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**NATIONAL GREEN TRIBUNAL EASTERN ZONE BENCH,
KOLKATA**

ORIGINAL APPLICATION NO 169/2023/EZ

Jinti Deka and Another

-Versus-

The State of Assam and Others

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The State of Assam and Ors

....Respondents

**SUBMISSION OF DOCUMENTS AND CASE LAWS ON BEHALF OF
THE PETITIONERS ABOVENAMED**

1. That Your Lordships' may kindly consider the few relevant documents in the form of pictures and case laws that have been enclosed herein which may be treated as part and partial of the submission on behalf of the instant applicants.

Dated : 06.12.2024

Filed by,

Indrani Gupta

ADVOCATE

HIGH COURT, CALCUTTA

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Jagibhakat Gaon Bridge

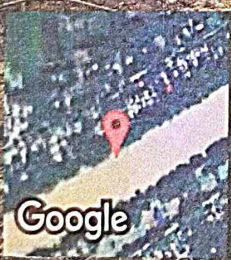
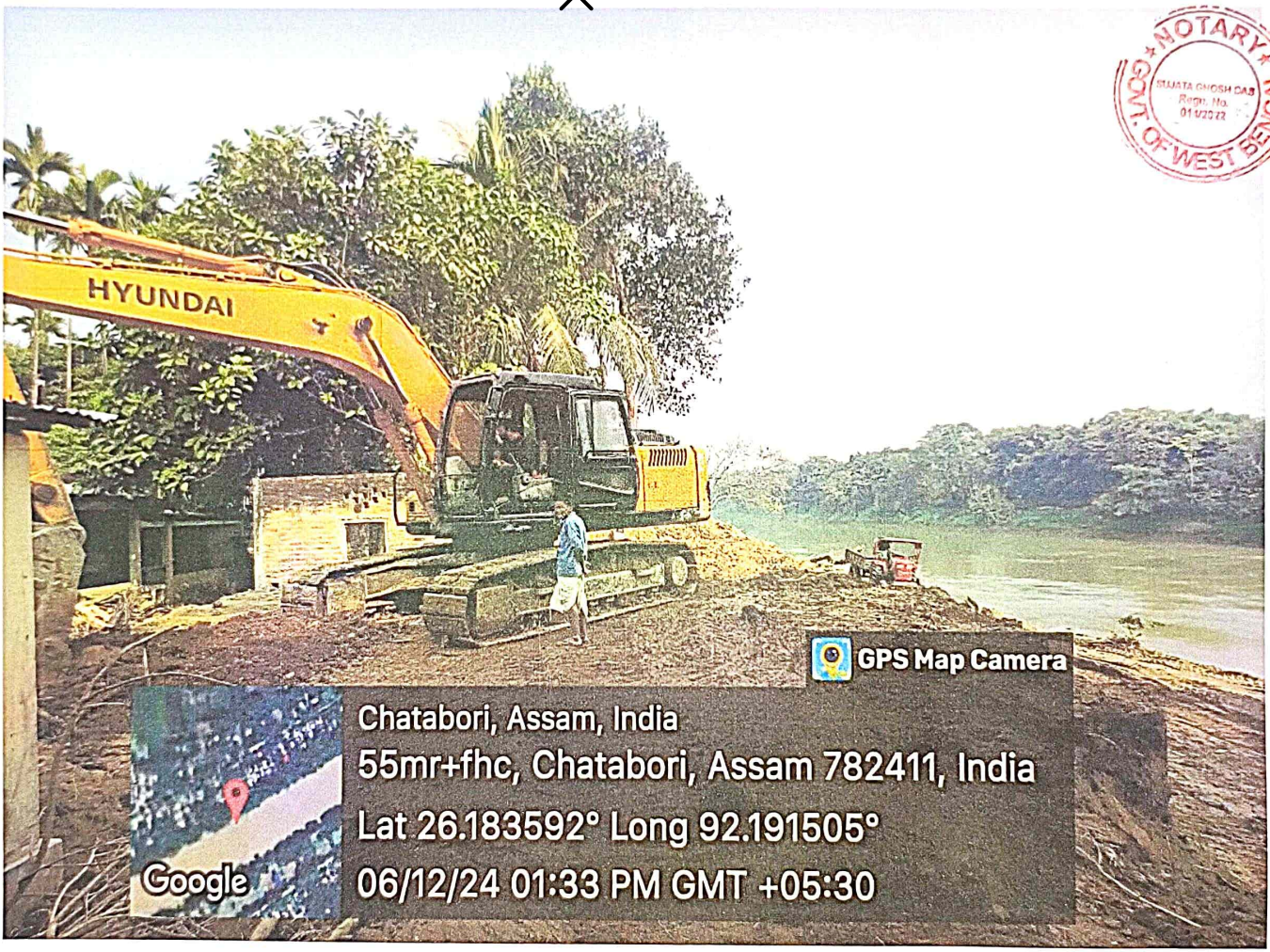
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CWC, Jaggi Bhakat Gaon

Kopili River

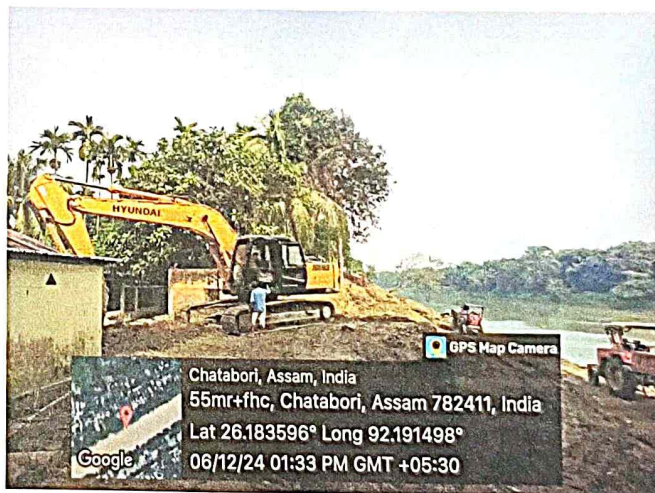
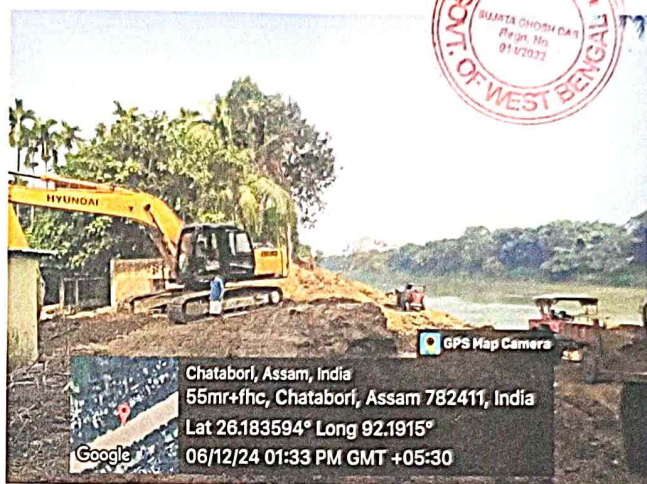
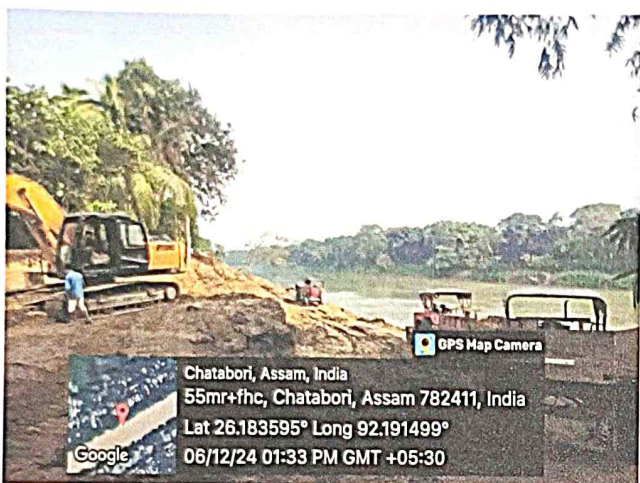




 **GPS Map Camera**

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55mr+fhc, Chatabori, Assam 782411, India
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06/12/24 01:33 PM GMT +05:30

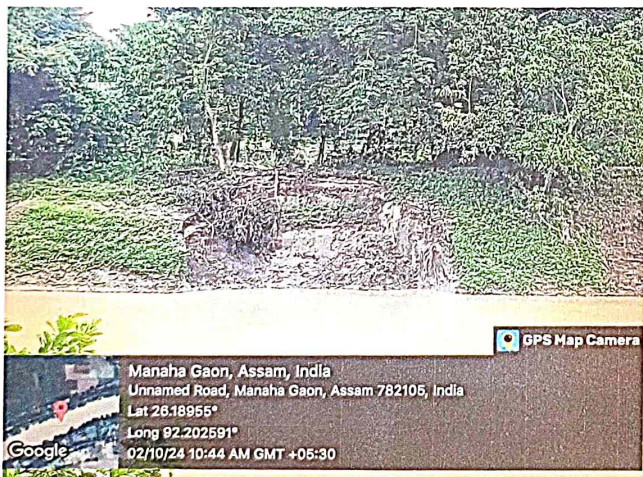
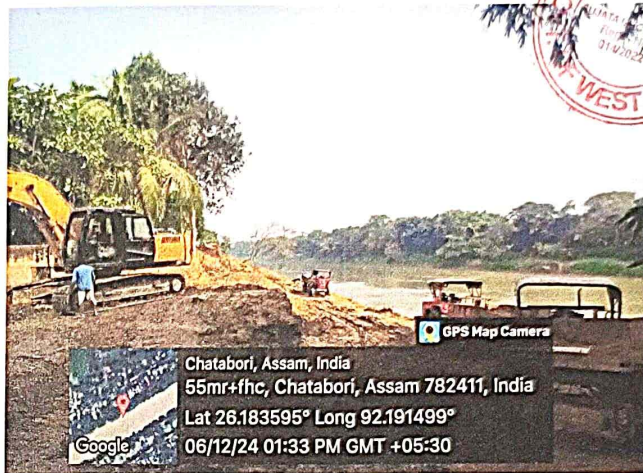
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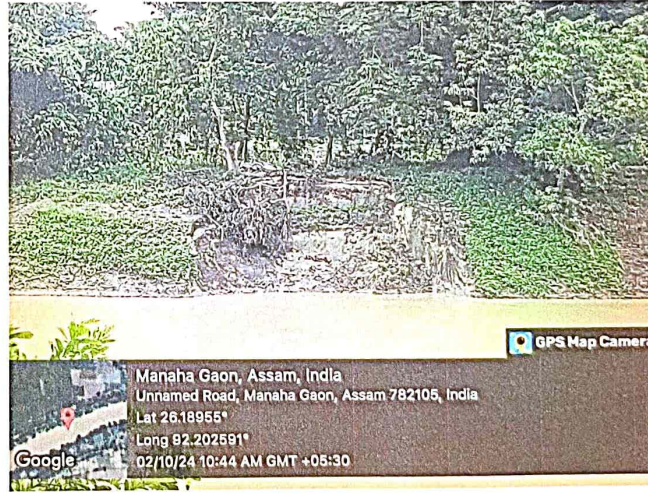
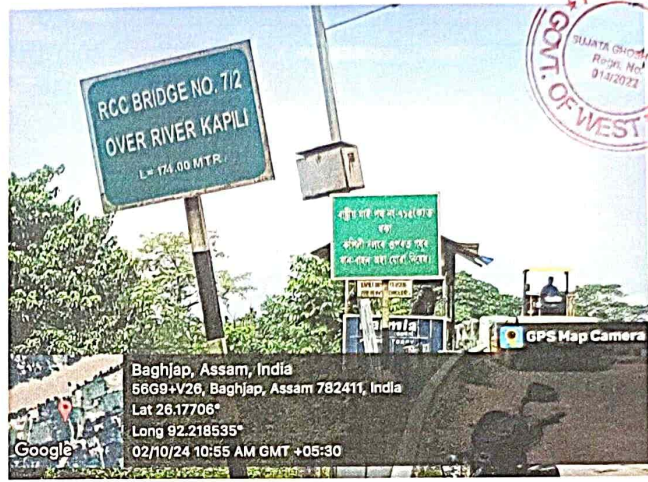


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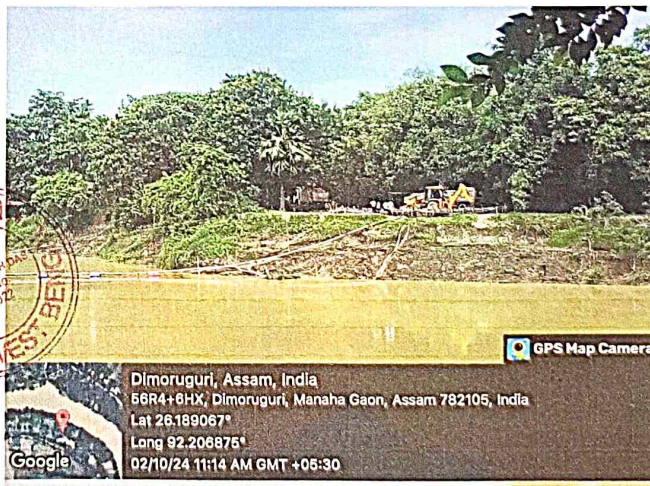
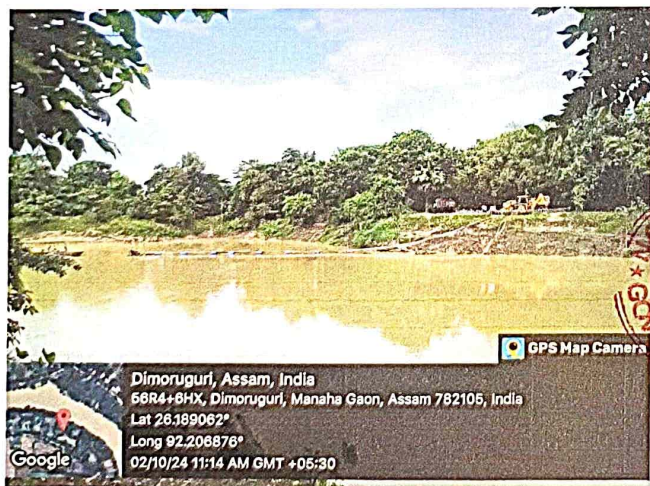
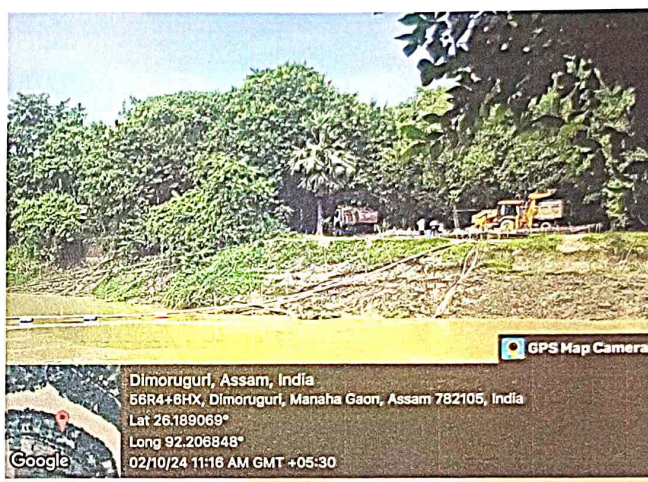
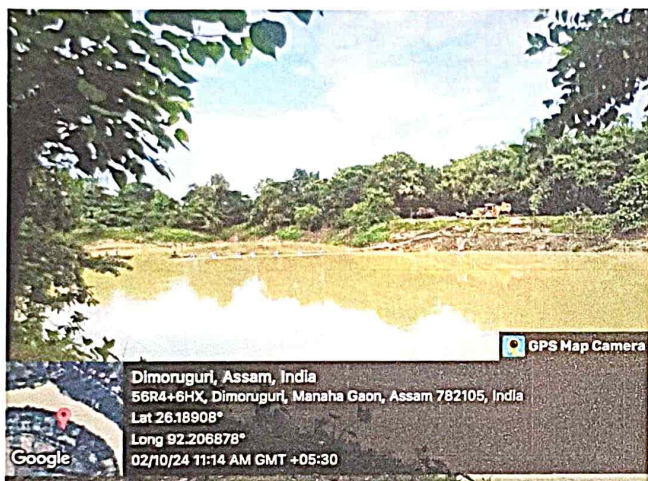


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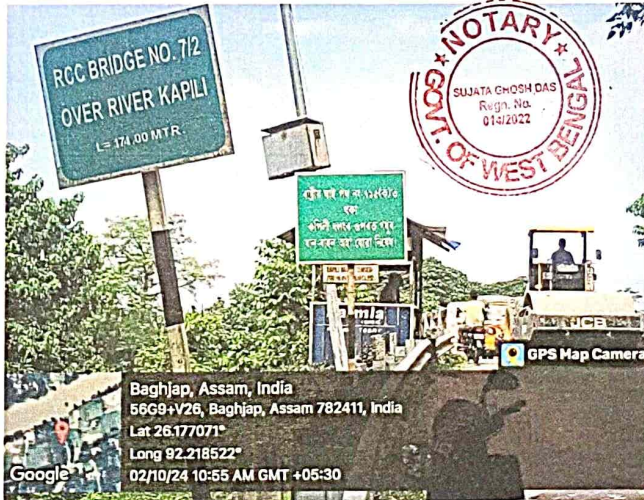
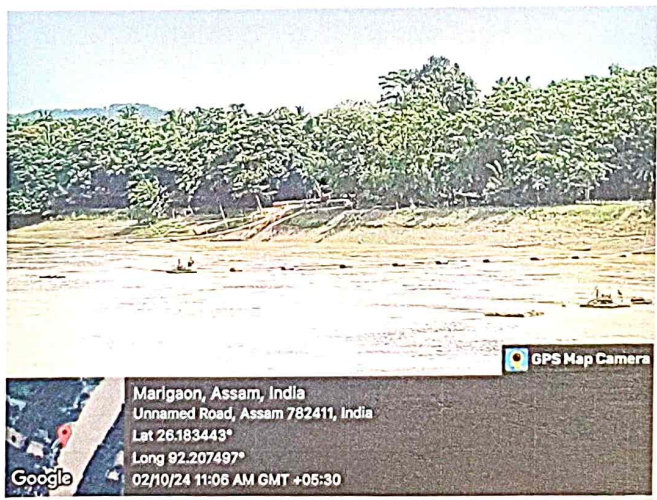
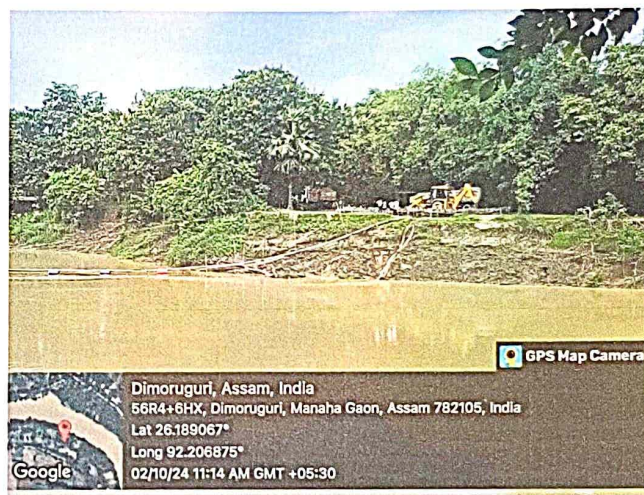
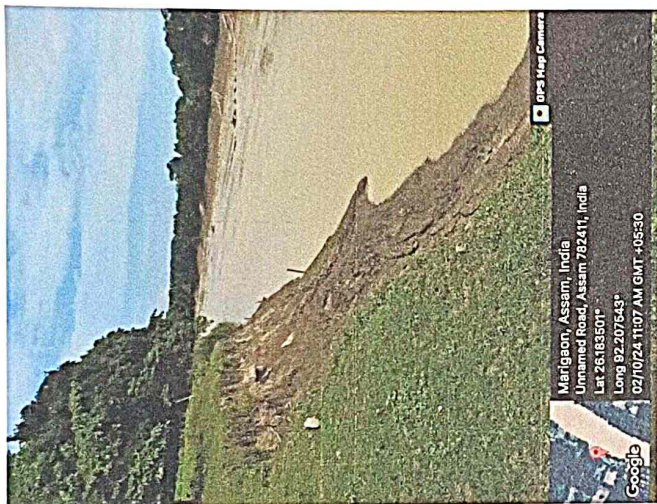


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NOTARY
SUNITA GHOSH
Regn. No.
014/2022
GOVT. OF WEST BENGAL

-X-



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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. Nos.12-13 of 2011

IN

SPECIAL LEAVE PETITION (C) NO. 19628-19629 OF 2009

Deepak Kumar etc.

...Petitioners

Versus

State of Haryana and Others etc.

...Respondents

WITH

SLP(C) Nos. 729-731/2011, 21833/2009, 12498-499/2010, SLP(C) CC... 16157/2011 & CC 18235/2011**ORDER****K. S. Radhakrishnan, J.**

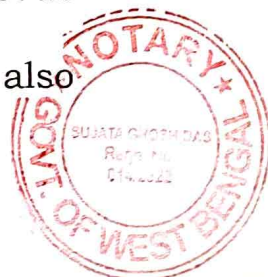
I.A. Nos. 12-13 of 2011 are allowed. SLP (C) Nos.12498-12499 of 2010 be detagged and be listed after two weeks.

The Department of Mines and Geology, Government of Haryana issued an auction notice dated 3.6.2011 proposing to auction the extraction of minor mineral boulder, gravel and sand quarries of an area not exceeding 4.5 hectares in each case in the District of Panchkula, auction notices dated 8.8.2011 in the District of Panchkula, Ambala and Yamuna



Nagar exceeding 5 hectares and above, quarrying minor mineral, road metal and masonry stone mines in the District of Bhiwani, stone, sand mines in the District of Mohindergarh, slate stone mines in the District of Rewari, and also in the Districts of Kurukshetra, Karnal, Faridabad and Palwal, with certain restrictions for quarrying in the river beds of Yamuna, Tangri, Markanda, Ghaggar, Krishnavati River basin, Dohan River basin etc. The validity of those auction notices is under challenge before us, apart from the complaint of illegal mining going on in the State of Rajasthan and Uttar Pradesh.

2. When the matter came up for hearing on 25.11.2011, we passed an order directing the CEC to make a local inspection with intimation to MoEF, State of U.P., Rajasthan and Haryana with regard to the alleged illegal mining going on in the States of Uttar Pradesh, Rajasthan and also with regard to the areas identified for mining in the State of Haryana and submit a report. We also directed the CEC to examine whether there has been an attempt to flout EIA Notification dated 14.9.2006 by breaking the homogeneous area into pieces of less than 5 hectares. CEC was also



directed to examine whether the activities going on in that area have any adverse environmental impact.

3. CEC, in response to our order, submitted a detailed report on 4.1.2012. However, the report is silent with regard to the disturbing trend of serious illegal and unrestricted upstream, in-stream and flood plain sand mining activities and the prevailing degree of degradation of the sites and the environment, especially on the river beds mentioned earlier. Report of CEC however states that the auction notice also refer to mining leases of less than 5 hectares and hence no environmental clearance need be obtained as per the MoEF notification dated 14.9.2006. No light is also thrown on the question whether there has been, in fact, an attempt to flout the notification dated 14.9.2006 by breaking the homogeneous area into pieces of less than 5 hectares and the possible environmental or ecological impact on quarrying of minor minerals.

4. Mr. Patwalia, learned senior counsel appearing for the petitioners, submitted that CEC report is silent about those aspects and also whether 1 km. distance has been



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maintained between the mining blocks of less than 5 hectares. Learned counsel also submitted that mining areas earmarked are at the foothills of fragile Himalayan ranges known as Shivalik hills, which are spread over the Districts of Panchkula, Ambala and Yamuna Nagar and the illegal and excessive mining has caused serious environmental degradation and ecological impact, and no Environmental Impact Assessment has ever taken place in areas earmarked for mining especially on the river beds.

5. Shri Gopal Subramaniam, learned senior counsel appearing for the State of Haryana, submitted that the State has taken adequate and effective precautions to maintain 1 km. separation between mining blocks of less than 5 hectares each and that the auction notice dated 3.6.2011 itself has imposed strict restrictions on quarrying in the river beds so also the auction notice dated 8.8.2011. Further, it was pointed out that the notification dated 14.9.2006 would not apply for quarrying minor minerals from areas of less than 5 hectares and therefore, no environmental impact assessment needs to be undertaken either at the instance of the State Government or the Project Proponent.



6. Shri Mohan Jain, learned Additional Solicitor General, appearing for the MoEF submitted that the grant or allotment of mining licence/lease of smaller plots of less than five hectares should not be encouraged from the environmental point of view and that the applicability of EIA notification of 2006, has to be seen in its letter and spirit so as to ensure environmental safeguards in place and implemented for sustainable mining. Learned counsel also assured, if environmental clearance is sought for covering a mining area of less than five hectares, the same shall be immediately attended to and necessary clearance would be granted in accordance with law.

7. We have no materials before us to come to the conclusion that the removal of minor mineral boulder, gravel, sand quarries etc. covered by the auction notices dated 3.6.2011 and 8.8.2011, in the places notified therein and also in the river beds of Yamuna, Ghaggar, Tangri, Markanda, Krishnavati river basin, Dohan river basin etc. would not cause environmental degradation or threat to the biodiversity, destroy riverine vegetation, cause erosion,



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pollute water sources etc. Sand mining on either side of the rivers, upstream and in-stream, is one of the causes for environmental degradation and also a threat to the biodiversity. Over the years, India's rivers and Riparian ecology have been badly affected by the alarming rate of unrestricted sand mining which damage the ecosystem of rivers and the safety of bridges, weakening of river beds, destruction of natural habitats of organisms living on the river beds, affects fish breeding and migration, spells disaster for the conservation of many bird species, increases saline water in the rivers etc. Extraction of alluvial material from within or near a streambed has a direct impact on the stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both in-stream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and expansion of existing ones is continuous



thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand.

8. We are expressing our deep concern since we are faced with a situation where the auction notices dated 3.6.2011 and 8.8.2011 have permitted quarrying mining and removal of sand from in-stream and upstream of several rivers, which may have serious environmental impact on ephemeral, seasonal and perennial rivers and river beds and sand extraction may have an adverse effect on bio-diversity as well. Further it may also lead to bed degradation and sedimentation having a negative effect on the aquatic life. Rivers mentioned in the auction notices are on the foothills of the fragile Shivalik hills. Shivalik hills are the source of rivers like Ghaggar, Tangri, Markanda etc. River Ghaggar is a seasonal river which rises up in the outer Himalayas between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes through Ambala





and Hissar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal river like Ghaggar, which also originates from the lower Shivalik hills and enters Haryana near Ambala. During monsoon, this stream swells up into a raging torrent, notorious for its devastating power, as also, river Yamuna.

9. We find that it is without conducting any study on the possible environmental impact on/in the river beds and elsewhere the auction notices have been issued. We are of the considered view that when we are faced with a situation where extraction of alluvial material within or near a river bed has an impact on the rivers physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that the extraction is in blocks of less than 5 hectares, separated by 1 kilometre, because their collective impact may be significant, hence the necessity of a proper environmental assessment plan. Possibly this may be the reason that in the affidavit filed by the MoEF on 23.11.2011 along with the annexure-2 report, the following stand has been taken:



“The Ministry is of the opinion that where the mining area is homogenous, physically proximate and on identifiable piece of land of 5 ha or more, it should not be broken into smaller sizes to circumvent the EIA Notification, 2006 as the EIA Notification, 2006 is not applicable to the mining projects having lease area of less than 5 ha. The Report of Committee on Minor Minerals, under the Chairmanship of the Secretary (E&F) with representatives of various state Governments as members including the State of Haryana and Rajasthan recommended a minimum lease size of 5 ha for minor minerals for undertaking scientific mining for the purpose of integrating and addressing environmental concerns. Only in cases of isolated discontinued mineral deposits in less than 5 ha, such mining leases may be considered keeping in view the mineral conservation.”

Situations referred to earlier prevail not only in the State of Haryana but also in the neighbouring and other States of the country as well and those issues had come up for serious deliberations before the Government of India, on various occasions.

10. Government of India was receiving various reports regarding the adverse impacts on riverbeds and groundwater due to quarrying/mining of minerals. The Mines and Minerals (Development & Regulation) Act 1957 empowers the State Governments to make rules in respect of minor



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minerals. It was noticed that proposals for mining of major minerals typically undergo environment impact assessment and environmental clearance procedure, but due attention has not been given to environmental aspects of mining of minor minerals. Environmental Impact Assessment Notification of 1994 did not apply to the mining of minor minerals, noticing that minor minerals were brought under the ambit of the Environmental Impact Assessment Notification of 2006 and as per the said notification mining of minerals with a lease area of 5 hectares and above require prior environmental clearance. MoEF's attention was drawn to several instances across the country regarding damage to lakes, riverbeds and groundwater leading to drying up of water beds and causing water scarcity on account of quarry/mining leases and mineral concessions granted under the Mineral Concession Rules framed by the State Governments under Section 15 of the Mines and Minerals (Development and Regulation) Act 1957. MoEF noticed that less attention was given on environmental aspects of mining of minor minerals since the area was small, but it was noticed that the collective impact in a particular area over a



period of time might be significant. Taking note of those aspects, MoEF constituted a Core Group under the Chairmanship of the Secretary (E&F) to look into the environmental aspects associated with mining of minor minerals, vide its order dated 24.03.2009. The terms of reference to the Group were as under:

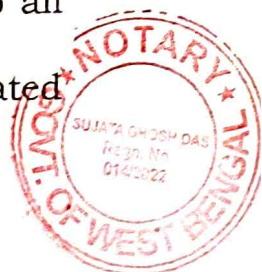
- (i) To consider the environmental aspects of mining of minor minerals (quarrying as well as river beds mining) for their integration into the mining process.
- (ii) Specific safeguard measures required to minimize the likely adverse impacts of mining on environment with specific reference to impact on water bodies as well as groundwater so as to ensure sustainable mining.
- (iii) To evolve model guidelines so as to address mining as well as environmental concerns in a balanced manner for their adoption and implementation by all the mineral producing States.

The Group held its first meeting on 7.7.2009 and discussed the impact that may be caused by quarrying/mining of minor minerals on riverbeds and ground waters. It was noticed that individual mines of minor minerals being small in size may have insignificant impact, however, their collective impacts, taking into consideration various mines on a regional scale, is significantly adverse. It was, therefore, felt



necessary to consider various aspects since appropriate guidelines have to be issued on the basis of the report of the Committee. The issues which were brought up for consideration were; (i) the need to re-look the definition of minor mineral, (ii) minimum size of lease for adopting eco friendly scientific mining practices, (iii) period of lease, (iv) cluster of mine approach for addressing and implementing EMP in case of small mines, (v) depth of mining to minimize adverse impact on hydrological regime, (vi) requirement of mine plan for minor minerals, similar to major minerals, and (vii) reclamation of mined out area, post mine land use, progressive mine closure plan etc.

11. Comments and inputs from various States and Experts were also invited so as to prepare a report for consideration of the MoEF. Based on the discussion held and subsequent inputs received, a draft report was prepared and circulated to all members for their further inputs. Report was further discussed on 29.1.2010 for its finalization. The observations/comments made during the meeting were incorporated in the report and it was again circulated to all members for their consideration. The report so circulated



was ultimately finalized. The decision taken by the MoEF affects generally the mining of minor minerals including the riverbed mining throughout the country. For an easy reference, we may extract the issues and recommendations made by the 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 “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 “sand shall not be treated as 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 silvitrete 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,



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(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**

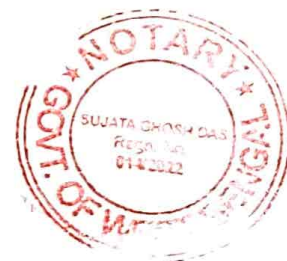


presently. Further, these clusters need be provided with processing/crusher zones for forward integration and minimizing excessive pressure on road infrastructure. The respective State Governments / Mine Owners Associations may facilitate implementation of Environment Management Plans in such cluster 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 of 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, bazaris and boulders is attracting considerable attention including in the courts. The following



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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.



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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. " (emphasis supplied)

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. 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.

12. 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 re-iterated 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.”

13. 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

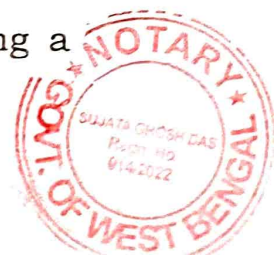


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Rules, 2010 were also put on the website. Further, it may be noted Section 15(1A)(i) of the Act specifies the manner in which rehabilitation of flora and other vegetation, such as trees, shrubs and the like destroyed by reasons of any quarrying or 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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



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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.

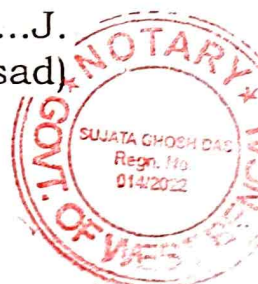
19. We, in the meanwhile, order that leases of minor mineral including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from the MoEF.

Ordered accordingly.

.....J.
(K.S. Radhakrishnan)

.....J.
(Chandramauli Kr. Prasad)

New Delhi



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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

IA NO. 3949 OF 2016
IN
WRIT PETITION (C) NO. 202 OF 1995

IN RE :
T.N. GODAVARMAN THIRUMULPADPetitioner(s)

VERSUS

UNION OF INDIA & ORS.Respondent(s)

AND
IN THE MATTER OF:

M/S. PUNTAMBEKAR MINERALS
(THROUGH ITS PROPRIETOR
SHRI DILIP BHUSAHEB MADAKE) ...Applicant(s)

J U D G M E N T

B.R. GAVAI, J.

1. When we pronounced our judgment in I.A. No. 131377 of 2022 along with connected applications in Writ Petition (Civil) No. 202 of 1995 on 26th April 2023, we did not anticipate that within a few days, we would be called upon to clarify the position as to whether mining activities would

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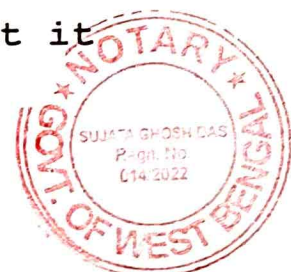
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be permissible beyond the distance of one kilometer from the boundary of the Protected Area, irrespective of the fact that such an area falls under the Eco-Sensitive Zone (in short "ESZ") notified by the Ministry of Environment, Forest and Climate Change ("MoEF" for short).

2. We are grateful to the applicant in the present application for giving us this opportunity to clarify this position so that further environmental damage is avoided.

3. The case of the applicant, in brief, is that the applicant was granted permission to execute a mining lease as early as in 2005, subject to clearance from MoEF as well as the National Board for Wild Life.

4. Shri Ranjit Kumar, learned senior counsel appearing for the applicant, submits that the area where the applicant proposes to carry out the activity is beyond 2.26 kilometer from the nearest boundary of the Radhanagari Wildlife Sanctuary. It is, therefore, submitted that it



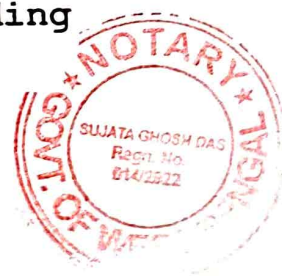
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falls beyond a distance of one kilometer from the boundary of the Protected Area.

5. Mr. Ranjit Kumar, learned senior counsel, therefore, relying on our judgment dated 26th April 2023 passed in in I.A. No. 131377 of 2022 along with connected applications in Writ Petition (Civil) No. 202 of 1995, the ink of which is yet to dry, submits that, since mining is proposed to be carried out beyond a distance of one kilometer from the boundary of Protected Area, it would very much be permitted.

6. Learned senior counsel submits that this Court has clearly held that mining within a distance of one kilometer from the boundary of the Protected Area is banned. He submits that, however, the judgment does not prohibit mining activities even in ESZ, which is a buffer area, if it extends beyond a distance of one kilometer from the boundary of the Protected Area.

7. He, however, submits that this would be subject to permission from the Standing



Committee of National Board for Wild Life (in short "SCNBWL"), which admittedly, has granted permission.

8. Mr. Balbir Singh, learned Additional Solicitor General appearing for the Union of India as well as Mr. A.D.N. Rao, learned Amicus Curiae have vehemently opposed this prayer and they submit that the contention of the applicant is based on a misreading of the directions issued by this Court.

9. We find that the directions issued in paragraph 65 of the judgment of this Court delivered on 26th April 2023 are very much clear.

It reads thus:

"65. We also modify the direction contained in paragraph 56.4 of the order dated 3rd June, 2022 (Supra) and direct that mining within the National Park and Wildlife Sanctuary and within an area of one kilometre from the boundary of such National Park and Wild Life Sanctuary shall not be permissible."

10. The perusal of the above para would reveal that the directions, which were issued by this



Court earlier for prohibiting mining activities within a distance of one kilometer from the boundary of such National Parks and Wildlife Sanctuaries only insofar as the State of Goa was concerned, has been made applicable pan-India.

11. The aforesaid question arose since in case of some of the National Parks and Wildlife Sanctuaries, the ESZ areas are less than one kilometer. In some, it is as less as 500 meters and in some others, it is even less than 500 meters.

12. We, therefore, clarified that even in case where the ESZ boundaries are less than one kilometer from the Protected Area, the ban on mining shall extend upto a distance of one kilometer from the boundary of such areas.

13. It will further be relevant to refer to paragraph 66.1 of our judgment dated 26th April, 2023, which reads thus:

"66(i) The MoEF & CC and all the State/Union Territory Governments shall strictly follow the provisions in the said Guidelines



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dated 9th February 2011 and so also the provisions contained in the ESZs notifications pertaining to the respective Protected Areas with regard to prohibited activities, regulated activities and permissible activities;"

14. It could thus clearly be seen that we have directed that MoEF as well as all the State Governments/Union Territories shall strictly follow the provisions in the Guidelines dated 9th February, 2011, as also the provisions contained in the ESZs notifications pertaining to the respective Protected Areas with regard to prohibited activities, regulated activities and permissible activities.

15. As such, our directions are very much clear. Whatever is prohibited under the 2011 guidelines and whatever is additionally prohibited under the specific ESZ notifications of the particular Protected Areas have to be strictly followed.

16. The perusal of paragraph 40 of the judgment dated 26th April 2023 would reveal that the very first activity, which is contained in Annexure-



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I of the Guidelines, is commercial mining and the same is prohibited.

17. Apart from that, it will also be relevant to refer to paragraph 4 of the Notification dated 15th October, 2020 vide which a final notification had been notified in so far as the ESZ for Radhanagari Sanctuary is concerned, which reads thus:

"4. List of activities prohibited or to be regulated within Eco-sensitive Zone.- All activities in the Eco-sensitive Zone shall be governed by the provisions of the Environment (Protection) Act, 1986 and the rules made there under including the Coastal Regulation Zone, 2011 and the Environmental Impact Assessment Notification, 2006 and other applicable laws including the Forest (Conservation) Act, 1980 (69 of 1980), the Indian Forest Act, 1927 (16 of 1927), the Wildlife (Protection) Act 1972 (53 of 1972), and amendments made thereto and be regulated in the manner specified in the Table below, namely:-

S.No. (1)	Activity (2)	Description (3)
A. Prohibited Activities.		



1.	Commercial mining, stone quarrying and crushing units	<p>(a) All new and existing mining (minor and major minerals), stone quarrying and crushing units shall be prohibited with immediate effect except for meeting the domestic needs of bona fide local residents including digging of earth for construction or repair of houses within Eco Sensitive Zone;</p> <p>(b) The mining operations shall be carried out in accordance with the order of the Hon'ble Supreme Court dated the 4th August, 2006 in the matter of T.N. Godaverman Thirumulpad Vs. UOI in W.P. (C) No. 202 of 1995 and dated the 21st April, 2014 in the matter of Goa Foundation Vs. UOI in W.P (C) No. 435</p>
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		of 2012.
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18. It could thus clearly be seen that Clause (a) of the Notification of the MoEF also clearly mentions that all the new and existing minor and major minerals, stone quarrying and crushing units shall be prohibited with immediate effect, except for meeting the domestic needs of bona fide local residents, including digging of earth for construction or repair of houses within ESZ.

19. No doubt that Clause (b) of the Notification of the MoEF mentions that the mining operation shall be carried out in accordance with the order of this Court dated 04th August 2006 in the matter of T.N. Godavarman Thirumulpad Vs. Union of India reported in (2010) 13 SCC 740 and order dated 21st April 2014 in the case of Goa Foundation v. Union of India and Others reported in (2014) 6 SCC 590.

20. However, the last word on the issue is the judgment dated 26th April 2023. The notification



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is dated 15th October 2020, i.e. prior to the pronouncement of our judgment.

21. As such, the provisions made in clause 1(b) of paragraph 4 of the Notification dated 15th October 2020 would now become redundant in view of our judgment and order dated 26th April 2023.

22. As such, any activity, which is prohibited by both the guidelines as well as the ESZ notification shall strictly be prohibited. Since the mining activity in ESZ area is a prohibited activity, there is no question of such an activity being permitted in an ESZ area even if it falls beyond the distance of one kilometer from the boundary of the protected area.

23. We clarify that even if in a particular case, the ESZ is more than one kilometer, still, if the concerned area where mining is proposed falls within the ESZ, the mining activity will not be permitted, even if it falls in an area which is beyond one kilometer from the boundary



of the Protected Area.

24. The prohibition of one kilometer from the boundary of Protected Area is only with regard to the cases where the boundary of ESZ is less than one kilometer from the boundary of the sanctuary. Only in such cases, the ban on mining will travel beyond the ESZ area and cover an area upto a distance of one kilometer.

25. The aforesaid directions were issued in order to protect the National Parks and Wildlife Sanctuaries so that the mines would not become a death trap for the flora and fauna within them.

26. Apart from that, the judgment dated 26th April 2023 is delivered by a Bench of three Judges of this Court, which is binding on us.

27. As such the application is rejected.

.....J
(B.R. GAVAI)

.....J
(VIKRAM NATH)

New Delhi
April 28, 2023



BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

ORIGINAL APPLICATION NO. 818/2022
(I.A. No. 74/2023)

IN THE MATTER OF:

SUO MOTU ACTION IN ILLEGAL MINING
FOR EXCAVATION OF MORRUM
AT ARAJI NO. 824 KHA (KHAND 3 AND 4)
IN AREA 16.194 AND 12.368 HECTARES, RESPECTIVELY
AT
VILLAGE AGORI KHAS, TEHSIL OBRA, DISTRICT SONBHADRA

...Applicant

Versus

1. **Union of India**
through Joint Secretary,
Ministry of Environment Forest and Climate Change,
Government of India, IIIrd Floor, Prithivi Block,
Indira Paryavaran Bhawan, Jor Bagh Road,
New Delhi 110003
2. **State of Uttar Pradesh**
through Chief Secretary,
Government of Uttar Pradesh, Lucknow,
Bapu Bhawan, Vidhansabha Marg,
Uttar Pradesh -226001
3. **Principal Secretary**
(Geology and Mining),
Govt. of Uttar Pradesh, Lucknow-226001
4. **Principal Secretary,**
Forest and Wild Life,
Govt. of Uttar Pradesh, Lucknow-226001
5. **Principal Secretary,**
PWD,
Government of Uttar Pradesh, Lucknow,
Lucknow-226001
6. **Member Secretary,**
Uttar Pradesh Pollution Control Board,
TC 12, Vibhuti Khand, Gomti Nagar,
Lucknow-226016
7. **Director,**
Geology and Mining, Uttar Pradesh
Khanij Bhawan, 27/8 Rajaram Mohan Rai Marg,
Lucknow-226001



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8. **Deputy Director General of Forest (C),**
Integrated Regional Office
Ministry of Environment Forest and Climate Change
Kendriya Bhawan, Vth floor, Sector H Aliganj,
Lucknow-226020
9. **District Magistrate, Sonbhadra,**
Uttar Pradesh-231216
10. **District Mining Officer, Sonbhadra,**
Uttar Pradesh-231216
11. **Divisional Forest Officer,**
Obra Forest Division,
Obra, Sonbhadra,
Uttar Pradesh-231219
12. **Divisional Forest Officer,**
Kaimur Wildlife Forest Division,
Mirzapur-231001
13. **Sub Divisional Magistrate, Obra,**
District Sonbhadra-231219
14. **Sudhakar Pandey**
S/o Shri Doodhnath Pandey,
Prop. M/s Sudhakar Pandey and Associates,
R/o Civil Line Road Tehsil Robertsganj,
District-Sonbhadra,
Uttar Pradesh - 231216
15. **M/s New India Minerals**
Brahmpuri Colony, 28 Jugauli Crossing,
Lucknow-226016,
Prop. Mr. Surendra Tiwari,
R/o Govindpur Ganeshpur, Akbarpur,
District-Ambedkaragar,
Uttar Pradesh

...Respondent(s)

Counsel for Applicant:

Mr. Abhishek Kumar Chaubey, Advocate for applicant in IA No. 74/2023

Counsel for Respondent(s):Mr. Mukesh Verma, Advocate for Mining Department, State of UP
Mr. Vishwajit Singh, Senior Advocate with Mr. Utkarsh Sharma and
Mr. Sharad Chauhan, Advocates for respondents 14 and 15**CORAM:****HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER**
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER

Reserved on: March 13, 2023
Pronounced on: May 19, 2023

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JUDGMENT

BY HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER

1. The substantial question relating to environment arising due to implementation of enactments mentioned in Schedule to National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act, 2010**') raised herein is about mining of sand and morrum near Eco-Sensitive Zone (hereinafter referred to as '**ESZ**') and protected reserved forest, in violation of various conditions of Environmental Clearance (hereinafter referred to as '**EC**'), consent orders and environmental laws, directly causing damage to environment, aquatic ecology, and in particular flora and fauna in the area under consideration.

2. Original Application (hereinafter referred to as '**OA**') under Sections



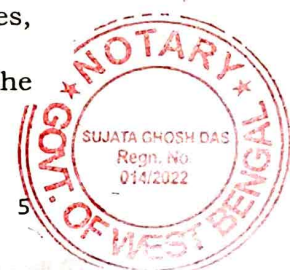
14, 15, 16, 17 and 18(1) of NGT Act, 2010 has been preferred by Sandal Parveen D/o Meraj Akhtar resident of Ward No. 1, Babaphulchand Dalit Basti Robertsganj, District Sonbhadra, complaining about mining activities of M/s. Sudhakar Pandey and Associates i.e., respondent 14 and M/s. New India Minerals i.e., respondent 15, at araji no. 824 kha (khand 4), area 12.368 hectares and Araji no. 824 kha (khand no. 3), area 16.194 hectares, respectively, at village Agori Khas, Tehsil Obra, District Sonbhadra, Uttar Pradesh, in violation of environmental laws and norms as also the provisions of Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as '**MMDR Act, 1957**').

3. **The facts in brief** as stated in OA are that applicant is a member of the Trust namely 'Birsa Munda Foundation and Research Institute' bearing registration no. 35/2014 situated at behind Chapka Power House Robertganj, District Sonbhadra. Trust is working for betterment and welfare of the society, raising issues relating to environmental pollution in the area of District Sonbhadra, in particular, and State of UP as well as in the area of Singrauli region comprising both parts of State of Madhya Pradesh and Uttar Pradesh, in general. Concern of the applicant is illegal mining on and beyond leased area in River Son, restricted forest and wild life forest area, using heavy machines like JCBs, Poklane etc. and blocking of free flow of Son river at village Mitapur and Kargara, by constructing temporary bridge using hume pipes, causing environmental degradation such as loss of *flora and fauna* and also by transportation of morrums/sands on heavy trucks, trippers/trailers, heavily overloaded, causing damage of Mitapur Kargara Road-Robertsganj/Varanasi Shaktinagar Road (SH 5A) and also causing heavy dust emissions damaging and effecting air quality as also causing health hazardous to local people.



