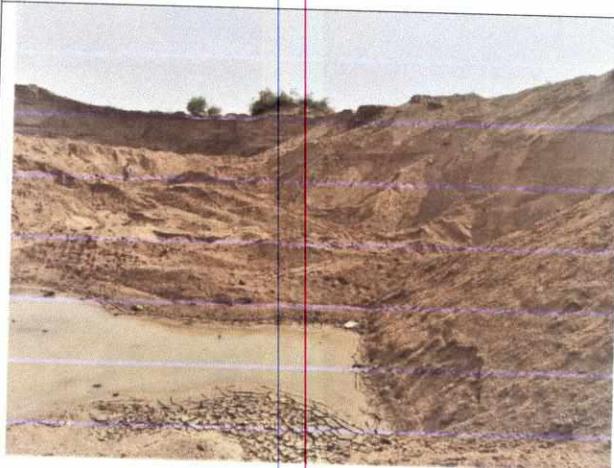


Figure 5: Local water table approached along the river bank.



Figure 6: Natural/ virgin landscape adjacent to mining boundary

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The inspecting team has also visited **Bherri Khurd Mine, Block No. 03** at District Jalaun, UP and took photographs of the site and observed that overexploitation of resources and use of unscientific mining practices will lead to change in the ecosystem of the rivers. Overexploitation of the resource along the banks will further lead to the natural undercutting of the sediments during the high discharge periods of river in the rainy season and may result in increase in gradient of the river bed and cause flash floods in the downstream. The observations made by the team visiting the inspection site are as under:

- a. *"The allotted mining site is alongside the river bank and represents a point bar. A thick succession of morrum, coarse sand and top soil layer is observed with a thickness ranging upto a maximum of 06 m. The top soil thickness ranges between 50 cm to 1.5 m in different sections in the mining area.*
- b. *Over exploitation of morrum has been observed only in 3 locations. The calculation of maximum thickness allotted to be excavated is 1.5 m which is derived from dividing the total quantity allotted i.e. 303630 m³ by the total area allotted i.e. 20.242 hectare or 202420 m². However, it has been observed that, in the three abovementioned location, the excavation has gone down upto 3-5 m from the original ground level. While at these locations the soil cover is upto 1.5 m, still barring ~1.5 m of allotted levels, excavation have gone to 1-2 m deeper levels than approved.*
- c. *The main stream of Betwa river at the time of inspection is confined to a width of about 100-150 m. Exploitation along the bank has led to the removal of the morrum/sand and other newer alluvium and the main stream in these sections have extended to over 300-350 m in width.*
- d. *No measures to stabilize the bank/levee slope have been taken and the quarry and open pit have not been filled with the muck after excavation and exploitation of the mineral. The heaps of the overburden material scraped rises above the ground level upto 3-4 m.*
- e. *Avulsion/migration/shift in the channel/river course is not very explicably observed, as claimed in the complaint. The valley is very wide ranging upto 800-900 m in the vicinity. The bank slope is very*

gentle. The chances of bank erosion during the high discharge periods are meagre. Still, scientific mining and measures to stabilize the bank slope must be adhered to.

PHOTOGRAPHS: BHERRI KHURD MINE BLOCK NO. 3, JALAUN, UTTAR PRADESH



Figure 7: Ponding due to over-stripping and River in the foresight.

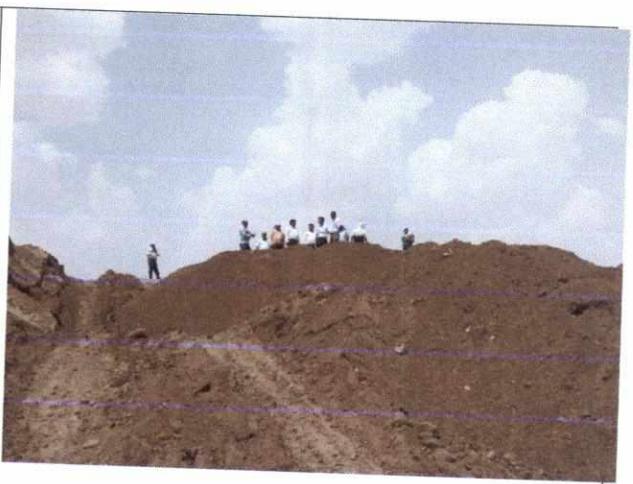


Figure 8: Opposite view from the pond illustrated in Figure 7



Figure 9: Other exploitation site with local water table exposed.