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4. **Singrauli** has been declared as 'Critically Polluted Industrial Area' vide Notification dated 13.01.2010 issued by Ministry of Environment and Forests (hereinafter referred to as '**MoEF**') on the basis of Comprehensive Environment Pollution Index (hereinafter referred to as '**CEPI**'). Total area of Singrauli, State of Madhya Pradesh is 5672 m². It consists of North East area of Madhya Pradesh and Southern part of District Sonbhadra of State of UP. It is emerging as energy hub of India and known as 'Energy Capital' due to availability of coal and water. Presently, approximately 12000 MW electricity per day is being generated by Thermal Power Plants in Singrauli (Madhya Pradesh). Coal mines and super thermal power plants situated in the area in Singrauli and Sonbhadra produce 83 million tonnes per annum of coal ash and 13200 million watts of thermal power. It is responsible for 16% and/or 10 tonnes per annum of total mercury pollution through power generation i.e., 720 kilograms of mercury per year. In entire Singrauli region (State of Madhya Pradesh and UP), a large number of thermal power plants are running like NTPC's Vindhyanchal Super Thermal Power Station, Hindalco Industries Power Division, Renuagar, Kanoria Chemicals and Industries (Power Division) Renukoot, NTPC Rihand Nagar, NTPC Shakti Nagar, Obra Thermal Power Station Unit-A and Unit-B, Anpara Thermal Power Station-A, B and C, Hindalco Industries Limited Renukoot, Hi-Tech Carbon Renukoot, Aditya Birla Chemicals Industries, L&T Dalla Cement Dalla, Dalla Cement (Bhalua, Jugal and Padarach Mines), Orient Micro Abrasives Limited, Renukoot etc. These industrial units are creating acute pollution and continuously destroying environment in the area spreading in Singrauli region/area. According to Annual Health Survey of 2010-2011, two and a half times more cases of diarrhea, dysentery and respiratory infections were detected. Besides, maximum number of chronic illnesses such as diabetes, hypertension, tuberculosis, asthma and arthritis were also detected in the



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area. As declared by Environment Ministry, Singrauli is 9th most critically polluted area in the country. Centre of Science and Environment, after investigation found that mercury, a deadly toxicant coal is slowly entering people's homes, food, water and even blood. It is highly dangerous to life of peoples and animals. Due to unplanned illegal crusher units working in the area, small invisible dust particles are being emitted causing respiratory and other health adversities. Complaining about degradation of environment in Singrauli area, **OA No. 276/2013, Ashwani Kumar Dubey vs. Union of India & Others** and **OA No. 20/2014, Jagat Narayan Viswakarma and Others vs. Union of India & Others** were filed before Tribunal, which constituted a Committee for giving factual report. Interim report was submitted on 07.07.2014. For monitoring of potential hazards of industrial development in Singrauli area, vide order dated 25.08.2014, this Tribunal constituted a core Committee. Ultimately, report dated 20.08.2015 was considered and a detailed order was passed on 06.12.2017 with the following directions:

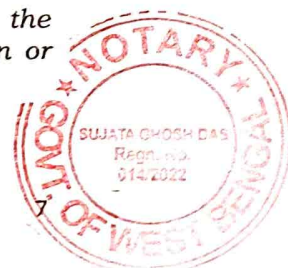
1. *We accept the interim report dated 07-07-2014 and final report dated 20-08-2015 filed by the Core Committee before the Tribunal as there are no objections raised by any of the stakeholders before us to the acceptance to the said reports. Consequently, we accept the reports.*
2. *Keeping in view of the facts and circumstances of the case, the Core Committee shall conduct a fresh inspection within four weeks from today and all the industries located in the area in question as well as localities around those industries. It will examine whether the recommendations made by the Core Committee already in its report dated 14-02-2014, 07-07-2014 and 20-08-2015 have been implemented or not and how they need to be. If any stakeholder is to be found deficient in compliance in taking action, what action should be taken against those industries or authorities or State Government for that default.*
3. *We hereby constitute two separate committees for appropriate implementation of the recommendations made by the Core Committee in their reports and these committees in their respective States shall be responsible for implementation of those directions without any further delay. The Committee shall consist of the followings in each States:*

i.) *Secretary Environment of the respective States*



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- ii.) Member Secretary of the Pollution Control Board of the concerned States
 - iii.) District Magistrate of the concerned district who shall be conveners of the meeting.
 - iv.) Zila Panchyat Adyayksh of the District in which the village falls inspection of which is being conducted by the Team.
 - v.) Nominee of the Mayor in the case of Urban areas.
 - vi.) Senior Officer from the Coal Mine Department of the States
4. This Supervisory Committee shall perform dual functions. First, is with regard to supervision of the implementation and recommendations issued by the Core Committee. Secondly, would also suggest to the Core Committee such further steps that have to be taken in the interest of environment, ecology and public health.
 5. The Supervisory Committee shall submit a monthly report of the Core Committee and the Core Committee in turn shall submit the report to the Tribunal every three months.
 6. We direct that the Member Secretary of the respective State Pollution Control Boards, the District Magistrate of the concerned district and the Director/Partner/Executive Officer of the industry thermal plant shall ensure that every village in the region of Singrauli region including coal mining area, every village is provided with an RO plant and if the population of the village so demands at least two or even more plants shall be provided in that village to ensure that residents of the village get potable water for drinking purposes at any cost. All the industries shall be liable to bear the cost in discharge of their corporate social responsibility as well as on the fact that the existing pollution is attributable to them in one way or the other. The principle of polluter pays has to be invoked but we make it clear that at this stage we are not returning the findings that these industries are causing pollution, as of now. We will leave it to the inspection team to return their findings in that behalf with complete analysis report.
 7. Since this region falls both in the State of Uttar Pradesh and in the State of Madhya Pradesh, both the State Pollution Control Boards along with the Department of Environment of the State Government shall fix on-line air monitoring system. They shall also ensure that water quality monitoring system is also provided wherever the water body or the river is there near to village industrial complexes etc.
 8. We further order and direct that Core Committee upon recommendations of the Supervisory Committee may consider and providing of further time for compliance or directions provided that it is shown that effective steps have already been taken by the industries and they are in the process of compliance of the directions may be like installation of ETP or any other anti-pollution devices that has been recommended or directed.
 9. For installation of RO plant, land would be provided by the Government/Gram Panchayat and entire cost for installation or maintenance would be borne by the industries.

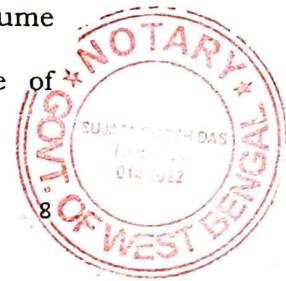


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10. The Supervisory Committee would be at liberty to take input/advise or opinion of any authority or body including Director General of Mines Safety.

11. All the stone crushers which are operating in these regions without obtaining consent of the Board and permission from the competent authority shall be shut down without further notice. The stone crusher which are permitted to operate would also be responsible for installation of RO system at the place where there are number of stone crushers running and they would be guided by the same directions as we have afore-recorded in the case of industries."

5. Applicant has further pleaded that respondent 14 i.e., M/s. Sudhakar Pandey and Associates is proprietorship Firm of Sudhakar Pandey, resident of Civil Line Road, Tehsil Robertsganj, District Sonbhadra, UP. It was granted mining permit for mining of morrum at araji no. 824 kha (khand 4), village Agori Khas, Tehsil Obra, District Sonbhadra, area 12.368 hectares, with the conditions that no mining outside allotted area or on forest or wild life forest area harming wild life, flora, fauna and vegetation shall be carried out; there will be no mining in a way so that it may harm or block the road right of way, public place, public property, houses etc.; the lessee will not use machines such as JCB or Poklane in the mining activity and will also not block free flow of Son River. However, violating all the norms and conditions, respondent 14 has conducted mining illegally, outside the allotted lease area that is at village Mitapur, on the forest land/wild life forest habitat which is within buffer zone of Kaimur Wild Life Sanctuary; due to continued mining activities carried out illegally, the lessee i.e., respondent 14 has endangered flora, fauna and vegetation along with wild animals such as Black Bucks, Sambhar, Snoth Bears, Wild Boards, Indian Fox, Jackals, Spotted Deer, Striped Hyena, Apes, Chinkara as well as number of water bodies including species of land and water birds, reptilians such as Monitor Lizard, Pythons etc.; lessee had also constructed illegal bridge of hume pipes over River Son, blocking free flow of river; the purpose of



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construction of bridge is for transporting sand by trucks; mining activities also involve mid river mining using heavy machines like JCBs and Poklanes; and it has also cut trees for making ways for transportation of mined mineral.

6. Applicant has further said that Kaimur Wild Life Sanctuary including the area to the extent of one km or around the boundary of the said Sanctuary has been declared 'Eco-Sensitive Zone' by Government of India in exercise of power under Section 3(2)(v) and (xiv) and (1) of Environment (Protection) Act, 1986 (hereinafter referred to as '**EP Act, 1986**') read with Rule 5(3) of Environment (Protection) Rules, 1986 (hereinafter referred to as '**EP Rules, 1986**') vide Notification dated 20.03.2017, copy whereof has been placed on record at page 84 of the paper book. Respondent 14 was issued a Term of Reference (hereinafter referred to as '**ToR**') for the aforesaid mining activity by State Level Environment Impact Assessment Authority, UP (hereinafter referred to as '**SEIAA UP**') vide letter dated 02.11.2021. Standard ToR is also given in the said letter along with additional ToR, copy whereof has been filed as annexure-2 at page 75 to the paper book.

7. Similarly, respondent 15, M/s. New India Minerals, a proprietorship Firm, owned by Surendra Tiwari resident of 190, Govind Pur, Ganeshpur, Akbarpur District Ambedkar Nagar, UP, was issued Environmental Clearance (hereinafter referred to as '**EC**') vide letter dated 01.12.2021 by SEIAA UP for carrying out river bed morrum mining (Son River) at Arajhi No. 824 kha (khand no. 3), area 16.194 hectares at village Agori Khas, Tehsil Obra, District Sonbhadra; copy of EC dated 01.12.2021 is on record at page 109 of paper book. EC allowed collection of 259102 m³ per annum mineral for one year; various conditions i.e., General and Specific, subject whereto EC was granted, are also mentioned in the said EC and we



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propose to refer the relevant conditions as and when it is required.

8. Respondent 15, however, in violation of the conditions of EC has proceeded with illegal mining of morrum on and outside the allotted lease area at village Kargara, on the forest land/wild life forest habitat which is within buffer zone of Kaimur Wild Life Sanctuary; illegal mining carried out by respondent 15 has endangered flora-fauna and vegetation along with wild animals such as Black Bucks, Sambhar, Sloth Bears, Wild Boars, Indian Fox, Jackals, Spotted Deer, Striped Hyena, Apes, Chinkara as well as number of water bodies including species of land and water birds, reptilian such as Monitor Lizard, Pythons etc.; respondent 15 had also constructed illegally, bridge of hume pipes over River Son, blocking free flow of river for transporting its sands by trucks; and is also carrying out mining illegally using heavy machines like JCBs and Poklanes.

9. Applicant has also filed some photographs showing mining with use of heavy machines by both respondents 14 and 15. Applicant has also made a complaint to District Magistrate, Sonbhadra against illegal mining carried out by respondents 14 and 15. District Magistrate constituted a five members Committee under Sub-division Magistrate, Obra to enquire into the complaint. The Committee submitted report on 06.05.2022 finding illegal mining by both the respondents as a result whereof, a **fine of Rs. 3,46,98,500/- was imposed upon respondent 14 for illegal mining of 36615 m³ of morrum at Mitapur while fine of Rs. 2,69,12,500/- was imposed upon respondent 15 for illegal mining of 27590 m³ morrum at village Kargara.**

10. Since illegal mining continued, a complaint was made on 12.08.2022 by Ritisha, copy whereof has been filed as annexure 4, page 130 of paper book. On the said complaint, Shri Manoj Kumar, Mining



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Inspector submitted report dated 24.08.2022 to Officer Incharge, Collectorate, Sonbhadra stating that as per Enquiry Report dated 06.05.2022, both the respondents were found guilty of illegal mining beyond the leased area and for that reason, **penalty of Rs. 3,46,98,500/- and Rs. 2,69,12,500/- was imposed upon respondents 14 and 15, respectively, which has been deposited by them.** Presently, due to monsoon season, mining activities of morrum and its transportation is completely closed.

11. It is also said that National Board of Wild Life (hereinafter referred to as **'NBWL'**) adopted 'The Wild Life Conservation Strategy, 2002' and took a decision in its meeting held on 21.01.2002 under the Chairmanship of Prime Minister to notify areas within 10 kms from the boundaries of National Parks and Sanctuaries as 'Eco-fragile Zones' under Section 3(V) of EP Act, 1986 and Rule 5(1)(viii)(x) of EP Rules, 1986.

12. It is said that in grant of EC, there is violation of the said decision of NBWL, in as much as, mining activities have been allowed within 10 kms of National Parks, Sanctuaries and Protected Forest Areas. Mining and related activities, on the principle of sustainable development comes within the concept of 'balancing' whereas mining and related operations beyond the principle of sustainable development comes within the concept of banning. It is a matter of degree. Balancing of mining activity with environment protection and banning such activity are two sides of same principles of sustainable development. They are part of precautionary principle. Environment and ecology are national assets. They are subject to inter-generational equity, sustainable development principle and part of Article 21, 48-A and 51-A(g) of Constitution of India. Information under Right to Information Act, 2005 (hereinafter referred to as **'RTI Act, 2005'**) was also sought by the members of Trust of which applicant is also

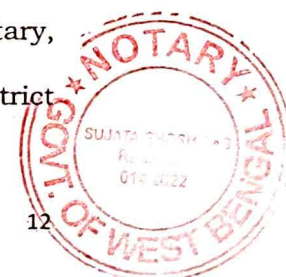


member and in reply thereof, illegal mining activities beyond leased area by respondents 14 and 15 were confirmed. One of such information given by Senior Mine Officer, Public Information Officer, Sonbhadra vide letter dated 16.08.2022 to Shri Mehfooz, a member of Birsa Munda Foundation and Research Institute is on record at page 141 which in reply to items 1 and 2, has said that **respondents 14 and 15 were found conducting mining illegally, beyond their leased area and imposed penalty of Rs. 3,93,10,500/- and Rs. 2,86,56,000/- respectively which was deposited by them through challan.**

13. In the above factual backdrop, applicant has prayed that mining leases granted to respondents 14 and 15 be immediately cancelled; and heavy penalty be imposed upon them as per law of restitution of environment; they should be directed to restrain from using heavy machines and after making survey of damages and losses caused to the local people, suitable compensation be determined and awarded under Section 15 of NGT Act, 2010, also for restitution of ecology and environment and the officer(s) responsible for failure of statutory duties should be identified and proceeded against, in accordance with law. It is also said that for causing loss to environment due to construction of illegal bridges over Son River, appropriate compensation should be assessed and imposed upon proponents i.e., respondents 14 and 15.

Tribunal's order dated 16.11.2022:

14. OA was taken up for admission on 16.11.2022 and after considering the facts stated in OA, Tribunal found it appropriate to constitute a fact-finding Committee comprising Regional Officer, Ministry of Environment, Forest and Climate Change (hereinafter referred to as **MoEF&CC**), Lucknow, (Chief Conservator of Forest); Member Secretary, UP Pollution Control Board (hereinafter referred to as **UPPCB**) and District



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Magistrate, Sonbhadra. The said Committee was directed to submit a factual report. It was also mentioned in the order dated 16.11.2022 that Committee may put the identified violators to the notice of the proceedings and a copy of report be furnished simultaneously to them so that they may also have an opportunity of filing their response before Tribunal.

Joint Committee Report dated 17.02.2023:

15. Pursuant to Tribunal's order dated 16.11.2022, Joint Committee was nominated comprising following:

- (i) Dr. A.K. Gupta, Additional Director, nominee of Regional Officer (Chief Conservator of Forest), Integrated Regional Office, MoEF&CC, Lucknow.
- (ii) Shri Sahdeo Kumar Mishra, ADM (F/R), Sonbhadra, nominee of District Magistrate, Sonbhadra.
- (iii) Dr. T.N. Singh, Regional Officer, Sonbhadra, nominee of UPPCB, Lucknow.

16. Committee visited the site on 09.12.2022, collected factual information and submitted report with its observations and recommendations as under:

"1. M/s Sudhakar Pandey and Associates R/o of Civil Line Road, Robertganj, Sonbhadra for morrum mining at Arazi 824 Kha (Khand -04), Village- Aghori Khas, Teh.- Obra, District-Sonbhadra.

a) The details of the above project & permissions obtained are as follows:

- Sanctioned lease area 12.368 ha, in bench of River Sone
- Lease holder obtained Environmental clearance vide letter no. EC21B001UP144167-File No.-6748/6321 dated 22.12.2021 for sand/morrum mining in the lease area of 12.368 ha.
- Lease holder obtained consent to operate vide letter no.148535/UPPCB/Sonebhadra(UPPCBRO)/CTO/water/Sonebhadra/2022 dated 25.01.2022, which is valid from 24.01.2022 to 31.12.2024 and 148529/UPPCB/Sonebhadra(UPPCBRO)/CTO/air/Sonebhadra/2022 dated 25.01.2022, which is valid

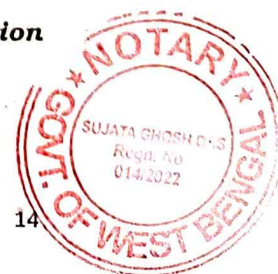


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from 24.01.2022 to 31.12.2024 for 197,888 cubic meter/year mining of sand/morrum.

b) Major observation:

- As per the specific condition of EC no. 1, it is clearly stated that "In absence of the replenishment study keeping in mind of various orders issued by Hon'ble NGT and the developmental work in the state, EC is granted for period of one year" i.e., up to 21.12.2022.
- SEIAA-UP vide MoM of 685th meeting held on dated 31.12.2022 extended the validity of EC for further one year. **(MoM attached as Annexure B)**
- Committee has been observed that **the lease holder doing significant mining outside of the lease area (towards main stream of river),** committee unable to visit the outside of the lease area (towards main stream of river), where mining is being conducted by lease holder, due to creation of heavy trench, committee could not visit the illegal patch of the land, which seems be created by lease holder before visit of the committee.
- Significant mining outside of the lease area is also evident from the Google satellite image dated March, 2022. **(Google satellite image attached as Annexure C)**
- **Satellite image also depicted that the area of mining outside of the lease is about 5.44 ha**
- As mentioned above, **illegal mining is being done by the lease holder in the main stream of the river (outside of the lease area), may certainly be change the course of river flow & its velocity and its quality, which is contradictory to EC General Condition no. 13.**
- It has also been observed that **the lease holder setup weigh bridge, borewell, office outside of the lease area, etc.**
- **Boundary pillars is not properly erected on each corner of the lease.**
- **No plantation has been done so far.**
- Sufficient evidences has been observed by committee, which shows that **the lease holder are using various machine for river bed mining in lease and outside of the lease area.**
- Lease holder has **not made motorable approach road with both side plantation.**
- It has also been observed that **the mining activity is also going on the main stream of river Sone, i.e., outside of the lease area.**
- Google satellite images taken on various time intervals clearly reflected that the illegal mining status beyond the lease area before start of mining and in between the mining.
- **One borewell is found in running condition without statutory approvals.**



- **Depth of the pit seems more as specify in the EC.**
- *The weighing bridges have been installed by these mines and the data is transmitted into the server.*

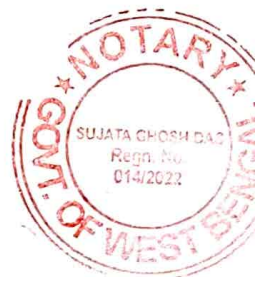
2. M/s New India Minerals Village- Aghori Khas, Teh.- Obra, District-Sonbhadra.

a) *The details of the above project & permission obtained are as follows:*

- *Sanctioned lease area 16.194 ha, in bench of River Sone.*
- *Lease holder obtained Environmental clearance vide letter no. EC21B001UP196497-File No. 6257 dated 01.12.2021 for sand/morrum mining in the lease area of 12.368 ha.*
- *Lease holder obtained consent to operate vide letter no. 143269/UPPCB/Sonebhadra (UPPCBRO)/CTO/air/Sonebhadra/2021 dated 08.12.2021, which is valid from 08.12.2021 to 31.12.2022. And 143270/UPPCB/ Sonebhadra (UPPCBRO)/CTO/water/Sonebhadra/2021 dated 08.12.2021, which is valid from 08.12.2021 to 31.12.2022 for 259104 cubic meter/year mining of sand/morrum.*
- *Latest consent to operate (CTO) vide letter 170202/UPPCB/Sonebhadra (UPPCBRO)/CTO/both/Sonebhadra/2022 dated 13.01.2023, which is valid from 01.01.2023 to 31.12.2024 for mining of sand and morrum with 259104 cubic meter/year.*

b) *Major observation:*

- ***As per the specific condition of EC no. 1, it is clearly stated that "In absence of the replenishment study keeping in mind of various orders issued by Hon'ble NGT and the developmental work in the state, EC is granted for period of one year".***
- *SEIAA-UP vide MoM of 685th meeting held on dated 31.12.2022 extended the validity of EC for further one year. (MoM attached as Annexure B)*
- ***Committee has been observed that the lease holder doing significant mining outside of the lease area (towards main stream of river), committee unable to visit the outside of the lease area (towards main stream of river), where mining is being conducted by lease holder, due to creation of heavy trench committee could not went in that patch of land, which seems be created by lease holder before visit of the committee.***
- ***Significant mining outside of the lease area is also evident from the Google satellite image taken of dated. (Google satellite image attached as Annexure D)***



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- Significant mining outside of the lease area is also evident from the Google satellite image dated March, 2022.
- Satellite image also depicted that the **area of mining outside of the lease is about 4.72 ha towards main stream.**
- **As mentioned above, illegal mining is being done by the lease holder in the main stream of the river (outside of the lease area), may certainly be change the course of river flow & its velocity and its quality, which is contradictory to EC General Condition no. 13.**
- **Lease holder has also not made motorable approach road with both side planation in area.**
- **It has also been observed that the lease holder setup weight bridge, borewell, DG sets, office outside of the lease area, etc and it seems that the above facilities has been setup on the government land,**
- **Borewell is found in running condition without statutory approvals.**
- **The weighing bridges have been installed by these mines and the data is transmitted into the server.**
- **It has been found that the compliance of Environmental clearance condition and CTO condition are pathetic.**
- **None of the statutory permission (EC, CTO, production, compliance report, lease document, mining plane etc) available with the representative of lease holder.**

3. Other observation

- **At the time of inspection, it was found that the Kachha path constructed by the mines lease holders for transportation of the sand from the lease area has been disturbed by keeping overburdens on the road in a such a way that the Committee may not reach to the illegal mining lease site outside the co-ordinates of the lease area. However, the committee member tried to see the factual situation and accordingly it was visible that 03 mines pit are operational outside the lease boundary. The illegal mining area could not be measured; however, it is visible on the Google earth and Google satellite image is attached as Annexure C, D & E.**
- **As per Google earth images, there are three illegal pits visible near the mine of M/s Sudhakar Pandey and Associates, the area of these illegal pits is 5.44 ha. Similarly, three illegal pits of 4.72 Ha area have existed near the mine area of M/s New India Minerals.**
- **The illegal mining pits are located towards the center of the river course which can severely affect the river economy.**
- **Temporary bridge structure is also visible across the river course which can interrupt the flow of the river.**





- It has been found that the **compliance of Environmental clearance condition and CTO condition are pathetic in both the mining lease.**

4. Environmental compensation (EC) imposed due to mining in outside of the lease and over production

- Committee vide letter no. G000081/OA No.818/2023 dated 28.01.2023 requested to Senior mining officer, Sonbhadra to provide various information including production details, any illegal mining reported to M/s New India mineral and M/s Sudhakar Pandey & associate of above mentioned lease. **No reply has been received so far.**
- As mentioned above both the lease holder doing significant mining in outside of their lease area (illegal mining), as the data of production is not available with committee, therefore, committee is in opinion to impose Environmental compensation (EC) based on the area covered under illegal mining as mentioned above.
- As per Google earth images, there are three illegal pits visible near the mine of M/s Sudhakar Pandey and Associates, the area of these illegal pits is 5.44 ha and three illegal pits of 4.72 Ha area have existed near the mine area of M/s New India Minerals. **The depth of the pits couldn't be verified because the way of the pits were not approachable.** As per environmental clearance of SEIAA-UP granted to this project, the maximum depth of the pits shouldn't be more than 3 Meters. Hence, taking the average depth of 1.5 meter, the volume of extracted illegal sand can be calculated. Hence the volume of the sand shall be equal to area * depth.
- The depth of the illegal mining pits mentioned above is not measurable. And hence, the excavated quantity could not be estimated accurately. The EC calculated above is approximation. The accuracy can be verified by measuring the depth employing drone mapping or Google satellite mapping.
- As per CPCB guidelines, the environmental compensation has been calculated as follows :

Environmental Compensation charge (In Rs.) =
 $D \times (1+RF+DF)$

Where, $D = Z \times$ Market Value of the material per MT or m³

$DF = 0.3$, if $Z/X = 0.11$ to 0.40

0.6 , if $Z/X = 0.41$ to 0.70

1 , if $Z/X > 0.71$

$RF = 0.25, 0.50, 0.75, 1.00$ as per risk level mentioned below:

Risk Level	1	2	3	4
Risk Factor	0.25	0.50	0.75	1

- The details of Environmental Compensation/ Charge are tabulated below:



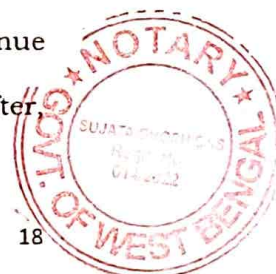
S.N.	Lease holder	Environmental Compensation/charge (in Rs.)
1.	M/s Sudhakar Pandey and Associates Aghori Khas, Teh.-Obra, District-Sonbhadra (Lease area 12.36 ha)	Rs.8,16,00,000.00 (Rupees Eight Crores Sixteen lakhs Only)
2.	M/s New India Minerals Village- Aghori Khas, Teh.-Obra, District- Sonbhadra (Lease area 16.194 ha)	Rs.7,08,00,000.00 (Rupees Seven Crores Eight lakhs Only)

5. Recommendations:

- The amount collected under Environmental compensation by lease holder can be utilize for betterment of the local area including construction of motorable road with both side tree planation, dragging of main course of River Sone and protection of Agroikahs kila.
- State mining department can be strengthened by drone survey/mapping tools, for controlling of illegal mining in the main stream of the river Sone etc in near future,
- State mining department can be strengthened by drone survey/mapping tools, for controlling of illegal mining in the main stream of the river Sone etc in near future,
- Production capacity of each mine in area in question can re-assess based on the replenishment study conducted by Mining Department.
- It has come to noticed that the established weight bridge, DG sets, borewell, hutment cum office, of both the lease holder arc either in government land or other land, which need to be verified by local administration and initiate further legal action, if found false.
- For betterment of the compliance status in mining lease area regular monitoring can be ensure by local mining department, Regional Office of UPPCB etc.”

Tribunal's order dated 20.02.2023:

17. The report of Joint Committee was considered by Tribunal on 20.02.2023. On this date, two IAs i.e., 55/2023 and 56/2023 were filed on behalf of applicant Sandal Parveen whereby permission to change counsel was sought and it was also stated that applicant be permitted to withdraw OA. Tribunal deprecated and condemned the conduct of applicant but disposed of both the applications holding that the applicant may withdraw herself from the matter but the proceedings will continue as suo-moto action by Tribunal with the change of cause title. Thereafter



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report was considered. It was found that the copy of the report, despite order was not supplied to the identified violators i.e., respondents 14 and 15. Hence they did not have any opportunity to file their objections, if any. Consequently, Tribunal issued notices and granted them time to file their response/objections to the report as well as to the averments made in OA.

IA No. 67/2023 dated 17.02.2023 filed on 20.02.2023 before Tribunal by Ritisha D/o Gopal Gond:

18. Ritisha is also member of Birsa Munda Foundation and Research Institute and making similar allegations as made in OA, this IA has been filed with similar prayer as made in OA. The additional facts are that some more areas have been mentioned and reference of some more mining lease holders has been given namely M/s. Veera Construction under the proprietorship of Rameshwar Prasad besides respondents 14 and 15. It is also said that some more mining leases have been granted for mining activities in Son River running through different villages. It is also said that an area of 200 kms of river Son starting from Sidhi District, Madhya Pradesh to Chopan District Sonbhadra was declared as '**Son Ghadiyal Sanctuary**', a **Protected Area**, in 1981. It is reserved for alligators, crocodiles, tortoises and other reptiles, found in the said river. Mining activities in river Son are adversely affecting aquatic animals in the river which is already part of protected area having been declared as 'Son Ghadiyal Wild Life Sanctuary'. She was allowed to address Tribunal in support of OA.

Objections dated 03.03.2023 filed on the same date by respondents 14 and 15 to Joint Committee Report dated 17.02.2023:

19. Respondents 14 and 15 have filed jointly the said objections to the report. Since it is the only document filed in support/defense of respondents 14 and 15, we find it appropriate to reproduce defense taken by them in the said objections from para 4 to para 26 as under:



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- “4. That is respectfully submitted that four blocks of land were carved out of Khasra No. 824 Kha, situated in Village Aghori Khas, Tehsil Obra, District Sonbhadra by the State Government, after obtaining No Objection Certificates from the Divisional Forest Officer, Obra Forest Division, Sonbhadra as well as from the Divisional Forest Officer, Kaimur Wildlife Sanctuary Division, with the **Answering Respondents in no manner being involved in the process of earmarking of the blocks of land for grant of mining leases.** Since a detailed survey had been done by the State Government before carving out the blocks and NOC's had been obtained from the concerned authorities, there is no question of the blocks of land being within the forest land or within the Eco Sensitive Zone of the Kaimur Wildlife Sanctuary.
5. That after carving out of the blocks of land, auction proceedings were initiated and a public advertisement was published by the office of the District Magistrate, Sonbhadra informing the public at large about the grant of mining leases in the four blocks of land, through the process of e-tender cum e-auction. The **Answering Respondents participated in the auction proceedings and emerged as the successful bidders in respect of two out of the four blocks, with Respondent No. 14 being the successful bidder in respect of Khand-4, measuring 12.368 Hectares, and Respondent No. 15 being the successful bidder in respect of Khand-3 [16.194 Hectares].**
6. That subsequently, after the deposit of the tender security amount, Letter of Intent dated 18.03.2021 was issued in favor of Respondent No. 14 and after sanction of the Mining Plan and issuance of the Environmental Clearance on 02.11.2021 and completion of other formalities, including deposit of forty five percent of the royalty payable in the first year of the lease deed [Rs. 4,59,49,594/-], Lease Deed dated 01.01.2022 was registered in favor of Respondent No. 14, with a stamp duty of Rs. 2,49,35,800/- being paid by Respondent No. 14 at the time of registration of the Lease Deed and Rs. 62,50,000/- as registration charges.
7. That similarly, Letter of Intent dated 08.01.2021 was issued in favor of Respondent No. 15 and after sanction of the Mining Plan, issuance of Environmental Clearance on 01.12.2021 and deposit of fifty percent of the royalty amount payable for the first year [Rs. 5,51,89,152/-], Lease Deed dated 13.12.2021 was registered in favor of Respondent No. 15, with an amount of Rs. 2,69,55,000/- being paid by Respondent No. 15 towards stamp duty and Rs. 66,33,000/- towards registration charges.

Copies of Lease Deeds of the Answering Respondents are annexed and marked as ANNEXURE-1 [COLLY].

8. That subsequent to the registration of the Lease Deeds, **when the Answering Respondents commenced their mining operations, they realized that large-scale illegal mining is being done by the local inhabitants/ landowners of the area in close vicinity to the lease areas of the Answering Respondents, with attempts also being made to infiltrate the lease areas of the Answering Respondents.** The



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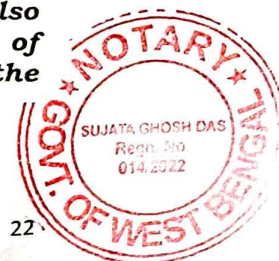
- Answering Respondents also came to know that such illegal mining, on the part of the local landowners, whose lands were situated all along the river bed of River Sone, had been going on since before the commencement of the mining leases of the Answering Respondents and **due to insufficient replenishment in the area, there were pits present within the lease areas of the Answering Respondents even before their mining operations had commenced.**
9. That when the Answering Respondents brought the same to the attention of the local authorities, they were surprisingly informed that this menace has been going on for some time and that they should be concerned about their operations and it is their responsibility to demarcate their area and ensure that the local landowners are not able to infiltrate into their area. Copies of Maps, showing the layout of the area in the vicinity of the lease areas of the Answering Respondents, are annexed and marked as ANNEXURE-2 [COLLY].
10. That the Answering Respondents were also informed that under the Ret Khet Scheme, mining permissions, for short periods of three months, were also granted by the State Government to the local landowners, permitting them to mine the sand found in their land. However, the **local inhabitants never confined themselves to their land and did large scale illegal mining in the entire area near the river bed.** Some of the short-term mining permissions, granted in favor of the local landowners by the State Government, are annexed and marked as ANNEXURE-3 [COLLY].
11. That even though the access road to the lease areas of the Answering Respondents passed through the land of the local landowners and the Answering Respondents had already been threatened with dire consequences in case they tried to pose hurdles in the illegal mining being done by the local inhabitants, who were large in number and wielded great influence and were fully capable of resorting to violence, the **Answering Respondents still mustered courage and brought this menace of large scale illegal mining, being done by the local landowners, to the attention of the authorities on several occasions, through letters and representations.** The menace of illegal mining being done by the local landowners was also highlighted by the local media through several news reports. However, the local authorities lent a deaf ear to all such complaints made by the Answering Respondents and to the news articles and it is then that the Answering Respondents came to know through sources that the local authorities work in collusion with the landowners and secure illegal gains from them, in return for not impeding their illegal operations. Copies of the letters written by the Answering Respondents, along with the newspaper clippings, highlighting the rampant illegal mining being done by the local landowners, are annexed and marked as ANNEXURE-4 [COLLY].
12. That due to the patronage enjoyed by them from the authorities, the pace of the illegal mining being done by the local landowners increased drastically after the commencement of the mining leases of the Answering Respondents, because the local inhabitants realized that once the leaseholders of the other two blocks, which



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had been auctioned and which, together with the blocks of the Answering Respondents, encompassed the majority 12 303 of the area in the river bed of River Sone, completed their formalities and commenced their mining operations, then **it will be very difficult for them to undertake illegal mining operations along the river bed.**

13. That is respectfully submitted that even in the replies submitted by the Answering Respondents to the authorities, in response to the Show Cause Notices dated 08.02.2022, 22.03.2022 and 10.05.2022 issued to them for mining outside their lease area, it had been categorically mentioned by the Answering Respondents that they had not done any mining outside their lease area and that the illegal mining, noticed during the inspections, was being done by the local inhabitants and the same had already been informed to the authorities by the Answering Respondents. However, the authorities, without considering the replies of the Answering Respondents, proceeded in a pre-determined manner and imposed penalties on the Answering Respondents for mining outside their lease area, in order to safeguard themselves and cover the fact that illegal mining was being done by the local landowners with the patronage of the authorities. Copies of the Replies to the Show Cause Notices, submitted by the Answering Respondents, along with the show causes notices are annexed and marked as ANNEXURE-5 [COLLY].
14. That the Answering Respondents were contesting the penalties imposed on them but in the meantime, the authorities threatened that in case the penalties imposed on the Answering Respondents are not deposited, they shall stop their mining operations and block the issuance of their OTP's, which are required by the Answering Respondents for generation of the MM-11 Forms. The authorities, acting on the said threat, once even blocked the issuance of the OTP's in the case of both the Answering Respondents. Because of the said situation, the Answering Respondents were constrained to deposit the penalties, amounting to Rs. 3,93,10,500/- in the case of Respondent No. 14 and Rs. 2,69,12,500/- in the case of Respondent No. 15, to the authorities. The said deposit was made under protest by the Answering Respondents without prejudice to their contentions on the issue.
15. That it is categorically stated that no mining is being done by the Answering Respondents outside their lease area and even within their area, the Answering Respondents have been undertaking mining after ensuring strict compliance of the applicable norms, while also complying with the conditions contained in their Environmental Clearances. Contrary to the observations contained in the Inspection Report submitted to this Hon'ble Tribunal by the Joint Committee, the Answering Respondents have ensured that a motorable approach road is present from their lease areas to the main road and adequate plantation has also been done by the Answering Respondents. Copies of documents, evidencing the plantation done by the



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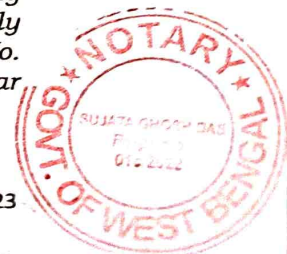
Answering Respondents, are annexed and marked as ANNEXURE-6 [COLLY].

16. That it is also pertinent to highlight that a huge sum of money, amounting to 10% of the total sum of royalty paid by the Answering Respondents to the State Government [the total royalty was Rs. 10,21,10,208/- in the first year in the case of Respondent No. 14 and Rs. 11,03,78,304 in the case of Respondent No. 15], has been deposited by the Answering Respondents in the Uttar Pradesh District Mineral Foundation Trust, which, as per the mandate of Rule 17 of the Uttar Pradesh District Mineral Foundation Trust Rules, 2017 [amended in 2020], is to be utilized for creating basic infrastructure in the area, inter-alia including construction and maintenance of approach road, electricity, sanitation and providing drinking water supply and for undertaking environment preservation and pollution control measures in the mining areas, inter-alia including common plantation in/around area affected by mining operations and measures to prevent illegal mining. However, **not a single penny out of the said amount has been spent by the State Government till date in either providing any facilities around the lease areas of the Answering Respondents or in undertaking measures to prevent illegal mining being done by the local landowners, which could have drastically improved the situation in the area.** Presumably, this has not been done by the authorities because the same would have caused disruption in their designs to abet the illegal mining being done by the local landowners. Copy of Rule 17 of the Uttar Pradesh District Mineral Foundation Trust Rules, 2017 [amended in 2020] is annexed and marked as ANNEXURE-7.

17. That it is submitted that the Answering Respondents are operating with valid permissions required by them under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, with the latest consents being valid till 31.12.2026 in the case of Respondent No. 14 and till 31.12.2024 in the case of Respondent No. 15.

Copies of the consents, granted to the Answering Respondents under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, are annexed and granted as ANNEXURE-8 [COLLY].

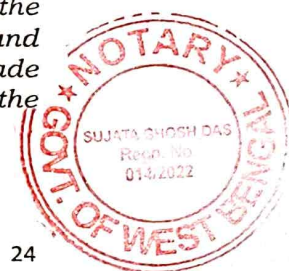
18. That it is pertinent to mention that **Respondent No. 15 has also got the No Objection Certificate [Valid from 20.12.2021 to 19.12.2026] issued from the Uttar Pradesh Ground Water Department, in respect of the borewell present in its lease area.** In so far as Respondent No. 14 is concerned, contrary to what has been stated in the Report of the Joint Committee, it is respectfully submitted that **there is no borewell situated inside the lease area of Respondent No. 14 and the water required for drinking and other activities is procured by Respondent No. 14 from external sources at its own cost.** Hence, there is no question of any permission being required in respect of any borewell by Respondent No. 14. The said position can be easily verified through an inspection of the lease area of Respondent No. 14. Copy of the NOC dated 26.12.2021, issued by the Uttar



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Pradesh Ground Water Department in favor of Respondent No. 15, is annexed and marked as ANNEXURE-9.

19. That it is also apposite to mention that without conducting a fact finding exercise and without studying the role of the local inhabitants/landowners, a blatant and partisan attempt has been made by the Joint Committee, comprising of members of the local authorities, who are fully aware of the real ground situation, to safeguard themselves and mask their collusion with the local landowners, by attributing all mining done in the entire area, adjacent to the river bed of River Son in Village Aghori Khas, to the Answering Respondents and recommending imposition of Environmental Compensation on the Answering Respondents, without any fault on their part. The various complaints given to the authorities by the Answering Respondents, as well as the various news reports, highlighting illegal mining being done by the local landowners, have been deliberately concealed by the Joint Committee from this Hon'ble Tribunal, in order to unfairly and unjustifiably lay the blame on the Answering Respondents.
20. That the **Joint Committee**, acting contrary to the directions of this Hon'ble Tribunal, contained in order dated 16.11.2022, also **neither interacted with the Answering Respondents at the time of the inspection nor did it provide any intimation of the inspection to the Answering Respondents, which would have enabled the Answering Respondents to apprise the Committee member, who had come from outside, about the correct position.** The Joint Committee conducted the inspection in a superficial manner and without applying its mind or seeking to ascertain the correct position or make a proper assessment of the quantum of illegal mining, resorted to assumptions and conjectures in attributing the entire fault to the Answering Respondents and recommending imposition of an exorbitant amount as environmental compensation on them.
21. That it is humbly submitted that if the Answering Respondents had to undertake illegal mining like the local landowners, then they could have done the same without subjecting themselves to the regulatory framework and without spending huge sums of money, amounting to several crores, in taking part in the auction proceedings, getting their lease deeds registered and paying royalty to the State Government, apart from GST@18% and contribution into the District Mineral Foundation Trust@10%. It is very unnatural that the Answering Respondents will be willing to put at risk such substantial investments and the future of their Lease Deeds, which are for a duration of five years, by indulging in illegal mining from the first year of their lease itself and getting some little gains through the same.
22. That the fact of the matter is that the **Answering Respondents are themselves the victims in the present case, as they have first been threatened with dire consequences by the local landowners**, have not received any help or support from the authorities, who are hand in gloves with the local landowners, and now it is the Answering Respondents who are sought to be made the scapegoats by the authorities for the illegal mining done in the



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area, despite the authorities being fully aware that the Answering Respondents have got absolutely nothing to do with the same.

23. That it is respectfully submitted that a fair, impartial and a proper fact-finding investigation by an independent agency, shall reveal the truth behind the matter and shall help in uncovering the collusion of the authorities with the local landowners, because of which large scale illegal mining has taken place on the river bed of River Sone and which has also caused a lot of harassment and inconvenience to the Answering Respondents. It is humbly prayed that this Hon'ble Tribunal may kindly order such an inquiry so as to safeguard the environment and also to find the real perpetrators behind the illegal mining.
24. That it is again reiterated that the Answering Respondents have always done mining within their area and within the limits specified in their Environmental Clearance. The same can be evidenced from the MM-11 Forms generated in respect of the lease areas of the Answering Respondents. Further, the trucks of the Answering Respondents, carrying the mined material from the lease areas, are also regulated by the mining department so there is no question of the Answering Respondents indulging in any illegal mining or transporting illegally mined material. Further, the **JCB machines, reference to which has been made in the Joint Committee Report, are used by the Answering Respondents within their lease areas for lifting the mined material but the same are not used outside the lease areas by the Answering Respondents for any purpose, leave alone for river bed mining.** It is submitted that the local landowners have been using machines during their illegal mining operations and information regarding the same has been given to the authorities by the Answering Respondents.
25. That as is evident from the above submissions, **the illegal mining in the area around the lease areas of the Answering Respondents is being undertaken by the local landowners, with the collusion and support of the authorities, with an attempt being made to lay the blame for the same on the Answering Respondents.** In such circumstances, it is respectfully prayed that this Hon'ble Tribunal may direct for a fair, impartial and independent inquiry and investigation to be conducted, with a fair opportunity to the Answering Respondents to participate in the same, which shall unravel the truth and unmask the real perpetrators of the illegal mining. The Answering Respondents undertake to render full assistance and cooperation in any such inquiry which may be held pursuant to the directions of this Hon'ble Tribunal.
26. That it is also prayed that since no illegal mining is being done by the Answering Respondents, this Hon'ble Tribunal may kindly be pleased to vacate its order dated 20.02.2023 and while dismissing the present Original Application qua the Answering Respondents, permit the Answering Respondents, premised on them being subjected to the strictest regulatory supervision and oversight while undertaking their mining operations, to resume their mining operations, in consonance with their lease deeds."



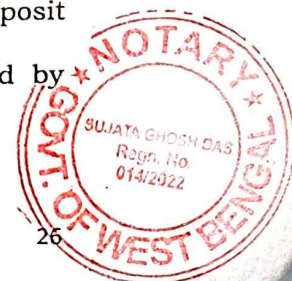
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IA No. 74/2023 dated 02.03.2023 filed on 06.03.2023:

20. This IA has been filed by Chaudhary Yashwant Singh S/o Late Ratiram Singh claiming himself to be President of Bhartiya Samajik Nyay Trust. He has also come with the same allegations as made in OA as also IA No. 67/2023. We do not find any reason to give details/contents of this IA which are similar to the facts already stated in respect of OA and IA No. 67/2023. He was allowed to address Tribunal in support of OA.

Additional Affidavit dated 17.03.2023 filed by respondent 14:

21. It is said that District Survey Report (hereinafter referred to as 'DSR') in respect of excavation of mineral in District Sonbhadra was prepared jointly by Directorate of Geology and Mining, State of UP and District Environment Impact Assessment Authority (hereinafter referred to as 'DEIAA') and approved on 28.11.2018, subsequent to which several blocks of land, including four blocks in khasra no. 824 kha, were carved out by State Government for grant of mining leases, through auction. Copy of the said DSR, approved on 28.11.2018 by DEIAA and District Level Assessment Committee (hereinafter referred to as 'DEAC'), has been filed as Annexure A-1. It is also said that Sand Replacement/Replenishment Study, in respect of River Sone in District Sonbhadra was also conducted by Central Mines Planning and Design Institute Limited, Ranchi (hereinafter referred to as 'CMPDIL Ranchi'), State of Jharkhand. Report was submitted to District Magistrate, Sonbhadra vide letter dated 30.12.2022 which is filed as annexure A-02 to Additional Affidavit. In para 7, it is said that since mining operations have been stopped pursuant to Tribunal's order dated 20.02.2023, respondent 14 is willing to resume mining operations at the earliest after curing deficiencies indicated in Joint Committee Report and to put a quietus to issue, he is willing to deposit environmental compensation of Rs. 8.16 Crores, as recommended by

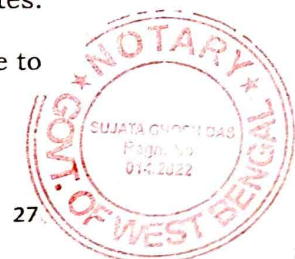


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Committee, but he may be allowed to pay in installments. Hence, he may be allowed to pay the said environmental compensation over a period of six months. Further, it is said that on submission of Compliance Report by respondent 14 to the authorities, it may be allowed to resume mining operations subject to adherence to applicable norms and conditions stipulated in EC.

ARGUMENTS:

22. The case set up in OA and as is evident from Joint Committee's report is that mining activities are being carried out by respondents 14 and 15 in utter violation of environmental laws and norms; it is degrading and damaging not only ecology of eco-sensitive zones but also environment in general; Araji no. 824 kha (khand 4), area 12.368 hectares and Araji no. 824 kha (khand 3), area 16.194 hectares are within the buffer zone of protected wild life sanctuaries where mining activities are not permissible; mining activities are being carried in the river bed by obstructing free flow of River Son and such mining activities are illegal and impermissible as it degrade not only aquatic ecology of river but also cause serious damage to environment; and that illegal mining is evident from the fact that mining authorities imposed penalty on account of illegal mining upon respondents 14 and 15 to the extent of Rs. 3,93,10,500/- and Rs. 2,86,56,000/- respectively, which has been paid by both the proponents. District Magistrate's letter dated 16.08.2022, annexure 6 at page 141 of the paper book, replying to questions 1 and 2, states that penalty of Rs. 3,93,10,500/- was imposed on account of illegal mining beyond sanctioned area upon respondent 14 and penalty of Rs. 2,86,56,000/- was imposed upon respondent 15 which has been paid by both the parties in Government treasury. The above penalties were under Mining Statutes. That being so, it is urged by interveners that both proponents are liable to



pay environmental compensation also for having indulged in illegal mining causing damage to environment. The complaints of illegal mining by respondents 14 and 15 have been found correct by Joint Committee constituted by this Tribunal and its report shows that respondents 14 and 15 are conducting illegal mining and, therefore liable to pay not only environmental compensation but also should face other legal actions including prosecution etc.

23. Learned interveners also contended that 'Son Ghadiyal Sanctuary' is being damaged on account of illegal mining in river bed of Son River which has also resulted in substantial decrease in the strength of aquatic animals like ghadiyals, tortoises and alligators etc. Our attention is drawn to newspaper reports placed on record along with IA 67/2023, where it is reported that **in the month of January 2023, some ghadiyals were found dead in mining pits.**

24. It is also evident from record that respondents 14 and 15 have constructed temporary bridges of hume pipes, obstructing free flow of River Son and causing degradation to flora and fauna in the river. Damage is also being caused to flora and fauna due to mining activities, being carried out with the help of heavy machines like JCBs, Poklanes etc., and use of heavy vehicles for transportation like Trucks, Trippers/Trailers etc.

25. It is said by interveners that their main concern is about illegal mining in 'Son Ghadiyal Wild Life Sanctuary Area' in River Son and Buffer Area of Kaimur Wild Life Sanctuary. Mining in Son river from Village Shilpi to Gurdah 20.288 KM, Patwadh Anshik to Chikra (Kanhuara) 14 KM and in between them at Village **Kargara, Mitapur, Bandhwa, Rediya** and Village **Bhagwa, Gothani, Badgawa, Sinduriya, Ghoriya, Kurcha, Newari, Agori Khas, Sasnai, Barahmori** and Chopan District Sonbhadra endanger



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the life and habitat of alligators found in Sone Ghadiyal Sanctuary stretch, situated in District Sidhi, Madhya Pradesh, neighboring District to Sonbhadra which expands upto 200 KM stretch in River Son starting from Sidhi District, M.P. to Chopan, District Sonbhadra which has been reserved for alligators, crocodiles, tortoises and other reptiles found in Rivers Sone, Gopadh and Banas. Further, 161 KM in River Son, in District Sidhi, Madhya Pradesh has been reserved for alligators, crocodiles, tortoises and other reptiles for their conservation and from Sidhi (M.P.) to Dehari on Son (Bihar) including District Sonbhadra of Uttar Pradesh, the whole stretch of River Son is corridor where these reptiles frequently move being their habitat but allotment of mining lease in the area of Son river between Shilpi to Gurdah 20.288 KM and Patwadh Anshik to Chikra (Kanhaura) 14.812 KM, in between this in Village Kargara (3136 Mtr. from Kaimur Wild Life Sanctuary), Mitapur (2280 Mtr. from Kaimur Wild Life Sanctuary), Bandhwa (1388 Mtr. from Kaimur Wild Life Sanctuary), Rediya (2288 Mtr. from Kaimur Wild Life Sanctuary), and Patwadh Anshik (2260 Mtr. from Kaimur Wild Life Sanctuary) is causing huge damage to these animals. Mining leases have been allotted on the pretext that area is more than 1 KM away from Kaimur Wild life Sanctuary area which is totally incorrect. Mining leases have been allotted in village Gothani on Araji no. 142 in Son river in area 10.10 acre (Block 1 to Block 4), Village Bhagwa in Son river Araji no. 21 Mi in area 10.10 acre (Block 1 to Block 4), Village Badgawa in River Son in Araji no. 1 in area 10.10 acre (Block 1 to Block 4), village Sinduriya in River Son in Araji no. 756 in area 10.10 acre (Block 1 to Block 7), village Ghoriya in River Son Araji no. 1 in area 10.10 acre (Block 1 to Block 10), village Kurcha in Son river Araji no. 1 in area 10.10 acre (Block 1 to Block 3), village Newari in Son river Araji no. 1 in area 10.10 acre (Block 1), village Agori khas in Son river Araji no. 824 kha in area 10.10 acre (Block 1 to Block 4), village Sasnai in Son river Araji



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no. 221 Cha in area 10.10 acre (Block 7 to 9) village Barahmori in Son river Araji no. 185 in area 10.10 acre (Block 1 to 17) and village Khebandha in river Renu Araji no. 246 in area 10.10 acre (Block 1 to 13) to various lease holders.

26. M/s. Veera Construction Prop. Rameshwar Prasad, S/o Shyma Prasad, R/o S 3/36-B Ordely Bazar Varanasi has been allotted mining lease on Araji no. 21 mi village Bhagwa in River Son.

27. M/s. New India Minerals, 28 Brahpuri Colony Jugali Crossing Faizabad Road Lucknow, Prop. Sri Surendra Tiwari, S/o Atma Ram Tiwari, R/o 190 Govindpur Ganeshpur, Akbarpur District Ambedkarnagar has been allotted mining lease on Araji no. 824 kha village Agori Khas in River Son and M/s. Sudhakar Pandey and Associates Prop. Sri Sudhakar Pandey, S/o late Doodnath Pandey, R/o Civil lines Road Robertsanj District Sonbhadra has also been allotted mining lease for excavation of sand in River Son at village Agori Khas, Araji no. 824 kha (block 4).

28. These leases have been allotted in prohibited areas and to cause damage to aquatic animals which are protected and to aquatic ecology.

29. Supporting the application, Learned Counsel appearing on behalf of State of UP contended that Joint Committee has found several violations of environmental laws and norms in the course of mining by respondents 14 and 15 and has proposed environmental compensation of Rs. 8.16 Crores upon respondent 14 and Rs. 7.08 Crores upon respondent 15. It is also pointed out that District Magistrate, Sonbhadra has already restrained mining and transportation of minerals in the mining projects in question, carried out by respondents 14 and 15 and further action by Regulators shall be taken as per the direction of this Tribunal.

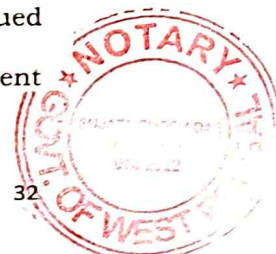


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Learned Counsel appearing for respondents 14 and 15 said that 4 blocks of land were carved out of khasra no. 824 kha situated in village Agori Khas, Tehsil Obra, District Sonbhadra, by State Government after obtaining No Objection Certificate (hereinafter referred to as 'NOC') from Divisional Forest Officer, Obra Forest Division, Sonbhadra and Divisional Forest Officer, Kaimur Wild Life Sanctuary Division. NOCs issued by Forest Officers show that the blocks were not within forest land or within ESZ of Kaimur Wild Life Sanctuary. District Magistrate, Sonbhadra initiated steps for e-tenders cum e-auction in which respondent 14 was successful bidder in respect of khasra no. 824 kha (khand 4), area 12.368 hectares and respondent 15 was successful bidder in respect of Araj 824 kha (khand 3), area 16.194 hectares.

33. After deposit of tender security amount, Letter of Intent dated 18.03.2021 was issued in favour of respondent 14; and EC was issued on 02.11.2021. After deposit of 5% of royalty payable in the first year of lease deed i.e., Rs. 4,59,49,594/-, lease deed dated 01.01.2022 was executed in favour of respondent 14, on payment of stamp duty of Rs. 2,49,35,800/-. Respondent 14 also paid registration charges of Rs. 62,50,000/-. However, we may place on record that EC is dated 22.12.2021 and CTO was issued on 25.01.2022.

34. Similarly, Letter of Intent dated 08.01.2021 was issued in favour of respondent 15. After sanction of mining plan, EC was granted on 01.12.2021. Respondent 15 deposited 50% of royalty amount payable for the first year of Rs. 5,51,89,152/- whereafter lease deed was executed on 13.12.2021. Respondent 15 paid stamp duty of Rs. 2,69,55,000/- besides registration charges of Rs. 66,33,000/-. CTO was issued on 08.12.2021. UP Ground Water Department (hereinafter referred to as 'UPGWD') issued NOC permitting extraction of ground water on 26.12.2021 as is evident



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30. Per contra, Learned Counsel appearing for respondents 14 and 15 contented that the proponents have not carried out mining activities in any area beyond the area sanctioned and approved by the concerned authorities. In fact, there are some local land owners who have carried out such illegal mining and they have also threatened respondents 14 and 15 and created obstructions in mining. Our attention is drawn to annexure-4 (page 365 of paper book) (collectively), making complaint of illegal mining by other parties and threats extended to the representatives of the Lease holders. It is also said that respondents 14 and 15 protested against imposition of penalty by mining authorities for alleged illegal mining but since OTP required for generation of e-MM-11 permit for transportation of mineral was stopped by District Mining Officer, hence under protest, penalty amount was paid. Learned Counsel for respondents 14 and 15 placed reliance on letter dated 31.05.2022 (page 380 of the paper book) which was submitted by respondent 15 to District Magistrate, Sonbhadra stating that under protest and without prejudice to the stand taken by respondent 15, it has deposited Rs. One Crore through RTGS with a request to resume OTP at the earliest.

31. On behalf of respondents 14 and 15, it is contended that Joint Committee did not conduct enquiry properly; proponents were not taken in confidence since they were not given prior notice and had no occasion to participate with the enquiry conducted by Joint Committee; Joint Committee conducted inspection in a superficial manner and without applying its mind or seeking view point of proponents to ascertain correct position; and Committee had submitted report on conjecture and surmises. It is further argued that respondents 14 and 15 had never indulged in any illegal mining or transportation of mined minerals illegally.

32. Giving background facts of allotment of mining lease to proponents,



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from para 18 (page 310 of paper book) of objections dated 03.03.2023 filed by respondents 14 and 15.

35. Respondents 14 and 15 claim that number of local inhabitants/land owners were indulged in illegal mining on land situated all along the river bed of River Son. It was responsibility of the authorities to demarcate the lease area which they did not. Instead, they colluded with the local inhabitants to encourage illegal mining in the river bed. Some land owners were also issued short term mining permissions under 'Ret-Khet Scheme'. A few notices were issued against illegal mining by mining licensees which included **notice dated 26.02.2022** (page 350 of paper book) issued to **Shankar**, s/o Khannu, resident of village Agori Khas, Tehsil Obra, District Sonbhadra; **notice dated 22.02.2022** (page 355 of paper book) issued to **Smt. Soni Devi** w/o Shri Rajkumar, resident of village Agori Khas, Tehsil Obra, District Sonbhadra; **notice dated 25.03.2022** (page 361 of paper book) issued to **Tapeshi** s/o Shri Sadan, resident of village Chora Badgawa, Tehsil Obra, District Sonbhadra and **notice dated 26.02.2022** (page 364 of paper book) issued to **Lal Mani** s/o Dangar, resident of village Agori Khas, Tehsil Obra, District Sonbhadra.

36. It is also argued that respondents 14 and 15 made complaints about such illegal mining by local land owners on several occasions through letters and representations but local land owners were so resourceful and powerful that neither local authorities acted to prevent such illegal mining by the local land owners nor took any appropriate action for stopping such illegal mining. This inaction on the part of authorities shows their apparent patronage to local land owners.

37. Deposit of Rs. 3,93,10,500/- by respondent 14 and Rs. 2,69,12,500/- by respondent 15, is admitted in para 14 of the objections



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dated 03.03.2023, filed jointly by respondents 14 and 15, but it is said that the same was under protest.

38. Respondents 14 and 15 claim that a huge sum towards royalty was deposited by them i.e., Rs. 10,21,10,208/- by respondents 14 and Rs. 11,03,78,304/- by respondent 15, which, as per the mandate of Rule 17 of UP District Mineral Foundation Trust Rules, 2017 (as amended in 2020), ought to be utilised for creating basic infrastructure in the area *inter-alia* including construction and maintenance of approached road, electricity, sanitation, providing drinking water supply etc. but not a single penny of the said amount has been spent by State Government till date by providing requisite facilities around the lease area of proponents.

39. Respondent 14 has permissions/consents under Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as '**Water Act, 1974**') and Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as '**Air Act, 1981**') which is valid upto 31.12.2026. Respondent 15 had such permissions valid upto 31.12.2024. Respondent 15 has also got NOC from UPGWD, valid from 20.12.2021 to 19.12.2026, filed as annexure-9 at page 413 to the paper book and, therefore, borewell installed by respondent 15 is not illegal. So far as respondent 14 is concerned, it has not installed any borewell inside the leased area and is procuring water for drinking and other purposes from external sources at its own cost. It is said that there are no illegal mining activities by respondents 14 and 15 and, therefore, the applications may be dismissed.

40. On the question whether there was any preparation of DSR and replenishment study before mining leases were granted to respondents 14 and 15, in the Additional Affidavit dated 17.03.2023, it is said that DSR was prepared and approved on 28.11.2018 and sand





replacement/replenishment study was conducted by CMPDIL Ranchi (State of Jharkhand) on 30.12.2022.

ISSUES:

41. After hearing Learned Counsel for the parties and on perusal of record, we find that the following issues have arisen which require adjudication by this Tribunal:

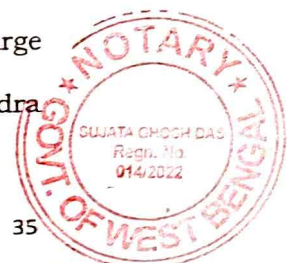
- (i) Whether mining leases granted to respondents 14 and 15 were/are valid and follow all the requisites of law necessary for grant of sand mining leases.
- (ii) Whether respondents 14 and 15 have violated environmental laws and norms in carrying out mining activities under the mining leases in question?
- (iii) Whether respondents 14 and 15 are liable for payment of environmental compensation and other civil or criminal action, as per law, if the questions raised above, both or any of them, are/is answered against respondents 14 and 15?
- (iv) What order/further order and/or direction/action is required to be passed or taken in this matter, considering entire facts and circumstances of this case?

DISCUSSION/FINDINGS ON MERITS:

42. We propose to answer **issues I and II** together.

43. It is not in dispute that mining activities and mining leases in question, being proceeded by respondents 14 and 15, are in District Sonbhadra of State of UP.

44. Sonbhadra is a district, rich with minerals like bauxide, limestone, coal, gold etc. It is also called as 'Energy Capital of India' since a large number of power plants are established in this area. District Sonbhadra



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lies in the extreme south-east of State of UP. It is bounded by district Mirzapur to the north-west, district Chandauli to the north, Kaimur and Rohtas districts of Bihar State to the north-east, district Garwah of Jharkhand to the east, Koriya and Surguja districts of Chhattisgarh to the south and Singrauli district of Madhya Pradesh to the west. It is second largest district of State of UP. District Sonbhadra has an area of 6788 km² and population of 1,862,559 as per 2011 census. Population density is 270 persons per km². Robertsganj is district headquarter town. Main rivers running through district are Son, Karmanasha and Belan.

45. District Sonbhadra lies on a plateau, north of Kaimur range and drained by tributaries of Ganges including Belan and Karmanasa river. South of the steep escarpment of Kaimur Range is the valley of Son River, which flows through the district from west to east. Southern portion of the district is hilly, interspersed with fertile stream valleys. Rihand river which rises to south in the highlands of Surguja district of Chhattisgarh, flows north to join river Son in center of district. Govind Ballabh Pant Sagar, a reservoir on Rihand, lies partly in the district and partly in Madhya Pradesh. East of Rihand, Kanhar River, which originates in Chhattisgarh, flows north to join Son River.

46. It has been pointed out that the disputed area of mining is near **Kaimur Wild Life Sanctuary**. Further substantial part of Son River, falling in State of MP is declared as "**Son Ghadiyal Wild Life Sanctuary**".

KAIMUR WILD LIFE SANCTUARY:

47. Area of Kaimur Wild Life Sanctuary as also its ESZ falls in State of UP as well as Bihar.

IN STATE OF BIHAR:

48. Vide notification no. S.O. 1160 dated 20.07.1979 issued by Forest



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Department, Government of Bihar, under the provisions of Wild Life (Protection) Act, 1972 (hereinafter referred to as '**WLP Act, 1972**'), Kaimur Wild Life Sanctuary situated in the then Shahabad district, lying between Latitudes 24°3' and 25°0' N and Longitude 83°25' and 85°0' E, in State of Bihar, extending over an area of 1504.96 km² was notified as 'Wild Life Sanctuary'.

49. The then part of Shahabad district is presently, part of districts Rohtas and Kaimur. The declared Kaimur Wild Life Sanctuary in State of Bihar was rich in different species of fauna like Leopard, Hyena, Jackal, Wolf, Wild Boar, Sloth Bear, Cheetal, Sambhar, Black Buck, Chinkara, Chausingha (four horned antelope), Nilgai, Jungle Fowl, Python, Mugger, Langur, Monkey. More than 100 bird species are the species of vital importance in Kaimur Wildlife Sanctuary. The area also included endangered species like Leopard, Black buck, Chinkara and Four horned antelope (Chausingha).

50. Further, Sanctuary in the part of Bihar is rich in the following types of forests:

- (i) Northern Tropical Dry Deciduous Forests and Dry Sal Forests having common associates of Sal such as Asan, Kend, Sidha, Piar, Dhaura, Amla, Harre, Bahera, Bija, Karamand occasional Gamhar and Jamun;
- (ii) Open and scrub forests having Ber, Kanaudaa, Capparis spp., Randiaspp., etc. with very occasional stems of Kend, Sidha, Harre, and Mahua;
- (iii) Open miscellaneous forests having Asan, Kend, Kusum, Karam, Piar, Dhaura, Bharkad, Gamhar, Ber, Salai, Amla, Harre, Bahera, Dudh Koraya and occasional Mahua and Bija with Khair also being an important associate of this type of forests.



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- (iv) Miscellaneous forests with Bamboo (*Dendrocalamus strictus*); and
- (v) Salai forests.

51. Forests of the Sanctuary also intercept rainfall and help recharge ground water aquifer, protect rivers and streams against siltation by minimizing soil erosion; Durgawati and Karmnasha are the main perennial rivers originating from the sanctuary. The Sanctuary is located in eastern extremity of Vindhyan hill ranges and its plateau landforms are unique in State of Bihar. The plateau tract in Sanctuary is inhabited by Chero, Oraon and Kharwar tribes with sociological significance.

52. Later on, a draft Notification was published on 28.01.2015, inviting objections and suggestions from persons likely to be affected to declare the area mentioned in the said notification as 'ESZ'. Final Notification in exercise of powers under sub-section (1), clauses (v) and (xiv) of sub-section (2) and sub-section (3) of Section 3 of EP Act, 1986 (29 of 1986) read with sub-rule (3) of Rule 5 of EP Rules, 1986 was issued by Central Government vide Notification no. 3549(E) dated 30.12.2015 published in Gazette of India (Extraordinary), of the same date. ESZ is spread over an area of 459.12 km² with an extent up to 2 km around Kaimur Wild Life Sanctuary excluding south-eastern and southern side of the Sanctuary and also western side of the Sanctuary which shares boundary with State of Uttar Pradesh. The boundary of ESZ mentioned in para 1 and 2 of Notification dated 30.12.2015 reads as under:

“1. Extent and boundaries of Eco-sensitive Zone – (1) The Eco-sensitive Zone is spread over an area of 459.12 square kilometers with an extent up to two kilometers around the Kaimur Wildlife Sanctuary excluding south-eastern and southern side of the Sanctuary and also the western side of the Sanctuary which shares boundary with State of Uttar Pradesh.

(2) The Eco-sensitive Zone is bounded as under:

- (i) Towards West - 24°57/43.980" N latitude and 83°20'43.554"E longitude (Reference Global Positioning System point No.52 of Annexure I map)



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- (ii) Towards West North - 25°0'42.763"N latitude and 83°21'3.310"E longitude (Reference Global Positioning System point No.1 of Annexure I map);
- (iii) Towards North - 25°1'18.311"N latitude and 83° 31'43.377"E longitude (Reference Global Positioning System point No.4 of Annexure I map);
- (iv) Towards East and East North- 24°53'46.061"N latitude and 84°6'17.194"E longitude (Reference Global Positioning System point No.21 of Annexure I map);
- (v) Towards East South - 24°44'34.356"N latitude and 84°3 50.259"E longitude (Reference Global Positioning System point No.26 of Annexure I map)
- (vi) Towards South East - 24°40'21.942"N latitude and 84°1'18.474"E longitude (Reference Global Positioning System point No.27 of Annexure I map).

IN STATE OF UP:

53. In State of UP, Kaimur Wild Life Sanctuary is situated in districts Mirzapur and Sonbhadra. The area lying between 24°27'51"N to 24°52'0.9"N and 24°38'19.11"N to 24°39'9.05"N latitudes and 82°20'15.30"E to 83°08'23.3"E and 82°44'59.9"E to 82°45'0.07"E longitudes, spread over an area of 500.73 km² in State of UP was declared 'Kaimur Wild Life Sanctuary' vide notification dated 10.08.1982.

54. Kaimur Wild Life Sanctuary which is part of State of UP offers natural habitat for Black Bucks (*Antilope cervicapra*), Sloth Bears (*Melursus ursinus*), Wild Boars (*Sus scrofa*), Striped Hyena (*Hyaena hyaena*), Sambhar (*Rusa unicolor*), Pangolin (*Manis crassicaudata*), Indian Fox (*Vulpes bengalensis*), Jackals (*Canis aureus*), Apes, Spotted Deer (*Axis axis*) and Chinkara (*Gazella bennettii*). There are a number of water bodies and a number of species of land and water birds. All the major orders of Reptilia are represented in this Sanctuary. These include Monitor Lizard (*Varanus sp.*), Cobra (*Ophiophagus Hannah*), Common Krait (*Bungarus caeruleus*), Russell's Viper (*Daboia*), Rat Snake (*Panthrophis obsoletus*) and Pythons (*Python sp.*). **Fresh water crocodiles are found in Belan and Bakhar rivers.**





55. Later on, a draft Notification dated 22.09.2015 was published under the provisions of EP Act, 1986 inviting objections and suggestions from all persons likely to be affected in respect of the proposals to declare certain part around Kaimur Wild Life Sanctuary as ESZ in State of UP.

56. Final Notification dated 20.03.2017 was published by Central Government in the Gazette of India (Extraordinary), of the same date in exercise of powers under sub-section (1), clauses (v) and (xiv) of sub-section (2) and sub-section (3) of Section 3 of EP Act, 1986 (29 of 1986) read with sub-rule (3) of Rule 5 of EP Rules, 1986, **notifying an area to an extent of 1 km all around the boundary of Kaimur Wild Life Sanctuary in State of UP as Kaimur Wild Life Sanctuary ESZ** (hereinafter referred to as '**KWSESZ, UP**'). The extent of boundaries of ESZ in State of UP in respect of Kaimur Wild Life Sanctuary declared in para 1 of the Notification dated 20.03.2017 stated as under:

"1. Extent and Boundaries of Eco-sensitive Zone- (1) *The extent of Eco-sensitive zone shall be 1 km all around the boundary of Kaimur Wildlife Sanctuary, with an area of 475.102 Sq. Km.*

(2) *The map of the Eco-sensitive Zone along with latitudes and longitudes and GPS coordinates is appended as Annexure I.*

(3) *The details of GPS coordinates of the points along the boundary of the Kaimur Wildlife Sanctuary and its Eco-sensitive Zone are appended as Annexure-II.*

(3) *The list of 70 villages falling in Eco-sensitive Zone along with GPS coordinates is appended as Annexure-III."*

RIVER SON:

57. River Son originates at an elevation of 600 m at Sonbhadra in Maikala range in State of Madhya Pradesh. Total catchment area of the basin is 65,110 km². Important tributaries of Son River are Sone, Mahanadi, Kanhar, Rihand, Gopad, Banas, north Koel and Ghaghar. Rihand dam has been constructed on the Rihand river. Total length of river Son is 784 km out of which about 500 km lies in State of MP, 82 km in



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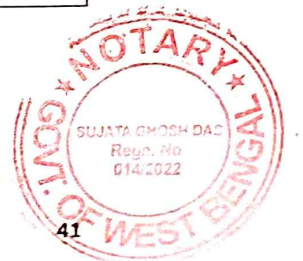
State of UP and remaining 202 km in State of Bihar. It meets river Ganga, about 16 km upstream of Dinapur, in Patna district of State of Bihar.

SON GHARIYAL WILD LIFE SANCTUARY and ECO-SENSITIVE ZONE:

58. State of MP issued Notification dated 23.09.1981 published in Gazette of Madhya Pradesh, dated 13.11.1981 by exercising powers under WLP Act, 1972 declaring certain area as Son Ghadiyal Wild Life Sanctuary. As per original Notification, the said Sanctuary covered districts Sidhi, Shadhool and Satna and comprised of the length of Son river-160.93 km, river Gopad-25.75 km and river Banas-22.53 km. The details of the area mentioned in the Notification declaring Son Ghadiyal Wild Life Sanctuary is as under:

“जिला का नाम	नदी का नाम	नदी की लंबाई किलोमीटर	कहाँ से कहाँ तक	नदी के दोनों किनारे के 200 मीटर चौड़ी पट्टी की लंबाई के साथ
(1)	(2)	(3)	(4)	(5)
सीधी	सोन नदी	138.40	उत्तर प्रदेश के मिर्जापुर जिले की सीमा से देवलीद (बाणसागर) बांध तक	270.80 कि.मी
सीधी-शहडोल	सोन नदी	9.66		19.32 कि.मी
शहडोल-सतना	सोन नदी	12.87		25.74 कि.मी
सीधी	गोपद नदी	25.75	सोन नदी के संगम से उप स्ट्रीम गोपद नदी पर रीवा वैठन ---पी. डब्लू. डी सड़क के क्रॉसिंग पर बने पक्के पुल तक	51.50 कि.मी
सीधी-शहडोल	बनास नदी	22.53	सोन नदी के संगम से उप स्ट्रीम बनास नदी पर सीधी सहडोल पी. डब्लू. डी सड़क के क्रॉसिंग पर बने पक्के पुल तक	45.06 कि.मी
-	सोन नदी	160.93	किनारे की दोनों पट्टी की लंबाई	321.86 कि.मी
	गोपद नदी	25.75		51.50 कि.मी
	बनास नदी	22.53		45.06 कि.मी
सोन घड़ियाल मगर अभ्यारण्य की कुल लंबाई		209.21 कि.मी		418.42 कि.मी

टीप - (1) अभ्यारण की सीमा में नदी की चौड़ाई शामिल है जिसे अलग से दर्शाया नहीं गया है



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(2) इसमें बगदरा अभयारण का सोन नदी किनारे का भाग भी शामिल है जिसे पूर्व में अभयारण घोषित किया जा चुका है”

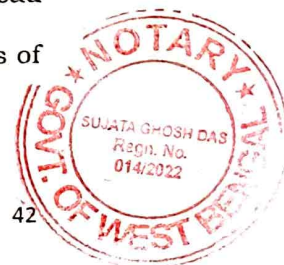
English Translation by Tribunal-

Name of District	Name of River	Length of river in Kilometer	From where to where	Up to 200 meter breadth of both side of river
(1)	(2)	(3)	(4)	(5)
Sidhi	Son River	138.40	From the boundary of Utter Pradesh state to Devanand (Bansagar) dam	270.80 Kilometer
Sidhi Shadol	Son River	9.66		19.32 Kilometer
Shadol Satna	Son River	12.87		25.74 Kilometer
Sidhi	Gopad River	25.75	From the meeting point of Son River to up stream of foot of Ravi River up to concrete bridge built over the crossing of P.W.D road.	51.50 Kilometer
Sidhi Shadol	Banas River	22.53	From the meeting point of Son River to up stream of foot of Banas River on the concrete bridge built over the crossing of P.W.D road at Sidhi Shadol.	45.00 Kilometer
-	Son River	160.93	Length of both sides of bank	321.86 Kilometer
-	Gopad River	25.75	Length of both sides of bank	51.50 Kilometer
-	Banas River	22.53	Length of both sides of bank	45.00 Kilometer
	Total Length of Son Ghadiyal Wild Life Sanctuary	209.21 Kilometer		418.30 Kilometer

The breadth of the river is covered under the sanctuary which has not been demarcated separately.

Under Bagdra Sanctuary the sides of Son River are also included which has been fostered by the Sanctuary for earlier.”

59. Presently, Son Ghadiyal Wild Life Sanctuary in State of MP is spread over 209 kilometer of length and 200 meters width on both river banks of



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Rivers Son, Gopad and Banas located in districts Sidhi, Singrauli, Satna and Shahdol of State of MP. Son Ghadiyal Wild Life Sanctuary falls in arid zone and supports many species of fishes, amphibians, reptiles and birds. Important aquatic fauna of the Sanctuary includes Gharial (*Gavialis gangeticus*), Mugger (*Crocodylus palustris*), and turtles (*Testudines* sp.).

60. Later, in exercise of powers under the provisions of EP Act, 1986, a draft Notification number S.O. 1780(E) dated 30.06.2015 was published by MoEF&CC, inviting objections and suggestions from all the persons likely to be affected thereby proposing to declare certain area as ESZ around Son Ghadiyal Wild Life Sanctuary.

61. Final Notification dated 13.12.2016 was published in Gazette of India, (Extraordinary) on 14.12.2016 declaring one km from the boundary of Son Ghadiyal Wild Life Sanctuary as ESZ in State of MP. This Notification was issued in exercise of powers under the provisions of subsection (1) read with clause (v) and clause (xiv) of subsection (2) of Section 3 of EP Act, 1986 (29 of 1986) and sub-rule (3) of Rule 5 of EP Rules, 1986. The extent of boundaries of Son Ghadiyal Wild Life Sanctuary ESZ in State of MP is given in para 1 of the Notification which reads as under:

“1. Extent and Boundaries of Eco-sensitive Zone- (1) *The extent of Eco-sensitive Zone is one kilometer from the boundary of the Son Gharial Wildlife Sanctuary. The area of Eco-sensitive Zone is 424 square kilo meters.*

(2) *The map of Eco sensitive Zone, Co-ordinates of Wildlife Sanctuary and Eco-sensitive Zone along with latitudes and longitudes is appended as Annexure I.*

(3) *The list of 122 villages falling within Eco-sensitive Zone along with latitudes and longitudes is appended as Annexure II.”*

62. Para 4 of the Notification contains list of activities, prohibited or to be regulated, within ESZ and item 1 prohibits commercial mining, stone quarrying and crushing units and reads as under:



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S. No.	Activity	Remarks
(1)	(2)	(3)
Prohibited Activities		
1.	Commercial mining, stone quarrying and crushing units.	<p>(a) All new and existing mining (minor and major minerals), stone quarrying and crushing units shall be prohibited effect except for the domestic needs of bona fide local residents including digging of earth for construction or repair of houses and for manufacture of country tiles or bricks for housing for personal consumption.</p> <p>(b) The mining operations shall strictly be in accordance with the interim order of the Hon'ble Supreme Court dated the 4th August, 2006 in the matter of T.N. Godavarman Thirumulpad Vs. Union of India in Writ Petition (Civil) No.202 of 1995 and order of the Hon'ble Supreme Court dated the 21st April, 2014 in the matter of Goa Foundation Vs. Union of India in Writ Petition (Civil) No.435 of 2012.</p>

63. **River Karmanasam**, tributary of Ganga originates at an elevation of 350 m near Sarodag on the northern face of Kaimur range in Mirzapur district of UP. It flows in a north-westerly direction through the plains of Mirzapur and **joins Ganga River** near Chanusa. The tributaries of Karamanasa are Durgawati, Chandraprabha, Karnauti, Nadi and Khajuri.

64. **Beian** river is central Indian river occupies a low-relief valley cut into Proterozoid quartzite of Vindhyan Group, about 80 km south-east of Allahabad. River runs westward, parallel to Kaimur hills. It originates from Kaimur hill series in MP and **joins Tons River at Chakghat** which flows northward to Ganga plains south of Allahabad of State of UP.

65. DSR approved on 28.11.2018, filed by respondents 14 and 15 as annexure A-1 to Additional Affidavit dated 17.03.2023, **contains list of Protected Forests and Reserved Forests of district Sonbhadra** as table 1.5 at page 533 which reads as under:



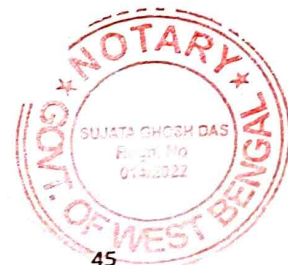
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"Table 1.5 LIST OF FORESTS

PROTECTED FOREST	RESERVED FOREST
Jagamar	Sermra
Barhar	Tenduhar
Chainpur	Parsauna
Khairdih	Shivdwar
Ghagra	Bisundhari
Barwen	Bhaiswari
Babhini	Bishar
	Devgarh
	Silpi
	Jamuna
	Domkhari
	Semiyan
	Belwa
	Alaur
	Bijaura
	Kargara
	Robertsganj
	Chakdiya
	Agori
	Chandauli
	Dholki
	Paunsila
	Gurdah
	Harsadand
	Bharahari
	Tapu
	Garderwa Khorka Baherado
	Dudhi
	Singrauli
	Majith
	Bajia Sistola
	Duba
	Jaurahi
	Mirgarani
	Chakdahiya
	Muirpur
	Bhangia
	Bairkhar
	Dhuman

66. DSR also states that geomorphologically, the district can be divided into three distinct units:

- (i) Residual hills
- (ii) River and hills and
- (iii) Valleys and ravines.



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67. Commenting on the mining activity in the district, DSR in para 7 says that district Sonbhadra is known for sand, morrum, limestone, dolomite and coal deposits. Mining of sand/morrum along the major river Son, Kanhar, Renu is the major source of revenue. These rivers generally run dry during hot weather but hold water during the greater part of the year and are utilized for irrigation. They contribute a major potentiality of sand mining along which potential area has been notified for e-tendering and given short term mining permits in these areas at different villages. Material like ordinary sand/morrum are also permitted for quarrying of material at number of places.

MINING AND ENVIRONMENT: IN VEDIC SCRIPTURES

68. Extraction of minerals from land or river bed or river plains and hills is claimed to be an age-old activity since minerals are useful for development of various civilization and the very mankind. It, however, cannot be disputed that the activities since affect the originality of nature, the same is bound to alter ecology and environment in various ways.

69. This was well-recognized by our fore-fathers even in Vedic era who had sufficient reasonable awareness about environment and its constituents. Vedic people desired to live life of hundred years which could have been possible only when environment remain unpolluted, clean and peaceful. Vedic vision was clear to live in harmony with environment, not merely physical but far wider and much comprehensive. Vedic message is clear that environment belongs to all living beings, so it needs protection by all, for the welfare of all. Vedic scriptures including Vedas regard nature as all-encompassing and hold an intimate relation with it. They refer to it as not only the highest reality but also to its various manifestations (son, moon, rivers, birds etc.) as mother, father, protector, friends, son etc.



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70. In ancient India, universe was regarded as integrated form. All natural phenomenon were given divine origin. *Prithivisukta* in *Atharvaveda* is the oldest manifestation of environmental concern, “*matabhumih putroham Prithviah*” (earth is my mother and I am herself). This rhyme speaks volume regarding allegiance of Vedic people with nature. It invokes and postulates divine intervention to bliss and protect the nature environment.

71. Rigveda, to protect environment, says,

- (i) “मधु वाता ऋतायते मधु क्षरन्ति सिन्धवः। माध्वीर्नः सन्त्वोषधीः ॥” (1.90.6)

Hindi Translation by Tribunal-

हे पढ़ाने वाले ! तुम और हम ऐसा अच्छा यत्न करें कि जिससे सृष्टि के पदार्थों से समग्र आनन्द के लिये विद्या करके उपकारों को ग्रहण कर सकें ॥ ६ ॥

English Tribunal by Tribunal-

“*The winds bring sweet (rewards) to the sacrificer; the rivers bring sweet (waters); may the herbs yield sweetness to us.*”

- (ii) “मधु नक्तमुतोषसो मधुमत्पार्थिवं रजः। मधु द्यौरस्तु नः पिता ॥” (1.90.7)

Hindi Translation by Tribunal-

पढ़ानेवाले लोगों से जैसे मनुष्यों के लिये पृथिवीस्थ पदार्थ आनन्दायक हों, वैसे सब मनुष्यों को गुण, ज्ञान, और हस्तक्रिया से विद्या का उपयोग करना चाहिए ॥ ७ ॥

English Tribunal by Tribunal-

“*May night and morning be sweet; may the region of the earth be full of sweetness; may the protecting heaven be sweet to us.*”

- (iii) “मधुमान्नो वनुस्पतिर्मधुमां अस्तु सूर्यः। माध्वीर्गावो भवन्तु नः ॥” (1.90.8)

Hindi Translation by Tribunal-

हे विद्वान् लोगो ! तुम और हम आओ मिलके ऐसा पुरुषार्थ करें कि जिससे हम लोगों के सब काम सिद्ध होवें ॥ ८ ॥

English Tribunal by Tribunal-

“*May Vanaspati be possessed of sweetness towards us; may the sun be imbued with sweetness; may the cattle be sweet to us.*”

72. It is a misconception that environmental science and ecology is knowledge and subject, gathered public awareness only in 19th or 20th



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century. In Indian ancient scriptures, origin of environmental science and ecology can be traced long back in the Vedic and ancient Sanskrit literature. In Atharvveda, 'vritavrita', 'abhivarah', 'avritah', 'parivrita' are the terms used for 'Paryavaran'. Upanishads mention that the universe consist of five elements i.e., earth, water, land, air and ether. Existence of human being on earth planet blossom due to blessings of mother earth. She is the goddess of nature according to Hindu mythology. She is the Supreme elixir of our existence on earth. Change to the naturalty of environment is nothing but an abuse to the earth endangering the very existence of mankind. Increasing natural hazards are result of atrocious acts of exploiting our earth by people.

73. Ancient Indian texts contain lot of material reflecting concern of Vedic people for environmental issues. They professed environmental protection in the form of mythology and traditions so as to give broader enforceability, acceptability and executability of the wisdom and vision of Vedic sages. Some Sanskrit shalokas which we reproduce below, are self-evident to demonstrate how important nature and environment was for Vedic people and they left no stone un-turned for making it mandatory for the people to follow life stream which concentrates on protection of environment:

- (i) “भूमिरापोऽनलो वायुः खं मनो बुद्धिरेव च।
अहङ्कार इतीयं मे भिन्ना प्रकृतिरष्टधा॥”

Hindi Translation by Tribunal -

पृथ्वी, जल, अग्नि, वायु और आकाश तथा मन, बुद्धि और अहंकार - यह आठ प्रकार से विभक्त हुई मेरी प्रकृति है॥

English Translation by Tribunal -

Earth, water, fire, air, space, mind, intellect, and ego-these are eight components of my material energy.

- (ii) “संरक्षेत् दूषितो न स्याल्लोकः मानवजीवनम् ।
न कोऽपि कस्यचिद् नाशं, कुर्यादर्थस्य सिद्धये ॥”





Hindi Translation by Tribunal -

संसार प्रदूषित न हो। मानव जीवन सुरक्षित रहो। धन की सिद्धि के लिए (धन प्राप्ति के लिए) कोई भी किसी का (प्रकृति का) नुकसान न करे।

English Translation by Tribunal -

"Do not pollute the whole world. May god human life be safe. No one should harm anyone (of nature) for the accomplishment of wealth."

- (iii) "पर्यावरणनाशेन नश्यन्ति सर्वजन्तवः ।
पवनः दुष्टतां याति प्रकृतिविकृतायते ॥"

Hindi Translation by Tribunal -

हमारे पर्यावरण के प्रदूषण के कारण सभी प्राणी नष्ट हो जाते हैं, हवाएं खराब हो जाती हैं और प्रकृति शत्रुतापूर्ण हो जाती है।

English Translation by Tribunal -

"Due to pollution (destruction) of our environment, all beings are destroyed, the winds get vicious and the nature becomes hostile."

- (iv) अप्सवन्तरमृतमप्सुभेषजमपामुतप्रशस्तये । देवाभवतवाजिनः ॥19॥

Hindi Translation by Tribunal -

जल में अमृत है, जल में औषधि है। हे ऋषि जनों, ऐसे श्रेष्ठ जल की प्रशंसा अर्थात् स्तुति करने में शीघ्रता बरतें।

English Translation by Tribunal -

"There is nectar in water, there is medicine in water, O sages, be quick to praise such elevated water."

74. The concept of environment, since Vedic era till date is almost consistent. Vedic view of environment is well defined in one verse of Atharavaveda where three coverings of our surroundings are referred as Chandamsi. Wise utilize three elements variously which are varied, visible and full of qualities. These are water, air and plants or herbs. They exist in the world from the very beginning. They are called as Chandamsi meaning 'coverings available everywhere.' The Sanskrit Shloka reads as under:

"त्रीणि च्छन्दांसि कवयो वि येतिरे पुरुरूपं दर्शतं विश्वचक्षणमा
आपो वाता औषधयस्तान्येकस्मिन् भुवन आर्पितानि ॥" Ibid 18.1.17

Hindi Translation by Tribunal-

विद्वान् लोग अनेकप्रकार उपकारी जल, वायु, और औषधियों आदि के गुणों को विद्वानों में उपदेश करकेलाभ उठावें और उनके कर्ता परमात्मा की महिमा जानकर उन्नति करें ॥



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English Translation by Tribunal-

"Sages and scholars of Shastra and Vedas study and foster three joyous gifts of nature and divinity, versatile in form, sensitively satisfying and universally illuminative for body, sense and mind and the soul. For this purpose, they are: waters for taste and sweetness, winds for energy of prana, and herbs for strength and alleviation of pain. And all these three are vested and concentrated in the same one source, Nature."

75. As already said, Upanishads talk of five basic elements constituting nature. Nature has maintained a status of balance between and among these constituents/elements and living creatures. A disturbance in percentage of any constituent of the environment beyond certain limits disturbs the natural balance and any change in the natural balance causes lots of problems to the living creatures in the universe. Different constituents of the environment exist with set relationships with one another.

76. Consistent with the Vedic concept of paryavaran/environment, broadly, we find definition of environment in Section 2(a) of EP Act, 1986, reads as under:

*"2(a) **environment** includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property;"*

77. When we go through the concept of earth (*Prithvi*), water (*Apah*), air (*Vayu*), ether (*Akasha*) and fire (*Agni*), we realize that ancient Vedic intellectuals knew various aspects of environment, cosmic order and importance of co-ordination between all natural powers for universal peace and harmony. When they pray for peace at all levels in Shanti mantra, they side by side express their believe about the importance of co-ordination and inter-relationship among all natural powers and regions. The prayer says that not only regions, waters, plants trees, natural energies but all creatures should live in harmony and peace. Peace should



remain everywhere. Mantra takes about the concord with the universe-
“peace of sky, peace of mid-region, peace of earth, peace of waters, peace of plants, peace of trees, peace of all-gods, peace of Brahman, peace of universe, peace of peace; May that peace come to me!” This mantra resounded United Nation when Union Minister, MoEF&CC started UNSC debate on climate change by reciting this verse which reads as under:

“ॐ द्यौः शान्तिरन्तरिक्षं शान्तिः
 पृथिवी शान्तिरापः शान्तिरोषधयः शान्तिः ।
 वनस्पतयः शान्तिर्विश्वेदेवाः शान्तिर्ब्रह्म शान्तिः
 सर्वं शान्तिः शान्तिरेव शान्तिः सा मा शान्तिरेधि ॥
 ॐ शान्तिः शान्तिः शान्तिः ॥”

Hindi Translation by Tribunal-

दयुलोक में शांति हो, अंतरिक्ष में शांति हो, पृथ्वी पर शांति हों, जल में शांति हो, औषध में शांति हो, वनस्पतियों में शांति हो, विश्व में शांति हो, सभी देवतागणों में शांति हो, ब्रह्म में शांति हो, सब में शांति हो, चारों ओर शांति हो, शांति हो, शांति हो, शांति हो, शांति हो।

English Translation by Tribunal-

“May peace radiate there in the whole sky as well as in the vast ethereal space everywhere. May peace reign all over this earth, in water and all herbs, trees, and creepers. May peace flow over the whole universe. May peace be in the Supreme Being Brahman. And may there always exist in all peace and peace alone. Aum peace, peace, and peace to us and all beings!”

78. Yajurveda expressed its thought that animal should be safe, protected and healthy. The Shlokas reads as under:

(i) “भूर्भुवः स्वः सुप्रजाः प्रजाभिः स्या सुवीरौ वीरैः सुपोषः पोषैः। नर्यं प्रजां मे पाहि श स्यं पुशून् मे पाह्यथर्यं पितुं मे पाहि ॥३७॥” (Yajurveda, 3/37)

Hindi Translation by Tribunal-

मनुष्यों को ईश्वर की उपासना व उस की आज्ञा के पालन का आश्रय लेकर उत्तम-उत्तम नियमों से वा उत्तम प्रजा, शूरता, पुष्टि आदि कारणों से प्रजा का पालन करके निरन्तर सुखों को सिद्ध करना चाहिये॥३७॥

English Translation by Tribunal-

“O God, friendly to the wise, do Thou protect my offspring. O worthy of praise do Thou protect my cattle. O God, above all suspicion, protect my food. O God through Thy grace, in unison with the three life-winds, Pran, Apan and Vyan, may I be rich in offspring, well-manned with men, a hero with the heroes, and strong with wise and invigorating deeds.”





(ii) “द्वयोः शान्तिरन्तरिक्षं शान्तिः पृथिवी शान्तिरापः शान्तिरोषधयः शान्तिः। वनस्पतयः शान्तिर्विश्वे देवाः शान्तिर्ब्रह्म शान्तिः सर्वं शान्तिः शान्तिरेव शान्तिः सा मा शान्तिरेधि॥१७॥”
(Sukla yajurveda 36-17)

Hindi Translation by Tribunal-

“हे मनुष्यो ! जो (द्वयोः, शान्तिः) प्रकाशयुक्त पदार्थ शान्तिकारक (अन्तरिक्षम्) दोनों लोक के बीच का आकाश (शान्तिः) शान्तिकारी (पृथिवी) भूमि (शान्तिः) सुखकारी निरुपद्रव (आपः) जल वा प्राण (शान्तिः) शान्तिदायी (ओषधयः) सोमलता आदि ओषधियाँ (शान्तिः) सुखदायी (वनस्पतयः) वट आदि वनस्पति (शान्तिः) शान्तिकारक (विश्वे, देवाः) सब विद्वान् लोग (शान्तिः) उपद्रवनिवारक (ब्रह्म) परमेश्वर वा वेद (शान्तिः) सुखदायी (सर्वम्) सम्पूर्ण वस्तु (शान्तिः) शान्तिकारक (शान्तिरेव) शान्ति ही (शान्तिः) शान्ति (मा) मुझको (एधि) प्राप्त होवे (सा) वह (शान्तिः) शान्ति तुम लोगों के लिये भी प्राप्त होवे ॥१७ ॥”

English Translation by Tribunal-

“May sky be peaceful. May atmosphere be peaceful. May Earth be peaceful. May waters be peaceful. May medicinal herbs be peaceful. May plants be peaceful. May all the learned persons be peaceful. May God and the Vedas be peaceful. May all the objects be peaceful; May peace itself be peaceful. May that peace come unto me.”