Figure 10: Natural/ virgin landscape in the vicinity of mining site

Discussions and Conclusion:

In view of the observations made during the site inspection, it is to be stated that the complaint of Shri Anchal Dwivedi is a general proposition based mainly on touching the enigmatic issue of severe water distress along with the claims of rampant illegal mining in Bundelkhand Region.

1. *As per the observations, the team finds no relation in the decline of ponds, groundwater levels and land productivity due to mining operations of morrum in the river bank.*
2. *Since both of the allotted mining sites are along the river banks, overexploitation of resources and use of unscientific mining practices will lead to change in the ecosystem of the river. Such practices should be avoided and exploitation of the resource must be carried out by strictly adhering to the approved mine plan. Departure from approved mining operations may lead to change in river course and lead to bank erosion and change in natural course of river.*
3. *The sediments deposited along the river bank takes several years to deposit. Over exploitation of the resource along the banks will lead to the natural undercutting of the sediments during the high discharge periods of river in the rainy season. This may lead to increase in gradient of the river bed and cause flash floods in the downstream.*
4. *Some complaints pertaining to nexus of police officers with mafia, claims of eloping of revenue maps, encroachment of ponds, and audit of the packages given to the region are out of the purview of this team and can be separately dealt with under the supervision and guidance of the Monitoring Committee.*
5. *No measures to stabilize the river bank have been taken up where excavation has already been carried out.*
6. *The types of ponds which are mentioned by the complainant in Para 6 have not been specified. In the lack of the facts and subjectivity pertaining to the classification of ponds which have been referred, no conclusion can be made on this aspect."*

So far as the complaint with regard to involvement of local authorities in illegal mining is concerned, the committee has not recorded any finding.

The ground situation noted in two districts of Bundelkhand Region at two sites as aforesaid is obviously the tip of the iceberg and it creates a ground for indepth enquiry, followed by cancellation of mining licence and prosecution of those who are involved in illegal mining operations and are punished suitably. This can be done only

by an independent agency to save the environment for the cause of our progeny, which is not an easy task in the present corrupt system. In spite of submission of report by the committee to the Director Mining, no comments over the said report have been provided by him. This shows how the present system is working. However, the members of the team have done commendable work while bringing on record all relevant facts, photographs and their fearless findings, showing the ground reality of Bundelkhand Region which is suffering badly because of illegal mining. We have been informed that mining by use of heavy machines has been banned by the Government, but even then it is going on unabatedly by the greedy miners exploiting the environment and affecting the life of generations to come.

From the observations made in the report and the photographs taken at the two sites (supra), it is apparent that heavy machines, like JCB are being used for mining purposes in contravention of the Government Order dated 31.05.2010, by which the holders of lease for excavation of sand were restrained from using heavy machines. The said Government Order was issued in furtherance of an interim order dated 27.05.2010, passed by a Division Bench of Hon'ble Allahabad High Court at Lucknow in **Writ Petition No. 3879 (M/B) of 2010, Pradeep Chaudhary vs. State of UP and others**. However, it appears that the learned Single Judge of Hon'ble Allahabad High Court being not agree with the aforesaid Government Order in pursuance of the direction issued by the Division Bench, forwarded a reference dated 14.06.2010, framing three questions to the larger Bench and also stayed the operation of the Government Order, the validity of which was upheld by the Hon'ble Supreme Court. The matter was taken up by the Full Bench of Hon'ble Allahabad High Court in **Civil Misc Writ Petition No. 34179 of 2010, Smt Maya Dixit and others vs. The State of UP and others** alongwith other connected petitions. The Full Bench considered the material on record and delivered its opinion on 13.09.2010, the relevant portion of which is as under:

"16. We may now refer to some of the judgments, which were pending before the learned Division Bench. We have not checked the records to find

out whether the P.I.L. work was assigned to that Bench, if the direction can be treated as P.I.L. In **Writ Petition No. 1580 (M/B) of 2009, Noor Mohammad Vs. State of U.P. &Ors.**, the learned Division Bench noted photographic evidence placed before it, which indicated use of heavy machines for excavation of sand on the river bank being done to a depth of more than three meters, which was prohibited by the Government Circulars. When the matter next came up on 06.03.2009, the learned Bench was pleased to observe as under:

“During the course of hearing, attention of this Court has been invited towards certain photographs filed with the writ petition. A supplementary affidavit was also filed to bring on record some recent photographs, which indicates that heavy machines have been used and excavation has been done to the depth of more than three meters, which have been prohibited by government circulars. Accordingly, on 3.3.2009, we proceeded to frame the following questions for adjudication of the controversy keeping in view the public interest, which are as under:

(1) Whether all over the State heavy machines have been used during mining operation or for excavation of sand by the contractors and whether using of heavy machines including JVC Machines have been prohibited by law?

(2) Whether the State Government and the Contractors involved in the mining work by using the heavy machines have violated any judgements of this Court as well as Hon'ble the Supreme Court coupled with circulars, orders and statutory provisions and on account of such violation this Court may pass appropriate orders to secure the ecological balance as well as to enforce some punitive measures?

(3) Whether on account of use of heavy machines during mining operation, damage has been caused to the rivers of the State including Ganga, Yamuna and Gomti as well as other places where the mining operations have been carried out? In case yes, then what remedial measure should be adopted to check such damages to maintain the ecological balance and environment?



After framing of the aforesaid questions, we impleaded the various authorities of the Union of India related with the mining works as well as other State authorities as respondent nos. 9 to 14 in the instant writ petition.”

It was also brought to the attention of the learned Bench that on the report being submitted by the Mining Officer, in order to maintain ecological balance and protection of the environment, action was being taken.

The attention of the learned Bench was also invited to an order passed by a learned Single Judge in **Writ Petition No. 5361 (M/S) of 2008**, whereby a Committee was constituted and the Committee had submitted a report in respect of district Bijnor. The learned Division Bench, while proceeding to appoint a Committee placed reliance upon another Division Bench judgment, and found that the State Government has failed to discharge its statutory as well as constitutional obligation to protect the environment by regulating mining operation like in Bijnor and, accordingly, appointed the Committee.

Earlier, another Division Bench in respect of the same subject matter, i.e. Writ Petition No. 1580 (M/B) of 2009, had noted the pleas by the respondents that the mining operations are being carried on by using JCB machines by the intervener in the petition. Thereafter, in another writ petition, being Writ Petition 3879 of 2010, Pradeep Chaudhary &Anr. Vs. State of U.P. through its Principal Secretary, Geology & Mining, the Court noted the report of district Saharanpur, which indicated the damage caused to the river course and, consequently, damage to environment which would disturb the ecological balance. The Court also noted that there is an option to the State Government to stop the use of heavy machines but that has not been done. The Court, then, noting the order passed in Writ Petition No. 1580 (M/B) of 2009, directed the State Government to ensure that in the State of U.P. no heavy machine is used by the lessees involved in the mining work at river bed for excavation of sand/morang till the matter is finally adjudicated by this Court.

.....

17.A. The order of the learned Bench in Noor Mohammad (supra) dated 06.03.2009 was the subject matter of an SLP, which was disposed of on

06.04.2009 and a further clarification was issued on 28.08.2009, which reads as under:

“An application has been filed seeking clarification of our order dated 6.4.2009. By the said order the SLP filed by the petitioner was dismissed. While dismissing the SLP, we did not hold that the matter before the High Court was a PIL. We only stated that if the writ petition had been converted into a PIL by the impugned order, the Registry will do the needful by placing the matter before appropriate Bench dealing with PILs as per rules and guidelines. If the order of the High Court did not convert the writ petition into a PIL then obviously the said observation will not apply. If there was any doubt regarding posting, the matter ought to be placed before learned Chief Justice of the High Court. With the said observation, I.A. No.3 is disposed of.”