79. In Ishopanisad, it is said that environment belongs to all living beings so it needs protection by all for the welfare of all.

“यत्ते मध्यं पृथिवि यच्च नभ्यं यास्त ऊर्जस्तन्वः संबभूवुः ।
तासु नो धेह्यभि नः पवस्व माता भूमिः पुत्रो अहं पृथिव्याः ।
पर्जन्यः पिता स उ नः पिपर्तु ॥१२॥”

English Translation by Tribunal-

“May the earth who is to us in the nature of a mother, hold us, her sons, close to her life- endowing self, protect us, and may Parjanya (the rain-bearing clouds), in the nature of a father, tend our upbringing.”

80. In substance, what we find is that Indian sub-continent has a rich ancient literature dealing the issue of environment and its protection. It has a long cultural tradition of thousands and thousands of years. Vedas, Upanishad, Vedantas etc. are the oldest monumental scriptures and represent wisdom and knowledge of Vedic sages and intellectuals. Since the dawn of human civilization, mankind has been modifying and interfering with nature but never with an intention of destroying it completely. It is the western culture and understanding of development which has been pressed and passed upon India. The nature has become enemy and is being destroyed like anything. It is said that environment



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has been, is and will be, man's permanent teacher. Adequate and appropriate understanding of environment is vital and indispensable knowledge to share. Ancient scriptures, Vedic scholars have not only explained usefulness of trees, plants, rivers, air, soil, etc. but depicted their beauty, charm and the manner in which they work like friends of mankind.

81. In this backdrop, we would look into the issues raised in this matter.

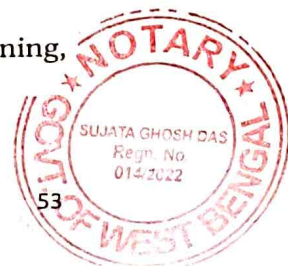
82. District Magistrate, Sonbhadra and other mining authorities proposed to allocate site in question for undertaking mining activities of morrum in the river bed of River Son, running in part of State of UP and in particular, Arajai No. 824 kha (khand no. 04 and 03), village Agori Khas, Tehsil Obra, District Sonbhadra.

83. Village Agori Khas, Tehsil Obra, Arajai no. 824 kha appears to be a big chunk of land being part of Son River bed and total area 60.950 hectares. The mining authorities made 4 parts of Arajai no. 824 kha (khand 3) with the area as below:

- (i) Arajai 824 kha (khand 1) – 16.194 hectares
- (ii) Arajai 824 kha (khand 2) – 16.194 hectares
- (iii) Arajai 824 kha (khand 3) – 16.194 hectares
- (iv) Arajai 824 kha (khand 4) – 12.368 hectares

84. For undertaking mining activities at the above site, District Mining Officer, Sonbhadra issued a certificate dated 23.03.2021 giving details of 500 meters cluster map.

85. Proceedings were initiated for allotting mining lease by inviting e-tender cum auction after obtaining NOC from Forest Department on 24.05.2021. Approval of mining plan by Director, Geology and Mining,



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Lucknow, UP was granted vide letter dated 24.05.2021.

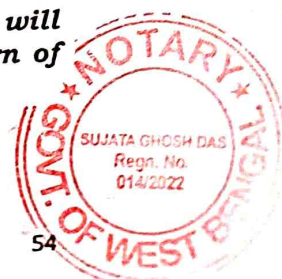
86. Respondent 14 was successful bidder in respect of Arajai 824 kha (khand 4), area 12.368 hectares while respondent 15 was successful bidder in respect of Arajai 824 kha (khand 3), area 16.194 hectares.

87. It appears that both applied for grant of EC. ToR was issued to respondent 14 vide letter dated 02.11.2021 while ToR was issued to respondent 15 on 11.06.2021.

88. EC was granted to respondent 14 on 22.12.2021. The copy of EC is available on the Parivesh Portal generated from Parivesh portal of Government of India, MoEF&CC which shows that public hearing was organized on 10.12.2021 and final EIA report was submitted by respondent 14 on 11.12.2021. 'Minable area after leaving 7.5 meters buffer zone', was mentioned as '9.844 hectares'. 'Type of land' was mentioned as 'River Bed Government Land'. State Level Expert Appraisal Committee (hereinafter referred to as 'SEAC') made recommendation in its meeting dated 13.12.2021 and SEIAA in its meeting dated 17.12.2021 decided to grant EC. Some of the general and specific conditions mentioned in EC, relevant for the purpose of the case, are as under:

"General Conditions:

4. *Precise mining area will be jointly demarcated at site by project proponent and officials of Mining/Revenue department prior to starting of mining operations. Such site plan, duly verified by competent authority along-with copy of the Environmental Clearance letter will be displayed on a hoarding/board at the site. A copy of site plan will also be submitted to SEIAA within a period of 02 months.*
12. *It shall be ensured that excavation of minor mineral does not disturb or change the underlying soil characteristics of the river bed/basin, where mining is carried out.*
13. *It shall be ensured that mining operation of Sand/Moram will not in any way disturb the, velocity and flow pattern of the river water significantly.*



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15. Primary survey of flora and fauna shall be carried out and data shall be submitted to the RO, PCB and SEAA within six months.
36. The proponent shall observe every 15 day for nesting of any turtle in the area. Based on the observations so made, if turtle nesting is observed, necessary safeguard measures shall be taken in consultation with the State Wildlife Department. For the purpose, awareness shall be created amongst the workers about the nesting sites so that such sites, if any, are identified by the workers during operations of the mine for taking required safeguard measures. In this regards the safety notified zone should be left so that the habitat/nesting area is undisturbed.
37. The project proponent shall undertake adequate safeguard measures during extraction of river bed material and ensure that due to this activity the hydro geological regime of the surrounding area shall not be affected.
45. The green cover development/tree plantation is to be done in an area equivalent to 20% of the total leased area either on river bank or along road side (Avenue Plantation).

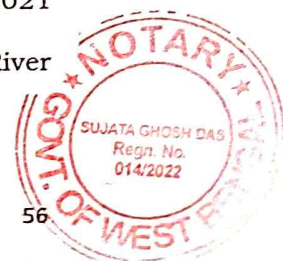
Specific Conditions:

1. In the absence of replenishment study keeping in mind various orders issued by Hon'ble NGT and development works in the State, EC is granted for a period of one year.
3. For subsequent period, PP shall submit fresh annual replenishment study to SEIAA, UP for amendment in EC for mineable quantity and maximum permissible depth for mining based on scientific findings of replenishment study. Such study shall be placed before SEAC for appraisal for next three years to assess rate of deposition and accordingly, mineable production capacity and depth can be prescribed based on trends analysis, provided it is found scientifically satisfactory by the SEC. The placing of the study report SEAC is mandatory for Initial three years.
5. **A certificate from Forest Department shall be obtained that no forest land is involved in mining or as a route** and if forest land is involved the project proponent shall obtain forest clearance and permission of Central and State Government as per the provisions of Forest (conservation) Act, 1980 and submit before the start of work.
8. Project Proponent should submit action plan for carrying out plantation at least @1,000 plants/ha of lease area. In this case, PP should prepare a plan, duly approved either by Forest Department or Horticulture Department, for planting at least 13,000 plants, either on government land or community land, within a periphery of 5 km from the boundary of the lease area along with provision for maintenance for 5 years. Survival of plants should not be less than the survival rate notified by Uttar Pradesh Forest Department otherwise it will be treated as violation of EC conditions.



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18. **No mining activity should be carried out in-stream channel as per SSMMG, 2016.**
19. Pakka motorable haul road to be maintained by the project proponent.
35. The excavated mining material should be carried and transported in such a way that no obstruction to the free flow of water takes place. Suitable measure should be taken and details to be provided to concern Department.
37. The project proponent shall ensure that if the project area falls within the eco-sensitive zone of National Park/Sanctuary prior permission of statutory committee of National board for wild life under the provision of Wildlife (Protection) Act, 1972 shall be obtained before commencement of work.
39. **Project falling within 10 KM area of Wild Life Sanctuary is to obtain a clearance from National Board Wild Life (NBWL) even if the eco-sensitive zone is not earmarked.**
43. The mining work will be open-cast and manual/semi mechanized (subject to order of Hon'ble NGT/Hon'ble Courts (s)). **Heavy machine such as excavator, scooper etc. should not be employed for mining purpose.** No drilling/blasting should be involved at any stage.
44. **Its be ensured that there shall be no mining of any type within 03 m or 10% of the width whichever is less, shall be left on both the banks of precise area to control and avoid erosion of river bank. The mining is confined to extraction of sand/moram from the river bank only.**
45. The project proponent shall undertake adequate safeguard measures during extraction of river bank material and ensure that due to this activity the hydro-geological regime of the surrounding area shall not be affected.
61. Concealing factual data or submission of false/fabricated data and failure to comply with any of the conditions mentioned above may result in withdrawal of this clearance and attract action under the provisions of Environment (Protection) Act, 1986.
89. In respect of respondent 15, EC was granted on 01.12.2021. The conditions, general and specific, mentioned in the said EC, are similar to that as contained in EC of respondent 14. Copy of EC dated 01.12.2021 issued to respondent 15 is on record at page 110 of paper book.
90. EC dated 22.12.2021 issued to respondent 14 and dated 01.12.2021 issued to respondent 15 show that mining was permitted along Son River



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bed at Araji No. 824 kha (khand 04 and 03), respectively, to respondents 14 and 15. Details of production etc. are given as under:

SN	Subject	Respondent 14	Respondent 15
1	Total Geological Reserve	326850 m ³	485820 m ³
2	Total Mineable Reserves	204755 m³	259104 m³
3	Proposed annual production	197888 m³	259104 m³
4	Total Production in 5 years	989440 m³	1295520 m³
5	Ultimate Depth of Mining	2.08 m (average)	3.0 m
6	Type of land	River bed Government land	River bed Government land
7	Number of trees to be planted	13000	7203
8	Water requirement		
	(a) Drinking and others	0.55 kld	0.66 kld
	(b) Suppression of dust	2.40 kld	0.55 kld
	(c) Plantation	13.0 kld	11.53 kld
	Total	15.95 kld	12.74 kld

91. Respondent 14 got Consent to Operate (hereinafter referred to as 'CTO') under Water Act, 1974 and Air Act, 1981 from UPPCB on 25.01.2022 (page 410 of paper book) while CTO (as mentioned in para 2(a) at page 190 of Joint Committee Report) was granted to respondent 15 on 08.12.2021.

92. Lease deed, executed in favour of respondent 14 by District Magistrate, Sonbhadra on behalf of Government of UP on 31.12.2021 is at page 323 of paper book and boundaries of mining area are mentioned as under:

“उत्तर : नई इंडिया मिनरल्स के पक्ष में स्वीकृत खनन पट्टा क्षेत्र।
दक्षिण : आराजी संख्या -824ख का शेष भाग।
पूरब : आराजी संख्या -824ख व सोन नदी की धारा।
पश्चिम - आराजी संख्या :824ख का शेष भाग।”

93. Condition no. 21 and 23 of the lease deed read as under:

“21. पट्टेदार स्वीकृत पट्टा क्षेत्र के अन्दर खनन कार्य करेगा। स्वीकृत पट्टा क्षेत्र के बाहर खनन कार्य किया जाता हुआ पाये जाने पर पट्टेदार के विरुद्ध उक्त नियमावली, 2021 तथा खान एवं खनिज (विकास एवं विनियमन) अधिनियम, 1957 में उल्लिखित प्राविधानों के अधीन वैधानिक कार्यवाही की जायेगी।



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23. वन भूमि अथवा वन स्वरूप भूमि एवं वन स्वरूप भूमि की बाहरी सीमा से 100 मीटर की परिधि के अन्दर कोई खनन कार्य नहीं किया जायेगा।”

English Translation by Tribunal -

“21. Lessee holder will do mining work within the approved lease area. If mining work is being found done beyond the approved lease area, legal action will be taken against the lessee under the provisions mentioned in the said Rules, 2021 and the Mines and Minerals (Development and Regulation) Act, 1957.

23. No mining work will be done within the radius of 100 meter from the outer boundary of forest land or forest related land.”

94. Lease deed in favour of respondent 15 was executed by District Magistrate, Sonbhadra on behalf of Government of UP on 04.12.2021, giving details of boundaries of the leased area as under:

“उत्तर : आराजी संख्या -824ख का शेष भाग।
दक्षिण : आराजी संख्या -824ख का शेष भाग।
पूरब : आराजी संख्या -824ख का शेष भाग।
पश्चिम - आराजी संख्या :824ख का शेष भाग।”

95. Conditions of both lease deeds are same.

96. An authorisation/NOC for sinking of new/existing well was granted by UPGWD under Section 14 of UP Ground Water (Management and Regulation) Act, 2019 (hereinafter referred to as **UPGWMR Act, 2019**) on 26.12.2021 to respondent 15. NOC is annexure 9 to objections filed by respondents 14 and 15 at page 413 which shows date of construction/sinking of well as 01.12.2021. In the application for grant of NOC, submitted by respondent 15 on 01.09.2021, the maximum allowable rate of withdrawal of water is mentioned as 30 m³ per hour. As per the general conditions of NOC, respondent 15 was required to install one piezometer.

97. It is admitted case of respondent 14 that after completion of all formalities, it commenced mining activities on 06.01.2022. It is however on record that CTO was issued to respondent 14 on 25.01.2022. Thus,



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initiation of mining by respondent 14 on 06.01.2022 was illegal and continued to be so till 24.01.2022.

EARLIER VIOLATIONS:

98. We find from record that both the proponents i.e., respondents 14 and 15, earlier also, were found to have indulged in violation of conditions of mining lease, EC and CTO etc. for which action under mining statutes was taken by Mining Authorities and demand of additional royalty, penalty etc. was raised which was satisfied by respondents 14 and 15. The details of these violations are as under:

99. VIOLATIONS BY RESPONDENT 14:

- (i) On 07.02.2022 (page 381 of paper book), a joint inspection was made by Sub-divisional Magistrate, Obra, Sonbhadra when it was found that respondent 14 has carried out mining activities outside the sanctioned mining lease area on the north side in village Kargara in Son River and created two pits measuring $175\text{m} \times 15\text{m} \times 0.80\text{m} = 2100\text{m}^3$ and $70\text{m} \times 15\text{m} \times 0.80\text{m} = 840\text{m}^3$ and thereby, caused illegal mining of 2940m^3 of morrum. For the said violation, show cause notice dated 08.02.2022 was issued by District Magistrate, Sonbhadra proposing imposition of royalty of Rs. 4,41,000/- at the rate of Rs. 150 per m^3 , cost of illegally mined mineral of Rs. 22,05,000/- and penalty under Rule 58 of Rs. 2 lakhs; total Rs. 28,46,000/-. Show cause notice was issued to respondent 14 under Section 4 and 21 of MMDR Act, 1957 read with Rule 3, 58 and 72 of UP Minor Mineral Concession Rules, 2021.
- (ii) Thereafter, another inspection was made by Sub-divisional Magistrate, Obra on 20.03.2022 (page 384 of paper book) and





again it was found that respondent 14 has created a new pit outside the permitted mining lease area on the north side in Son River measuring 58m × 25m × 1.20m= 1740m³ and has caused illegal mining of morrum of the quantity of 1740 m³. Consequently, vide show cause notice dated 22.03.2022, District Magistrate Sonbhadra proposed demand of Rs. 17,66,000/- as under:

Royalty @ Rs.150 per m ³	Rs. 2,61,000/-
Cost of mineral	Rs.13,05,000/-
Penalty for violation under Rule 58	Rs.2,00,000/-

(iii) Respondent 14 replied both the notices vide letter dated 26.03.2022, copy whereof is at page 385. In the reply he admitted violations and said that he has deposited the proposed amount towards royalty and penalty. However, he sought exemption from the cost of mineral pleading that he will not commit such violation in future. The relevant extract of the reply dated 26.03.2022 submitted by respondent 14 reads as under:

- 3- खनन कार्य में प्रयोग की जाने वाली मशीनों के संचालको द्वारा त्रुटिवस अपनी सीमा से थोड़ा सा इतर जाकर कार्य कर लिया गया है जिसे मैं स्वीकार करता हूँ।
- 4- प्रार्थी के खनन क्षेत्र की जाँच उपजिलाधिकारी महोदय ओबरा द्वारा गठित समिति द्वारा दिनांक 07/02/2022 को जाँच की गई एवं स्वयं की त्रुटियों के लिये क्षमा प्रार्थना मेरे द्वारा की गयी साथ ही अनाधिकृत क्षेत्र से निकाली गई खनिज की रायल्टी राजकीय कोष में जमा किये जाने का निवेदन भी किया गया।
- 5- उक्त कार्यवाही के क्रम में आपके कार्यालय के पत्र संख्या 6062/खनिज /2022 द्वारा मेरे विरुद्ध रायल्टी के साथ ही साथ खनिमुख मूल्य एवं अर्थदण्ड भी अधिरोपित कर जमा किये जाने के आदेश प्राप्त हुए हैं।
- 6- प्रार्थी के खनन क्षेत्र की दुबारा जाँच उपजिलाधिकारी महोदय ओबरा द्वारा स्वयं एवं खान विभाग एवं वन विभाग साथ ही पुलिस क्षेत्राधिकारी महोदय ओबरा की उपस्थिति में दिनांक 20/03/22 को पुनः की गई।
- 7- खनन क्षेत्र की जाँच के दौरान नापी में लगे अधिकारियों द्वारा पुनः उन्ही गड्डों को नाप दिया गया जिनकी मापी पूर्व के जाँच दिनांक 07/02/22 को भी जा चुकी थी।
- 8- महोदय के कार्यालय से निर्गत दोनो पत्र मुझे आज ही प्राप्त हुए हैं जिसके क्रम मे रायल्टी एवं अर्थदण्ड की धनराशि मेरे द्वारा राजकीय कोष में जमा करा दी गई है।
- 9- खनिमुख मूल्य का माफी के लिए प्रार्थना पत्र प्रेषित है महोदय की कृपा का आधार निम्नवत है।



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- (क) प्रार्थी महोदय को इस बात के लिए आश्वस्त करता है कि मेरे द्वारा कभी भी विधि विरुद्ध कार्य नहीं किये जायेंगे।
- (ख) प्रार्थी द्वारा समस्त राजकीय देयताओं का भुगतान अब तक ससमय/अग्रिम रूप से किया जा रहा है।
- (ग) महोदय के आदेश प्राप्त के साथ ही रायल्टी एवं अर्थदंड के रूप में निर्धारित धनराशि मेरे द्वारा जमा कि जा चुकी है।
अस्तु महोदय से निवेदन है कि कृपा पूर्वक खनिमुख मूल्य के रूप में अधिरोपित धनराशि माफ करने की कृपा करें।”

English Translation by Tribunal-

“3. **The machines used in the mining work have mistakenly taken by the operators beyond their limits, which I accept.**

4. Investigation of the applicant's mining area was carried by the committee constituted by the Deputy Collector Mr. Obra, on 07/02/2022 and apologized for my own errors, along with request to deposit royalty of mineral extracted from unauthorized area in state fund.

5. In order of the above action, orders have been received against me to deposit the royalty as well as mineral price value and penalty by your office's letter number 6062 / Mineral / 2022.

6. The mining area of the applicant was re-examined on 20/03/22 by the sub-collector, Obra himself and in the presence of Mines and Forest Department as well as the police jurisdictional officer, Obra.

7. During the investigation of the mining area by the officers engaged in measurement, the same pits were again measured which has already been submitted on 07.02.0222.

8. I have received both the letters issued from the office today, **the amount of royalty and penalty has been deposited by me in the state treasury.**

9. Application letter for forgiveness of mineral price is placed, for the kind grace of Sir which is as follows.

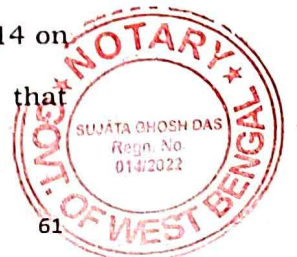
(a) The applicant assures that he will never do any illegal act.

(b) Till now all the government dues are being paid by the applicant on time / in advance.

(c) With the receipt of the order of the sir, **the amount fixed as royalty and fine has been submitted by me.**

Therefore, it is kindly **requested to forgive the amount imposed as mineral price value.**”

- (iv) The third show cause notice was issued to respondent 14 on 10.05.2022 by District Magistrate, Sonbhadra stating that



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mining lease site was inspected by Mining Officer, Sonbhadra, Inspector of Mines and Surveyor of Mining Department on 06.05.2022 who found that boundary pillars and sign boards were not fixed; positioning of 2 CCTV camera was not in order and recording was also not properly maintained; there was illegal mining by creating two new pits outside the mining lease area on north east side in village Mitapur and illegal mining was conducted with lifter/suction machines and excavator. The details of pits wherefrom illegal mining from Son River were conducted, mentioned in the show cause notice at page 382, are as under:

“पिट -1. लम्बाई 131 मी० x चौड़ाई 120 मी० x ऊँचाई 1.5 मी० = 23,580 घन मी०
पिट-2. लम्बाई 158 मी० x चौड़ाई 55 मी० x ऊँचाई 1.5 मी० = 13,035 घन मी०”

- (v) Show cause notice proposed total penalty etc. of Rs. 3,46,98,500/- as per following details:

Royalty @ Rs.150 per m ³	Rs. 54,92,250/-
Cost of mineral	Rs. 2,74,61,250/-
Penalty for violation under Rule 58	Rs. 12,20,000/-
Penalty for violation under Rule 60(4)	Rs. 5,00,000/-
Total	Rs.3,46,98,500/-

- (vi) The said show cause notice was replied by respondent 14 vide letter dated 21.05.2022, copy whereof is at page 383. The allegations with regard to boundary pillars were admitted but tried to be explained that the same were disturbed by some unsocial elements. The allegation with regard to positioning of CCTV was also admitted and it is said that now it has been corrected. However, with regard to illegal mining on the forest land, respondent 14 has said that responsibility of its supervision and monitoring was that of Forest Department who used to monitor the same; and that respondent 14 has



not caused any illegal mining in the forest land.

- (vii) In the objections dated 03.03.2023 **in para 14, however, it is said that respondent 14 has deposited penalty amount of Rs. 3,93,10,500/- under protest.** Before us, it is, however, not disputed that neither any appeal has been filed against the said order nor any further action has been taken disputing liability and seeking refund of the amount paid, till date.

100. VIOLATION BY RESPONDENT 15:

- (i) In respect of respondent 15, a show cause notice dated 08.02.2022 (at page 375 of paper book) was issued stating that Sub-divisional Magistrate, Obra Sonbhadra conducted a joint enquiry on 07.02.2022 in respect of mining lease granted to respondent 15 on Araji No. 824 kha (khand 3), area 16.194 hectares on the Son River bed. It was found that going beyond the leased area, on the northern side in village Kargara in Son River, 3 pits were created with following measurement:

Pit I	65m × 25m × 0.80m	1300 m ³
Pit II	45m × 35m × 0.70m	1071 m ³
Pit III	70m × 20m × 0.80m	1120 m ³
	Total	3491 m ³

- (ii) The said extraction beyond leased area was carried out within 100 meters of the forest land. Consequently, District Magistrate, Sonbhadra vide the above show cause notice proposed imposition of penalty as under:

Royalty @ Rs.150 per m ³	Rs. 5,23,650/- (for 3491 m ³)
Cost of mineral	Rs. 26,18,250/-
Penalty under Rule 58 of UP Mineral Concession Rules, 2021	Rs. 2,00,000/-
Total	Rs. 33,41,900/-

- (iii) The show cause notice states that respondent 15 has violated



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Rule 3, 58 and 72 UP Minor Mineral Concession Rules, 2021 and Sections 4 and 21 of MMDR Act, 1957.

- (iv) Respondent 15 submitted reply to the show cause notice vide letter dated 24.02.2022 (page 376 of the paper book). Denying allegations of illegal mining, it was stated that several complaints were made by respondent 15 with regard to illegal mining on Son River being carried out by local contractor who was allotted mining right under Ret-Khet Scheme, in close proximity to area leased out to respondent 15. The relevant extract of the reply submitted by respondent 15 reads as under:

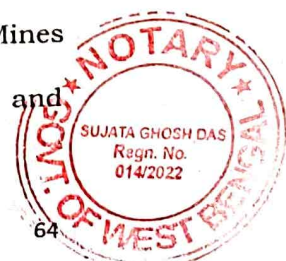
“With reference to the Show cause Notice issued vide letter No. 6061/Khanij/2022 dated 08.02.2022 on behalf of New India Minerals it is denied that there has been any illegal mining by the Firm on the northern side towards village Karghara on the River Son, outside its mining area at Araji No. 824-Kha, Khund-3 in Village Aghori Khas.

2. In this regard we would like to draw your kind attention to our several complaints to the Mines Officer about illegal mining on Son River being carried out by the local contractor who had been allotted mining right under the ‘Ret Khet Scheme’ in very close proximity of the area leased to New India Minerals. It has also been pointed out that the said contractor has also been illegally extracting sand & morrun from another area in Khund-2 at Araji No. 824-Kha in Village Aghori khas.

3. Thus, in our humble submission, the act of Illegal mining being carried out by a local contractor who also happened to be wilding considerable Influence, is being alleged against New India Minerals which is unjust and unfair.

4. In view of the above clarifications, it is requested that the cost/penalty of Rs.33,41,900/-imposed on us may be reviewed and rescinded.”

- (v) Another show cause notice was issued to respondent 15 on 10.05.2022 (page 377 of the paper book), alleging that Mines Officer, Sonbhadra; Mines Inspector, Sonbhadra and



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Surveyor, Mining Department conducted a joint inspection on 06.05.2022 and found following violations:

- The boundary pillars and sign boards were not installed in the mining lease area.
- In place of 4 CCTV cameras for 360-degree recording, only 2 CCTV camera at weigh bridge were found installed.
- Vehicle no. UP 54 T 5945 at 05:44 on 05.05.2022 and UP 50 VT 7262 at 06:24 on 05.05.2022 were found standing, as per 2 CCTV cameras installed at the weigh bridge site but when enquired from the representatives of lease holder, they could not show e-MM-11 of the above 2 vehicles.
- On the eastern side of the mining lease, beyond the forest land of village Kargara and on the northern side in the proposed khand no. 2 of village Agori Khas, a fresh pit was found where mining was done and it was found that illegal mining was carried out from river Son by using 4 lifters/suction machines and excavators. Details of pits are as under:

Pit I	190m × 95m × 1m	18,050 m ³
Pit II	110m × 60m × 1.5m	9,900 m ³
	Total	27,950 m ³

- (vi) Alleging violation of Rules 3, 36, 42, 58 and 72 of UP Minor Mineral Concession Rules, 2021 and Sections 4 and 21 of MMDR Act, 1957, it was said that the violation is punishable. It is also said that there is violation of condition no. 11 of mining lease deed general condition part 3, wherein use of lifter/suction machines were prohibited. District Magistrate, Sonbhadra proposed demand/penalty as under:



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Royalty @ Rs.150 per m ³	Rs. 41,92,500/- (for 27950m ³)
Cost of illegally mineral	Rs. 2,09,62,500/-
Penalty for violation under Rule 36	Rs.25,000/-
Penalty for violation under Rule 58	Rs. 12,32,500/-
Penalty for violation under Rule 60(4)	Rs.5,00,000/-
Total	Rs. 2,69,12,500/-

(vii) Respondent 15 replied the said show cause notice dated 10.05.2022 vide letter dated 14.05.2022 (page 378 of paper book). It is said that proponent was required to indicate GPS coordinates in the Map and erect boundary pillars to identify mining area in the presence of officers from Revenue and Chakbandi Departments before execution and registration of mining lease agreement. It is impossible of not having erected boundary pillars since mining lease agreement was already executed. Further the lease area was inspected by joint teams earlier on 21.01.2022, 03.02.2022, 08.02.2022 and 22.03.2022 and for the first-time allegations of absence of boundary pillars and sign boards was made. Further, with regard to CCTV cameras, it was stated that earlier joint team of mines officers visited the premises but no such violation was pointed out. Four CCTV cameras were installed by respondent 15. With respect of non-production of e-MM-11 permits of 2 vehicles, the explanation was that these trucks were yet to be loaded and process of OTP generation was being carried out which was disrupted due to visit of inspection team. In respect of illegal mining outside the leased area, in village Kargara and Agori Khas (khand 2), respondent 15 explained that several complaints were made in the past about illegal mining on Son River being carried out by local contractors granted mining rights under Ret-Khet Scheme



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and the allegations against respondent 15 are incorrect.

(viii) Respondent 15 has also placed on record letter dated 31.05.2022 (page 380) stating that w.e.f. 05:00 pm on 29.03.2022 since OTP required for generation of e-MM-11 permit for transportation of minerals from the leased site, was stopped by District Mining Officer, hence, **under protest, respondent 15 deposited Rs. One Crore towards proposed demand of penalty etc.** vide show cause notice dated 10.05.2022.

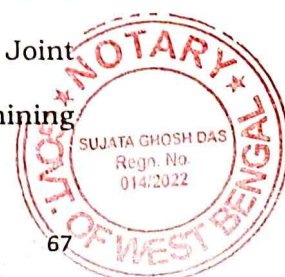
(ix) **In para 14 of objections dated 03.03.2023, it has been stated that respondent 15 infact has paid the entire demanded sum vide show cause notice dated 10.05.2022 i.e., Rs. 2,69,12,500/-.**

Violations noticed and observed by Joint Committee in its report dated 17.02.2023:

101. Joint Committee in respect of both the mining leases granted to respondents 14 and 15 has observed that the leases were sanctioned in **bench of River Son.**

102. In Geomorphology, geography and geology, a **bench or benchland** is a long, relatively narrow strip of relatively level or gently inclined land that is bounded by distinctly steeper slopes above and below it. In mining, a bench is a narrow strip of land cut into the side of an open-pit mine. These step-like zones are created along the walls of an open-pit mine for access and mining.

103. The report further shows various violations on the part of both respondents 14 and 15. One of the major violations found by Joint Committee, in respect of respondents 14 and 15 both, is significant mining



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outside the lease area (towards main stream of river). The observations of Joint Committee in respect of respondent 14 on this violation reads as under:

*“Committee has been observed that the **lease holder doing significant mining outside of the lease area (towards main stream of river)**, committee unable to visit the outside of the lease area (towards main stream of river), where mining is being conducted by lease holder, due to creation of heavy trench committee could not went in that patch of land, which seems be created by lease holder before visit of the committee.”*

104. The report also shows that significant mining outside lease area is also evident from Google Satellite Image dated March 2022 and the area of mining outside the lease area is about 5.44 hectares as per Satellite image.

105. In respect of respondent 15, the findings with respect to mining outside lease area, reads as under:

*“Committee has been observed that the **lease holder doing significant mining outside of the lease area (towards main stream of river)**, committee unable to visit the outside of the lease area (towards main stream of river), where mining is being conducted by lease holder, due to creation of heavy trench committee could not went in that patch of land, which seems be created by lease holder before visit of the committee.”*

106. Here also, it is said that the mining outside lease area is also evident from Google satellite image dated March 2022. The area of mining outside lease area as per satellite image was found by Joint Committee is 4.72 hectares towards main stream.

107. The defense of respondents 14 and 15, in respect of this violation is that the said mining was not done by the proponents but already done by land owners of the nearby area and even before mining lease area was handed over to respondents 14 and 15, such mining was already conducted by third parties. It is also said that they made complaints to authorities on various occasions but authorities did not pay any heed to



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the complaints.

108. With regard to complaints allegedly made by respondents 14 and 15 regarding illegal mining by third parties, when inquired by this Tribunal, our attention was drawn by Learned Counsel appearing for respondents 14 and 15 to various letters filed collectively as annexure 4 which are on pages 365, 366, 367 and 368. We have seen these documents and find that all these letters were written by one Rashmit Malhotra S/o Ajit Malhotra R/o Main Road, Pipariya, Hoshangabad, Madhya Pradesh who was allotted mining lease in Aaraji 824 kha (khand 2), area 16.194 hectares. These letters are dated as under:

- (i) Letter at page 365 - It is un-dated, sent by Rashmit Malhotra to Senior Mining Officer, Sonbhadra.
- (ii) Letter at page 366 dated 04.05.2022 sent by Rashmit Malhotra to Deputy Collector, Tehsil Obra, District Sonbhadra.
- (iii) Letter at page 367 - It contains endorsement of receipt on 04.05.2022 sent by Rashmit Malhotra to District Collector, Sonbhadra.
- (iv) Letter at page 368 - This letter is dated 08.01.2022 sent by Rashmit Malhotra to District Magistrate, Sonbhadra but it does not talk of complaint of illegal mining by third party. Instead, it says that at araji no. 371, 167, 330, 332, 336, 367, 370, 166, 374 and 375, mining of sand/morrum was approved but no morrum was actually available in the said area and land is being cultivated/ used for agricultural purposes i.e., for sowing of crops.

109. With respect of agori khas (khand 2), it is also said in the above letter that there is also no sand/morrum available in the private land hence there is a possibility of theft of morrum from Agori khas (khand 2).



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110. Our attention is also drawn to copies of certain newspapers reports while at page 369, 370, 371, 372, 373 and 374. Having gone through the newspapers, our observations in respect of the said newspapers are as under:

- (i) At pages 369 and 370, there is copy of daily newspaper Rashtriya Sahara dated 05.05.2022 and it reports complaint of illegal mining by land owner/contractor in araji no. 824 kha (khand-2) and the allegation of illegal mining was made by Rashmit Malhotra.
- (ii) At page 371, 372, 373 and 374 are the copies of the newspapers dated 02.02.2022 of Dainik Bhaskar, Jan Sandesh, Samvad News Agency and Dainik Bhaskar (repeated). They also relate to a similar complaint made by Chander Shekhar Chaurasiya, lessee of Agori Khas (khand 1) and Rashmit Malhotra lessee of Agori Khas (khand 2).

111. Not even a single complaint, allegedly made by respondents 14 and 15, has been placed on record and except what they have stated in their reply to the show cause notices, as discussed above, as a matter of fact, respondents 14 and 15 have failed to show even a single complaint made to the mining authorities about the alleged illegal mining done by third parties or land owners/contractors in respect to the allegations of illegal mining levelled by mining authorities against respondents 14 and 15.

112. In fact, one of the letters on record i.e., dated 26.03.2022 (page 335) shows a clear admission on the part of respondent 14 regarding illegal mining beyond the leased area.

113. The defense taken by respondents that the mining outside the lease area was caused by others and third parties, therefore, neither could be proved by them nor they could place any material before this Tribunal to

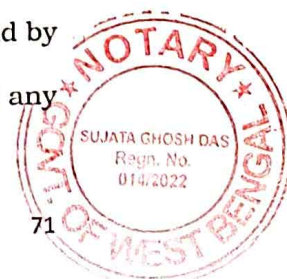


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show that they made any such complaint when lease area handed over to them by the authorities that some mining by third parties has already done in their area or that in nearby area, some mining activities are going on. The entire defense, in our view, particularly, looking to the fact that the letter dated 26.03.2022 is also a clear admission on part of respondent 14 regarding illegal mining beyond lease area shows that the defense taken jointly by both the respondents is an after-thought and in fact, they are guilty of undertaking mining of morrum in an area outside the leased area. Joint Committee has actually conducted field visit on 09.12.2022 and recorded its findings based on the site inspection. Nothing has been brought on record or placed before us to show that Joint Committee had recorded any incorrect finding, particularly, when no motive or reason for giving an incorrect finding has been attributed to the Joint Committee comprising of high officials like Regional Officer, Integrated Regional Officer, MoEF&CC Lucknow, Additional District Magistrate (Finance and Revenue), a nominee of District Magistrate, Sonbhadra and Regional Officer Sonbhadra of UPPCB. It is not the case of respondents 14 and 15 that Joint Committee did not visit the field on 09.12.2022, as stated in the report.

114. Further, findings and observations that heavy trenches were created on account whereof, the Committee could not visit the patch of the land whereon illegal mining was carried out, as the said trenches created obstructions in such visit, show a deliberate attempt on the part of respondent 14 and 15 in creating hurdle in the physical inspection.

115. We find satisfied to draw the above inference from the facts that for past violations i.e., illegal mining beyond leased area, the penalty amount imposed by Mining Authorities under mining statutes was already paid by both the respondents 14 and 15 and they have not taken or initiated any

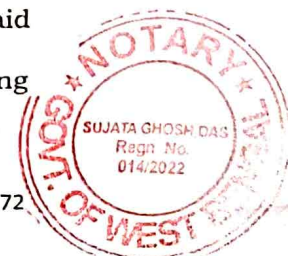


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legal action, challenging the said demand or for refund of the amount already paid. This fact is admitted during the course of arguments when it is admitted by learned counsel appearing for respondents 14 and 15 that neither any appeal has been filed before appropriate Appellate Authority nor any legal action for refund of the amount already paid has been taken till the date on which the matter was heard by this Tribunal, i.e., 13.03.2023 and payment has attained finality.

116. Thus, we may summarise on the defense of respondents 14 and 15 regarding third parties' involvement that though respondents 14 and 15 claimed to have made several complaints in the past but not even a single such complaint allegedly made by respondents 14 and 15 has been placed on record. They have miserably failed to show that illegal mining was not carried out by them. There is only a self-claimed denial. Illegal mining has been carried out in the area, in proximity to leased area to respondents 14 and 15. Mining authorities on physical inspections, have held respondents 14 and 15 responsible of illegal mining and saddled them with liability of fine and penalty etc. which has been paid by respondents 14 and 15. In fact, respondents 14 in its reply dated 26.03.2022 has admitted to have carried out mining outside the lease area. Further, it is also admitted that both the respondents have satisfied entire demand raised by District Magistrate, Sonbhadra vide various show cause notices discussed above on account of illegal mining by respondents 14 and 15.

117. We may also repeat about admission on the part of respondents 14 and 15 during the course of the arguments that the entire demand raised by mining authorities as per the show cause notices referred to hereinabove, the amount has been paid by respondents 14 and 15 and neither they have initiated any further proceedings for refund of the said amount nor filed any appeal to the higher authorities under mining



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statutes for revocation of the demand raised by District Magistrate, Sonbhadra on the allegation of illegal mining by respondents 14 and 15. Those allegations of illegal mining thus stand ultimately admitted and consequent liability of fine etc. also stand admitted since payment has been made.

118. Thus, it is evident that they (respondents 14 and 15) are guilty of carrying out **illegal mining beyond the lease area.**

119. The next violation observed by Joint Committee is **mining by lease holder in main stream of the river** (outside of the leased area).

120. In this regard, observations made in respect of respondent 14 reads as under:

“As mentioned above, illegal mining is being done by the lease holder in the main stream of the river (outside of the lease area), may certainly be change the course of river flow & its velocity and its quality, which is contradictory to EC General Condition no. 13.

It has also been observed that the mining activity is also going on the main stream of river Sone, i.e., outside of the lease area.”

121. In respect of respondent 15, observations of Joint Committee are as under:

“As mentioned above, illegal mining is being done by the lease holder in the main stream of the river (outside of the lease area), may certainly be change the course of river flow & its velocity and its quality, which is contradictory to EC General Condition no. 13.”

122. In respect of both the respondents 14 and 15, Joint Committee under the head ‘Other Observations’ has said as under:

“As per Google earth images, there are three illegal pits visible near the mine of M/s Sudhakar Pandey and Associates, the area of these illegal pits is 5.44 ha. Similarly, three illegal pits of 4.72 Ha area have existed near the mine area of M/s New India Minerals.



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The illegal mining pits are located towards the center of the river course which can severely affect the river economy.

123. On this aspect, we do not find any explanation or defense on the part of respondents 14 and 15 either in their written objections or any statement or explanation given at the time of hearing. What is said is that the mining was allowed in the river bed of Son river but 'mining in river bed' and 'mining in main stream of river' are two different things. If sufficient mined mineral has been deposited in the river bed, during dry period, such mined material may be taken away from the river bed. Otherwise, in an active stream, if mining is conducted in the main stream, it has serious consequences and impact on stream's physical characteristics such as channel geometry, bed elevation, substratum composition and stability, in-stream roughness of the bed, flow velocity, discharge capacity, sediment transport capacity, turbidity, temperature etc. Alternation or modification of the above attributes may cause hazardous impact on ecological equilibrium of riverine regime. It may also cause adverse impact on in-stream biota and riparian habitats. This disturbance may also cause changes in channel configuration and flow-paths.

124. Sustainable Sand Mining Management Guidelines-2016 (hereinafter referred to as '**SSMG-2016**') says:

- "b) In-stream extraction of gravel from below the water level of a stream generally causes more changes to the natural hydrologic processes than limiting extraction to a reference point above the water level.*
- c) In-stream extraction of gravel below the deepest part of the channel (the thalweg) generally causes more changes to the natural hydrological processes than limiting extraction to a reference point above the thalweg."*

125. Under the head "General Approach to Sustainable Sand and Gravel Mining", SSMG-2016 says as under:



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- "b) The distance between sites for sand and gravel mining shall depend on the replenishment rate of the river. Sediment rating curve for the potential sites shall be developed and checked against the extracted volumes of sand and gravel.
- c) Sand and gravel may be extracted across the entire active channel during the dry season.
- d) Abandoned stream channels on terrace and inactive floodplains be preferred rather than active channels and their deltas and flood plains. Stream should not be diverted to form inactive channel.
- e) Layers of sand and gravel which could be removed from the river bed shall depend on the width of the river and replenishment rate of the river.
- m) Mining depth should be restricted to 3 meter and distance from the bank should be 3 meter or 10 percent of the river width whichever less.
- n) The borrow area should preferably be located on the river side of the proposed embankment, because they get silted up in course of time. For low embankment less than 6 m in height, borrow area should not be selected within 25 m from the toe/heel of the embankment. In case of higher embankment the distance should not be less than 50 m. In order to obviate development of flow parallel to embankment, cross bars of width eight times the depth of borrow pits spaced 50 to 60 meters centre-to-centre should be left in the borrow pits.
- o) Demarcation of mining area with pillars and geo-referencing should be done prior to start of mining."

126. Enforcement & Monitoring Guidelines for Sand Mining-2020 in para

4.3 (r) says as under:

"r) River bed sand mining shall be restricted within the central 3/4th width of the river/rivulet or 7.5 meters (inward) from river banks but up to 10% of the width of the river, as the case may be and decided by regulatory authority while granting environmental clearance in consultation with irrigation department. Regulating authority while regulating the zone of river bed mining shall ensure that the objective to minimize the effects of riverbank erosion and consequential channel migration are achieved to the extent possible. In general, the area for removal of minerals shall not exceed 60% of the mine lease area, and any deviation or relaxation in this regard shall be adequately supported by the scientific report."

127. The study of River Son, conducted in DSR-2018 (annexure-I to the additional affidavit dated 17.03.2023 filed by respondent 14) mentions that River Son enters the area in State of UP at Kalighat and flowing for a



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distance of nearly 60 km due each, leaves the area about 15 km north-east of the Kon area and enters State of Bihar. In this area, River Son forms a deep cut valley about 12.15 km wide. Along the course of river and stream, very limited valley fill deposits are observed. River Son divides the district (Sonbhadra) into two districts topographic divisions. The thickness of alluvium or weathered zone is more in North of River Son while it is negligible in south of River Son. River Son generally dry during hot weather but hold water during the greater part of the year and utilized for irrigation and contribute a major potentiality of sand mining along which potential area has been notified for e-tendering and given short term mining permits in these areas at different villages.

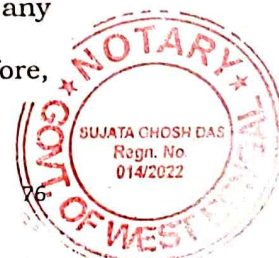
128. DSR-2018 relied by respondents 14 does not show district wise availability of sand or gravel or aggregated resources. In para 8(b), it gives description of sand/morrum mining area (vacant) but as required in SSMG-2016, DSR must contain following:

- (i) District wise detail of river or stream and other sand source.
- (ii) District wise availability of sand or gravel or aggregate resources.
- (iii) District wise detail of existing mining leases of sand and aggregates.

129. Even in the EC issued to respondents 14 and 15 specific condition no. 18 says as under:

“No mining activity should be carried out in-stream channel as per SSMG-2016.”

130. Therefore, there was a clear condition imposed in EC also but this has been violated by respondent 14 and 15 by carrying out mining activities in main stream of river and that too outside the leased area. This is serious violation which has serious consequences, degrading and damaging effect on the river ecology. On this aspect, we do not find any explanation or defense on the part of respondents 14 and 15, therefore,



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this violation stands established against respondents 14 and 15.

131. **Temporary bridges structure raised by proponents:** The third violation, common to respondents 14 and 15, noticed by Joint Committee is creation of temporary bridges structures across the river course liable to interrupt flow of river. On this aspect, there is no explanation and no denial on the part of respondents 14 and 15. At the time of arguments, it sought to explain that the bridge structures were created for transportation of mineral from one side to another but such structure was not permitted particularly, when interruption to velocity and flow pattern is specifically prohibited in the conditions of EC which we have quoted above. Thus, **this violation on the part of respondents 14 and 15 is well established.**

132. **Sinking of borewells and extraction of ground water:** The Joint Committee in respect of both the respondents have said that the bore well was found to have been installed by respondents 14 and 15 and they were illegally extracting ground water without having obtained any NOC from Ground Water Department.

133. In regard to respondent 14, findings of Joint Committee on this aspect are as under:

“One bore well is found in running condition without statutory approvals.”

134. In respect of respondent 15, observations of Joint Committee are as under:

“Bore well is found in running condition without statutory approvals.”

135. In the objections, it has been said by respondents 14 and 15 that NOC was obtained by respondent 15 in respect of a bore well for extraction of ground water from UPGWD on 26.12.2021, copy of NOC is also on



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record as annexure-9 to the objections on page 413 of the paper book. Therefore, **findings of Joint Committee on this aspect, in respect of respondent 15 is not accepted.**

136. However, with regard to respondent 14, we find no reason but to accept the findings and **hold that this violation is found proved against respondent 14.** The explanation of respondent 14 is that it has not installed any bore well inside the lease area but no such bore well has been installed outside the lease area, is not the case of respondent 14. It is also said that it is meeting its requirement of water from external sources but what those external sources and in what manner, the water requirement is being met, nothing has been placed on record though onus lay upon respondent 14 to prove this fact. In absence of any material, **we find difficult to accept the defense of respondent 14 and hold it guilty of violation of illegal extraction of ground water by installing a bore well without having obtained any permission from Competent Authority and findings of Joint Committee to this extent is accepted.**

137. The other violations found in respect of both the cases or individually are given in the form of chart:

Common violations:	
(a) Motorable approach road with both side plantation not raised/constructed	(a) Motorable approach road with both side plantation in area not made/raised
(b) Compliance of EC conditions and CTO conditions are pathetic	(b) Compliance of EC conditions and CTO conditions are pathetic
(c) Illegal mining pits were located towards the centre of the river course which can severely affect river economy	(c) Illegal mining pits were located towards the centre of the river course which can severely affect river economy



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Individual violations of respondent 14:	
(d) Boundary pillars not properly erected on each corner of the lease	
(e) Lease holder was using various machines for river bed mining in lease area as also outside the lease area	
(f) Depth of pit more than prescribed in EC	
Individual violations of respondent 15:	
(g) Weigh bridge, bore well, DG sets and office outside the leased area on Government land	
(h) Statutory permissions like EC, CTO, production, compliance report, lease documents, mining plans etc. were not available with the representative of lease holder	

138. Further, Joint Committee has said that both the proponents created a situation by obstructing road dumping over-burdened so that the Committee may not reach the illegal mining lease site outside the co-ordinates of leased area. In this regard, observations of Joint Committee are as under:

“At the time of inspection, it was found that the Kachha path constructed by the mines lease holders for transportation of the sand from the lease area has been disturbed by keeping overburdens on the road in a such a way that the Committee may not reach to the illegal mining lease site outside the co-ordinates of the lease area. However, the committee member tried to see the factual situation and accordingly it was visible that 03 mines pit are operational outside the lease boundary. The illegal mining area could not be measured; however, it is visible on the Google earth and Google satellite image is attached as Annexure C, D & E.”



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139. On this aspect, neither any explanation has come forward from respondents 14 and 15 nor there is any denial. Common attempt made by both the parties to obstruct functioning of Joint Committee is nothing but an attempt to violate order of this Tribunal which permitted the Committee to visit the site and furnish factual report. It is also an offence under Section 26 of NGT Act, 2010. This shows that respondents 14 and 15 had in fact committed serious violation by doing illegal mining, hence, are liable to be proceeded against in accordance with law.

140. The report of committee in respect of the violations as observed above is accepted and issues I and II are answered against respondents 14 and 15.

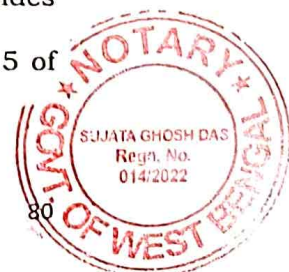
141. Now we proceed to consider **issue III.**

142. Since findings on issues I and II have gone against respondents 14 and 15, it is thus clear that both are liable to pay environmental compensation on the principle of 'Polluters Pay' since illegal mining has caused serious damage to aquatic ecology and riverine regime. For violation of conditions of EC etc., both are also liable for other action like initiation of criminal proceedings in accordance with law.

143. Coming to the question of environmental compensation, the moot question would be the quantum of compensation which has to be paid by respondents 14 and 15.

Principle for Computation of Environmental Compensation:

144. The question of **assessment of environmental compensation** includes the principles/factors/aspects, necessary to be considered for computing/assessing/determining environmental compensation. Besides judicial precedents, we find little assistance from Statute. Section 15 of



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NGT Act, 2010 talks of relief of compensation and restitution. It confers wide powers on this Tribunal to grant relief by awarding compensation for the loss suffered by individual(s) and/or for damage caused to environment. Section 15 reads as under:

“15. Relief, compensation, and restitution-(1) *The Tribunal may, by an order, provide, -*

- a) **relief and compensation** to the victims of pollution and **other environmental damage arising under the enactments** specified in the Schedule I (including accident occurring while handling any hazardous substance);
- b) **for restitution of property damaged;**
- c) **for restitution of the environment** for such area or areas, as the Tribunal may think fit.

(2) *The relief and Compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section of (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).*

(3) *No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:*

Provided that the Tribunal may, if it is satisfied that the' applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) *The Tribunal may, **having regard to the damage to public health, property and environment**, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.*

(5) *Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may, be, compensation or relief received from, any other Court or authority.*

145. Sub-section 1 of Section 15 enables Tribunal to make an order providing relief and compensation to (i) the victims of pollution, (ii) other environmental damage arising under the enactments specified in the Schedule I.

146. Tribunal is also conferred power to pass an order providing relief for restitution of property damaged. Section 15(1)(c) enables Tribunal to pass



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an order providing relief for restitution of the environment for such area or areas, as Tribunal may think fit. Section 15 sub-section 4 says that Tribunal may divide compensation or relief payable under separate heads specified in Schedules II, having regard to the damage to public health, property and environment so as to provide compensation or relief, (i) to the claimants and (ii) for restitution of the damaged property or environment, as it may think fit.

147. Schedule II of NGT Act, 2010 gives a list of heads under which compensation or relief for damage may be granted. It has 14 heads in total out of which item (a) to (f), (l), (m) and (n) relates to loss, damage etc. sustained to the person or individual or their property. Item (i) to (k) relates to harm, damage, destruction etc. of environment or environmental system including soil, air, water, land, and eco-system. Items (i) to (k) of Schedule II of NGT Act, 2010 are as under:

“(i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;

“(j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;

“(k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;”

148. Items (g) and (h) relate to expense and cost incurred by State in providing relief to affected person; and loss caused in connection with activity causing damage.

149. The damage to environment covers a very wide variety of nature as is evident from definition of environment under section 2 (c) which is inclusive and says; ‘environment includes water, air, and land and the interrelationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property’.



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150. Section 20 of NGT Act, 2010 requires Tribunal to apply principles of sustainable development, the precautionary principle and the polluter pays principle. In the present case, environmental compensation has to be computed by applying 'Polluter Pays' Principle.

151. The compensation has to be determined holding proponents/violators liable to pay such compensation applying **principle of 'Polluter Pays'**.

152. This principle was recognized as part of environmental law in India in *Indian Council for Enviro-Legal Action vs. Union of India, (1996)3SCC212*. Certain industries producing assets were dumping their waste. Even untreated waste water was allowed to flow freely polluting atmosphere and sub-terrain supply of water which ultimately caused darkening and dirtiness of wells and the streams water rendering it unfit for human consumption. Certain environmentalists' organizations broadly alleging severe damage to villager's health, filed a Writ petition as PIL in 1989 before Supreme Court. By that time, some of the units were already closed. Referring to Article 48-A in Director Principle of State Policy and 51-A in the Fundamental duties of citizens, Supreme Court observed that said provisions say that State shall endeavor to protect and improve environment and to safeguard the forest and wildlife of the country. One of the fundamental duties of citizen says to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creature. **Proponent has established to operate its commercial unit contrary to law flouting norms provided by law, Statutory Regulator is bound to act and if it fails, a judicial forum can direct it to act in accordance with law.** Referring to Oleum Gas leak case, i.e., *M.C. Mehta vs. Union of India, (1987)1SCC395*, Court



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observed in para 58 that the constitution bench held that **enterprise must be held strictly liable for causing such harm as a part of social cost of carrying on the hazardous or inherently dangerous activity.** Hazardous or inherently harmful activities for private profits can be tolerated only on the condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of carrying on of such hazardous or inherently dangerous activity, regardless of whether it is carried on carefully or not. Court also referred to its earlier decision in **Indian Council for Enviro Legal action vs. Union of India (1995)3SCC77**, wherein PCB identified about 22 industries responsible for causing pollution by discharge of their effluent and a direction was issued by Court observing that they were responsible to compensate to farmers. It was the duty of State Government to ensure that this amount was recovered from the industries and paid to the farmers. In para 67 of the judgment, Court said that the **question of liability of respondent units to defray the costs of remedial measures can also be looked into from another angle which has now come to be accepted universally as a sound principle, for example, 'Polluter Pays' principle.** On this aspect, Court further observed as under:

"67. ...The Polluter Pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The 'Polluter Pays' principle was promoted by the Organization for Economic Co-operation and Development (OECD) during the 1970s when there was great public interest in environmental issues. During this time there were demands on government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialized society. Since then there has been considerable discussion of the nature of the polluter pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactory agreed.



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Despite the difficulties inherent in defining the principle, the European Community accepted it as a fundamental part of its strategy on environmental matters, and it has been one of the underlying principles of the four Community Action Programmes on the Environment. The current Fourth Action Programme ([1987] OJ C 328/1) makes it clear that **'the cost of preventing and eliminating nuisances must in principle be borne by the polluter'**, and the polluter pays principle has now been incorporated into the European Community Treaty as part of the new Articles on the environment which were introduced by the Single European Act of 1986. Article 130-R(2) of the Treaty states that environmental considerations are to play a part in all the policies of the Community, and that action is to be based on three principles: the need for preventative action; the need for environmental damage to be rectified at source; and that the polluter should pay."

153. Court further said that **according to the above principle of 'Polluter Pays', responsibility for repairing the damage is that of the offending industry.** Sections 3 and 5 of EP Act, 1986 empower Central Government to give directions and take measures for giving effect to this principle. It further said as under:

"...In all the circumstances of the case, we think it appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment (Protection) Act, 1986. It is, of course, open to the Central Government to take the help and assistance of State Government, R.P.C.B. or such other agency or authority, as they think fit."

154. The above principle has been followed in **Vellore Citizen Welfare Forum vs. Union of India, 1996(5)SCC647.** In para 25, direction no. 2 reads as under:

2. The authority so constituted by the Central Government shall implement the "precautionary principle" and the "polluter pays" principle. The authority shall, with the help of expert opinion and after giving opportunity to the concerned polluters assess the loss to the ecology/environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise.



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155. In *Bittu Sehgal and Another vs. Union of India & Others* (2001)9SCC181, referring the earlier judgments, Supreme Court has said that 'Precautionary' Principle and 'Polluter Pays' Principle have been accepted as part of the law of the land.

156. In *Research Foundation for Science vs. Union of India & Ors.*, (2005)13SCC186, in para 26 and 29, Court, on 'Polluter Pays' principle, has said as under:

26. The liability of the importers to pay the amounts to be spent for destroying the goods in question cannot be doubted on applicability of precautionary principle and polluter-pays principle. These principles are part of the environmental law of India. There is constitutional mandate to protect and improve the environment. In order to fulfill the constitutional mandate various legislations have been enacted with attempt to solve the problem of environmental degradation.

29. The polluter-pays principle basically means that the producer of goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. This includes environmental cost as well as direct cost to the people or property, it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those which are immediately tangible. The principle also does not mean that the polluter can pollute and pay for it. The nature and extent of cost and the circumstances in which the principle will apply may differ from case to case.

157. In *Karnataka Industrial Areas Development Board vs. C. Kenchappa & Others* (2006)6SCC371, principle of 'Polluter Pays' has been explained in detail referring to the earlier judgments in *Indian Council for Enviro-Legal Action vs. Union of India* (supra) and *Vellore Citizen Welfare Forum* (supra).

158. Thus, broad principles of environmental laws are given but the methodology for assessing/determining compensation is not provided in the Statute. Even Rules framed under NGT Act, 2010 are silent on this aspect. Issue of determination of environmental compensation is significant in the sense that it should be proportionate to or bears a



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reasonable nexus with the environmental damage and its remediation/restoration. Similarly, in case of compensation to be determined for a victim, it needs to co-relate to injury caused or damage suffered by such person as also cost incurred for treatment/remediation.

159. Taking into consideration multifarious situations, relating to violation of environmental laws, *vis-a-vis* different proponents, nature of cases involving violation of environmental laws can be categorized as under:

- (i) Where project/activities are carried out without obtaining requisite statutory permissions/consents/clearances/NOC etc., affecting environment and ecology. For example, Environmental Clearance under Environmental Impact Assessment Notification, 2006; Consent under Water Act, 1974 and Air Act, 1981; Authorisation under Solid Waste Management Rules, 2016 and other Rules; and NOC for extraction and use of ground water, wherever applicable, and similar requirements under other Statutes.
- (ii) Where proponents have violated conditions imposed under Statutory Permissions, Consents, Clearances, NOC etc. affecting environment and ecology.
- (iii) Where proponents have carried out their activities, causing damage to environment and ecology by not following standards/norms regarding cleanliness/pollution of air, water etc.

160. The above categories are further sub-divided, i.e., where the polluters/violators are corporate bodies/organisations/associations and group of the people, in contradistinction, to individuals; and another category, the individuals themselves responsible for such pollution.



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161. Further category among above classification is, where, besides pollution of environment, proponents/violators action also affect the community at large regarding its source of livelihood, health etc.

162. The next relevant aspect is, whether damage to environment is irreversible, permanent or is capable of wholly or partially restoration/remediation.

163. Determination/computation/assessment of environmental compensation must, not only conform the requirement of restoration/remediation but should also take care of damage caused to the environment, to the community, if any, and should also be preventive, deterrent and to some extent, must have an element of "being punitive". The idea is not only for restoration/remediation or to mitigate damage/loss to environment, but also to discourage people/proponents from indulging in the activities or carrying out their affairs in such a manner so as to cause damage/loss to environment.

164. To impose appropriate 'environmental compensation' for causing harm to environment, besides other relevant factors as pointed out, one has to understand the kind and nature of 'Harmness cost'. This includes risk assessment. The concept of risk assessment will include human-health risk assessment and ecological risk assessment. U.S. Environmental Protection Agency has provided a guideline to understand harm caused to environment as well as people. For the purpose of human-health risk assessment, it comprised of three broad steps, namely, planning and problem formulation; effects and exposure assessment and risk categorization. The first part involves participation of stakeholders and others to get input; in the second aspect health effect of hazardous substances as well as likelihood and level of exposure to the pollutant are



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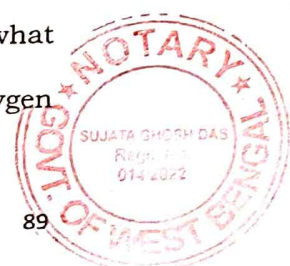
examined and the third step involves integration of effects and exposure assessment to determine risk.

165. Similarly, ecological risk assessment is an approach to determine risk of environmental harm by human activities. Here also, we can find answer following three major steps, i.e., problem codification; analysis of exposure and risk characterization. First part encompasses identification of risk and what needs to be protected. Second step insists upon crystallization of factors that are exposed, degree to exposure and whether exposure is likely or not to cause adverse ecological effects. Third step is comprised of two components, i.e., risk assessment and risk description.

166. In totality, problem is multi-fold and multi-angular. Solution is not straight but involves various shades and nuances and vary from case to case. Even Internationally, there is no thumb-rule to make assessment of damage and loss caused to environment due to activities carried out individually or collectively by the people, and for remediation/restoration. Different considerations are applicable and have been applied.

167. In India, where commercial activities were carried out without obtaining statutory permissions/consents/clearance/NOC, Courts have determined, in some matters, compensation by fixing certain percentage of cost of project. In some cases, volume of business transactions, turnover, and magnitude of establishment of proponent have also been considered as guiding factors to determine environmental compensation.

168. Nature is extremely precious. It is difficult to price elements of nature like light, oxygen (air), water in different forms like rain, snow, vapour etc. When nature is exploited beyond its carrying capacity, results are harmful and dangerous. People do not understand the value of what nature has given free. Recently, in COVID-19 wave II, scarcity of oxygen



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proved its worth. In dreadful second phase of the above pandemic, any amount offered, in some cases, could not save life for want of oxygen. Further, damage to environment, sometimes do not reflect in individuals immediately and may take time but injury is there. In such cases, process of determination of compensation may be different.

169. In an article, 'The cost of pollution-Environmental Economics' by Linas Cekanavicius, 2011, it has been suggested, where commercial activities have been carried out without consent etc., and pollution standards have been violated, Total Pollution Cost (hereinafter referred to as 'TPC') can be applied. It combines the cost of abatement of environment pollution and cost of pollution induced environmental damage. The formula comes to $TPC(z)=AC(z)+ED(z)$, where z denotes the pollution level. Further, clean-up cost/remediation cost of pollution estimated to be incurred by authorities can also be used to determine environmental compensation.

170. When there is collective violation, sometimes the issue arose about apportionment of cost. Where more than one violator is indulged, apportionment may not be equal since user's respective capacity to produce waste, contribution of different categories to overall costs etc. would be relevant. The element of economic benefit to company resulting from violation is also an important aspect to be considered, otherwise observations of Supreme Court that the amount of environmental compensation must be deterrent, will become obliterated. Article 14 of the Constitution says that unequal cannot be treated equally, and it has also to be taken care. Determination/assessment/computation of environmental compensation cannot be arbitrary. It must be founded on some objective and intelligible considerations and criteria. Simultaneously, Supreme Court also said that its calculations must be



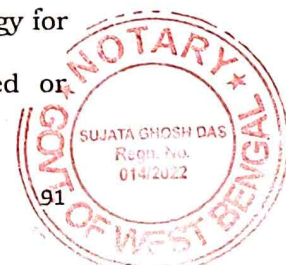
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based on a principle which is simple and can be applied easily. In other words, it can be said that wherever Court finds it appropriate, expert's assessment can be sought but sometimes, experts also go by their own convictions and belief and fail to take into account judicial precedents which have advanced cause of environment by applying the Principles of 'Sustainable Development', 'Precautionary Approach' and 'Polluter Pays', etc.

171. Clean-up cost or TPC, may be a relevant factor to evaluate damage, but in the diverse conditions as available in this country, no single factor or formula may serve the purpose. Determination should be a quantitative estimation; the amount must be deterrent to polluter/violator and though there is some element of subjectivity but broadly assessment/computation must be founded on objective considerations. Appropriate compensation must be determined to cover not only the aspect of violation of law on the part of polluter/violator but also damage to the environment, its remediation/restoration, loss to the community at large and other relevant factors like deterrence, element of penalty etc.

172. Committee in its reports has made certain recommendations determining environmental compensation under certain heads. The computation by Committee is based on certain formulas it has suggested. Applying principle of absolute liability, 'Polluter Pays' alongwith 'Precautionary Principle' and 'Sustainable Development', it has to be seen whether proponents/violators are liable to pay environmental compensation as suggested by Committee and also to undergo other statutory sanctions provided in the Statutes including criminal prosecution, or computation of compensation requires some other method.

173. **CPCB Guidelines:** CPCB has suggested in a report methodology for assessment of environmental compensation which may be levied or



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imposed upon industrial establishments who are guilty of violation of environmental laws and have caused damage/degradation/loss to environment. It does not encompass individuals, statutory institutions and Government etc. Report is titled as "Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund" which was finalized in the meeting held on 27.03.2019. It shortlisted the incidents requiring an occasion for determining environmental compensation. Six such incidents, shortlisted, are:

"Cases considered for levying Environmental Compensation (EC):

- a) Discharges in violation of consent conditions, mainly prescribed standards/consent limits.
- b) Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.
- c) Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.
- d) Accidental discharges lasting for short durations resulting into damage to the environment.
- e) Intentional discharges to the environment – land, water and air resulting into acute injury or damage to the environment.
- f) Injection of treated/partially treated/ untreated effluents to ground water."

174. For the instances at items (a), (b) and (c), report says that 'Pollution Index' (hereinafter referred to as '**PI**') would be used as a basis to levy environmental compensation. CPCB had already published Guidelines categorizing industries into Red, Orange, Green and White, based on the concept of **PI**. The **PI** is arrived after considering quantity and quality of emissions/effluents generated, types of hazardous waste generated and consumption of resources. **PI** of an industrial sector is a numerical number in the range of 0 to 100 and is represented as follows:

PI=f (Water Pollution Score, Air Pollution Score and HW Generation Score).

175. Since range of PI is 0 to 100, increase in value of PI denotes



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increasing degree of pollution hazard from industrial sector. Accordingly, report says, for determining environmental compensation in respect of cases covered by item (a), (b) and (c), it will apply following formula:

$$EC = PI \times N \times R \times S \times LF$$

Where,

EC is Environmental Compensation in Rs.

PI = **Pollution Index of industrial sector**

N = Number of days of violation took place

R = A factor in Rupees (₹) for EC

S = Factor for scale of operation

LF = Location factor"

176. The formula incorporates anticipated severity of environmental pollution in terms of PI, duration of violation in terms of number of days, scale of operation in terms of micro and small/medium/large industry and location in terms of proximity to the large habitations. A note is also given under the aforesaid formula and it reads as under:

"Note:

- The **industrial sectors** have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental Compensation for Red, Orange and Green categories of industries, respectively.
- N, number of days for which violation took place is the period between the day of violation observed/due date of direction's compliance and the day of compliance verified by CPCB/SPCB/PCC.
- R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider R as 250, as the Environmental Compensation in cases of violation.
- S could be based on small/medium/large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units.
- LF, could be based on population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or up to 10 km distance from the municipal boundary of the city/town, following factors (LF) may be used:

Table No. 1.1: Location Factor Values

S. No	Population* (million)	Location Factor# (LF)
1	1 to <5	1.25
2	5 to <10	1.5
3	10 and above	2.0

*Population of the city/town as per the latest Census of India



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#LF will be 1.0 in case unit is located >10km from municipal boundary
LF is presumed as 1 for city/town having population less than one million.

For notified Ecologically Sensitive areas, for beginning, LF may be assumed as 2.0. **However, for critically Polluted Areas, LF may be explored in future.**

- f. In any case, minimum Environmental Compensation shall be ₹ 5000/day.
- g. In order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2 times on 1st repetition, 4 times on 2nd repetition and 8 times on further repetitions.
- h. If the operations of the industry are inevitable and violator continues its operations beyond 3 months then for deterrent compensation, EC may be increased by 2, 4 and 8 times for 2nd, 3rd and 4th quarter, respectively. Even if the operations are inevitable beyond 12 months, violator will not be allowed to operate.
- i. Besides EC, industry may be prosecuted or closure directions may be issued, whenever required.

A sample calculation for Environmental Compensation (without deterrent factor) is given at Table No. 1.2. It can be noticed that for all instances, EC for Red, Orange, and Green category of industries varies from 3,750 to 60,000 ₹/day.

Table No. 1.2: A sample calculation for Environmental Compensation

Industrial Category	Red	Orange	Green
Pollution Index (PI)	60-100	41-59	21-40
Average PI	80	50	30
R-Factor	250		
S-Factor	0.5-1.5		
L-Factor	1.00-2.00		
Environmental Compensation (₹/day)	10,000-60,000	6,250-37,500	5,000-22,500

177. We find that **R** which is a factor in Rupees (₹) is taken to be 100 minimum and 500 maximum. It has suggested that R value be taken as average i.e., Rs. 250/-. On what basis, this minimum and maximum has been determined and why average is suggested, beyond any comprehension. We do not find any material in the above report which may throw light for taking value of R as above. Similarly, for determining value of S i.e., Factor for Scale of Operation from 0.5 to 1.5, we find no Guidelines as to on what basis, it has been determined and only on the size of the industry, divided in small, medium and large, the said factor has been prescribed. The note further says that minimum environmental



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compensation would be Rs. 5000/- per day. From table 1.2, we find that in the highest case i.e., large industry, depending on the level of PI, maximum environmental compensation would be Rs. 60,000/- per day and minimum Rs. 10,000/- per day. The above determination excludes the actual loss to the environment and cost of remediation including damage to *flora-fauna* and human beings. Moreover, classification of industries for industrial policy, or for some licensing purpose, banking purpose etc. would be wholly irrelevant for environment. A small industry may be capable of causing much more pollution than medium or even large industry. For example, pollution caused by a brick kiln using coal as fuel may be much more than many medium category industries.

178. In respect of items (d), (e) and (f), report says that for determining environmental compensation, one has to consider the matters in two parts, one for providing immediate relief and another long term relief, such as remediation. In such cases, detailed investigations are required from Expert Institutions or Organizations, based on which environmental compensation will be decided. Second part of report is with regard to utilization of environmental compensation fund. For this purpose, report says that CPCB will finalize a scheme for utilization of fund for protection of environment. Certain schemes identified by CPCB for utilization of the said fund are mentioned in para 1.4.1, as under:

- a. Industrial Inspections for compliance verification.*
- b. Installation of Continuous water quality monitoring stations/Continuous ambient air quality monitoring stations for strengthening of existing monitoring network.*
- c. Preparation of Comprehensive Industry Documents on Industrial Sectors/clean technology.*
- d. Investigations of environmental damages, preparation of DPRs.*
- e. Remediation of contaminated sites.*
- f. Infrastructure augmentation of Urban Local Bodies (ULBs)/capacity building of SPCBs/PCCs."*

179. All the above, except item (e), relate to establishment/infrastructure



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for monitoring/prevention of pollution which in fact is the statutory duty and function of officials of State PCB and CPCB. It appears that CPCB has attempted to utilize environment fund to meet expenses which is the responsibility of Government.

180. Chapter II of report deals with determination of environmental compensation for violations of **Graded Response Action Plan (GRAP)** in NCR. Here, a fixed amount of environmental compensation has been recommended in table 2.1, as under:

“Table No. 2.1: Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in Delhi-NCR.

Activity	State Of Air Quality	Environmental Compensation
Industrial Emissions	<i>Severe +/Emergency</i>	<i>Rs 1.0 Crore</i>
	<i>Severe</i>	<i>Rs 50 Lakh</i>
	<i>Very Poor</i>	<i>Rs 25 Lakh</i>
	<i>Moderate to Poor</i>	<i>Rs 10 Lakh</i>
Vapour Recovery System (VRS) at Outlets of Oil Companies		
i. Not installed	<i>Target Date</i>	<i>Rs 1.0 Crore</i>
ii. Non-functional	<i>Very poor to Severe +</i>	<i>Rs 50.0 Lakh</i>
	<i>Moderate to Poor</i>	<i>Rs 25.0 Lakh</i>
Construction sites (Offending plot more than 20,000 Sq.m.)	<i>Severe +/Emergency</i>	<i>Rs 1.0 Crore</i>
	<i>Severe</i>	<i>Rs 50 Lakh</i>
	<i>Very Poor</i>	<i>Rs 25 Lakh</i>
	<i>Moderate to Poor</i>	<i>Rs 10 Lakh</i>
Solid waste/garbage dumping in Industrial Estates	<i>Very poor to Severe +</i>	<i>Rs 25.0 Lakh</i>
	<i>Moderate to Poo</i>	<i>Rs 10.0 Lakh</i>
Failure to water sprinkling on unpaved roads		
a) Hot-spots	<i>Very poor to Severe +</i>	<i>Rs 25.0 Lakh</i>
b) Other than Hot-spots	<i>Very poor to Severe +</i>	<i>Rs 10.0 Lakh</i>

181. Chapter III considers determination of environmental compensation where a proponent has discharged pollutants in water bodies or failed to prevent discharge of pollutants in water bodies and also failed to implement Waste Management Rules. Laying down Guidelines for determination of environmental compensation in this category, report has referred to Tribunal's order dated 06.12.2018 in **OA No. 125/2017 and**



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MA No. 1337/2018, Court on its own motion vs. State of Karnataka,

stating as under:

“Since failure of preventing the pollutants being discharged in water bodies (including lakes) and failure to implement solid and other waste management rules are too frequent and widespread, the CPCB must lay down specific guidelines to deal with the same, throughout India, including the scale of compensation to be recovered from different individuals/authorities, in addition to or as alternative to prosecution. The scale may have slabs, depending on extent of pollution caused, economic viability, etc. Deterrent effect for repeated wrongs may also be provided.”

182. It is suggested that determination of environmental compensation in this category would have two components, (i) Cost saved/benefits achieved by the concerned individual/authority by not having proper waste/sewage managing system; and (ii) Cost to the environment (environmental externality) due to untreated/partially treated waste/sewage because insufficient capacity of waste/sewage management facility. It further says that Cost saved/benefits achieved would also include interest on capital cost of waste/sewage management facility, daily operation and maintenance (O & M) cost associated with the facility. The determination of environmental compensation, therefore, is suggested, applying following formula:

“Therefore, generalized formula for Environmental Compensation may be described as:

EC= Capital Cost Factor × Marginal Average Capital Cost for Establishment of Waste or Sewage Management or Treatment Facility × (Waste or Sewage Management or Treatment Capacity Gap) + O&M Cost Factor × Marginal Average O&M Cost × (Waste or Sewage Management or Treatment Capacity Gap) × No. of Days for which facility was not available + Environmental Externality”

183. Environmental externality has been placed in two categories (i) untreated/partially treated sewage discharge and (ii) improper municipal solid waste management and detailed in table 3.1 and 3.2, as under:



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Table No. 3.1: Environmental externality for untreated/partially treated sewage discharge

Sewage Treatment Capacity Gap (MLD)	Marginal Cost of Environmental Externality (Rs. per MLD/day)	Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)
Up to 200	75	Min. 0.05, Max. 0.10
201-500	85	Min. 0.25, Max. 0.35
501 and above	90	Min. 0.60, Max. 0.80

Table No. 3.2: Environmental externality for improper municipal solid waste management

Municipal Solid Waste Management Capacity Gap (TPD)	Marginal Cost of Environmental Externality (Rs. per ton per day)	Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)
Up to 200	15	Min. 0.01, Max. 0.05
201-500	30	Min. 0.10, Max. 0.15
501-1000	35	Min. 0.25, Max. 0.3
1001-2000	40	Min. 0.50, Max. 0.60
Above 2000		Max. 0.80

184. CPCB has further recommended a fixed cap for minimum and maximum cost for capital and O & M component for environmental compensation in table 3.3 and 3.4, as under:

Table No. 3.3: Minimum and Maximum EC to be levied for untreated/partially treated sewage discharge

Class of the City/Town	Mega-City	Million-plus City	Class-I City/Town and others
Minimum and Maximum values of EC (Total Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 2000 Max. 20000	Min. 1000 Max. 10000	Min. 100 Max. 1000
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	Min. 2 Max. 20	Min. 1 Max. 10	Min. 0.5 Max. 5



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Table No. 3.4: Minimum and Maximum EC to be levied for improper municipal solid waste management

Class of the City/Town	Mega-City	Million-plus City	Class-I City/Town and others
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 1000 Max. 10000	Min. 500 Max. 5000	Min. 100 Max. 1000
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	Min. 1.0 Max. 10.0	Min. 0.5 Max. 5.0	Min. 0.1 Max. 1.0

185. Para 3.3 deals with the method of determining environmental compensation for damage/untreated/partially treated sewage by concerned individual/authority. Under this head, CPCB has considered that for population above 1 Lakh, requirement of water supply, would be minimum 150 to 200 lpcd and 85% whereof would result in sewage generation. It takes capital cost for 1 MLD STP ranges from 0.63 Crores to 3 Crores and O & M cost around Rs. 30,000 per month. Consequently, it suggested to assume capital cost for STPs as Rs. 1.75 Crores/MLD (marginal average cost). Expected cost for conveyance system is assumed as Rs. 5.55 Crore/MLD and annual O& M as 10% of combined capital cost. Based on the above assumptions, Committee has recommended/suggested environmental compensation, to be levied on urban local bodies, by applying formula and here CPCB has suggested two formulas and any of them may be adopted:

“EC= Capital Cost Factor × [Marginal Average Capital Cost for Treatment Facility × (Total Generation-Installed Capacity) + Marginal Average Capital Cost for Conveyance Facility × (Total Generation -Operational Capacity)] + O&M Cost Factor × Marginal Average O&M Cost × (Total Generation- Operational Capacity) × No. of Days for which facility was not available + Environmental Externality × No. of Days for which facility was not available

Alternatively;



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$EC \text{ (Lacs Rs.)} = [17.5(\text{Total Sewage Generation} - \text{Installed Treatment Capacity}) + 55.5(\text{Total Sewage Generation} - \text{Operational Capacity})] + 0.2(\text{Sewage Generation} - \text{Operational Capacity}) \times N + \text{Marginal Cost of Environmental Externality} \times (\text{Total Sewage Generation} - \text{Operational Capacity}) \times N$

Where; N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority

Quantity of Sewage is in MLD"

186. Para 3.4 deals with the method of environmental compensation to be levied on concerned individual/authority for improper solid waste management, chargeable from urban local body based on the following formula:

$EC = \text{Capital Cost Factor} \times \text{Marginal Average Cost for Waste Management} \times (\text{Per day waste generation} - \text{Per day waste disposed as per the Rules}) + \text{O\&M Cost Factor} \times \text{Marginal Average O\&M Cost} \times (\text{Per day waste generation} - \text{Per day waste disposed as per the Rules}) \times \text{Number of days violation took place} + \text{Environmental Externality} \times N$

Where;

Waste Quantity in tons per day (TPD)

N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority

Simplifying;

$EC \text{ (Lacs Rs.)} = 2.4(\text{Waste Generation} - \text{Waste Disposed as per the Rules}) + 0.02 (\text{Waste Generation} - \text{Waste Disposed as per the Rules}) \times N + \text{Marginal Cost of Environmental Externality} \times (\text{Waste Generation} - \text{Waste Disposed as per the Rules}) \times N$

187. Here also certain assumed figures have been taken by CPCB. Report says that municipal solid waste generation is approximately 1.5 lakh MT/day in India as per MoHUA Report-2016. As per principles of Solid Waste Management Rules, 2016 and Plastic Waste Management Rules, 2016, total cost of municipal solid waste management in city/town includes cost for door to door collection, cost of segregation at source, cost for transportation in segregated manner, cost for processing of municipal



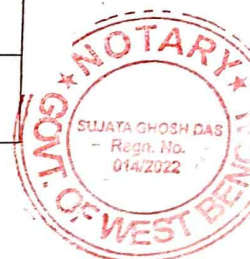
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solid waste and disposal through facility like composting bio-methanation, recycling, co-processing in cement kilns etc. It is estimated that total cost of processing and treatment of municipal solid waste for a city of population of 1 lakh and generating approximately 50 tons/day of municipal solid waste is Rs. 15.5 Crores which includes capital cost (one time) and Operational and Management cost for one year. Expenditure for subsequent years would be only 3.5 Crores/annum. For arriving per day waste generation, CPCB has referred to a survey conducted by Environment Protection Training Research Institute (EPTRI) which estimated that solid waste generated in small, medium and large cities and towns is about 0.1 kg (Class-III), 0.3-0.4 kg (Class-II) and 0.5 kg (Class-I) per capita per day respectively. The Committee opined that 0.6 kg/day, 0.5 kg/day and 0.4 kg/day per capita waste generation may be assumed for mega-cities, million-plus UAs/towns and Class-I UA/Towns respectively for calculation of environmental compensation purposes.

188. Sample calculation of environmental compensation to be levied for improper management of municipal solid waste has been provided in table 3.6 which read as under:

“Table No. 3.6: Sample calculation for EC to be levied for improper management of Municipal Solid Waste

City	Delhi	Agra	Gurugram	Ambala
Population (2011)	1,63,49,831	17,60,285	8,76,969	5,00,774
Class	Mega-City	Million-plus City	Class-I Town	Class-I Town
Waste Generation (kg. per person per day)	0.6	0.5	0.4	0.4
Waste Generation (TPD)	9809.90	880.14	350.79	200.31
Waste Disposal as per Rules (TPD) (assumed as 25% of waste generation for sample calculation)	2452.47	220.04	87.70	50.08
Waste Management Capacity Gap (TPD)	7357.42	660.11	263.09	150.23
Calculated EC (capital cost component) in Lacs. Rs.	17657.82	1584.26	631.42	360.56



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<i>Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)</i>	<i>Min. 1000 Max. 10000</i>	<i>Min. 500 Max. 5000</i>	<i>Min. 100 Max. 1000</i>	<i>Min. 100 Max. 1000</i>
<i>Final EC (capital cost component) in Lacs. Rs.</i>	10000.00	1584.26	631.42	360.56
<i>Calculated EC (O&M Component) in Lacs. Rs./Day</i>	147.15	13.20	5.26	3.00
<i>Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./Day)</i>	<i>Min. 1.0 Max. 10.0</i>	<i>Min. 0.5 Max. 5.0</i>	<i>Min. 0.1 Max. 1.0</i>	<i>Min. 0.1 Max. 1.0</i>
<i>Final EC (O&M Component) in Lacs. Rs./Day</i>	10.00	5.00	1.00	1.00
<i>Calculated Environmental Externality (Lacs Rs. Per Day)</i>	2.58	0.18	0.03	0.02
<i>Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. per day)</i>	<i>Max. 0.80</i>	<i>Min. 0.25 Max. 0.35</i>	<i>Min. 0.01 Max. 0.05</i>	<i>Min. 0.01 Max. 0.05</i>
<i>Final Environmental Externality (Lacs Rs. per day)</i>	0.80	0.25	0.03	0.02

189. Chapter IV deals with determination/computation of environmental compensation in case of “illegal extraction of ground water” and for this purpose report has referred to Tribunal’s order dated 03.01.2019 passed in **OA No. 327/2018, Shailesh Singh vs. Central Ground Water Board & Ors.** The relevant extract of the order quoted in para 4.1 of the report is as under:

“CPCB may constitute a mechanism to deal with individual cases of violation of norms, as existed prior to Notification of 12/12/2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law.”

190. Here, broadly, determination of environmental compensation refers to two major aspects i.e., illegal extraction of water as one aspect and illegal use of ground water as second aspect. For determination of



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environmental compensation for illegal extraction of ground water, formula suggested by Committee is:

$$EC_{GW} = \text{Water Consumption per Day} \times \text{No. of Days} \times \text{Environmental Compensation Rate for illegal extraction of ground water (ECR}_{GW})$$

Where water Consumption is in m^3/day and ECR_{GW} in $Rs./m^3$

Yield of the pump varies based on the capacity/power of pump, water head etc. For reference purpose, yield of the pump may be assumed as given in **Annexure-VI**.

Time duration will be the period from which pump is operated illegally.

In case of illegal extraction of ground water, quantity of discharge as per the meter reading or as calculated with assumptions of yield and time may be used for calculation of EC_{GW} ."

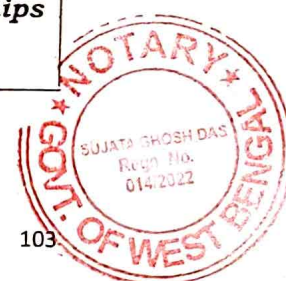
191. Depending on the category of the area for the purpose of ground water i.e., safe, semi-critical, critical and over-exploited and also the purpose for which ground water is used, determination of environmental compensation for illegal use of ground water, has been suggested differently for different purpose/use i.e., for drinking and domestic use; for packaged drinking water units/for mining infrastructure and dewatering projects and for industrial units. Hence, all these aspects are separately given in paragraph 4.6.1, 4.6.2, 4.6.3 and 4.6.4 as under:

“4.6.1 ECR_{GW} for Drinking and Domestic use:

Drinking and Domestic use means uses of ground water in households, institutional activity, hospitals, commercial complexes, townships etc.

Sl. No	Area Category	Water Consumption (m^3/day)			
		<2	2 to <5	5 to <25	25 & above
Environmental Compensation Rate (ECR_{GW}) in $Rs./m^3$					
1	Safe	4	6	8	10
2	Semi Critical	12	14	16	20
3.	Critical	22	24	26	30
4	Over-Exploited	32	34	36	40

Minimum EC_{GW} =Rs 10,000/- (for households) and Rs. 50,000 (for institutional activity, commercial complexes, townships etc.)



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4.6.2 ECR_{GW} for Packaged drinking water units:

Sl. No	Area Category	Water Consumption (m ³ /day)			
		<200	200 to <1000	1000 to <5000	5000 & above
Environmental Compensation Rate (ECR _{GW}) in Rs./m ³					
1	Safe	12	18	24	30
2	Semi Critical	24	36	48	60
3.	Critical	36	48	66	90
4	Over-Exploited	48	72	96	120
Minimum ECR_{GW}=Rs 1,00,000/-					

4.6.3 ECR_{GW} for Mining, Infrastructure and Dewatering Projects:

Sl. No	Area Category	Water Consumption (m ³ /day)			
		<200	200 to <1000	1000 to <5000	5000 & above
Environmental Compensation Rate (ECR _{GW}) in Rs./m ³					
1	Safe	15	21	30	40
2	Semi Critical	30	45	60	75
3.	Critical	45	60	85	115
4	Over-Exploited	60	90	120	150
Minimum ECR_{GW}=Rs 1,00,000/-					

4.6.4 ECR_{GW} for Industrial Units:

Sl. No	Area Category	Water Consumption (m ³ /day)			
		<200	200 to <1000	1000 to <5000	5000 & above
Environmental Compensation Rate (ECR _{GW}) in Rs./m ³					
1	Safe	20	30	40	50
2	Semi Critical	40	60	80	100
3.	Critical	60	80	110	150
4	Over-Exploited	80	120	160	200
Minimum ECR_{GW}=Rs 1,00,000/-					

192. It is also recommended that minimum environmental compensation for illegal extraction of ground water would be Rs. 10,000/- if it is for domestic purposes, but in other matters, it would be Rs. 50,000/-.

193. These recommendations by CPCB have not been given in the form of a binding statutory provision. Even otherwise, we find that these are only broad suggestions, ignore several relevant aspects which have to be considered while determining environmental compensation in a given

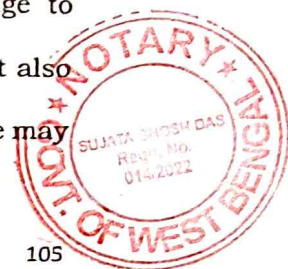


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case, therefore, cannot be taken as readymade application to all situations for determining of environmental compensation. Moreover, on some aspects, there is no suggestion, but it is deferred.

194. We also find that some crucial relevant aspects, requiring application of principle of 'Polluter Pays', have not been considered in the above suggestions. CPCB has failed to consider that the purpose of determination/computation/assessment of environmental compensation and levy thereof, involve various factors like (i) cost of damage to environment, (ii) cost needed for restoration/remediation of damage caused to environment, (iii) element of deterrent/provincial, (iv) liability arising for violation of statutory mandatory law relating to environment namely requirement of consent, EC and NOC etc. It is not mere cost of item or subject but computation of something which situation has arisen by an act of proponents/violators due to violation of environmental law causing damage to environment. The loss and its remedy involve complex of components.

195. Nature is precious. The elements of nature like air, water, light and soil in materialistic manner may not be priced appropriately and adequately. Most of the time, whenever price is determined, it may be extremely low or highly exorbitant meaning thereby disproportionate. Still, since some of the assets of nature are marketable, on that basis price may be determined but when such elements are damaged or degraded, restoration thereof, in effect is priceless. Many a times, it may be almost impracticable and improbable to recover and remediate damaged environment to its position as it was. Moreover, its cost might be very high. It also cannot be doubted that once there is pollution or damage to environment, it would affect adversely not only the environment but also inhabitants and all biological organisms. Damage is there, only degree may

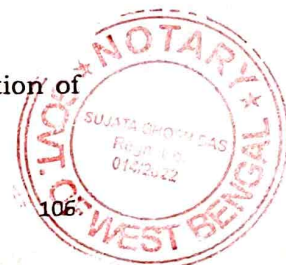


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differ whether to the environment or to the inhabitants and other organisms. To find out simultaneously degree of damage and to ascertain the same in many cases may not be possible or practicable. For example, polluted air causes respiratory diseases but people do not get infected and starts reflection of the disease immediately but it takes some time. The time taken in reflection of injury on the person or body also differs from person to person depending upon his immunity and other health conditions. In some cases, damage to environment i.e., air pollution may be fatal to a person who already has respiratory problem. For some a minor inconvenience, minor injury to others, and some may not suffer to the extent of showing symptoms of any diseases at all. When we talk of environmental compensation for causing degradation to environment and for its restoration or remediation, it is not a formal or casual or symbolic amount which is required to be levied upon the violator. It is substantive and adequate amount which must be levied for restoration of environment. CPCB, in determining values of fixed quotients and Rupees etc., has been very lenient as if only symbolically violator is to be held liable and it must pay a petty amount.

196. Statutory Regulators must realize that the amount is needed for remediation and restoration of damaged environment; enough to be deterrent, to provide adequate compensation where inhabitants are affected adversely and where violator has proceeded in violation of Environmental Laws relating to consents, clearances, permissions etc., to penalize him for such violation to prove to be a deterrent to him and others. Unfortunately, the above guidelines laid down by CPCB have not considered all these aspects and it appears that the same have been prepared in a very casual and formal manner.

197. In respect of computation of compensation for illegal extraction of



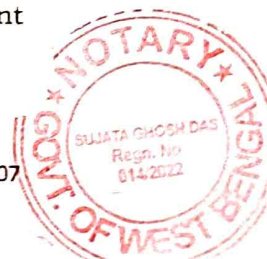
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ground water, CPCB has referred to Tribunal's order in ***Court on its own motion vs. State of Karnataka (supra)***, directing it to lay down guidelines to deal with the scale of compensation but has failed to consider that Tribunal has also observed that its scale may have slabs depending on extent of pollution caused, economic viability etc. and deterrent effect.

198. Statutory Regulators have also failed to consider that environmental compensation is not a kind of fee which may result in profiteering to violators and after adjusting a nominal amount of environmental compensation, a violator may find it profitable to continue with such violations. The objective of environmental compensation is that not only the loss and damage already caused, is made to recover and restore but also in future, the said violator may not repeat the kind of violation already committed and others also have a fear of not doing the same else similar liability may be enforced upon them. Unless amount of compensation is more than maximum permissible profit arising from violation, the purpose of environmental compensation would always stand defeated.

199. Loss caused to surroundings of the environment, may also include *flora-fauna* and human beings. It is in this backdrop that in various matters when the issues were considered by Courts and Tribunal and found necessary to impose environmental compensation upon proponent/violator of environmental laws, they have followed different mechanisms. Sometimes, Committee's reports confirming violations have been referred but for quantum of compensation, directions have been issued in different ways. In some cases, CPCB guidelines have been applied while in many other, project cost has been made basis.

200. CPCB Guidelines have taken care of industries and municipal bodies. Its application in all cases irrespective of other relevant



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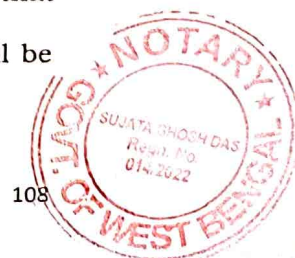
consideration may prove to be disastrous. Individuals, charitable, social or religious bodies, public sector and Government establishments etc., may, in given circumstances, justify a different approach. Further, there may be cases attracting aggravating factors or mitigating factors, for example, in national emergency, some activity got performed violating environmental norms or a proponent is resilient to any advice to adhere law to protect environment and so on. In fact, quantum of environmental compensation should have nexus with State's efforts for protection and preservation of environment and control of pollution. Compensation regime must be a deterrent to violators and incentivize eco-friendly proponents. No one should get profited by violating environmental laws and community should also not suffer for violation of environmental norms by defaulting proponents. There is no reason, if beside the aspects noticed above, the computation process also incorporates the elements of inflation, quality of life, and economic prosperity.

201. In the context of "violation of disposal of Bio-Medical Waste" and "Non-compliance of Bio-Medical Waste Management Rules, 2016" and determination of environmental compensation for such violations, Tribunal in **OA No. 710/2017, Shailesh Singh vs. Sheela Hospital & Trauma Centre, Shahjahanpur & Others** and other connected matters, vide order dated 15.07.2019, accepted report of CPCB, and said:

"10. The compensation regime suggested by the CPCB may be adopted. It will be open to the State PCBs/PCCs to adopt a higher scale of compensation, having regard to the problems faced in such States/UTs.

11. It is made clear that if even after two months the States/UTs are found to be non-compliant, the compensation will be liable to be recovered from the said States/UTs at the rate of Rs. 1 Crore per month till the non-compliance continues."

202. The above recommendations i.e., in para 10, Tribunal said that compensation regime suggested by the CPCB may be adopted. It will be



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open to the State PCBs/PCCs to adopt a higher scale of compensation, having regard to the problems faced in such States/UTs. It further says that if State Governments and UTs still remain non-complying for two months, compensation will be recovered at the rate of Rs. One Crore per month till non-compliance continues.

203. In respect of solid waste, sewage effluent, ground water extraction etc., Tribunal in **OA No. 593/2017, Paryavaran Suraksha Samiti and another vs. Union of India and others**, vide order dated 28.08.2019 has said in para 16, that as regards environmental compensation regime fixed vide CPCB guidelines for industrial units, GRAP, solid waste, sewage and ground water is accepted as an interim measure. Tribunal further observed that recovery of compensation on 'Polluter Pays' principle is a part of enforcement strategy but not a substitute for compliance. It directed all States/UTs to enforce compensation regime latest w.e.f. 01.04.2020 and made it clear that it is not condoning any past violations. Tribunal directed to enforce recovery of compensation from 01.04.2020 from the defaulting local bodies failing which the concerned States/UTs themselves must pay the requisite amount of compensation.

204. In the matter of illegal mining causing damage to environment, methodology for determining environmental compensation was examined in **OA No. 360/2015, National Green Tribunal Bar Association vs. Virender Singh (State of Gujarat)** and other connected matters decided on 26.02.2021. Here a report was submitted by CPCB on 30.01.2020, placing on record recommendations made by Committee comprising:

- i.) Dr Purnamita Dasgupta, Professor, IEG, Delhi,
- ii.) Dr K.S. Kavi Kumar, Professor, MSE, Chennai,
- iii.) Dr. Yogesh Dubey, Associate Professor, IIFM, Bhopal,
- iv.) Shri Sundeep, Director, MoEF&CC, Delhi and



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v.) Shri A. Sudhakar, Additional Director, CPCB, Delhi.