Thus, this would make it clear that even if a Bench was hearing a matter assigned to it as per the assignment and if in the course of hearing it proceeds to consider reliefs not sought in the petition, but which will fall within the PIL jurisdiction, then the Bench is bound to direct the Registry to place the matter before the learned Chief Justice for appropriate directions or before the appropriate P.I.L Bench. In other words, if that Bench is not assigned PIL work, it cannot proceed to hear the matter.”

Subject to aforesaid observations and keeping in view the fact that the interim order of the Hon’ble Allahabad High Court restraining the use of heavy machines in excavation of sand was upheld by the Hon’ble Supreme Court without any modification and the Government order restraining the lease holders from using heavy machines in sand mining was not interfered with, the Full Bench dismissed the reference as not maintainable. To quote the relevant portion:

“20. We are surprised at the stage at which the reference was made. Normally a reference is made after hearing the parties on merits and the learned Bench arrived at a conclusion that it does not agree with the view taken by another coordinate Bench, which has earlier decided the law. In this case, a strange procedure has been followed. Interim relief was first granted, the matter was not finally heard, and without considering the merits of the matter, a reference has been made. In our opinion, this was a strange procedure. We express, therefore, our anguish at the manner in

which this reference is made. We may also note that the interim order dated 06.03.2009 passed in Noor Mohammad (supra), was the subject matter of special leave petition to the Supreme Court. The learned Court did not interfere with that order. The special leave petition was dismissed on 06.04.2009 and further clarification was issued on 28.08.2009. The effect was that use of heavy machinery was banned. In spite of that the interim relief was granted without considering the normal tests for granting an injunction.

21. The learned counsel has sought to take us through the merits of the matter. In view of the fact that the reference itself is not maintainable, we do not propose to examine the matter on merit and leave it to the parties to take appropriate steps which in law they may be entitled to.

22. Considering the importance of the issue on environment and ecology, though the challenge is to a Government Order, we request the learned Bench assigned to hear the matter to dispose the same at the earliest, more so when interim orders have been granted in favour of the petitioners without striking down the subordinate legislation, if it could be struck down.

23. Reference is disposed of accordingly.

24. Registry to place the petitions before the appropriate Bench.”

In view of above, the Government order being upheld by the Hon'ble Supreme Court restraining the use of heavy machines and the opinion of the expert committee to the effect that because of use of heavy machines, irreparable loss and damage may be caused to rivers and their course, there seems to be no justification for use heavy machines at mining sites (supra) as noted by the expert committee while forwarding its report to the Monitoring Committee. The miners/contractors are not only violating the law/Government order, but they are also creating a situation which may further deteriorate the environment of Bundelkhand region causing water scarcity. Further, the magnitude of violation of law may be inferred, keeping in view the number of vehicles seized, compensation imposed and FIR lodged against wrongdoers, which appears to be only the tip of iceberg. Strong action is required in the

matter to save the Bundelkhand region from deteriorating water status and converting into a desert.

Subject to above, we propose and recommend as under:

1. Use of heavy machines may be barred forthwith for excavation of sand not only in Bundelkhand region but in the banks of all rivers in the State of UP.
2. No excavation of sand should be done within 100 meters on either side of the banks of rivers/wetland/river bed.
3. Appropriate environmental compensation may be imposed by Hon'ble NGT keeping in view the gravity of situation and unscientific mining done by the miners, whose particulars be supplied by the Director Mining.
4. It shall be appropriate that satellite mapping of all rivers of the State of UP, on the banks of which mining is being done for the last twenty years or more, be done to assess the damage caused to the environment due to unscientific mining, with follow up action in the matter and guilty be punished. Regular monitoring by satellite imaging of all the mining areas be done. We have been informed that similar step was taken in Punjab and Haryana to assess the damage and quantum of mining in the past.
5. We have been informed that the CBI is making an enquiry into the matter of illegal mining done in Bundelkhand region. Accordingly, the present matter be also referred to the CBI to look into the matter alongwith pending one.
6. The Government of Uttar Pradesh should constitute a team of officers to check the use of heavy machines for excavation of sand in mining sites.
7. Any other order or orders, which the Hon'ble NGT may deem appropriate, be passed in the matter.



(Justice D.P.Singh)
Chairman,
Eastern UP Rivers and Water Reservoirs
Monitoring Committee, Lucknow.

July 29, 2019