205. Report was considered by Tribunal vide order dated 17.08.2020.

Report said:

- “8. The Committee considered two approaches:
(I) Approach 1: Direct Compensation based on the market value of extraction, adjusted for ecological damages.
(II) Approach 2: Computing a Simplified NPV for ecological damages.

9. In the first approach, the criteria adopted is:

- Exceedance Factor (EF).
- Risk Factor (RF).
- Deterrence Factor (DF).

10. Approach 1 is demonstrated by Table 1 as follows:

Table No. 01: Approach 1				
<i>Permitted Quantity (in MT or m³)</i>	<i>Total Extraction (in MT or m³)</i>	<i>Excess Extraction (in MT or m³)</i>	<i>Exceedance in Extraction:</i>	<i>Compensation Charge (in Rs.)</i>
X	Y	Z=Y-X	Z/X	D* (1+RF+DF) Where D=Z x Market Value of the material per MT-or-m ³
				DF = 0.3 if Z/X = 0.11 to 0.40 DF = 0.6 if Z/X = 0.41 to 0.70 DF = 1 if Z/X >= 0.71
				RF = 0.25, 0.50, 0.75, 1.00 (as per table 2)

11. Approach 2 is demonstrated by following formula:
 “Total Benefits (B)=Market Value of illegal extraction: D(refer Table 1)

Total Ecological Costs (C) = Market Value adjusted for risk factor:
 D * RF (refer Table 1).”

12. Final recommendation is as follows:

“Thus, it is recommended that the annual net present value (NPV) of the amount arrived at after taking the difference between the costs and the benefits through the use of the above approach, maybe calculated for a period of 5 years at a discount rate of 5% for mining



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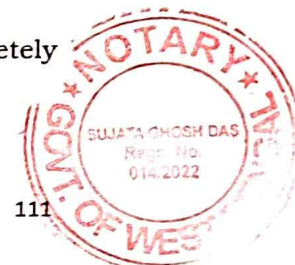
which is in a severe ecological damage risk zone. **The rationale for levying this NPV is based on expert opinion that reversal and/or restoration of the ecological damages is usually not possible within a short period of time and rarely is it feasible to achieve 100% restoration, even if the sand deposition in the river basin is restored through flooding in subsequent years.** The negative externalities of the mining activity are therefore to be accounted for in this manner. Ideally, the worth of all such damages, including costs of those which can be restored should be charged. **However, till data on site-specific assessments becomes available, this approach may be adopted in the interim.** In situations where the risk categorization charged. However, till data on site-specific assessments becomes available, this approach may be adopted in the interim. In situations where the risk categorisation is unavailable or pending calculation, the following Discount Rates may be considered:

Severity	Mild	Moderate	Significant	Severe
Risk Level	1	2	3	4
Risk Factor	0.25	0.50	0.75	1.0
Discount Rate	8%	7%	6%	5%

206. Here, in both the approaches, element of illegality committed by PP in carrying on mining was not considered at all. For example, if EC and/or consent is not obtained. Similarly, cost of remediation/restoration was also not taken into consideration.

207. In some cases, compensation has been awarded by Tribunal on lump sum basis without referring to any methodology. For example: (i) **in Ajay Kumar Negi vs. Union of India, OA No. 183/2013**, Rs. 5 Crores was imposed, (ii) **in Naim Shariff vs. M/s. Das Offshore OA No. 15(THC) of 2016**, Rs. 25 Crores was imposed and (iii) **in Hazira Macchimar Samiti vs. Union of India**, Rs. 25 Crores was imposed.

208. In **Goa Foundation vs. Union of India & Others (2014)6SCC590**, Supreme Court relied on **Samaj Parivartana Samudaya & Others vs. State of Karnataka & Others (2013)8SCC209** and held that **ten per cent of the sale price** of iron ore during e-auction should be taken as compensation. To arrive at the above view, Court observed that this was an appropriate compensation given that mining could not completely



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stopped due to its contribution towards employment and revenue generation for the State. Further, Court directed to create a special purpose vehicle, i.e., "Goan Iron Ore Permanent Fund" for depositing above directed compensation and utilization of above fund for remediation of damage to environment.

209. In **Goel Ganga Developers vs Union of India and Others, (2018)18SCC257**, Tribunal imposed Rs. 195 Crore compensation since project was executed without EC. Supreme Court made it Rs. **100 Crores or 10% of project cost whichever is higher**. Supreme Court also upheld Rs. 5 crores imposed by Tribunal vide order dated 27.09.2016. Thus, total amount exceeded even 10% of project cost.

210. In **Mantri Techzone Private Limited vs. Forward Foundation & Others, (2019)18SCC494**, Supreme Court affirmed imposition of environmental compensation by Tribunal, considering cost of the project, where there was violation regarding EC/consent and proponent proceeded with construction activities, violating provisions relating to EC/Consent. Tribunal determined environmental compensation at 5% and 3% of project cost of two builders. 5% of project cost was imposed where project proponent had raised illegal constructions while 3% was imposed where actual construction activity was not undertaken by project proponent and only preparatory steps were taken including excavation and deposition of huge earth by creating a hillock. Besides, Tribunal also directed for demolition and removal of debris from natural drain at the cost of project proponent.

211. In **Goa Foundation vs. Union of India & Others (supra)**, where illegal extraction of minerals was involved and in **Goel Ganga Developers India vs. Union of India (supra)**, where a construction project was



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carried out without EC in violation of EIA Notification, 2006, Supreme Court permitted computation of environmental compensation at 10% of the project cost. In fact, in **Goel Ganga (supra)** case, exemplary cost of Rs. 100 Crores were imposed, and Court said that developer would pay Rs. 100 Crores or 10% of project cost whichever is higher.

212. On the issue of assessment of compensation for damage to environment in the matter of illegal mining, recently Supreme Court in **Bajri Lease LOI holders Welfare Society vs. State of Rajasthan and others, SLP (Civil) No. 10584 of 2019** (order dated 11.11.2021) has said that compensation/penalty to be paid by those indulging in illegal sand mining, cannot be restricted to be value of illegally mined minerals. The cost of restoration of environment as well as the cost of ecological services should be part of compensation. 'Polluter Pays' principle as interpreted by this Court means that absolute liability for harm to the environment extends not only to compensate victims of pollution but also cost of restoring environmental degradation. Remediation of damaged environment is part of the process of "Sustainable Development" and as such, the polluter is liable to pay the cost the individual sufferers as well as the cost of reversing the damaged ecology.

213. Considering the violations noticed above, Joint Committee recommended environmental compensation of Rs. 8.16 Crores against respondent 14 and Rs. 7.08 Crores against respondent 15. Calculation details/method of computation of environmental compensation has been explained by Learned Counsel for UPPCB as under:

Calculation in respect of respondent 14:

Total Permitted Quantity in Environmental Clearance (X)	= NIL
Total Extraction (Y)	= 81600 m ³ (Area * Depth = 5.44Ha * 1.5 Meter = 5.44 * 10000 * 1.5)
Excess Extraction (Z), (Z=Y-X)	= 81600 m ³



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Market value of illegally mined material (D) (Market value of the material as Rs.400/- per m ³)	$D = Z \times \text{Market Value of the material}$ $= 81600 \times 400$ $= 3,26,40,000.00$ (Taking the average values as per rate of Mining Department)
Risk Factor (RF)	RF = 0.5, As per risk level=2, (Viewing the mining activity/safety of mining)
Deterrence Factor (DF)	DF = 1.00 As Z/X= more than 1
Environmental Compensation/charge (in Rs.)	$= D \times (1+RF+DF)$ $= 3,26,40,000.00 \times (1+0.5+1.0)$ $= 3,26,40,000.00 \times 2.5$ = Rs.8,16,00,000.00 (Rupees Eight Crores Sixteen Lakhs Only)

Calculation in respect of respondent 15:

Total Permitted Quantity in Environmental Clearance (X)	= NIL
Total Extraction (Y)	= 70800 m ³ (Area * Depth = 4.72Ha * 1.5 Meter = 4.72 * 10000 * 1.5)
Excess Extraction (Z), (Z=Y-X)	= 70800 m ³
Market value of illegally mined material (D) (Market value of the material as Rs.400/- per m ³)	$D = Z \times \text{Market Value of the material}$ $= 70800 \times 400$ $= 2,83,20,000.00$ (Taking the average values as per rate of Mining Department)
Risk Factor (RF)	RF = 0.5, As per risk level=2, (Viewing the mining activity/safety of mining)
Deterrence Factor (DF)	DF = 1.00 As Z/X= more than 1
Environmental Compensation/charge (in Rs.)	$= D \times (1+RF+DF)$ $= 2,83,20,000 \times (1.0+0.5+1.0)$ $= 2,83,20,000.00 \times 2.5$ = Rs.7,08,00,000.00 (Rupees Seven Crores Eight Lakhs Only)

214. Joint Committee has followed the formula as under:

Environmental Compensation = Total quantity of illegally mined minerals \times market value of the material \times (1+RF+DF)

Here **RF** is Risk Factor and **DF** is Deterrent Factor, value whereof has been given in the above chart.

215. Learned Counsel appearing for respondents 14 and 15 had not addressed this Tribunal on the above computation of environmental compensation. In fact, during the course of arguments, Learned Counsel appearing for respondents 14 and 15 agreed that if so directed, they would pay the said amount but some time may be allowed for such payment.



Respondent 14 has also filed an affidavit giving this statement but requested that it may be permitted to pay the said amount in installment in six months.

216. In absence of anything else, we find no reason but to accept the above quantum of compensation computed and recommended by Joint Committee and accept Joint Committee Report to this extent and **answer issue III accordingly.**

ISSUE IV:

217. This case is an illustration to show how heavy mining activities in the river bed and that too, in the main stream of River Son has been allowed by the mining authorities in District Sonbhadra. The area is surrounded by Reserved Forest, Sanctuaries and even part of River Son in State of MP (touching border of State of UP) wherefrom it originates, has been declared as 'Son Ghadiyal Wild Life Sanctuary' and certain area has been further declared as 'ESZ'. The material has been placed on record along with IA 67/2023, reporting that due to illegal mining in State of UP in River Son, population of ghadiyal and tortoise have considerably reduced. Ghadiyal have also been found occasionally in District Sonbhadra which has been recused by Forest Department from time to time. The substantial run off of River Son is broadly in State of MP. A small part, around 85 km is in State of UP and, thereafter, it travels in State of Bihar.

218. The aquatic animals do not understand political boundaries and when the river course is common, the aquatic animals may travel to an area which may fall in one or the other State or District. The river course of Son is common from State of MP to State of Bihar. The aquatic animals like alligators, ghadiyal, tortoise etc. can travel to a very long distance and,



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therefore, traveling of these aquatic animals in River Son from State of MP to States of UP and Bihar cannot be ruled out. If indiscrete, uncontrolled and unmonitored mining in the river stream is allowed in States of UP and Bihar, it is bound to damage these aquatic animals. When substantial part of River Son in State of MP has been declared as "Son Ghadiyal Wild Life Sanctuary" and 'ESZ', we do not find as to why the entire course of River Son to the extent these ghadiyals etc. can travel the run off of River Son, should not be declared as a Protected Area/ESZ under the provisions of WLP Act, 1972 and EP Act, 1986.

219. Inaction on the part of the authorities in not taking appropriate action for protection of aquatic animals like alligators, ghadiyals etc. amounts to failure in discharge of statutory functions and is seriously condemnable. However, this Tribunal, when adjudicate or consider a matter under Sections 14 and 15 of NGT Act, 2010, is under an obligation to proceed by applying principles of 'Sustainable Development', 'Intergenerational Relationship', 'Precautionary Principle' and 'Polluter Pays Principle'.

220. The issue of prescription and determination of Eco-Sensitive Zones or extended Buffer Zones, surrounding Wild Life Sanctuaries and National Parks, and activities prohibited and permitted in such ESZ/Buffer Zone etc. was considered by Supreme Court in **T.N. Godavarman Thirumulpad, In Re vs. Union of India & Ors.**, W.P.(C) No. 202/1995. Several orders were passed in the above matter from time to time and we are referring here the order dated 03.06.2022 passed in **T.N. Godavarman (supra)** reported in **(2022)10SCC544**. Supreme Court considered recommendations of Central Empowered Committee (hereinafter referred to as 'CEC'). CEC was constituted pursuant to Supreme Court's order dated 09.05.2002 vide MoEF Notification dated 17.09.2002 issued in



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exercise of power under Section 3(3) of EP Act, 1986. By this notification, Committee was given a statutory status. CEC submitted report on 20.09.2012, dealing with creation identification and declaration of safety zones around Protected Forests all across the country. MoEF&CC also issued a set of guidelines for declaration of ESZs around National Parks and Wild Life Sanctuaries vide Government of India's Office Memorandum dated 09.02.2011. Clauses 3 and 4 of the guidelines stipulated as under:

“3. Purpose for declaring eco-sensitive zones.-

The purpose of declaring eco-sensitive zones around national parks and sanctuaries is to create some kind of “Shock Absorber” for the protected areas. They would also act as a transition zone from areas of high protection to areas involving lesser protection. As has been decided by the National Board for Wildlife, the activities in the eco-sensitive zones would be of a regulatory nature rather than prohibitive nature, unless and otherwise so required.

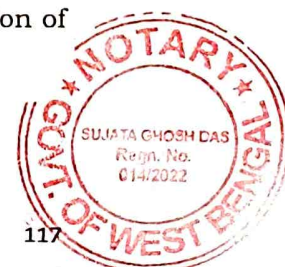
4. Extent of eco-sensitive zones.-

4.1. *Many of the existing protected areas have already undergone tremendous development in close vicinity to their boundaries. Some of the protected areas actually lying in the urban setup (e.g. Guindy National Park, Tamil Nadu; Sanjay Gandhi National Park, Maharashtra, etc). Therefore, defining the extent of eco-sensitive zones around protected areas will have to be kept flexible and protected area specific. The width of the eco-sensitive zone and type of regulations will differ from protected area to protected area. However, as a general principle the width of the eco-sensitive zone could go up to 10 km around a protected area as provided in the Wildlife Conservation Strategy-2002.*

4.2. *In case where sensitive corridors, connectivity and ecologically important patches, crucial for landscape linkage, are even beyond 10 km width, these should be included in the eco-sensitive zone.*

4.3. *Further, even in context of a particular protected area, the distribution of an area of eco-sensitive zone and the extent of regulation may not be uniform all around and it could be of variable width and extent.”*

221. CEC in the report dated 20.09.2012 titled as “Note regarding Safety Zones (Eco-Sensitive Zones) Around National Parks and Wildlife Sanctuaries” made recommendations for identification and declaration of safety zones, classifying into four categories, as under:



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"11. For the purpose of identification and declaration of the safety zones around National Parks/Wildlife Sanctuaries (hereinafter referred to as protected areas), the protected areas based on their areas, are classified into four categories:

(i) **CATEGORY A** - The protected areas having an area of 500 sq km or more. The total number of such protected areas is 73 and their total area is about 1,01,389 sq km (63.44 % of total area of protected areas);

(ii) **CATEGORY B** - The protected areas having an area between 200 sq km to 500 sq km. The total number of such protected areas is 115 and their total area is about 38,942 sq km (24.37 % of total area of protected areas);

(iii) **CATEGORY C** - The protected areas having an area between 100 sq km to 200 sq km. The total number of such protected areas is 85 and their total area is about 12,066 sq km (about 7.55 % of total area of protected areas); and

(iv) **CATEGORY D** - The protected areas having an area up to 100 sq km. The total number of such protected areas is 344 and their total area is about 7422 sq km (about 4.65 % of total area of all protected areas)."

222. Supreme Court considered all the above aspects and also the provisions of WLP Act, 1972, and in para 54 to 56 of its judgment, observed as under:

"54. In our opinion, the Guidelines framed on 9-2-2011 appear to be reasonable and we accept the view of the Standing Committee that uniform guidelines may not be possible in respect of each sanctuary or national park for maintaining ESZ. We are of the opinion, however, that a minimum width of 1 km ESZ ought to be maintained in respect of the protected forests, which forms part of the recommendations of CEC in relation to Category B protected forests. This would be the standard formula, subject to changes in special circumstances. We have considered CEC's recommendation that the ESZ should be relatable to the area covered by a protected forest but the Standing Committee's view that the area of a protected forest may not always be a reasonable criteria also merits consideration. It was argued before us that the 1 km wide "no-development-zone" may not be feasible in all cases and specific instances were given for Sanjay Gandhi National Park and Guindy National Park in Mumbai and Chennai metropolis respectively which have urban activities in very close proximity. These sanctuaries shall form special cases.

55. Turning specifically to Jamua Ramgarh Sanctuary, the first report of the CEC proposed 100 m as ESZ. In the second report, however, one kilometre width has been recommended for all protected forests falling under Category 'B'. Having regard to its area, the said sanctuary comes in that category. In the order of this Court passed on 4-8-2006 (T.N. Godavarma Thirumulpad vs. Union of India, (2010)13SCC740, the same margin i.e. one kilometre buffer zone has



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been prescribed. In the given facts concerning the Jamua Ramgarh Sanctuary, in our opinion the margin of 25 m as contemplated in as the 1994 Mineral Policy of the State of Rajasthan is grossly inadequate. We, however, treat Jamua Ramgarh Sanctuary as a special case for fixing the ESZ as in the past, the buffer zone varied from 25 m to 100 m. In our opinion, ESZ of 500 m would be a reasonable buffer zone, within which subsisting activities which do not come within the prohibited list as per the Guidelines of 9-2-2011 could be carried on. But for commencing of any new activity which would be otherwise permissible, the ESZ norm of one kilometre shall be maintained for Jamua Ramgarh Sanctuary.

56. We accordingly direct:

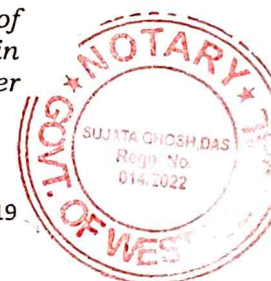
56.1. Each protected forest, that is, national park or wildlife sanctuary must have an ESZ of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 9-2-2011 shall be strictly adhered to. For Jamua Ramgarh Wildlife Sanctuary, it shall be 500 m so far as subsisting activities are concerned.

56.2. In the event, however, the ESZ is already prescribed as per law that goes beyond one kilometre buffer zone, the wider margin as ESZ shall prevail. If such wider buffer zone beyond one kilometre is proposed under any statutory instrument for a particular national park or wildlife sanctuary awaiting final decision in that regard, then till such final decision is taken, the ESZ covering the area beyond one kilometre as proposed shall be maintained.

56.3. The Principal Chief Conservator of Forests as also the Home Secretary of each State and Union Territory shall remain responsible for proper compliance of the said Guidelines as regards nature of use within the ESZ of all national parks and sanctuaries within a particular State or Union Territory. The Principal Chief Conservator of Forests for each State and Union Territory shall also arrange to make a list of subsisting structures and other relevant details within the respective ESZS forthwith and a report shall be furnished before this Court by the Principal Chief Conservator of Forests of each State and Union Territory within a period of three months. For this purpose, such authority shall be entitled to take assistance of any governmental agency for satellite imaging or photography using drones.

56.4. Mining within the national parks and wildlife sanctuaries shall not be permitted.

56.5. In the event any activity is already being undertaken within the one kilometre or extended buffer zone (ESZ), as the case may be, of any wildlife sanctuary or national park which does not come within the ambit of prohibited activities as per the 9-2-2011 Guidelines, such activities may continue with permission of the Principal Chief Conservator of Forests of each State or Union Territory and the person responsible for such activities in such a situation shall obtain necessary permission within a period of six months. Such permission shall be given once the Principal Chief Conservator of Forests is satisfied that the activities concerned do not come within the prohibited list and were continuing prior to passing of this order



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in a legitimate manner. **No new permanent structure shall be permitted to come up for whatsoever purpose within the ESZ.**

56.6. The minimum width of the ESZ may be diluted in overwhelming public interest but for that purpose the State or Union Territory concerned shall approach CEC and MoEF&CC and both these bodies shall give their respective opinions/recommendations before this Court. **On that basis, this Court shall pass appropriate order.**

56.7. In the event CEC, MOEF&CC, the Standing Committee of National Board for Wildlife or any other body of persons or individual having special interest in environmental issues consider it necessary for maintaining a wider or larger ESZ in respect of any national park or wildlife sanctuary, such body or individual shall approach CEC. In such a situation CEC shall be at liberty to examine the need of a wider ESZ in respect of any national park or wildlife sanctuary in consultation with all the stakeholders including the State or Union Territory concerned, MoEF&CC as also the Standing Committee of the National Board for Wildlife and then approach this Court with its recommendations.

56.8. In respect of sanctuaries or national parks for which the proposal of a State or Union Territory has not been given, the 10 km buffer zone as ESZ as indicated in the order passed by this Court on 4-12-2006 in *Goa Foundation v. Union of India*, (2011)15SCC791 and also contained in the Guidelines of 9-2-2011 shall be implemented. Within that area, the entire set of restrictions concerning an ESZ shall operate till a final decision in that regard is arrived at.

56.9. IA No. 1412 of 2005 and IA No. 117831 of 2019 do not relate to the issues involved in IA No. 1000 of 2003. These applications may be placed before the appropriate Bench to be heard independently.

56.10. For the same reason, IA No. 1992 of 2007 shall also be dealt with independently by the appropriate Bench and no order is being passed concerning this application at this stage.

56.11. The application of the State of Rajasthan registered as IA No. 3880 of 2015 relates to clarification of an order passed in *Goa Foundation v. Union of India*, (2011)15SCC791 (WP(C) No. 460 of 2004]. Let this application be placed before the Bench taking up the case of *Goa Foundation*.

56.12. IA No. 96949 of 2019 and IA No. 65571 of 2021 are disposed of with directions that the MoEF&CC as also CEC shall proceed to take a decision in regard to the draft proposal for ESZ made by the State of Maharashtra to the extent of 0-3.89 km and the MoEF&CC shall take final decision on that basis within a period of three months, if the said decision has not already been taken.

56.13. Prayers for impleadment of the applicants in IAs Nos. 984 of 2003, 1026, 1123, 1197 and 1251 of 2004 are allowed. Necessary amendments may be carried out in these regards.



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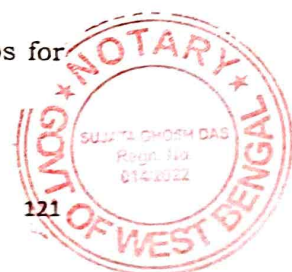
56.14. *For the reasons already given, however, prayers of the applicants in IAS Nos. 982 of 2003, 1027, 1124, 1198, 1210, 1250 of 2004 and 1512 of 2006 are rejected.*

56.15. *CEC shall quantify the compensation to be recovered from each miner indulging in mining activities within the Jamua Ramgarh Sanctuary in violation of any statutory provision or order of this Court. Specific recommendations for compensatory afforestation, reclamation, clearing overburden dumping as also compensation in monetary units for degradation of forest resources shall also be made. A further set of recommendations concerning confiscation of earth-moving equipments and other machineries lying within or in the periphery of the said sanctuary shall be made by CEC. Recommendations shall be made within a period of four months before this Court in the form of an application. This Court shall consider passing appropriate order upon going through such application. The exercise concerning such reparation, including quantifying compensation shall be undertaken upon giving the mining operator, State and MOEF&CC opportunity of hearing.*

56.16. *In the event there is any subsisting order of any High Court or any court subordinate to such High Court covering any of the issues dealt with by this Court in this order, **this order shall prevail over any such order which may be contrary to these directions.***

56.17. *We have already observed that there are certain overlapping issues involved in this writ petition and the cases of Goa Foundation [Writ Petition (C) No. 460 of 2004] and [Writ Petition (C) No. 435 of 2012]. We request the Hon'ble the Chief Justice of India to consider having the present writ petition i.e. T.N. Godavarman Thirumulpad, In re v. Union of India: WP (C) No. 460 of 2004 (Goa Foundation v. Union of India) as also WP (C) No. 435 of 2012 (Goa Foundation v. Union of India) be heard together before the same Bench. The Registry may place this order before the Hon'ble the Chief Justice of India."*

223. In the present case, Kaimur Forest falls in States of Bihar and UP. Both the Governments have declared relevant part as Protected Sanctuary and also ESZ. However, with regard to protection of ghadiyals etc. found in River Son, only State of MP, in respect of the area in State of MP, had declared certain part of River Son as "Son Ghadiyal Wild Life Sanctuary" and also ESZ thereof. Despite the fact that these aquatic animals can/may travel with the running water without recognizing political boundaries made by Governments and come to State of UP and State of Bihar, as is also evident from record that ghadiyals were found in District Sonbhadra on various occasions and even dead bodies were found but no steps for



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protection thereof have been taken in these States. We can look into this aspect on “precautionary principle” and issue necessary directions to the authorities concerned.

224. Section 20 of NGT Act, 2010 mandated Tribunal to follow “precautionary principle”. It reads as under:

“20. Tribunal to apply certain principles.-The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.”

225. Precautionary principle finds its recognition and elaboration in principle 15 of Rio Declaration on Environment and Development 1992, which states as under:

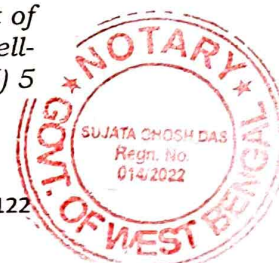
“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

226. In ***M.C. Mehta vs. Union of India, (2004)12SCC118***, Supreme Court highlighted importance of ‘precautionary principle’ and said:

“48. ...In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment.”

227. In ***Research Foundation for Science Technology, National Resource Policy vs. Union of India, (2005)10SCC510***, it was held that ‘precautionary principle’ is part of Indian jurisprudence arising from Articles 47, 48-A and 51-A(g) of the Constitution. In para 16 of the judgment, Court said:

“16. The legal position regarding applicability of the precautionary principle and polluter-pays principle which are part of the concept of sustainable development in our country is now well-settled. In Vellore Citizens’ Welfare Forum v. Union of India, (1996) 5



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SCC 647, a three-Judge Bench of this Court, after referring to the principles evolved in various international conferences and to the concept of “sustainable development”, *inter alia*, held that the precautionary principle and polluter-pays principle have now emerged and govern the law in our country, as is clear from Articles 47, 48-A and 51-A(g) of our Constitution and that, in fact, in the various environmental statutes including the Environment (Protection) Act, 1986, these concepts are already implied. These principles have been held to have become part of our law. Further, it was observed in *Vellore Citizens’ Welfare Forum, (1996)5SCC647* case that these principles are accepted as part of the customary international law and hence there should be no difficulty in accepting them as part of our domestic law.”

228. In ***Hospitality Association of Mudumalai vs. In Defence of Environment & Animals, (2020)10SCC589***, Court referred to its earlier decision in *M.C. Mehta (Badkal & Surajkund Lakes Matter) vs. Union of India, (1997)3SCC715*, and observed that therein, the ‘precautionary principle’ was accepted as part of law of land. Court further said:

“39. ...Articles 21, 47, 48-A and 51-A(g) of the Constitution give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests and wildlife and to have compassion for living creatures. **The precautionary principle makes it mandatory for the State Government to anticipate, prevent and attack the causes of environmental degradation.**”

229. In ***Municipal Corporation of Greater Mumbai vs. Ankita Sinha, (2022)13SCC401***, Court in para 73 and 74 said as under:

“73. The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other “decisions” or “orders” to governmental authorities or polluters, when they fail to ‘to anticipate, prevent and attack the causes of environmental degradation. Two aspects must therefore be emphasised i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for the NGT’s powers should be eschewed to adopt one which allows for full flow of the forum’s power within the environmental domain.

74. It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as nonadversarial.”



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230. In **H.P. Bus Stand Management & Development Authority vs. Central Empowered Committee, (2021)4SCC309**, it was emphasized that the duty of State is to create conceptual, procedural and institutional structures to guide environmental regulation in compliance with the “environmental rule of law”. Such regulation must arise out of a multi-disciplinary analysis between policy, regulatory and scientific perspectives. In para 49 of the judgment, Court said:

*“49. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools – conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges – of how they have been shaped by humanity’s interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity’s actions have charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognises that the ‘law’ element in the environmental rule of law does not make the concept peculiarly the preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts. There are significant linkages between concepts such as sustainable development, the polluter pays principle and the trust doctrine. The universe of nature is indivisible and integrated. **The state of the environment in one part of the earth affects and is fundamentally affected by what occurs in another part. Every element of the environment shares a symbiotic relationship with the others.** It is this inseparable bond and connect which the environmental rule of law seeks to explore and understand in order to find solutions to the pressing problems which threaten the existence of humanity. **The environmental rule of law is founded on the need to understand the consequences of our actions going beyond local, state and national boundaries.** The rise in the oceans threatens not just maritime communities. The rise in temperatures, dilution of glaciers and growing desertification have consequences which go beyond the communities and creatures whose habitats are threatened. They affect the future survival of the entire eco-system. The environmental rule of law attempts to weave an understanding of the connections in the natural environment which make the issue of survival a unified challenge which confronts human societies everywhere. It seeks to build on experiential learnings of the past to formulate principles which must become the building pillars of*



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environmental regulation in the present and future. The environmental rule of law recognises the overlap between and seeks to amalgamate scientific learning, legal principle and policy intervention. Significantly, it brings attention to the rules, processes and norms followed by institutions which provide regulatory governance on the environment. In doing so, it fosters a regime of open, accountable and transparent decision making on concerns of the environment. It fosters the importance of participatory governance – of the value in giving a voice to those who are most affected by environmental policies and public projects. The structural design of the environmental rule of law composes of substantive, procedural and institutional elements. The tools of analysis go beyond legal concepts. The result of the framework is more than just the sum total of its parts. Together, the elements which it embodies aspire to safeguard the bounties of nature against existential threats. For it is founded on the universal recognition that the future of human existence depends on how we conserve, protect and regenerate the environment today.”

231. Considering all its earlier judgment, recently in **Pragnesh Shah vs. Arun Kumar Sharma, (2022)11SCC493**, Supreme Court examined correctness of the directions issued by this Tribunal to modify zonal management plan so as to bring it in compliance with ESZ Notification and upholding directions issued by Tribunal, discussed ‘precautionary principle’ and said:

“The precautionary principle requires the State to act in advance to prevent environmental harm from taking place, rather than by adopting measures once the harm has taken place.”.... (para 34)

and

“The precautionary principle envisages that the State cannot refuse to act to preserve the environment simply because all the scientific data may not be available. If there is some data to suggest that environmental degradation is possible, the State must step into action to prevent it from taking place.” ... (para 36)

232. These principles when applied in the present case, we find that when aquatic animals like ghadiyal are found in River Son, then considering their fragility and necessity for protection, if in the part of river which falls in one State, a Protected Sanctuary and ESZ is declared by MoEF&CC, unless very apparent and compelling reasons are available, we find no justification for not following the declaration for further part of river when



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aquatic animals not only actually are travelling and reaching to the parts of other States through the passage of same river but also there are report that they are suffering damage in other States where adequate protections under relevant statutory enactments have not been extended or made available.

233. In view of above discussion, we find it necessary to issue a direction to Ministry of Environment and Forest, State of UP and Bihar as also MoEF&CC to look into this aspect and take necessary remedial action and made appropriate declaration of the part of River Son running in States of UP and Bihar as Son Ghadiyal Wild Life Sanctuary and its ESZ in accordance with law within three months.

234. With regard to further actions against respondents 14 and 15 i.e., the violators in the present case, the Statutory Regulators are directed to take appropriate, remedial and punitive action like initiation of criminal proceedings without any further delay. For violation of conditions of EC, SEIAA UP would proceed in terms of the other conditions of EC providing consequences of violation of conditions of EC by proponents. There is one more aspect. The illegal mining in violation of the provisions of the environmental laws like EP Act, 1986 etc. also constitute an offence under the provisions of Prevention of Money Laundering Act, 2002 if requisite conditions thereunder are satisfied.

THE CRIMINAL LIABILITY - Offence under Prevention of Money Laundering Act, 2002:

235. When environmental norms are not observed and in violation thereof, there is discharge and/or emission of pollutants causing pollution and thereby commercial activities for commercial gains continue, such activities also attract provisions of Prevention of Money Laundering Act, 2002 (hereinafter referred to as '**PMLA 2002**' as amended from time to



time).

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236. PMLA 2002 was enacted pursuant to resolution no. S-17/2 adopted by General Assembly of United Nation at 17th Special Sessions held on 23.02.1990 on political declaration and global programme of action; and political declaration adopted by UNGA in the Special Session held on 8th to 10th June, 1998. It came into force however on 01.07.2005. The term “money laundering” and “proceeds of crime” are defined in Section-2(p) and (u) which read as under:

“2(p). *“Money Laundering” has the meaning assigned to it in Section-3.*

2(u). *“Proceeds of Crime” means any property derived or obtained directly or indirectly, by any person as a result of **criminal activity** relating to a “**scheduled offence**” or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value within the country or abroad.*

[Explanation: for the removal of doubts, it is hereby clarified that proceeds of crime include property not only derived or obtained from the “scheduled offence” but also any property which may directly or indirectly be derived or obtained as result of criminal activity relatable to the “schedule offence”.]

237. “Scheduled Offence” is defined in Section 2(y) and says;

“2(y). **“Scheduled Offence” means-**

- (i) *The offences **specified under Part-A of the Schedule**; or*
- (ii) *The offences specified under Part-B of the Schedule, if the total value involved in such offences is one crore rupees or more; or*
- (iii) *The offences specified under Part-C of the schedule.”*

238. Section 3 of PMLA 2002 talks of offence of money laundering and says:

“3. Offence of money laundering: *whosoever directly or indirectly attempts to indulge or knowingly assists or knowing is a party or is actually involve **in any process or activity connected proceeds of crime** including in concealment, possession, acquisition or use **and projecting or claiming it as untainted property** shall be guilty of offence of money laundering.”*

239. There is an explanation also inserted by Finance Act, 2019 w.e.f. 01.08.2019, but for the issue under consideration, it is not relevant, hence



omitted.

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240. Attachment of property involved in “money laundering” is governed by Section 5 of PMLA 2002 which permits attachment by Director or any other officer not below the rank of Deputy Director authorised by Director for the purpose of such attachment and he has reason to believe (to be recorded in writing) on the basis of material in his possession that **any person is in possession of any proceeds of crime** and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this chapter (by order in writing), may provisionally attach such property for a period not exceeding 180 days from the date of the order, in such manner as may be prescribed.

241. First proviso of Section 5(1) imposes a condition that no such order of attachment shall be made unless, in relation to the “Scheduled offence”, a report has been forwarded to a Magistrate under Section 173 Cr.P.C. or a complaint has been filed by a person authorised to investigate the offence mentioned in that schedule, before a Magistrate or Court for taking cognizance of the “Scheduled offence”.

242. There is an exception in 2nd proviso of Section 5(1) authorising Director or the officers authorised by him to attach any property of any person referred to in Sub-Section 1, if he has reason to believe (to be recorded in writing), on the basis of material in his possession that if such property involved in money laundering is not attached immediately, it is likely to frustrate proceeding under PMLA 2002.

243. Section 5(5) requires the Director or the other officer, who has provisionally attached property under Sub-Section 1 to file a complaint within 30 days from such attachment stating facts of such attachment



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before Adjudicating Authority which is appointed under Section 6.

244. Section 8 provides the procedure to be observed by **Adjudicating Authority** to pass an order confirming attachment of property under Section 5(1). When such order of confirmation is passed, attached property would remain under attachment till trial completes and if Special Court under PMLA 2002 recorded finding of conviction of commission of offence of money laundering, such property shall stand confiscated to the Central Government but where Special Court finds that offence of money laundering has not taken place or properties not involved in money laundering, it shall release such property to the person entitled to receive it.

245. Section 5 shows that except the cases covered by second proviso, no attachment is permissible unless report under Section 173 Cr.P.C. submitted to the Magistrate or complaint has been filed before the Magistrate or concerned **to take cognizance of "Scheduled offence"**.

246. Schedule to PMLA 2002 as initially came into force on 01.07.2005, was having Part-A, divided in paragraph 1, dealing with Section 121 and 121(A) of IPC; paragraph-2 covering certain offences under Narcotic Drugs and Psychotropic Substances Act, 1985 and Part-B paragraph 1 offences under Sections 302, 304, 307, 308, 327, 329, 364(A), 384 to 389, 392 to 402, 467, 489A and 489B of IPC; paragraph 2 contains some offences of Arms Act, paragraph 3 referred to offences under Wild Life Protection Act 1972, Paragraph 4, offences under Immoral Traffic Prevention Act, 1956 and Paragraph 5, offences under Sections 7, 8, 9 and 10 of Prevention of Corruption Act, 1988 (hereinafter referred to as '**PCA 1988**').

247. Thus, PMLA 2002, at the time of enforcement in 2005, did not cover Sections 120-B, 468, 420 and 471 IPC and Section 13 of PCA, 1988 and

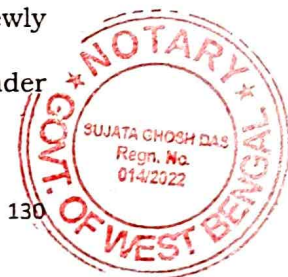


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environmental enactments. In other words, offences under these Sections/Statutes were not "Scheduled offences" for the purpose of Section 3 PMLA 2002.

248. The Schedule underwent amendment for the first time vide Prevention of Money Laundering (Amendment) Act, 2009 published in Gazette of India, Extraordinary dated 06.03.2009. In Part A paragraph 1, Sections 489A and 489B were inserted. We are not concerned with the offences referred under paragraph 2 of the Schedule, hence amendments made therein are omitted. After paragraph-2, paragraph-3 and paragraphs-4 were inserted relating to offences under Explosive Substance Act, 1908 and Offences under Unlawful Activities (Prevention) Act, 1967. In Part-B, paragraph 1 was substituted and a number of offences of IPC were added and this included Section 120-B, 420, 467 and 471 IPC. Some amendments were made in paragraph 3 and 5 of Part-B and thereafter, paragraphs 6 to 25 were inserted covering offences under several enactments which are not relevant for the purpose of issue before us. Part C was also inserted in the schedule to cover cross border offences and the same is also omitted. Even after this amendment, Sections 468 IPC and 13 PCA, 1988 were not "scheduled offence" so as to attract offence under Section 3 of PMLA 2002. The amendment was given effect from 01.06.2009.

249. Next amendment was made vide Prevention of Money Laundering (Amendment) Act, 2012 published in Gazette of India, Extraordinary dated 04.01.2013. Paragraph A part-1 of the Schedule was substituted adding some more offences of IPC. In fact, entire Part A was substituted by a new Part-A which had paragraphs 1 to 28 covering offences under various Statutes, some were earlier in Part A and also Part B and some newly added. Paragraph 8 Part 1 as substituted in 2012 covered offences under



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Sections 7, 8, 9, 10 and 13 of PCA, 1988. Thus, Section 13 was included therein only in 2013. In Part B, paragraph 1 to 25 were omitted and in Part C serial No. 2 and entries relating thereto, were omitted. This amendment came into force from 15.02.2013.

250. The offences under environmental norms have been included in the Schedule to PMLA 2002 inasmuch as paragraph 23, 25,26,27 have been inserted by Section 30 of PML (Amendment) Act, 2012 which came into force on 15.02.2013 and said insertion of paragraphs are as under:

"PARAGRAPH 23
OFFENCES UNDER THE BIOLOGICAL DIVERSITY ACT, 2002
(18 of 2003)

<i>Section</i>	<i>Description of offence</i>
<i>55 read with section 6.</i>	<i>Penalties for contravention of section 6, etc.</i>

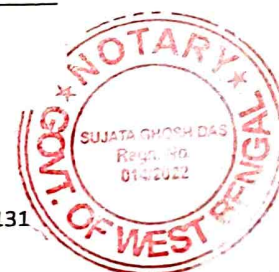
PARAGRAPH 25
OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986
(29 OF 1986)

<i>Section</i>	<i>Description of offence</i>
<i>15 read with section 7.</i>	<i>Penalty for discharging environmental pollutants, etc., in section 7 excess of prescribed standards.</i>
<i>15 read with section 8.</i>	<i>Penalty for handling hazardous substances without section 8 complying with procedural safeguards.</i>

PARAGRAPH 26
OFFENCES UNDER THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974
(6 OF 1974)

<i>Section</i>	<i>Description of offence</i>
<i>41(2)</i>	<i>Penalty for pollution of stream or well.</i>
<i>43</i>	<i>Penalty for contravention of provisions of section 24.</i>

PARAGRAPH 27



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UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION)
ACT, 1981
(14 OF 1981)

Section	Description of offence
37	<i>Failure to comply with the provisions for operating industrial plant."</i>

251. All these provisions relating to offences under various Environmental Statutes have been placed in part A of the Schedule. Application of PMLA 2002 in respect to the aforesaid offences has to be seen in the light of Section 3 read with schedule as amended vide Amendment Act, 2012.

252. In ***A.K. Samsuddin vs. Union of India, Writ Petition No. 15378/2016 decided on 19.07.2016***, Kerala High Court said that the time of commission of the "scheduled offence" is not relevant in the context of the prosecution under the Act. What is relevant in the context of the prosecution is the time of commission of the Act of money laundering. It has to be established that the money involved are the proceeds of crime and having full knowledge of the same, the person concerned projects it as untainted property.

253. In ***Smt. Soodamani Dorai vs. Joint Director of Enforcement, Writ Petition No.8383 of 2013 decided on 04.10.2018***, a Single Judge of Madras High Court observed that substratal subject of the Act is to prevent money laundering and to confiscate proceeds of crime.

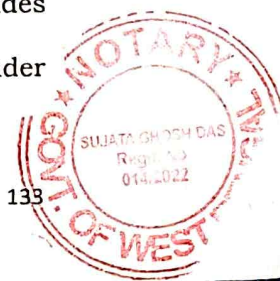
254. PMLA 2002 brings in a different kind of offence on the statute book. In ***Janta Jha vs. Assistant Director (2013) SCC Online (Odisha) 619***, High Court of Odisha held that even if an accused has been acquitted of the charges framed against him in Sessions Trial, a proceeding under PMLA 2002 cannot amount to double jeopardy where procedure and



nature of proof are totally different from a criminal proceeding under IPC.

255. On the contrary in **Rajeev Chanana vs. Deputy Director (2014) SCC Online (Delhi) 4889**, it was held by Delhi High Court that after acquittal of a person from a "Scheduled offence", trial for an offence under Section 3 of PMLA 2002 will not survive. Court said it is hard to imagine as to how a trial for an offence of money laundering can continue where the fundamental basis, i.e., the commission of a Scheduled offence has been found to be unproved.

256. The question of simultaneous investigation by Police or CBI or any other Investigating Agencies in respect of schedule offences and Enforcement Directorate (hereinafter referred to as 'ED') under Section 3 of PMLA 2002 was considered by a Single Judge (Hon'ble S.P. Garg, J) of Delhi High Court in **Rohit Tandon vs. Enforcement Directorate in Bail Application No. 119 of 2017 and Crl.M.B. 121 of 2017**. In the judgment dated 05.05.2017, Court found that Delhi Police registered FIR under Section 420, 406, 409, 467, 468, 188 and 120-B on 25.12.2016 and very next date ED registered ECIR on 26.12.2016. Court said that presence of "Scheduled offence" is only a trigger point for initiating investigation under PMLA 2002. Act nowhere prescribes, if ED is debarred from conducting investigation under Sections 3 and 4 PMLA 2002 unless investigating agency concludes its investigation in the FIR or charge sheet is filed therein for commission of "Scheduled offence". The proceedings under PMLA 2002 are distinct from the proceedings of the "Scheduled offence". In the Investigation of FIR by Police, ED has no control. The proceedings under PMLA 2002 are not dependent on the outcome of the investigation conducted in the "Scheduled offences". More over to avoid conflicting and multiple opinions of court, Section 44 PMLA 2002 provides trial by Special Court in case of "Scheduled Offence" and offence under



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PMLA 2002. Delhi High Court relied on a judgment of Allahabad High Court in **Sushil Kumar Katiyar vs. Union of India & Ors.** (MANU/UP/0777/2016) wherein Allahabad High Court said:

“A person can be prosecuted for the offence of money laundering even if he is not guilty of “Scheduled offences” and his property can also be provisionally attached irrespective of the fact as to whether he has been found guilty of the “Scheduled offences”. The prosecution is not required to wait for the result of the conviction for the “scheduled offences” in order to initiate proceedings U/s 3 of the PML Act. However, the person against whom, there is an allegation of the offence of money laundering, can approach appropriate forum, in order to show his bonafide and innocence that is not guilty of the offence of money laundering and has not acquired any proceeds of crime or any property out of the proceeds of crime.”

257. Against the judgment of Delhi High Court in **Rohit Tandon vs. The Enforcement Directorate**, Appeal was filed in Supreme Court and judgment is reported in (2017) SCC Online SC 1304. Supreme Court upheld, the order of High Court rejecting Bail. Then meeting further argument raised on behalf of Rohit Tandon that the incriminating material recovered, would not take the colour of proceeds of crime as there is no allegation or the prosecution complaint that un-accounted cash deposited by appellant was result of criminal activity, it was observed that the expression “criminal activity” has not been defined but very nature of the alleged activities of the accused referred to in the predicate offence are criminal activities. Court observed:

“... however, the stated activity allegedly indulged into by the accused named in the commission of predicate offence is replete with mens-rea. In that the concealment, possession, acquisition or use of the property by projecting or claiming it as untainted property and converting the same by bank drafts, would certainly come within the sweep of criminal activity relating to a “scheduled offence”. That would come within the meaning of Section 3 and punishable under Section 4 of the Act, being a case of money laundering.”

258. Recently in **P. Chidambaram vs. Directorate of Enforcement (2019) SCC Online SC 1143**, Court considered scheme of PMLA 2002, and observed that **money laundering is the process of concealing illicit**

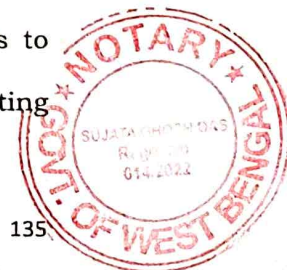


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sources of money and launderer transforming the money proceeds derived from criminal activity into funds and moved to other institution or transformed into legitimate asset. It is realized world around that money laundering poses a serious threat not only to the financial system of the country but also to their integrity and sovereignty. **“Schedule offence” is a sine qua non for the offence of money laundering which would generate the money i.e., being laundered.**

259. In the present case, when environmental norms were not followed, this resulted in commissioning of Scheduled offence and revenue earned by committing such crime is proceeds of crime as defined in PMLA 2002 and by showing it part of business proceeds in accounts amounts to projecting or claiming it as untainted property. The entire activity is covered by Section 3 of PMLA 2002.

260. It appears that initially PMLA 2002 was enacted so as to cover activities of terrorist, illegal traffic in narcotics, enemies of the country etc., applying to a very limited number of statutes, Enforcement Directorate had been taking action under PMLA 2002 in a narrow sphere. It has forgot to take note of the fact that scope of PMLA 2002 has been enhanced or widened, a lot, at least after amendment Act of 2012 w.e.f. 15.02.2013. More than nine and half years have passed but not a single action has been taken by Enforcement Directorate, against violators committing offences under environmental Statutes which have been included in the Schedule, part A of PMLA 2002. The offences under Environmental Acts, as such are non-cognizable but under PMLA 2002, offences are cognizable. Since Competent Authority has never resorted to proceed against violators of environmental Statutes despite committing offences thereunder, which are included in PMLA 2002, this inaction has encouraged polluters to continue violation with impunity. Parliament's intention of treating



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environmental violations as very serious offences is writ large from the fact that, offences under environmental laws as noticed above, have been included in Schedule, Part A of PMLA 2002 yet enforcement machinery has frustrated entire attempt. It is incumbent upon the Competent Authorities regulating and enforcing PMLA 2002 to take action against such violators.

261. In view of the above discussion, **we answer issue IV** by directing Ministry of Environment and Forest, States of UP and Bihar as also MoEF&CC to look into the question of declaration of part of River Son running in States of UP and Bihar as 'Son Ghadiyal Wild Life Sanctuary' and its 'ESZ' in accordance with law within three months and considering the fact that respondents 14 and 15 have committed/violated conditions of EC and the provisions of EP Act, 1986, and the said violation is also an offence under EP Act, 1986 and since EP Act, 1986 is included in the Schedule of PMLA Act, 2002, the Directorate of Enforcement may look into these aspects and take further action under the said Act in accordance with law.

262. In view of the above discussion, this OA is allowed with the directions contained in judgment above which are summarized as under:

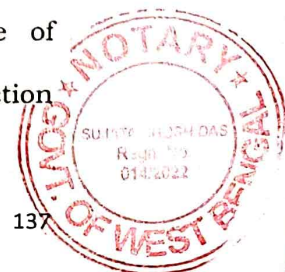
- (i) Respondents 14 and 15 shall pay amount of environmental compensation of Rs. 8.16 Crores and Rs. 7.08 Crores respectively, to UPPCB by depositing 40% of the amount within one month i.e., by 19.06.2023 and remaining amount in two equal installments within two months i.e., by 19.08.2023 and 19.10.2023. In case of failure in payment as per the above schedule, the entire amount of compensation or the balance amount, as the case may be, shall be recovered in accordance with law besides taking further criminal action by initiating proceedings under Section 26 read with Section



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30 of NGT Act, 2010.

- (ii) Ministry of Environment and Forest of States of UP and Bihar and MoEF&CC shall consider the matter of declaration of part of River Son running in States of UP and Bihar as Wild Life Sanctuary and ESZ for protection of ghadiyals etc. in River Son and would take necessary, remedial and appropriate action within three months.
- (iii) A Joint Committee comprising representatives of Ministry of Environment and Forest of State of UP, UPPCB, SEIAA UP and District Magistrate, Sonbhadra is constituted to re-visit all mining leases granted for mining activities in Son river bed for carrying out mining activities in District Sonbhadra which are degrading/damaging river stream itself and/or the protected animals like ghadiyal, turtles/tortoise etc. and take appropriate decision/action in accordance with law within three months.
- (iv) Till a decision pursuant to direction (iii) is taken, no further mining in Son river bed in District Sonbhadra shall be allowed. District Magistrate, Sonbhadra and UPPCB shall ensure compliance of this direction.
- (v) ECs, CTOs and NOCs granted to respondents 14 and 15 for carrying out mining activities in Son river bed shall be re-visited by SEIAA UP, UPPCB and other Competent Authorities in light of the discussions made above and in the light of the fact that leased area is surrounded by Reserved Forest, ESZ and Sanctuaries and appropriate decisions would be taken as to whether in such circumstances, mining activities should be allowed to continue therein or not and till such a decision is taken, no further mining shall be allowed by respondents 14 and 15.
- (vi) Copy of this judgment shall be forwarded to Directorate of Enforcement Headquarter for information and appropriate action



under PMLA Act, 2002 against the violators/respondents 14 and 15
in accordance with law.

263. All pending IAs stand disposed of accordingly.

264. Copy of the judgment shall be forwarded to MoEF&CC, Additional
Chief Secretary/Principal Secretary of Ministry of Environment and
Forest, States of UP and Bihar, SEIAA UP, UPPCB, District Magistrate,
Sonbhadra and Directorate of Enforcement Headquarter by e-mail for
information, necessary action and compliance.

SUDHIR AGARWAL,
JUDICIAL MEMBER

PROF. A. SENTHIL VEL,
EXPERT MEMBER

May 19, 2023
OA No. 818/2022
R



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Item No.1:

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Original Application No. 171 of 2020 (SZ)

IN THE MATTER OF:

Sarvabhoun Bagali
S/o Late Saragouda,
R/o Kachari Road,
Opp. Head Post Office, INDI,
Vijayapur District, Karnataka - 586 101.

... Applicant(s)

Versus

State of Karnataka
Through its Director,
Department of Mines and Geology,
#49 Khanija Bhawan, Race Course Road,
Bengaluru - 560 001 and Ors.

... Respondent(s)

For Applicant(s): Mr. Aagney Sail

For Respondent(s): Mr. K.M. Darpan along with
Mr. Rajat Jonathan Shaw for R1, R5 to R7.
Mrs. M. Sumathi for R2.
Mr.H.K. Vasanth for R3.
Mr. M.R. Gokul Krishnan for R4.
Mr. K. Venkatasubban
For M/s. Sarvabhauman Associates for R8 and R9.

Date of Judgment: 11th May 2022.

CORAM:

HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER



ORDER

Judgment pronounced through Video Conference. The original application is disposed of with directions vide separate Judgment.

Pending interlocutory application, if any, shall stand disposed of.

Sd/-
Justice K. Ramakrishnan, J.M.

Sd/-
Dr. Satyagopal Korlapati, E.M.

O.A. No. 171 of 2020 (SZ)
11th May, 2022. SE

NOT



Item No.1:**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI****Original Application No. 171 of 2020(SZ)****IN THE MATTER OF:**

Sarvabhoom Bagali
S/o Late Saragouda,
R/o Kachari Road,
Opp. Head Post Office, INDI,
Vijayapur District,
Karnataka - 586 101

... Applicant(s)

Versus

- 1. State of Karnataka**
Through its Director,
Department of Mines and Geology,
#49 Khanija Bhawan,
Race Course Road,
Bengaluru - 560 001
- 2. Ministry of Environment, Forests & Climate Change**
Through its Secretary,
Indira Paryavaran Bhavan,
Jorbagh, New Delhi - 110 003
- 3. Karnataka State Environment Impact Assessment Authority (SEIAA)**
Through its Member Secretary,
Room No. 709, VII Floor, IV Gate, M.S. Building,
Bengaluru - 560 001.
- 4. Karnataka State Pollution Control Board**
Through its Regional Office - Raichur,
M.S. Chambers, I Floor,
Beside S.S.I. Yuva, Com Computers
Lingasugar Road, Raichur - 584 101
- 5. Deputy Commissioner - Raichur District**
Deputy Commissioner's Office,
Sathkacheri, Raichur
Raichur (Dist.), Karnataka - 584 101
- 6. Superintendent of Police**
Raichur District,
Office of the Superintendent of Police,
Hyderabad Road,
Raichur, Karnataka - 584 101



7. Senior Geologist

Department of Mines & Geology,
#1-4-156/165/181, I.D.M.S. Layout,
Raghavendra Nagar,
Near Shri Shakthi Bhavan,
I.B. Road, Raichur,
Karnataka - 584 101

8. Anand B. Doddamani

Concerned Sand Mining Contractor,
68, Behind Chetan College,
Akshay Colony, Hubli, Dharwad District,
Karnataka 580 021

9. P.L. Kamble

Concerned Sand Mining Contractor,
N.H.13, Illakal Road,
Hunagund, District Bagalkot,
Karnataka - 587 125

... Respondent(s)

For Applicant(s): Mr. Aagney Sail

For Respondent(s): Mr. K.M. Darpan along with
Mr. Rajat Jonathan Shaw for R1, R5 to R7.
Mrs. M. Sumathi for R2.
Mr.H.K. Vasanth for R3.
Mr. M.R. Gokul Krishnan for R4.
Mr. K. Venkatasubban
For M/s. Sarvabhauman Associates for R8 and R9.

Judgment Reserved on: 29th March 2022.

Judgment Pronounced on: 11th May 2022.

CORAM:

HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

Whether the Judgement is allowed to be published on the Internet - Yes/No

Whether the Judgement is to be published in the All India NGT Reporter - Yes/No



JUDGMENT

Delivered by Justice K. Ramakrishnan, Judicial Member.

1. The above case has been filed by the applicant against the user of heavy machineries while doing sand mining from river bed on the basis of the mining lease granted by the Mining Department.

2. It is alleged in the application that large scale illegal sand mining is going on at two different sites in the Krishna River Bed in Joldahadgi Village, Devadurga Taluk, District Raichur, Karnataka using Pokhland/JCB machines which is against the guidelines issued by the Ministry of Environment and Forests and Climate Change on sustainable sand mining policy and also against the EIA Notification, 2006. On account of the indiscriminate use of machineries for river bed sand mining, huge pits were created in Krishna River and one girl by name Miss. Shridevi daughter of Chandappa who went there for washing her clothes fell down and drowned on 14/03/2020 in that place and died. This has happened on account of the negligence on the part of the persons who have done the sand mining using the heavy machineries and as such they are liable to pay compensation for the same.

3. The applicant is a Senior Citizen who served as a Government Doctor in Health Department of State of Karnataka for 34 years and after retirement in the year 2004, he joined politics and elected as MLA from Indi Constituency in 2008 and served as such still 2013. He had filed several applications before the Principal Bench of National Green Tribunal highlighting illegal sand mining in Bhima River of Vijayapura District of



Karnataka State and adjoining Sholapur District in Maharashtra. The application so filed by him are (i) MA No. 529/2014 in OA No. 171/2013 which was decided by Judgment dated 13.01.2015, (ii) OA No.363/2015 decided by Judgment dated 25.09.2018 granting compensation for drowning of three teenage girls on 04.07.2014 in a sand mining pit. (iii) OA No. 366 of 2015 decided as per Judgment dated 25.09.2018 (iv) OA No. 367 of 2015 decided as per Judgment dated 11.09.2017 and (v) OA No. 368 of 2015 decided as per Judgment dated 19.09.2018.

4. The Mining leases that have been granted for the two blocks in Joldahadgi Village, Devadurga Taluk, Raichur District, Karnataka dated 13.05.2017 and 14.06.2017 were issued by the Department of Mines and Geology whereby they have been permitted to do sand mining using heavy machineries evidenced by Annexure A2 Series Mining leases.

5. The applicant also produced the tender notice issued by the Department in respect of 18 sand blocks using heavy machineries in Apparal, Madarakal, Chikaraykumpi, Parataapur, Myadaragol, Karikihalli, Chinchodi, Nilavanji, Joladahadgi, Baagoor, Karkihalli and Parataapur of Devadurga Taluk. On 11.06.2020, the applicant filed MA 33/2020 in OA 366/2015 seeking directions against the large scale illegal sand mining in Krishna riverbed in 12 villages of Devadurga Taluk (highlighting instances of sand blocks No. 1 & 2 of Joladahadgi Village, Raichur District, Karnataka). MA 32 of 2020 was filed for impleadment of Raichur District Sand Monitoring Committee Officials as Respondents evidenced by Annexure A4 Series.



6. Rampant illegal and unscientific sand mining led to the death of a teenage girl by name Miss. Shridevi who drowned on 14.03.2020 on account of her falling down in the pit created due to unlawful sand mining and drowning on account of the same.

7. The applicant had produced the documents relating to the death of the girl as Annexure 5 and Annexure 6 and also narrated the manner in which the incident occurred and how the body was recovered and the nature of investigation conducted, evidenced by Annexure A7.

8. The applicant filed MA 38/2020 in OA 366/2015 and MA 39/2020 on 09.07.2020 seeking an enquiry regarding the death and impleadment of the sand mining contractors evidenced by Annexure A8. The applicant had reiterated the O.M. issued by the Ministry of Environment, Forests and Climate Change dated 24.12.2013 produced as Annexure A9, wherein it was mentioned that the river sand mining can be done manually only. Further, as per the Sustainable Sand Mining Management Guidelines, 2016 issued by the Ministry of Environment, Forests and Climate Change considered all these aspects and recommended standard environmental conditions for sand mining and under Clause 29 they have mentioned as follows:

"29. Standard Environmental Condition for Sand Mining

<i>Impact Category</i>	<i>S.No.</i>	<i>Environmental Conditions</i>
<i>Sustainable Mining Practices</i>	<i>19</i>	<i>Depending upon the location, thickness of sand, deposition, agricultural land/Riverbed, the method of mining may be manual, semi-mechanized or mechanized; however, manual method of mining shall be preferred over any other method.</i>

The guideline was produced as Annexure 10.



9. There are certain direction given and the Karnataka Government has given certain inputs which read as follows:

"Suggestions/Recommendations for Environmentally Sustainable Sand Mining:

1. *Undertaking sand mining activity through a Government agency to be governed by District Level Sand Monitoring Committee headed by Deputy Commissioner.*
2. *The area should be properly surveyed and mapped with the help of GPS to assign geo coordinates and accordingly erect boundary pillars so as to avoid illegal and unscientific mining.*
3. *Depth of sand available may be indicated in a contour map using suitable drilled holes to ensure sand mining do not exceed one meter depth.*
4. *Once thickness is established sand mining may be permitted to one meter depth where the thickness of sand is more than three meter deep. If the thickness of sand is less than three meter, sand mining shall not be permitted.*
5. *Sufficient spacing shall be ensured from one block to another block and sufficient time gap shall be provided for replenishment before undertaking mining activity in the same block.*
6. *Mining activity shall be restricted to only non-monsoon season and in the area that is exposed.*
7. *No in-stream mining shall be permitted.*
8. *No stream should be diverted for the purpose of sand mining. No natural water course and/ or water resources are obstructed due to mining operations.*
9. *Site specific plan with eco-restoration should be in place.*
10. *Sand mining shall be undertaken only by manual method without use of earth moving equipment such as JCB etc. Use of mechanized boats for sucking sand from in-stream area shall be strictly prohibited.*
11. *Appropriate safety zones shall be maintained in proximity to any bridge/ and/or embankment and other permanent structures. No sand mining shall be undertaken in such safety/buffer zones. Guidelines issued by the Ministry of Mines in this regard shall also be adhered to.*
12. *The quarrying activity shall not intersect subterranean water level and ground water table.*
13. *The top soil in case of surface land mining shall be stored temporarily in an earmarked site and concurrently used for land reclamation.*
14. *Use of alternate material such as M-sand in place of natural river sand shall be encouraged in order to reduce stress on natural eco-system."*



10. But in the lease deeds dated 13.06.2017 and 14.06.2017 produced as Annexure A2, the following conditions have been added:

(a) MECHANISED MINING ALLOWED:

The lease / license deed allows operation of machinery, equipment, etc. as per Part II clause 3 stating,

"PART II

LIBERTIES, POWERS AND PRIVILEGES TO BE EXERCISED AND ENJOYED BY THE LESSEES/LICENSEES SUBJECT TO THE RESTRICTIONS AND CONDITIONS IN PART III

...

3. To bring and use machinery, equipment, etc.

Liberty and power for or in connection with any of the purposes mentioned in this to erect, construct and maintain and use on or under the said lands any engines, machinery plant dressing .. and other Buildings and other works and conveniences of the like nature or under said lands."

11. These conditions are contrary to the Sustainable Sand Mining Policy and Sustainable Sand Mining Guidelines of 2016 as per this no mechanised mining was permitted.

12. There was no mention/condition of taking Environmental Clearance before commencement of the work as per Rule 8(1A) and 31R(20) of the Karnataka Minor Mineral Concession Rules, 1994. In the Form E issued by Mining Department under Karnataka Minor Mineral Concession Rules, 1994, mechanised mining was permitted which is against the Rules.

13. While disposing O.A. No. 363 of 2015 by Judgment dated 25.09.2018, the Principal Bench has issued certain directions and also directed to pay certain compensation to the death of the girls evidenced by Annexure-12. Since illegal sand mining is going on without following the standard procedure provided using heavy machineries and in spite of it being brought to the notice of the authorities, no action was taken, the applicant



has no other remedy except to approach this Tribunal seeking the following interim reliefs.

- A. *"Hold and declare that use of machinery in ordinary sand mining from river bed in the quarrying lease deeds dated 13.06.2017 and 14.06.2017 (Annexure - A2(Colly) issued by the Government of Karnataka is not permissible as per Environment Impact Assessment Notification, 2006 and in violation of the same.*
- B. *Direct the Deputy Commissioner, Raichur District (who is also Incumbent Chairman of the District Sand Mining Committee) to immediately stop all sand mining using mechanized devices like JCB's Pokland machines etc., on river bed of Krishna river at 12 Villages including Joladhadgi of Devadurga Taluk, District Raichur, Karnataka as mentioned in the present Application.*
- C. *Direct the Deputy commissioner, Raichur District to bring on record the recent (ongoing) 4 environmental clearances, mining plans, contractor details etc., and file affidavit of compliance of Rule 31R(3) of the Karnataka Minor Mineral Concession Rules, 1994 pertaining to sand mining on Krishna river in the entire District of Raichur.*
- D. *Direct the Senior Geologist, Department of Mines and Geology, Raichur District, Government of Karnataka to submit before this Hon'ble an affidavit detailing the format for quarrying lease/licence deed used for ordinary to the lapses pointed out in the quarrying lease deeds dated 14.06.2017 & 14.06.2017 as mentioned in the present Application*
- E. *Direct the Ministry of Environment, Forests & Climate Change to Constitute a Committee for Issuing 'Guidelines on enquiry and payment of compensation in cases of loss of life the EIA Notification, 2006 and other applicable Environmental laws, and to submit such Committee's report before this Hon'ble Tribunal.*
- F. *Direct the District Magistrate, Raichur District, Karnataka to conduct an enquiry into the death of Shridevi D/o Chandappa who fell/slipped and drowned in a sand mining pit on 14.03. 2020 on the riverbed of Krishna 5 River in or around Sand Block Nos. 1 & 2 at village Joladahadgi, Taluka Devadurga, District Raichur, Karnataka especially with respect to the environment and liability of the holders of the quarrying lease deeds dated 13.06.2017 and 14.06.2017 and submit a report to this Hon'ble Tribunal.*
- G. *Direct the Karnataka State authorities to provide compensation to the family of the teenage girl Shridevi D/o Chandappa who drowned on*

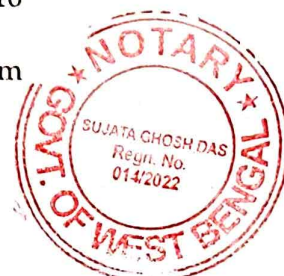


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14.03.2020 at village Joladahadgi, Taluka Devadurga, District Raichur, Karnataka.

- H. Direct prosecution of the concerned sand mining contractors, government officials involved for their lapse and violation of the Karnataka Minor Mineral Concession Rules, 1994 Environment Impact Assessment Notification, 2006 Sustainable Sand Mining Management Guidelines, 2016 and various orders Supreme Court and this Tribunal.
- I. Pass any such order as this Hon'ble Tribunal may find fit and proper in the facts and circumstances of the case."

14. The 2nd Respondent filed counter affidavit reiterated the allegations made by the applicant in the application and also the relief sought for in the application. They have further contended that as regards M.A. No. 33/2020, 32/2020 and 39/2020 in O.A. No. 366/2015 are concerned according to their knowledge by the order dated 17.08.2020, those applications were withdrawn by the applicant. The 2nd Respondent Ministry had issued EIA Notification 2006 vide S.O. 1533(e) dated 14.09.2006 under the provisions of the Environment (Protection) Act, 1986. As per this Notification, certain projects require prior Environmental Clearance and those projects which require Environmental Clearance have been enumerated in the schedule attached to the Notification. Further, as per the notification, the projects were categorized as Category 'A' and Category 'B' and as regards, the Category 'A' is concerned, the Environmental Clearance will have to be obtained from MOEF and CC and as regards the Category 'B' is concerned, the same will have to be obtained from concerned State Environmental Impact Assessment Authority (SEIAA). They have also mentioned that as per the Provisions of Sustainable Sand Management Guidelines, 2016 (SSMG-2016), the mining activity shall be done manually and no in-stream



mining shall be allowed. The relevant paragraph of the said guideline has been extracted below:

"(a) The mining activity shall be done manually. The depth of mining shall be restricted to 3 m/ water level, whichever is less.

(b) For carrying out mining in proximity to any bridge and / or embankment, appropriate safety zone shall be worked out on case to case basis to the satisfaction of SEAC / SEIAA, taking into account the structural parameters, locational aspects, flow rate etc., and no mining shall be carried out in the safety zone so worked out. NO in-stream mining shall be allowed."

15. In compliance with the directions issued by the Hon'ble National Green Tribunal in its order dated 04.09.2018 in O.A. No. 173 of 2018 in the matter of Sudarsan Das vs. State of West Bengal & Ors., the 2nd Respondent has formulated new guideline i.e. "Enforcement & Monitoring Guidelines for Sand Mining" (EMGSM-2020) supplemental to the existing guidelines, i.e. Sustainable Sand Management Guidelines 2016 (SSMG-2016), which focuses on the effective monitoring of the sand mining right from the identification of sand mineral sources to its dispatch and end-use by consumers and the general public. Further, this document will serve as a guideline for collection of critical information for enforcement of the regulatory provisions and also highlights the essential infrastructural requirements necessary for effective monitoring of Sustainable Sand Mining. The 2nd Respondent Ministry vide S.O. 637 (E) dated 28th February 2014 delegated the powers vested in it under Section 5 of the Environment Protection Act, 1986 to all State and Union Territory Environment Impact Assessment Authorities to issue show cause notice and to issue directions to the project proponent in case of violation of EC conditions and for keeping such Environment Clearance in abeyance or withdrawing them, if required



(X)

The Environment Clearance for the project under consideration has been granted by State Environment Impact Assessment Authority, Karnataka. The State Department of Mines and Geology is the nodal authority of the State for dealing with the allotment of mining leases under the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) and is entrusted with the enforcement and regulation of mining operations in the State including illegal mining. The State Government is empowered under Section 23 C of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) to make rules for prevention of illegal mining, transportation and storage of minerals and the State Government is entrusted with the enforcement and regulation of mining operations in the State. They prayed for accepting their contentions and pass appropriate orders.

16. The 3rd Respondent has filed their Reply in the form of submissions contending as follows:

“Submissions in respect of orders of Hon’ble National Green Tribunal, Southern Zone, Chennai in O.A. No. 171 of 2020 (SZ), from Respondent No.3, State Level Environment Impact Assessment Authority, Karnataka.

It is submitted that the Hon’ble NGT while hearing the above mentioned matter on 08.09.2020 in order to ascertain the genuineness and real status of river bed sand mining, appointed a Joint Committee comprising of the District Collector, Raichur District, a Senior Officer from MoEF & CC, Regional Office, Bangalore, a Senior Officer from SEIAA, Karnataka, a Senior Officer from KSPCB and a Senior Officer from Department of Mines & Geology as deputed by the Director of Mines, State of Karnataka, to inspect the area in question and submit a factual as well as action taken report, if there is any violation found.

Accordingly, the Joint Committee constituted by the NGT has submitted its report before the Hon’ble NGT by e-filing on 16.12.2020. Further, the Hon’ble NGT, during the hearing on 27.01.2021 upon verifying the report



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noted that there was excess mining done and also heavy machineries were used for doing the quarrying and some illegalities were found and certain penalties have been recovered for transporting more than the permitted quantity. However, for the excess mining, whether they have imposed penalty and recovered additional royalty, including whether they have recovered environmental compensation for doing excess mining including the cost required for restoration has not been mentioned in the report. Hence, the committee is directed to submit a further report.

Further, it is submitted that the Joint Committee has e-filed the second report on 24.03.2021, which is examined by the Hon'ble Tribunal on 09.02.2022. It was also directed that the official respondents who have not filed the Statements to file the statement on or before 23.02.2022.

Further, it is also submitted that the Environmental Clearances were issued to the alleged mining areas by the District Level Environment Impact Assessment Authority, Raichur, vide letter No. DEIAA-OS-18 MIN/2017 and No. DEIAA-OS-25MIN/2017, dated 08.06.2017.

In this regard, it is kindly submitted that, SEIAA, Karnataka was part of the Joint Committee constituted by the Hon'ble Tribunal, which has dealt with the issues raised by the applicant and submitted reports. The SEIAA is in agreement with the reports of the Joint Committee."

17. The 2nd Respondent has filed a further statement contending that this Tribunal by order dated 08.09.2020 appointed a Joint Committee to inspect the area in question and submit a report both factual and action taken if there is any violation found. The Joint Committee constituted by the Tribunal had submitted the report before this Tribunal by e-filing on 16.12.2020. This Tribunal after considering the report directed to file further report of action taken for violations and excess mining including imposition of environmental compensation. The Joint Committee filed the second report on 24.03.2021, which was considered by this Tribunal on 09.02.2022 directed the officials who have not filed their statement to file their statement. Environment and Clearance were issued to the alleged Mining areas by the District Level Environment Impact Assessment authority by



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letter No. DR-OS-18 MIN/2017 and No. DR-OS-25 MIN/2017 dated 08.02.2017. They are adopting the findings of the Joint Committee as part of their Statement.

18. The 8th Respondent filed counter affidavit denying the allegations made in the application. They were carrying on the mining activity on the basis of the Lease Deed dated 13.06.2016 granted by 1st Respondent. As per the lease deed they were permitted to use backhoe equipment like JCB as per Chapter IV-B, 31-R of Karnataka Minor Mineral Concession Rules, 1994 and its amendments. They denied the allegations that mining operations were done during night time as well. They were conducting the mining strictly in accordance with the permissions granted and they have not carried out any illegal mining. The death of Ms. Shridevi happened accidentally on 14.03.2020 and it was not occurred inside the mining lease area and the same happened on the North of Joladahedagi Blocks. They have taken all precautions by which the life of any person visiting the area is not endangered. Investigation was conducted in respect of the death of said girl and it was concluded by the concerned police officials. They have taken advantage of the illiteracy of father of the girl in obtaining the affidavit produced along with the application and he had subsequently withdrawn that affidavit and declaring that it was invalid. The user of backhoe equipment, like JCB were allowed as per the Provisions of the Karnataka Minor Mineral Concession Rules, 1994 and Amendments 2016 and as per the Sustainable Mining Management Guidelines 2016 they have not violated any of the conditions and they are strictly complying with the conditions imposed in the permissions granted. So they prayed for dismissal of application with cost.



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19. The 9th Respondent filed a counter which reads as follows:

Counter affidavit of P.L. Kamble

I, Parashuram S/o Laxman Kamble, Hindu, aged 48 years, residing at N.H. 13, Ilakal Road, Humagund, Bagalkot District, Karnataka -587125 today at Bangalore do hereby solemnly affirm and sincerely state as follows:

1. I am the 9th Respondent herein and I am fully acquainted with the facts of the case. I have read contents of this application and I am filing this counter affidavit in answer thereto.
2. I submit that I deny the allegation stated in para 4 of the application. I submit that I am carrying out the mining on the strength of the quarrying Lease/License deed dated 13.06.2017 granted by the 1st Respondent herein. As per the Lease deed I am permitted to use backhoe equipment like JCB is allowed as per Chapter IV - B, 31-R of Karnataka Minor Mineral concession Rules - 1994 & its amendments and it is false to state that the mining are being carried out during the night time as well and I put the Applicant to strict proof of the same. I submit that the mining is been carried out as per the terms and conditions stipulated in the Lease Deed dated 13.06.2017 and I have environmental clearance on 08.06.2017. I submit that the details given regarding the Lease deeds are correct and I deny the allegation that mining carried out by me is illegal. The averments stated in para 6 are hereby denied and I put the applicant to strict proof of the same. I submit that with respect to averments in Para 7 of the application are not within my knowledge and being the court proceedings I am not disputing the same.
3. I submit that I deny the allegations stated in para 8 of the application and put the applicant to strict proof of the same. I submit that the death of Ms. Sridevi happened accidentally on 14.03.2020 and it was not occurred inside the mining lease area and the same happened is on the north of the Joladahedagi Blocks. Further I have taken all precautions by which the life of any person visiting the area is not endangered. I submit that investigation with respect to the death of Ms. Sridevi was conducted and the same was concluded by the concerned police officials. I submit that I stoutly deny the allegations stated in para 9 of the application that the father of the deceased girl namely Chandappa gave an affidavit dated 06.07.2020 describing the incident and the thumb impression was obtained by fraud and undue influence taking advantage of the illiteracy of Chandappa and the same was subsequently withdrawn by him in the subsequent affidavit dated 21.07.2020 withdrawing his earlier affidavit declaring it to be invalid. I submit that as the deceased father namely Chandappa withdrawn the alleged



affidavit dated 06.07.2020 the allegations in para 10 are denied and same needs no reference.

4. I submit that it is true that an application M.A. No.39 of 2020 in O.A. No. 366 of 2015 was filed by the applicant and the O.A. No.366 of 2015 itself was disposed off by the Principal Bench, New Delhi vide order dated 26.02.2021. I submit that the allegations in Para 11 and 12 are denied and as per the New Sand Policy, 2016, Karnataka Minor Mineral concession Rules, 1994 and Amendment 2016 and as per the Sustainable Mining Management Guidelines, 2016 usage of bachoe equipment like JCB is allowed. Further I have not violated any environmental laws till date. Further the father of the deceased girl namely Chandappa himself has filed an affidavit dated 21.07.2020 stating that her daughter had accidentally drowned in the Krishna River at Joladahedagi Village and not in mining lease area and hence I shall not be penalized for no wrong or negligence on my part. I submit that in order to extort money from me the applicant had obtained an affidavit dated 06.07.2020 from the father of the deceased and nowhere the father had stated that he death of his daughter was due to drowning in a sand mining block pit except in the alleged affidavit dated 06.07.2020 produced before this court. Even in the FIR lodged it was stated that the deceased girl had accidentally drowned in the Krishna River. The conduct of the applicant is mala fide and I pray this Hon'ble Tribunal to dismiss the application with exemplary cost.
5. For all the reasons stated above, it is therefore prayed that this Hon'ble Tribunal may be pleased to dismiss the application with exemplary cost and pass such further orders as this Hon'ble Tribunal may deem fit and proper, in the circumstances of the case and thus render justice."

20. They have also more or less reiterated the contentions raised by the 8th Respondent in their Counter Statement. They also tendered on carrying on the mining operations strictly in accordance with the permissions granted and no illegal mining has been done by them.

21. The 7th Respondent filed Counter Affidavit in the form of Additional Statements contending that the counter affidavit filed by them on 18.12.2020 was directed to be read as part and parcel of this affidavit and this will have to be in continuation of the earlier counter filed. Specific and separate rules

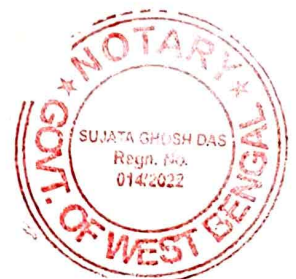


were made governing sand mining other than mining lease of minor minerals Chapter IVB deals with grant of quarrying leases or composite licence by auction, Rules 31R to 31 ZE govern the sand mining. They were drafted in compliance of the Guideline 2016 and 2020 issued by the MoEF & CC. Form E (Rule-18) of KMMCR 1994 violates 2016 guidelines issued by the MoEF and CC in as much as it allows the use of heavy vehicles and machinery in sand mining. A copy of the lease deed executed by the lessee for sand mining is produced along with the affidavit. It is in Form E. It refers to execution of quarrying lease as per Rule 18 of KMMCR 1994. Chapter II of KMMCR 1994 governing grant of lease to quarry minor mineral other than sand. Rule 18 is not applicable to sand mining. However, by mistake or as usual practice, the Form E is used in sand mining leases. Copy of the lease deed is produced in Annexure-R1(A). Clause 3 in Part II of the lease deed should have been struck down. But by the over sight, it was not scored off, for which they beg apology for the same and the mistake will be rectified in future. The lease deed contains additional conditions, which are part of the lease deed. Second condition prohibits use of dredger and Machinery in sand mining. Sub rule 10 and 11 of Rule 31R governing sand mining read as under:

"10) Mechanised boats and dredgers in river sand quarrying are prohibited.

11) Use of backhoe equipment like JCB and screening in river bed sand quarrying shall be in accordance with guidelines issued by the Ministry of Environment, Forest and Climate Change Government of India (MoEF) from time to time.

Provided that loading equipment like dumpers, tractor mounted loaders, may be used on the river banks, only for loading without destabilising river bank."



22. They prohibit use of dredgers and compels the lessee to bind by the guidelines issued by the MoEF & CC from time to time. Clause-3 in Part-III of the lease deed contradicts the Rules. Rules over-ride the lease deed. The rules in Chapter IVB of the KMMCR regarding sand mining are in consonance with the guidelines issued by MoEF & CC. The State Government is not permitting use of machineries in sand mining except in exceptional circumstances as stated in the guideline of MoEF and CC. Rules for sand mining were amended in consonance with the guidelines of 2016 and 2020 issued by MoEF and CC. In the earlier affidavit filed by them, the State has explained the relevancy of sand mining rules in Chapter IVB and Guidelines of 2016-2020. They are strictly followed and action is being taken against violators and penalty recovered as per rules. They admitted the second part of the Joint Committee Report which gives the true facts relating to the mater. Table-I of report contains two leases where there was no excess sand mining. So there is no question of collection of Environmental Compensation arises. Table-2 contains the names of lessees, who have transported sand without obtaining permission. They were penalised with penalty of Rs.12,64,500/-. Table 3 show names of lessees who have extracted sand by encroachment and penalties were levied on them recently and partly recovered and action will be taken to recover the balance. Action against defaulters are taken by levying penalty on various grounds and in some cases, FIRs were registered. There was no case of sand mining by encroachment in Krishna River. Those referred to in the report of Joint Committee are not related to the area mentioned in this application. Those sand mining is permitted without Environment Clearance, thus there is no question of imposing lump sum amount. If Environment Compensation is worked out more than the lump sum, it will have to be



restricted to lump sum amount. They also described the procedure adopted by Government of Karnataka in respect of grant of mining lease as follows.

- (i) No sand quarrying shall be undertaken without a quarrying plan and Environmental Clearance.
- (ii) Lessee shall make Stockyard, Office, CC Camera and Weigh Bridge near to the sand block.
- (iii) Quarrying shall be done in accordance with MoEF Guidelines.
- (iv) In-stream, mining sand extraction and loading to vehicles directly from river is prohibited. So, lessee should store mining sand in stockyard.
- (v) Lessee should mine as per the mining plan without damaging safety zone and riverbed.
- (vi) Permits are issued to vehicles fitted with GPS.
- (vii) The vehicles having non-communication mode, shall not be issued with permits and shall not be allowed to transport sand.
- (viii) Mechanised boats and dredgers in river sand quarrying are prohibited.
- (ix) Sand stored in stockyard, shall be disposed by issuing Computerized Mineral Dispatch Permits (CMDR) to the transporters

23. So, they prayed for dismissal of the application.

24. The 3rd Respondent filed a further counter affidavit contending as follows:

1. "That I in my official capacity in the SEIAA, Karnataka Bengaluru, i.e. Respondent No.3 in the above mentioned matter, am conversant with the facts and circumstances of the case on the basis of official records, and as such authorised and competent to swear this affidavit.
2. It is submitted at the very outset that the Respondent No.3 denies each averment and/or submission made in the Application which is contrary to and inconsistent with the averments made and facts stated in the present reply. It is submitted that nothing stated in the application may be deemed to have been admitted by the Respondent No.3 unless and until the same is expressly admitted in the present reply.
3. That a short affidavit is being filed by the answering respondent at this stage and craves leave and liberty to file a detailed Counter Affidavit to the aforesaid application, as and when required.
4. That the applicant in the present matter has alleged that the illegal sand mining being done at two different sites on the Krishna Riverbed in village Joldahadgi, Taluka Devadurga, District Raichur, Karnataka by using poclairn/JCB



machines. It is also alleged in the application that during March 2020, a girl died by falling into the pit caused in the river Krishna by the contractors, who were engaged in sand mining and such things are still continuing.

5. That the applicant has inter-alia prayed for that the Hon'ble Tribunal please to
 - (a) Hold and declare that use of machinery in ordinary sand mining is not permissible as per EIA Notification.
 - (b) Direct the Deputy Commissioner, Raichur District to immediately stop all sand mining using mechanized devices like JCBs Poclaim machines etc., on riverbed of Krishna river
 - (c) Direct the Deputy Commissioner, Raichur District to bring on record the recent (ongoing) environmental clearances, mining plans, contractor details etc. and file affidavit of compliance of Rule. 31R(3) of the Karnataka Minor Mineral Concession Rules, 1994
 - (d) Direct the Department of Mines and Geology to submit an affidavit detailing the format for quarrying lease used for ordinary sand in entire District
 - (e) Director MoEF & CC to constitute a Committee for issuing "Guidelines on enquiry and payment of compensation in cases of loss of life connected to sand mining"
 - (f) direct the District Magistrate, Raichur District to conduct an enquiry into the death of minor girl
 - (g) direct the State authorities to provide compensation to the family of the teenage girl
 - (h) Direct prosecution of the concerned sand mining contracts, government officials involved for their lapse and violation of the Karnataka Minor Mineral Concession Rules, 1994 EIA Notification, 2006, Sustainable Sand Mining Management Guidelines, 2016 and various orders Supreme Court and this Tribunal.
6. That it is further submitted that MoEF & CC, New Delhi has issued EIA Notification dated 14th September 2006 which requires certain projects to obtain prior Environmental Clearance ("EC") before any construction work in case of new projects or expansion and modernization of existing projects or activities. The Schedule to the Notification details the categories or projects or activities which require prior Environmental Clearance.
7. That it is further submitted that all projects and activities are broadly categorized into two categories – Category "A" and Category "B", based on the potential impacts on spatial extent and human health and natural and man-made resources. All projects or activities included as Category 'A' in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment, Forest and Climate Change (MoEF&CC) and all projects or activities included as Category 'B' in the Schedule will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA). In the absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be treated as a Category 'A' project.
8. It is further submitted that the MoEF & CC, New Delhi further came up with the notification having S.O. 141 (E) dated 15th January, 2016 which stipulates that 'B2' Category projects pertaining to mining of minor mineral of lease area



less than or equal to five hectares shall require prior environmental clearance from DEIAA (District Environment Assessment Authority). The DEIAA shall base its decision on the recommendations of DEAC (District Level Expert Appraisal Committee), as constituted as per this notification. The copy of the notification S.O. 141 (E) dated 15th January, 2016 is annexed herein and marked as ANNEXURE-1.

9. It is respectfully submitted that the Environmental Clearances were issued to the alleged mining areas by the District Level Environment Impact Assessment Authority, Raichur vide letter No.DEIAA-OS-18 MIN/2017 and No.DEIAA-OS-25MIN/2017, dated 08.06.2017. Copy of the Environmental Clearances are enclosed at ANNEXURE -2 & ANNEXURE - 3 respectively.
10. It is most respectfully stated that in compliance of direction passed by Hon'ble National Green Tribunal in its order dated 04.09.2018 in O.A. 173/2018 in the matter of Sudarsan Das vs. State of West Bengal & Ors, MoEF & CC, New Delhi has formulated the new guidelines i.e. "Enforcement & Monitoring Guidelines for Sand Mining" (EMGSM-2020) supplemental to the existing guidelines i.e. Sustainable Sand Management Guidelines 2016 (SSMG-2016), which focus on the effective monitoring of the sand mining right from the identification of Sand mineral sources to its dispatch and end-use by consumers and the general public. Further, this document will serve as a guideline for collection of critical information for enforcement of the regulatory provision(s) and also highlights the essential infrastructural requirements necessary for effective monitoring for Sustainable Sand Mining.
11. It is submitted that the EMGSM-2020 & SSMG-2016 shall be read and implemented in sync with each other. In case, any ambiguity or variation between the provisions of both these document arises, the provision made in 'Enforcement & Monitoring Guidelines for Sand Mining-2020" shall prevail. Further, it is submitted that the Hon'ble National Green Tribunal, New Delhi in O.A. NO. 8 of 2018 (CZ) titled as SurajPagare&Anr. Vs State of M.P vide order dated 11.06.2020 directed the Principle Secretary, Mines; Director, Mines and State of Madhya Pradesh to follow the guidelines issued by MoEF in January, 2020 i.e. EMGSM-2020.
12. It is most respectfully submitted that the Hon'ble Tribunal vide order dated 26.02.2021 passed in the matter of Original Application No. 360/2015 titled as National Green Tribunal Bar Association versus Virender Singh (State of Gujarat) directed all the States/UTs to strictly follow the SSMG-2016 read with EMGSM-2020 reinforced by mechanism for preparation of DSRs, Environment Management Plans, replenishment studies, mine closure plans, grant of EC supra), assessment and recovery of compensation, seizure and release of vehicles involved in illegal mining, other safeguards against violations, grievance redressal, accountability of the designated officers and periodical review at higher levels (in terms of the order referred by the Hon'ble tribunal in the order).



13. It is most respectfully submitted that the Regional Office, MoEF&CC is authorized to monitor the implementation of the stipulated conditions and environmental safeguards contained in the Environmental Clearance vide Circular No. J-11013/30/2009-1A.II(I) dated 3rd June 2009 issued by MoEF. The copy of the Circular is enclosed at ANNEXURE-4.
14. It is respectfully submitted that State Department of Mines and Geology is the nodal authority in the State for dealing with the allotment of mining leases under the Mines and Minerals (Development and Regulation) Act (MMDR Act) and is entrusted with the enforcement and regulation of mining operations in a State including illegal mining.
15. That in view of the submissions made hereinabove, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to pass any order(s) as deemed fit and proper in the fact and circumstances of the matter."

25. They have more or less reiterated the contentions raised by MoEF and CC. So, they prayed for accepting their contentions and pass appropriate orders.

26. As per order dated 08.09.2020 when this Tribunal admitted the matter appointed a Joint Committee consisting of the District Collector, Raichur District or a Senior Officer not below the rank of Assistant Collector or Sub Divisional Magistrate as deputed by the District Collector, a Senior Officer from integrated Regional Office of MOEF & CC, Bangalore, a Senior Officer from State Environment Impact Assessment Authority (SEIAA) Karnataka, a Senior Officer from Karnataka State Pollution Control Board as nominated by its Chairman and Senior Officer from Department of Mines and Geology as deputed by the Director of Mines, State of Karnataka to inspect the area in question and submit a factual; as well as action taken report if there is any violation found.



27. The committee was directed to consider the following issues:-

- i. The question regarding accident said to have happened in that area and ascertain the cause of incidents and if it is related to any negligence on the part of the contractor lessee in doing mining in unscientific manner then that will have to be mentioned in the report.
- ii. Whether the sand mining is being done in river bed using mechanical process, using heavy machinery which is not permitted under the Sustainable Sand Mining Policy as well as directions issued by the Principal Bench of National Green Tribunal regarding sand mining in river bed areas.
- iii. Whether there were any violations of environment clearance and other consent conditions in carrying out the mining and whether any excess mining has been done and if so assess environmental compensation and also compensation payable to the kit and kin of the deceased as has been recorded by the Principal Bench of National Green Tribunal in OA No. 363 of 2016 vide order dated 25.09.2018.
- iv. MOEF and CC Regional Office Bangalore was designated as Nodal Agency for coordination and for providing all necessary logistics for this purpose.

28. On 27.01.2021 this Tribunal considered the Joint Committee Report dated Nil e-filed on 16.12.2020 which was extracted in Para 3 of the Order dated 27.01.2021 which reads as follows:

"REPORT OF JOINT COMMITTEE IN THE MATTER OF O.A. 171 OF 2020 (DR. SARVABHOUM BAGALI) SUBMITTED BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE, CHENNAI, AS PER



ORDER DATED 08.09.2020

1.0 PREAMBLE

In the Original Application No. 171 of 2020 (SZ), filed by Dr.SarvabhounBagali, Vs The State of Karnataka &Ors, the Hon'ble National Green Tribunal (NGT), Chennai issued an Orders on 08.09.2020 with the following directions:

"1. In order to ascertain the genuineness and real status of river bed sand mining, we feel it appropriate to appoint a joint committee comprising of 1) the District Collector, Raichur District, or a Senior Officer not below the rank of Assistant Collector or Sub Divisional Magistrate, as deputed by the District Collector, 2) a Senior Officer from Ministry of Environment Forests and climate Change (MoEF& CC), Regional Office, Bangalore 3) a Senior Officer from State Environment Impact Assessment Authority (SEIAA),Karnataka 4) A Senior Officer from Karnataka State Pollution Control Board as nominated by its Chairman and5) a Senior Officer from Department of Mines & Geology as deputed by the Director of Mines, State of Karnataka to inspect the area in question and submit a factual as well as action taken report, if there is any violation found.

2. The committee is also directed to go into the question regarding the accident said to have happened in that area and ascertain the cause of the incident and if it is related to any negligence on the part of the contractor in doing mining in an unscientific manner, then that may also be mentioned in the report.

3. The committee is also directed to go into the question as to whether sand mining is being done in river bed using mechanical process using heavy machinery which is not permitted under the Sustainable Sand Mining Policy as well as the directions of the Principal Bench of National Green Tribunal regarding sand mining in river bed areas.

4. The committee is also directed to go in to the question as to whether there were any violations of environmental clearance and other consent conditions in carrying out the mining and any excess mining has been done then, assess the environmental compensation and also compensation payable to the kith and kin of the deceased as has been recorded by the Principal Bench of National Green Tribunal in Original application No. 363 of 2015 vide order dated25.09.2018.

5. The Regional Office, Ministry of Environment, Forests and Climate change (MoEF & CC), Bangalore will be the nodal agency for co-ordination and for providing all necessary logistics for this purpose."

In compliance of above Order, the Regional Office, Ministry of Environment, Forests and Climate change (MoEF & CC), Bangalore, vide letter No. F. No. EP/12.7/NGT /54/KAR dated 18/09/2020 has requested the concerned Departments/Authorities to nominate senior official for the Committee to complete the task as appointed by the Hon'ble NGT. A reminder was also sent on 01.10.2020.

2.0 PRELIMINARY MEETING

On receipt of the Nominations, a preliminary meeting was held on 09.10.2020 to



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decide the further course of action for completing the task assigned by Hon'ble Tribunal. Following members have attended:

1. Shri Santhosh Kama Gouda, KAS, Assistant Commissioner, Raichur Sub-Division.
2. Shri M Sridhar, Zonal Senior Environmental Officer, KSPCB, Ballari.
3. Shri Kiran Kumar B S, Scientific Officer, Grade-I, Dept of Forest, Ecology and Environment and Karnataka Wetland Management Authority.
4. Shri M Viswanath, Senior Geologist, Department of Mines & Geology, Raichur.
5. Shri E. Thirunavukkarasu, Scientist „E“, Integrated Regional Office, Ministry of Environment, Forest and Climate Change.

The Joint Committee discussed about the Terms of references given by the Hon'ble NGT and decided to obtain the relevant information from concerned departments before the inspection of the Joint Committee such as District Survey Report (DSR) /report on estimation of sand deposits, List of mines permitted by the District Sand Committee, Audit of the quantity extracted etc. The site visit was also scheduled between 19-23 October 2020. However, due to meteorological forecast dated 13.10.2020 and continuous heavy rain in both the districts and flood in the rivers, the members felt that it will be difficult to reach and visit all mines sites and committee cannot find out ground reality of the sites and compliance status etc., Hence, site visit could not be completed. In view of the above, members suggested to seek additional time of three months from Hon'ble NGT to complete the task. Hon'ble Tribunal Vide order dated 29.10.2020 has granted time till 17.12.2020 to file the report.

3.0 INSPECTION BY THE JOINT COMMITTEE

Joint Committee inspected the mine sites at Raichur District on 24-25 November 2020. Following members have attended:

1. Shri Santhosh Kama Gouda, KAS, Assistant Commissioner, Raichur Subdivision.
2. Shri Kiran Kumar B S, Scientific Officer, Grade-I, Dept of Forest, Ecology and Environment and Karnataka Wetland Management Authority.
3. Smt Suganda B Kuri, Deputy Environmental Officer, KSPCB, Raichur.
4. Shri M Viswanath, Senior Geologist, Department of Mines & Geology, Raichur.
5. Shri E. Thirunavukkarasu, Scientist „E“, Integrated Regional Office, Ministry of Environment, Forest and Climate Change.

Following were also present:

1. Smt K. Pusphalatha, Senior Geologist, O/O Joint Director, Department of Mines & Geology, Ballari
2. Shri Maduraj, Tahsildar, Deodurga
3. Shri Manjunath, Geologist, Department of Mines & Geology, Raichur.
4. Shri Gopikrishna Geologist, Department of Mines & Geology, Raichur.
5. Shri Syed Fazil, Geologist, Department of Mines & Geology, Raichur.
6. Shri RM Nadaf, Circle Inspector, Deodurga.
7. Shri K Rangiah, Police Sub Inspector, Deodurga.



4.0 ABOUT THE GRANT OF MINING LEASE

The Joint Committee noted that the following procedure is being followed in granting of sand mining

4.1 Procedure followed in granting lease:

As per the Sustainable Sand Mining-2016 and 31(R) of Karnataka Minor Mineral Concession Rules -1994 (KMMCR) of amendment of 2016, Sand blocks have been inspected and identified with co-ordinates in river Krishna, Tungabhadra & in Nalas for the propose of Tender-Cum-Action or reservation for Governments works. With the assistance of Revenue, PWD, Forest, and DMG, the approximate quarriable sand available in each identified block is estimated by restricting quarrying depth to 1 to 3 meter or water level whichever is less.

After recommendations of the Taluk Committee, District Committee notifies in the official Gazette for grant of quarrying lease through auction for sand quarrying or extraction by Government Departments.

Tender-cum-auction is done through online. Highest price offer is declared as the successful bidder; the successful bidder obtains Quarry Plan, Environmental Clearance, as per Chapter-II-A of KMMCR-1994 of amendment of 2016. Sand quarrying permission is issued up to a period for five years.

In Raichur District, 2 sand leases granted in Joladhahadgi of Deodurga Taluk in Krishna riverbed to the successful bidder through Tender-Cum-auction as per Sand Policy-2016.

The District level Sand Monitoring Committee ensures stipulation of following conditions as per the New Sand Policy, 2016, KMMCR, 1994 and Amendment,2016 and as per the Sustainable Mining Management Guidelines,2016:

- a) No sand quarrying shall be undertaken without a quarrying plan and Environmental Clearance.*
- b) Lessee shall make Stockyard, Office, CC Camera, Weigh Bridge near to the sand block.*
- c) Quarrying shall be done in accordance with MOEF Guidelines.*
- d) In stream, mining sand extraction and loading to vehicles directly from river is prohibited. So, lessee should store mining sand in stockyard.*
- e) Lessee should mine as per the mine plan without damaging safety zone and riverbed.*
- f) Sand quarrying activity shall be in accordance with terms and conditions of the EC*
- g) The sand has to be mined in the sand lease blocks and to be stored in stockyard.*
- h) No Sand quarrying shall be allowed within a radius of 500 meters from water supply.*
- i) Permits shall be issued to vehicles having GPS.*
- j) The vehicles having non-communication mode, shall not be issued with permit and shall not be allowed to load sand.*
- k) Permits issued for transportation of Sand shall obtain sign in the Check Post.*
- l) Mechanized boats and dredgers in river sand quarrying are prohibited.*



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- m) Usage of backhoe equipment like JCB is allowed as per Chapter IV – B, 31-R of Karnataka Minor Mineral Concession Rules -1994 & its amendments.
- n) Sand stored in stockyard, shall be disposed by issuing Computerised Mineral Dispatch Permits (CMDR) to the transporters.

4.2. Action taken on violators

Established 14 check post across the District to check the illegal transportation of sand. Action have been taken to file FIRs impose penalty, against the violators like multiple illegal transport using same permit, vehicles for transporting more than the Permit Quantity, vehicles not equipped with GPS, usage of Heavy machinery like Hitachi etc. Following are the major action taken to prevent illegal sand mining/transportation/stock by the District/Taluk sand Monitoring Committee.

- i. 83 vehicles which have not equipped with GPS have been block listed and sand permits not issued for a period of three months.
- ii. 77 vehicles which have violated the rules by using the same permits transporting 237 multiple times from the 11 different sand stockyards of sand blocks have been block listed and transport permits not issued for a period of three months. Tender bid amount, Royalty, District Mineral Fund (DMF) of amount Rs.38,02,344/- has been collected as penalty. Each Vehicle owners have been imposed penalty of Rs. 25,000.
- iii. Six FIRs have been lodged against multiple illegal sand transportation on vehicles.
- iv. 30 FIRs have been registered & penalised for 76 vehicles of an amount Rs: 13,01,535/-by the members of the District Sand Monitoring Committee/Taluk Sand Monitoring Committee against the vehicles for transporting more than the Permit (Mineral Dispatch Permit) quantity.
- v. 78 vehicles have been penalised of an amount Rs 13.01 lakhs for transporting more than the Permit.
- vi. Six FIRs have been filed against for being used Hitachi's for mining in the blocks.
- vii. An amount of Rs 14 lakhs have been imposed as penalty for using Hitachi's for mining in the blocks.
- viii. In the Year 2017-18, 27 FIRs against the 27 Survey number& in the Year 2018-19, 38 FIRs against 68 Survey numbers have been registered for unlawful collection of sand on Patta land. District Level Sand Committee decided that, such lands to be entered as "Government" in the records.
- ix. Rs 58.66 lakhs imposed on three Sand Mining Lease holders who have extracted more quantity and six Sand Mining Lease holders for encroachment.
- x. During 2017-18, 2018-19, 2019-20, 2020-21 District/Taluk Sand Monitoring Committee lodged

- 995 FIR "s against illegal transportation (1090 Tippers, 320 Tippers/Lorry Seized)
- 105 FIR "s against illegal Storage of sand (54118 MT Seized)
- 6 FIR "s against illegal Sand Mining (7 Hitachis, 4 JCBs, 5 tippers Seized)



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5.0 DELIBERATIONS OF THE COMMITTEE

Hon'ble National Green Tribunal in the order dated 08.09.2020 directed the Joint Committee to look into the following:

- i. Ascertain the cause of the accident said to have happened in that area
- ii. whether sand mining is being done in riverbed using mechanical process using heavy machinery which is not permitted under the Sustainable Sand Mining Policy as well as the directions of the Principal Bench of National Green Tribunal regarding sand mining in riverbed areas.
- iii. whether there were any violations of environmental clearance and other consent conditions in carrying out the mining and any excess mining has been done then, assess the environmental compensation and also compensation payable to the kith and kin of the deceased as has been recorded by the Principal Bench of National Green Tribunal in Original application No. 363 of 2015 vide order dated 25.09.2018.

In order to deliberate on the above given Terms of References (ToR), the Committee, inspected the mine sites, had examined various documents like mine lease, Environmental Clearance and the compliance status with the prevailing regulations and guidelines etc., Based on the above, each ToR has been deliberated in detail and following are the observations/comments:

- 5.1 Ascertain the cause of the accident said to have happened in that area Shri Chandappa, Father of the deceased girl Ms.Sridevi, along with the few villagers – Shri Sugureshgouda, Shri Ramesh patil, Shri Reddyappagouda, Shri Somanathgouda, Shri Venkanagouda, Shri Amathyannagouda, Shri Veereshgouda, Shri Shankargouda, Shri Nagappa, Shri Yallappa, Shri Vasudevnaikmet the Joint Committee and produced an affidavit and made an oral statement. According to the affidavit and the oral statement, her daughter Ms. Sridevi has accidentally drowned in the Krishna River at Joladahedagi Village on 14.03.2020 and it was not occurred inside mining lease area. Shri Honnappa who resides in his village introduced Dr.Sarvabhoun Bagalito him stating that he is a social welfare worker and they assured to get funds under Ashraya scheme for his family from the Government in view of the accidental death of her daughter. Shri. Honnappa and Dr.Sarvabhoun Bagali had executed an affidavit on 06.07.2020 and got his thumb impression. Since he has not done any schooling, cannot read or write in any language and hence could not verify the contents in the affidavit. Later, came to know that Dr. Sarvabhoun Bagali has filed an application -O.A No: 366 of 2015 based on the alleged false/affidavit. He has further informed that he has never stated that the death of her daughter was due to drowning in a sand mining block pit, concerned Police officials and authorities have conducted investigation and had concluded the same. Therefore,



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he has executed another affidavit on 21.07.2020 withdrawing the affidavit dated 06.07.2020 and declaring it to be invalid. The place shown by him to the Committee where Ms.Sridevi accidentally drowned is north of the Joladahadgi Blocks.

It is noted from the affidavit and statement of Shri Chandappa father of the deceased girl that his daughter has accidentally drowned in the Krishna River at Joladahadgi Village, and not in mining lease area. Copy of the affidavit of Shri Chandappa dated 21.07.2020 is enclosed at Annexure-I.

The FIR filed in Devadurga Police station, Raichur also states that the girl has accidentally drowned in the Krishna River. Copy of the FIR in Kannada and its English translation are enclosed at Annexure-II and III\

- 5.2 Whether sand mining is being done in riverbed using mechanical process using heavy machinery which is not permitted under the Sustainable Sand Mining Policy as well as the directions of the Principal Bench of National Green Tribunal regarding sand mining in riverbed areas. It is noted that as per the information from Mines and Geology Department, Raichur following two sand mining leases have been awarded to the successful bidder in Krishna River, Joladahadgi, Devadurga Taluk, Raichur District through tender-cum-auction as per the KMMCR-1994 of Amendment of 2016 of Sand Policy. It is noted that these sand mining are permitted following due procedure prescribed under the regulations and guidelines:

Table -1: Details of Mine leases granted in Joladahadgi, Devadurga taluk, Raichur District

SL. No	Name of the lessee	Name of the water body, village	Extent (acres)	Date of Quarry Plan approval	Date of EC	Quantity permitted, MTPA	Exiracted from 2017 to till date, MT
1	Sri.Anand.B.Doddamani	Krishna River	12.20	06.06.2017	08.06.2017	38500	51151
2	Sri. P L Kamble	Krishna River	12.20	06.06.2017	08.06.2017	48000	76278

According the Department of Mines and Geology, mechanized boats and dredgers in river sand mining are prohibited, however usage of backhoe equipment like JCB is allowed as per the Chapter IV-B, 31-R of KMMCR,1994& its amendment-2016. According to Sustainable Sand Mining Management Guidelines 2016, Standard Environmental Conditions for Sand Mining, under Sustainable mining practices "Depending upon the location, thickness of sand, deposition, agricultural land/riverbed, the method of mining may be manual, semi mechanized or mechanized." In many sand leases in Yamuna river semi mechanized method has been allowed by MoEF & CC. Copy of a lease is enclosed at Annexure-VI. However, it was reported that both these mine owners have used heavy machinery – Hitachi for mining and hence FIRs have been filed against these mine owners and imposed penalty of Rs 2.0 lakhs each. Though the Sustainable Sand Mining Management Guidelines 2016 permits usage of semi mechanized or mechanized method of mining depends upon the



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location, thickness of sand deposition etc., the Committee opined that manual method of mining be preferred for mining up to a depth of one-meter, the usage of semi mechanized or mechanized may be permitted only in case of the blocks where the depth of sand deposition is more than one meter and depth of mining can be permitted more than one meter. It may be noted that according to the Sustainable Sand Mining Management Guidelines 2016, the depth of mining may be restricted to 3m / water level, whichever is less.

4.3 Whether there were any violations of environmental clearance and other consent conditions in carrying out the mining and any excess mining has been done then, assess the environmental compensation and also compensation payable to the kith and kin of the deceased as has been recorded by the Principal Bench of National Green Tribunal in Original application No. 363 of 2015 vide order dated 25.09.2018.

The Committee has noted from the Google earth imageries that that both the mines have commenced their mining activity only after the grant of EC.

Bock-1 - Sri.Anand.B.Doddamani

The Environmental clearance was granted to Sri.Anand.B.Doddamanion 08.06.2017. From the google satellite imageries (April, 2017 to September, 2019) & field visit following point is/ are inferred:

- The plain area in the blocks of the image of April, 2017 is evident that there was no mining.
- The pit formation and water logging found from satellite image of the year 2019 is evidence that mining done in the lease area after obtaining Environmental Clearance.

As per records DMG, Raichur, this mine owner has been imposed Rs 2.0 lakhs for using heavy machinery – Hitachi for mining. FIRs have also been filed for using heavy machinery – Hitachi for mining. *Bock-2 - Sri. P L Kamble* The Environmental clearance was granted to Sri. P L Kambleon 08.06.2017. From the google satellite imageries (April, 2017 to September, 2019) & field visit following points are inferred:

- The plain area in the blocks of the image of April, 2017 is evident that there was no mining.
- The pit formation and water logging found from satellite image of the year 2019 is evidence that mining done in the lease area after obtaining Environmental Clearance.

As per records DMG, penalty of Rs.19,01,952/- has been imposed for transporting sand by 127 multiple trips using same permits. Also mine owner has been imposed Rs 2.0 lakhs for using heavy machinery – Hitachi for mining. FIRs have also been filed for using heavy machinery – Hitachi for mining.

The Committee observed in both mines that there are no violation of Environmental laws since the Sustainable Sand Mining Management Guidelines 2016 permits manual, semi mechanized or mechanized method of mining depending upon the location, thickness of sand, deposition, agricultural land/riverbed, there are certain non- compliances of EC conditions relating to installation of dust control measures, implementation of water conservations measures, advertisement on grant of EC,



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improvement of transport route, constitution of Environmental Management Cell, submission of half yearly compliance report to Regional Office of the MoEFCC / SEIAA, Karnataka etc.,

The mine owners expressed technical difficulties / non-viabilities in installing the dust control measures and implementation of water conservations measures. It is noted that EC stipulated a condition as "Mineral handling area shall be provided with the adequate number of high efficiency dust extraction system. Loading and unloading areas including the transfer points should also have efficient dust control arrangement. These should be properly maintained and operated."

The Committee opined that the dust extraction could be installed and effectively operated in a closed area whereas both the mining as well as the sand storage area are open and hence it is technically not feasible. Further, the dust pollution is naturally prevented due to the moisture content and the density of the sand. Moreover, the dust settles down within few meters of the activity (within the site itself) due to density of sand particle. In view of the above, the Committee opined that this condition is not so relevant. Instead of dust extraction, water sprinkling at stock yard may be insisted.

As regards, water conservation, it is noted that EC stipulates condition as " The project authority should implement suitable conservation measures to augment ground water resources in the area in consultation with the Regional Director, Central Ground Water Board within 3 months and report be submitted to the Authority." In general water conservation involves minimisation of water usage, recycling and rainwater harvesting etc.,. Whereas, there is no water usage and waste water generation in the sand mining. Since all the mine sites are located either in riverbed or nallas, no separate rainwater harvesting measures are required. In view of the above, the committee opined that this condition is not so relevant.

As regards, CSR, the mine owners have informed that they pay District Mineral Fund which is used in the CSR activities in the vicinity of the project and also carry out certain activities viz. distribution of tree saplings, issue of books for the school students etc, hence, stipulation of separate conditions on CSR amounts to duplication. The Committee also agree with the statement of mine owners.

As regards non- constitution of Environmental Management Cell (EMC), the committee felt that it may not be viable for such mines to have a separate Environment Management cell in view of the number of workers engaged and their educational quality, nature of activity etc, and hence the mine owners may utilise the service of accredited environmental consultant/laboratory for the environmental management instead of having their own EMC.

In view of the above, the Committee opined that conditions on dust extraction system, water conservation, Environmental Management Cell, CSR need to be revisited. The SEIAA need to consider suitable modification of above conditions in the EC in future.

As regards the other non- compliances, considering the nature of non- compliances, the Committee instructed the mine owners to comply with the EC conditions and submit a compliance report within a month, otherwise enforcement action will be initiated as per the regulations.



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As regards the compensation payable towards the death of a girl, it was noted from the records that the death happened in the river and not in the mining area.

6.0 CONCLUSION AND RECOMMENDATIONS

After detailed deliberation, the Joint Committee has made the following conclusion and Recommendations:

- According to the site visit and records produced before the Committee viz., affidavit of Shri Chandappa father of the deceased girl, the girl has accidentally drowned in the Krishna River at Joladahedagi Village, and not in mined pit / inside mining lease area. Hence, the Committee has not calculated any compensation.
- Mechanized boats and dredgers in river sand mining are prohibited, however usage of backhoe equipment like JCB is allowed as per the prevailing Rules and Regulations.
- Though the Sustainable Sand Mining Management Guidelines 2016 permits usage of semi mechanized or mechanized method of mining depends upon the location, thickness of sand deposition etc., the Committee opined that manual method of mining be preferred for mining up to a depth of one-meter, the usage of semi mechanized or mechanized may be permitted only in case of the blocks where the depth of sand deposition is more than one meter and depth of mining can be permitted more than one meter. It may be noted that according to the Sustainable Sand Mining Management Guidelines 2016, the depth of mining may be restricted to 3m / water level, whichever is less.
- Mining shall be done in layers of one-meter depth to avoid ponding effect and after first layer is excavated, the process can be repeated for the next layers so as to avoid pit formation.
- There are no violation of Environmental laws noticed except certain non- compliances of EC conditions relating to advertisement on grant of EC, Display of EC at the site, improvement of transport route, constitution of Environmental Management Cell, submission of half yearly compliance report. Considering the nature of non-compliances, one Month time may be given to the mine owners to comply with the EC conditions and submit a compliance report to Integrated Regional Office, MoEFCC, Bangalore / SEIAA, Karnataka with a copy to DMG, Raichur.
- The Committee also felt that the conditions stipulated in the EC such as dust extraction in mineral handling area (storage area), water conservation, etc are not so relevant for these mines hence conditions on dust extraction system, water conservation, Environmental Management Cell, CSR need to be revisited. The mine owners may utilise the service of accredited environmental consultant / laboratory for the environmental management instead of having their own Environment Management Cell. The SEIAA need to consider suitable modification of above conditions in the EC in future.
- In addition to the imposition of penalty, cancellation of mine lease in case of any violation- encroachment, excess mining etc, and barring the lease owner in participating in Auction for a particular period say one to two years, may be considered.



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- DMG need to be strengthened with manpower and infrastructure so as to enhance the frequency of monitoring
- The CC Cameras at stock yard shall be connected to the servers of District / Taluk Sand Monitoring Committees/ DMG for monitoring.
- The CC Cameras shall be installed at check post on the sand transport route and connected to the servers of District / Taluk Sand Monitoring Committees/ DMG for monitoring."

29. Thereafter this Tribunal passed the following order:

"4. It is seen from the report that there was excess mining done and also heavy machineries were used for doing the quarrying and some illegalities were found and certain penalties have been recovered for transporting more than the permitted quantity. However for the excess mining, whether they have imposed penalty and recovered additional royalty, including whether they have recovered environmental compensation for doing excess mining including the cost required for restoration has not been mentioned in the report.

5. The learned counsel appearing for the applicant wanted some time to give their written submissions regarding the report for considering the matter in detail.

6. The committee is also directed (i) to submit a further report regarding the adequacy of the penalty recovered for the excess mining and whether that calculation was made in tune with the direction issued by the Principal Bench of National Green Tribunal in such matters and also in tune with the penalty provided under the respective mining laws in that State, (ii) to ascertain as to whether any further royalty has been recovered from the licensee who have been permitted to do the quarrying for the excess mining that has been done by them over and above the penalty imposed and whether the penalty imposed for transportation of more than the permit against the 78 lorries will include the amount that has been mentioned by this Tribunal above and (iii) to submit what are all the action taken by them against the alleged mining operators, including imposition of Environmental compensation and submit a further report to this Tribunal on or before 25.02.2021 by e-filing in the form of Searchable PDF/OCR Supportable PDF and not in the form of Image PDF along with necessary hardcopies to be produced as per Rules.

7. The applicant is also at liberty to file their objections/written submission, if any, to the Joint Committee report before the next hearing date.



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8. The Registry is directed to communicate this order to the members of the committee by e-mail immediately so as to enable them to comply with the direction.

9. For consideration of further report and written submission/objections, if any, to the committee report, post on 25.02.2021."

30. On 09.02.2022 this Tribunal considered the second Joint Committee Report dated Nil e-filed on 24.03.2021 extracted in Para 5 of the Order which reads as follows:

"SECOND REPORT OF JOINT COMMITTEE IN THE MATTER OF O.A. 171 OF 2020 (DR. SARVABHOUM BAGALI) SUBMITTED BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE, CHENNAI, AS PER ORDER DATED 27.01.2021.

1.0 PREAMBLE

In the Original Application No. 171 of 2020 (SZ), filed by Dr. Sarvabhoun Bagali, Vs The State of Karnataka & Ors., the Hon'ble National Green Tribunal (NGT), Chennai vide Order dated 08.09.2020 constituted a Joint Committee to inspect the sites in question and submit a Report. Accordingly, the Joint Committee has inspected the sand mines at Raichur District and submitted a report. Hon'ble NGT vide Order dated 27.01.2021 issued following directions:

"6. The committee is also directed

- (i) to submit a further report regarding the adequacy of the penalty recovered for the excess mining and whether that calculation was made in tune with the direction issued by the Principal Bench of National Green Tribunal in such matters and also in tune with the penalty provided under the respective mining laws in that State, (DMG)*
- (ii) to ascertain as to whether any further royalty has been recovered from the licensee who have been permitted to do the quarrying for the excess mining that has been done by them over and above the penalty imposed and whether the penalty imposed for transportation of more than the permit against the 78 lorries will include the amount that has been mentioned by this Tribunal above and (DMG)*
- (iii) to submit what are all the action taken by them against the alleged mining operators, including imposition of Environmental Compensation (MoEFCC)*

2.0 DELIBERTAIONS OF THE COMMITTEE

In order to deliberate on the above directions, the Committee had collected the information from concerned Departments and deliberated in detail. Following are the details/ observations/comments:

2.1 Adequacy of the penalty recovered for the excess mining and whether that calculation was made in tune with the direction issued by the Principal Bench



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of National Green Tribunal in such matters and also in tune with the penalty provided under the respective mining laws in that State, (DMG)

According to the DMG, following are the details of quantity permitted and mined by both the sand mines which are the subject matter of the OA:

Table -1: Details of Mine leases in Joladahadegi, Devadurga Taluk, Raichur District with quantity permitted and mined.

Sl. No.	Name of the Lessee	Date of EC	Quantity permitted per year, MT	Quantity extracted, MT			
				2017-18	2018-19	2019-20	2020-21
1	Sri Anand. B. Doddamani	08.06.2017	38500	0	5000	35351	10800
2	Sri P.L. Kamble	08.06.2017	48000	0	19500	43974	12804

It can be seen from the table that there is no excess sand mining by these leases. Hence, environmental compensation has not been worked out. However, Rs. 19.01 lakhs collected by District Sand Committee from Lessee Sri P.L. Kamble as penalty for transporting sand without permit/by multiple trips.

The Committee also noted the District Sand Committee, Raichur has collected Rs.12,64,500 Lakhs from three mines in the District for transporting sand without permit/multiple trips. Details are given in the Table 2 below:

Table 2: Details of the mines leases transported sand without permit/by multiple trips.

Sl. No.	Name of the lessee	Date of EC	Lease area, acre	Quantity transported without permit, MT	Penalty levied (Rs)	Penalty Collected, Rs
1	Myadargol-2	08.06.2017	12.20	270	2,43,000/-	2,43,000/-
2	Myadargol-3	08.06.2017	12.20	435	3,91,500/-	3,91,500/-
3	Myadargol-5	08.06.2017	12.20	700	6,30,000/-	6,30,000/-
4	ARshangi-2	08.06.2017	12.20	1750	6,30,000/-	Nil
5	Apparal-1	08.06.2017	12.20	600	Rs.2,16,000/-	Nil
6	Madlapur	29.09.2018	12.20	240	Rs.2,20,150/-	Nil

The Committee also noted that District Sand Committee, Raichur has imposed penalty on the following three mines who have extracted and by encroaching areas outside the lease area and collected Rs.16,11,200 Lakhs. Details are given in Table 3 below:

Table 3: Details of the sand mining outside lease areas in Raichur District

Sl. No.	Name of the lessee	Date of EC	Quantity extracted outside lease area, MT	Penalty Imposed (Rs)	Penalty Collected, Rs
1	Apparal-1	08.06.2017	1300	4,68,000/-	1,00,000/-
2	Chikkarayakumpi-1	08.06.2017	6200	22,32,000/-	15,11,200/-
3	Singapur	29.09.2018	500	8,35,500/-	Nil



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Based on the direction of Hon'ble Tribunal, the Joint Committee has calculated environmental compensation based on the Judgment of Hon'ble NGT (PB) dated 26.02.2021 in OA 360 of 2015. The Joint Committee considered the entire quantity mined outside lease area as illegal sand mining. The details are given in the Table 4 below:

Table 4: Details of the Environmental compensation

Sl. No.	Name of the lessee	Quantity extracted outside lease area, MT	Environmental compensation calculated based on the above, Rs
1.	Appāral-2	1300	10,78,286
2.	Chikkarayakumpi-1	6200	51,42,603
3.	Singapur	500	4,14,725

Calculation on Environmental Compensation is enclosed at Annexure-1.

It can be seen from the above two table that the Environmental Compensation worked out based on the Judgment of Hon'ble NGT(PB) dated 26.02.2021 in OA 360 of 2015 is more than the penalty levied by DMG in respect of two mine leases (Apparal-2 and Chikkarayakumpi-1) and less in case of Singapur mine lease.

2.2 Whether any further royalty has been recovered from the licensee who have been permitted to do the quarrying for the excess mining that has been done by them over and above the penalty imposed and whether the penalty imposed for transportation of more than the permit against the 78 lorries will include the amount that has been mentioned by this Tribunal above and (DMG)

The Committee noted that the penalty collected from the above sand lease holders include five times of the royalty, tender bid amount, over and above the penalty.

The penalty imposed and collected from 76 vehicles for transporting of more than the permit quantity does not include the penalty collected for transporting without permit/by multiple trips. Rs.13.01 lakhs collected against transporting of more than the permit quantity and Rs.45.45 lakhs collected against transporting sand without permit/by multiple trips.

2.3 Action taken by them against the alleged mining operators, including imposition of Environmental compensation (MoEFCC)

The Committee noted that apart from penalty, the District Sand Committee has taken following actions on the defaulters:

- In the year 2017-18, 27 FIRs against 27 Survey number & in the year 2018-19, 38 FIRs against 68 Survey numbers have been registered for unlawful collection of sand on Patta land.



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- Out of 77 vehicles who have transported sand without permit/ by multiple trips, 26 vehicles failed to pay penalty and hence those have been block listed.
- Six FIRs have been filed for using heavy machineries-Hitachi's for mining.
- An amount of Rs 14 lakhs has been collected as penalty for using Hitachi's for mining.
- 995 FIRs filed against illegal transportation (1090 Tippers, 320 Tippers/lorry seized)
- 105 FIRs filed against illegal Storage of sand (54118 MT Seized)

As regards the non-compliances of EC, mine owners have been directed to take action to comply with the conditions and submit a Action taken report / Action plan with time schedule on or before 25th February, 2021. The two sand mine leases which are subject matter of this OA have submitted compliance report along with latest ambient air quality monitoring reports, noise level reports, etc., The monitoring report reveals that all the parameters are within the limit. However, there are few short comings such as improvement & maintenance of approach road, wearing of personnel protective equipment by workers, advertisement about grant of EC etc., In view of the lease importance given by the lease owners on EC compliances and to bring attention and importance on EC, the committee felt that a lumpsum amount, say Rs five lakhs may be imposed on all mines as Environmental compensation.

3.0 CONCLUSION AND RECOMMENDATIONS:

- i. Joint Committee noted that there is no excess sand mining in both the sand mines which are the subject matter of this OA. Imposition of Environmental Compensation is therefore does not arise.
- ii. The Joint Committee noted that DMG has imposed penalty of RS.35,35,000 on three mines and collected Rs.16,11,200 for mining in encroachment areas outside the lease area. All these three mines are not part of present OA. The Joint Committee has worked out Environmental Compensation based on the methodology approved by Hon'ble NGT(PB) vide Judgment dated 26.02.2021 in OA 360 of 2015. It is noted that the Environmental Compensation calculated is more than the penalty levied by DMG in respect of two mine leases (Apparal-2 and Chikkarayakumpi-1) and less in case of Singapur mine lease. Since these mine leases are not part of this present OA, the Joint Committee felt that it would be appropriate to leave to Hon'ble Tribunal to decide on imposing Environmental Compensation.
- iii. Apart from penalty, the District Sand Committee has taken various actions on the defaulters including collecting penalty for using heavy machineries, filing FIR, etc.,
- iv. The DMG to take necessary action to collect the balance penalty.
- v. In view of the least importance given by the lease owners on EC compliances and to bring attention and importance on EC, the Committee recommends for imposing a lumpsum amount, say Rs five lakhs on all mines as Environmental compensation.
- vi. In case of continuance of non-compliances, the SEIAA, Karnataka to take action as per the powers delegated under S.O 637(E) dated 28.02.2014.



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ENVIRONMENTAL COMPENSATION

The environmental compensation for capital dredging is calculated based on the method approved by the Hon'ble NGT (PB) vide Judgment dated 26.02.2021 in OA 360 of 2015. The Joint Committee considered the entire quantity mined outside lease area as illegal sand mining.

Present Value of Foregone Ecological values (@5-8% discount rate and over 5 years)

$$PV = \sum_{t=1}^5 = 1 (D \times RF) / (1+r)^t$$

Where D is Market Value of Illegally mined Material

Risk Factor (RF) = 0.25, 0.50, 0.75, 1.00 as per the extent of severity of damage and ecological fragility of the river basin

Severity of Impact	Mild	Moderate	Significant	Severe
Risk level	1	2	3	4
Risk Factor	0.25	0.50	0.75	1.00
Discount Rate	8%	7%	6%	5%

Net Present Value (after netting out market value of illegally mined material) – i.e., Total Compensation to be levied, NPV = PV-

CALCULATION

The Committee noted that three mines – Apparal-2, Chikkarayakumpi-1 and Singapur have extracted sand by encroaching areas outside the lease area. The entire quantity mined outside lease area has been considered as illegal.

RF is considered as 0.5 (Moderate).

Market value of Rs. 790 as per the District Sand Committee, Raichur is considered.

1. Mine lease - Apparal-2

Quantity mined out = 1300 MT

Market value, D, Rs=1300 x 790 = Rs.10,27,000

$$PV = [102700 \times 0.5] / (1+0.07)^1 + [102700 \times 0.5] / (1+0.07)^2 + [102700 \times 0.5] / (1+0.07)^3 + [102700 \times 0.5] / (1+0.07)^4 + [102700 \times 0.5] / (1+0.07)^5 = Rs.21,05,286$$

$$NPV = PV - D = 21,05,286 - 10,27,000 = Rs 10,78,286$$

2. Chikkarayakumpi-1

Quantity mined out = 6200 Mt

Market value, D = 6200 x 790 = Rs.48,98,000"

31. On 29.03.2022, the case was heard and taken for Judgment.



32. The Counsel for the applicant submitted that as per the Provisions of the MMDR Act and also as per the Sustainable Sand Management Guidelines, 2016 and Enforcement and Monitoring Guidelines for Sand Mining of 2020, use of heavy machineries are prohibited. But in the list Lease Deed executed by the authorities, they have permitted the mechanised sand mining which is against the Rules. Further, 9th Respondent had filed their additional Counter Affidavit where they have mentioned that they are not permitting mechanised sand mining and they are strictly adhering to the Provisions of the MMDR Act and the Lease Deed in Form E was in relation to the quarrying lease granted under Rule 18 and by mistake that was incorporated and relevant portion in respect of Sand Mining prohibiting use of heavy machineries was omitted to be struck off by mistake. So, under such circumstances, the Counsel for the applicant prayed that orders may be passed directing the authorities to strictly comply with the provisions of the MMDR Act.

33. On the other hand, the Counsel appearing for State of Karnataka submitted that the affidavit filed by the 9th Respondent will go to show that the Form-E attached to the lease was by mistake which intended for granting lease under Rule 18 which relates to quarrying operations other than minor minerals and sand and that mistake was later rectified and no mechanised mining is permitted in river bed sand mining activities.

34. Considered the pleadings submissions made in Committee Reports and submissions made by both sides.



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35. The points that arise for consideration are:-

- i. Whether there was any Sand Mining done against the provisions of the Statute and the guidelines issued in this regard in respect of river bed sand mining?
- ii. What is the nature of direction, if any, that will have to be issued in the circumstances of the case?

POINTS:

36. The grievance in this application was regarding permission being granted to do mechanised sand mining in river beds of Krishna River in Richur District. According to the applicant, mechanised sand mining was prohibited under the Sand Mining Management Guidelines of 2016 and Lease Deed issued by the 9th Respondent permits such activities which is illegal.

37. The applicant also raised question that on account of the unscientific Sand Mining, death of a girl by name Shridevi happened during March 2020 and compensation will have to be directed to be paid for them.

38. Admittedly, to ascertain the genuineness of the allegation made in the application, a Joint Committee was appointed and the Joint Committee has filed a report wherein they have categorically stated that there was no excess mining done in the disputed area and the death of the girl was not happened in the mining lease area but it was outside the mining area and as



such it cannot be related to any negligence on the part of the lessees who were undertaking the mining in this area.

39. Respondents 8 and 9 were impleaded in this case alleging that the death of the girl happened within their area and as such they are liable to pay compensation. In view of the Joint Committee Report that the death has occurred not within the lease area and mining is nothing to do with the death of the girl, there is no necessity to direct respondents 8 and 9 to pay any compensation to the legal heirs of the deceased girl. The Learned Counsel appearing for the applicant fairly conceded that he is not pressing for this relief in view of the finding of the Joint Committee. So that prayer is rejected.

40. It is an admitted fact that as per the directions of this Tribunal in several cases in relation to River Bed Sand Mining and also on the basis of the guidelines given by MoEF and CC on sustainable sand mining policy namely Sand Mining Management Guidelines, 2016 and Enforcement and Monitoring Guidelines for Sand Mining, 2020 (EMGSM-2020) Mechanised sand Mining was prohibited in River Bed Sand Mining activity. So, any provision in the Lease Deed contrary to the same is not valid.

41. Further the 7th Respondent had filed a counter affidavit, wherein they have categorically stated that the Rule 18 of KMM CR 1994 is not applicable to sand mining and it relates to quarry of minor mineral other than sand. Form-E is a Lease Deed which has to be executed for doing quarry of other minor minerals other than sand and in fact, it is also mentioned that the Class 3 of Part II of Form E was omitted to be struck off



and it is only a mistake which deals with permission for bringing machinery and equipment which reads as follows:

"Liberty and power for are in connection with any of the purpose mentioned in this to erect, construct and maintain and use on or under the said land any Indian Machinery Plant pressing and floors furnaces coat oven brickle workshop, store houses, Bungalows, Godowns, shed and other buildings and other works and conveniences of light nature on or under the said lands. So it is clear from that even in this clause machineries can be brought only for the purposes mentioned therein."

42. Further, the Counter affidavit filed by 7th Respondent clearly shows that there are other conditions in Sub Rule 10 and 11 of Rule 31 (R) of KMMCR Rules, 2019 KMMCR 1994 which reads as follows:

*"Mechanised Doors and Grudges in river sand quarry are prohibited.
Use of backhoe equipment like JCB and Screening in River Bed Sand Quarrying shall be in accordance with the guidelines issued by the Ministry of Environment and Forest and Climate Change, Government of India, from time to time.*

Provided that loading equipment like dumpers, tractors, mounted loaders may be used on the river banks only for loading without destabilising river bank."

43. Further, they have also assured that they will be permitting river sand mining strictly in accordance with the guidelines issued by the MoEF and CC.

44. So, under such circumstances, we feel that the application can be disposed of with the following directions:-

- a. The prayer for compensation for the death of Miss. Shridevi is rejected.
- b. Whenever lease in respect of sand mining in river bed is granted, then the granting authority must specifically mention in that deed that no heavy machinery can be used for carrying out the sand



mining in river beds. The officials must be careful in drafting the lease deed in future.

- c. The Mining and Geology Department, State of Karnataka is directed to strictly implement the provisions of Karnataka Minor Mineral Concessions Rules, 1994 amended from time to time and also the Sand Mining Management Guidelines, 2016 and Enforcement and Monitoring of Guidelines of Sand Mining, 2020 issued by the MoEF and CC in respect of River Bed Sand Mining.
- d. Whenever there is any violation found, then the authorities are directed to take appropriate action against those violators strictly in accordance with law including the imposition of Environmental compensation apart from realising the penalty under the Karnataka Minor Mineral Concessions Rules, 1994 as amended from time to time and initiating prosecution under the respective statute.
- e. The Mining and Geology Department is directed to make necessary monitoring system to check illegal mining and violation of conditions and excess mining being done and if anything is brought to their notice, they are directed to take appropriate action against those persons who are responsible for the same, in accordance with law.
- f. The authorities must also provide necessary mechanism to check all these aspects and also must have a regular mechanism to have a vigil to supervise the sand mining areas to avoid natural resources being exploited.
- g. The authority dealing with grant of Sand Mining Lease in river bed area and the regulator who are Monitoring the same are directed to follow strictly the recommendations made by the Joint Committee



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extracted above and also the provisions in Sustainable Sand Mining Guidelines, 2016 and also in Enforcement and Monitoring Guidelines on Sand Mining, 2020.

- h. The Mining department is directed to take steps to realise the Environmental Compensation imposed against the persons responsible for illegal mining outside the permitted mining area in addition to the penalty imposed by the Joint Committee in accordance with law, after issuing show cause notice and providing opportunity of filing objection.

45. The points are answered accordingly.

46. In the result, the application is allowed in part and disposed of with the following directions:-

(i) The claim for compensation for death of the girl Miss. Shridevi is rejected as not pressed, since the incident occurred not within the lease area and it was not due to any activities of the lessees of the mining operations.

(ii) Whenever lease in respect of sand mining in river bed is granted, then the granting authority must specifically mention in that deed that no heavy machinery can be used for carrying out the sand mining in river beds. The officials must be careful in drafting the lease deed in future.

(iii) The Mining and Geology Department, State of Karnataka is directed to strictly implement the provisions of Karnataka Minor Mineral Concessions Rules, 1994 amended from time to



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time and also the Sand Mining Management Guidelines, 2016 and Enforcement and Monitoring of Guidelines of Sand Mining, 2020 issued by the MoEF and CC in respect of River Bed Sand Mining.

(iv) Whenever there is any violation found, then the authorities are directed to take appropriate action against those violators strictly in accordance with law including the imposition of Environmental compensation apart from realising the penalty under the Karnataka Minor Mineral Concessions Rules, 1994 as amended from time to time and initiating prosecution under the respective statute.

(v) The Mining and Geology Department is directed to make necessary monitoring system to check illegal mining and violation of conditions and excess mining being done and if anything is brought to their notice, they are directed to take appropriate action against those persons who are responsible for the same, in accordance with law.

(vi) The authorities must also provide necessary mechanism to check all these aspects and also must have a regular mechanism to have a vigil to supervise the sand mining areas to avoid natural resources being exploited.

(vii) The authority dealing with grant of Sand Mining Lease in river bed area and the regulator who are Monitoring the same are directed to follow strictly the recommendations made by the Joint Committee extracted above and also the provisions in Sustainable Sand Mining Guidelines, 2016 and also in Enforcement and Monitoring Guidelines on Sand Mining, 2020.



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(viii) The Mining department is directed to take steps to realise the Environmental Compensation imposed against the persons responsible for illegal mining outside the permitted mining area in addition to the penalty imposed by the Joint Committee in accordance with law, after issuing show cause notice and providing opportunity of filing objection.

(ix) Considering the circumstances, parties are directed to bear their respective cost in the application.

(x) The Registry is directed to communicate this Judgment to the Official respondents for their information and compliance with the direction.

47. With the above observations and directions, this Original Application is disposed of.

Sd/-
Justice K. Ramakrishnan, J.M.

Sd/-
Dr. Satyagopal Korlapati, E.M.

O.A. No. 171 of 2020 (SZ)
11th May, 2022. SE



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2023 SCC OnLine NGT 207

In the National Green Tribunal[±]

(BEFORE SHEO KUMAR SINGH, CHAIRPERSON, ARUN KUMAR TYAGI, MEMBER
(JUDICIAL) AND A. SENTHIL VEL, EXPERT MEMBER)

In re : News item published in The Siasat Daily
dated 18.04.2023 titled "Sand mafia attacks
Bihar Mines Department team, beats up woman
official"

Original Application No. 305/2023

Decided on July 11, 2023, [Date of hearing : 11.07.2023]

Advocates who appeared in this case:

Mr. Rishi K. Awasthi & Mr. Azmat H. Amanullah, Adv. for the State of
Bihar for Respondent.

ORDER

1. In Original Application No. 360/2015 dated 26.02.2021 it was
observed:—

"15. It is undisputed that there is huge degradation of environment on account of unregulated sand mining remains which is otherwise lucrative activity. It poses threat to bio-diversity, could destroy riverine vegetation, cause erosion, pollute water sources, badly affecting riparian ecology, damaging ecosystem of rivers, safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spell disaster for the conservation birdspecies, increase saline water in the rivers. It has direct impact on the physical habitat characteristics of the rivers such as bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Increase in demand of sand has placed immense pressure in the supply of sand resource and mining activities were going on illegally as well as legally without requisite restrictions. Lack of proper planning and sand management disturbs marine ecosystem and upset the ability of natural marine processes to replenish the sand. The Hon'ble Supreme Court (in Deepak Kumar, supra) noted that core group was constituted by the MoEF&CC to examine the impact of minor minerals on riverbeds and ground waters. (A draft report was prepared recommending mandatory preparation of mining plan on the pattern of mining plans for major minerals. Further recommendations are reclamation and



rehabilitation of abandoned mines, proportion of hydro geo-logical balance for minerals below ground water table limiting depth of mining to 3 meter and identification on locations where mining should be permitted was required. There is need for identifying safety zones in the proximity of intendments. Thus, strict regulatory parameters were required for regulating mining of minor minerals. It was noted that in-stream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the stream bed causes deepening of rivers which may result in destruction of aquatic and riparian habitats. It has impact on stream's physical habitat characteristics.

16. In *State (NCT of Delhi) v. Sanjay*, (2014) 9 SCC 772, at page 790, it was observed:

"32. The policy and object of the Mines and Minerals Act and Rules have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological imbalance and to stop the damages being caused to the nature. The Court cannot lose sight of the fact that *adverse and destructive environmental impact of sand mining has been discussed in the UNEP Global Environmental Alert Service Report. As per the contents of the Report, lack of proper scientific methodology for river sand mining has led to indiscriminate sand mining, while weak governance and corruption have led to widespread illegal mining. While referring to the proposition in India, it was stated that sand trading is a lucrative business, and there is evidence of illegal trading such as the case of the influential mafias in our country.*

33. The mining of aggregates in rivers has led to severe damage to rivers, including pollution and changes in levels of pH. Removing sediment from rivers causes the river to cut its channel through the bed of the valley floor, or channel incision, both upstream and downstream of the extraction site. This leads to coarsening of bed material and lateral channel instability. It can change the riverbed itself. The removal of more than 12 million tonnes of sand a year from Vembanad Lake catchment in India has led to the lowering of the riverbed by 7 to 15 cm a year. Incision can also cause the alluvial aquifer to drain to a lower level, resulting in a loss of aquifer storage. It can also increase flood frequency and intensity by reducing flood regulation capacity. However, lowering the water table is most threatening to water supply exacerbating drought occurrence and severity as tributaries of major rivers dry up



when sand mining reaches certain thresholds. Illegal sand mining also causes erosion. Damming and mining have reduced sediment delivery from rivers to many coastal areas, leading to accelerated beach erosion.

34. The Report also dealt with the astonishing impact of sand mining on the economy. It states that tourism may be affected through beach erosion. Fishing, both traditional and commercial, can be affected through destruction of benthic fauna. Agriculture could be affected through loss of agricultural land from river erosion and the lowering of the water table. The insurance sector is affected through exacerbation of the impact of extreme events such as floods, droughts and storm surges through decreased protection of beach fronts. The erosion of coastal areas and beaches affects houses and infrastructure. A decrease in bed load or channel shortening can cause downstream erosion including bank erosion and the undercutting or undermining of engineering structures such as bridges, side protection walls and structures for water supply.

35. Sand is often removed from beaches to build hotels, roads and other tourism-related infrastructure. In some locations, continued construction is likely to lead to an unsustainable situation and destruction of the main natural attraction for visitors—beaches themselves. Mining from, within or near a riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, instream roughness of the bed, flow velocity, discharge capacity, sediment transportation capacity, turbidity, temperature, etc. Alteration or modification of the above attributes may cause hazardous impact on ecological equilibrium of riverine regime. This may also cause adverse impact on instream biota and riparian habitats. This disturbance may also cause changes in channel configuration and flow paths. Today, demand for sand and gravel continues to increase. Mining operators, instead of working in conjunction with cognizant resource agencies to ensure that sand mining is conducted in a responsible manner, are engaged in full-time profiteering. Excessive in-stream sand and gravel mining from riverbeds and like resources causes the degradation of rivers. In-stream mining lowers the stream bottom, which leads to bank erosion. Depletion of sand in the stream-bed and along coastal areas causes the deepening of rivers and estuaries and enlargement of river mouths and coastal inlets. It also leads to saline water intrusion from the nearby sea. The effect of mining is compounded by the effect of sea level rise. Any volume of sand exported from stream-



beds and coastal areas is a loss to the system. Excessive in-stream sand mining is a threat to bridges, river banks and nearby structures. Sand mining also affects the adjoining groundwater system and the uses that local people make of the river. Further, according to researches, in-stream sand mining results in the destruction of aquatic and riparian habitat through wholesale changes in the channel morphology. The ill effects include bed degradation, bed coarsening, lowered water tables near the stream-bed and channel instability. These physical impacts cause degradation of riparian and aquatic biota and may lead to the undermining of bridges and other structures. Continued extraction of sand from riverbeds may also cause the entire stream-bed to degrade to the depth of excavation."

Need for regulation under the Water, Air and EP Acts by PCBs, apart from the Mining authorities under the Mining law

17. Again, in Goa Foundation, supra (prs 74-76) it was observed that **mining was required to be regulated not only by the Mining department but also by the PCBs under the Water and Air Act and by the MoEF under the EP Act. It is made clear that the environment laws override other laws and any provision to the contrary in the Mines Act will not stand in the way of enforcing the environment norms. In this regard reference may also be made to report of the Ministry of Mines entitled "Sand Mining Framework" which will not stand in the way of modified mechanism in accordance with this order."**

2. Cognizance was taken by this Tribunal on the issue of rampant illegal mining in Bihar taking place near bridges to get access to trucks affecting safety of the pillars supporting the bridges.

3. The matter was taken up by this Tribunal on 09.05.2023 and a Committee was constituted consisting Chief Secretary, Bihar, DGP, Bihar and ACS/PS, Mining and ACS/PC, Environment with direction to submit factual and action taken report. The Committee has submitted a report which as follows:—

"II. Site Inspection & Findings of the Joint Committee:

1. The Joint committee, formed under the directions passed by the Hon'ble NGT vide its order dated 09.05.2023, visited the place of occurrence i.e., Parev, Patna on 24.05.2023. The following essential facts came to light during the inspection conducted by the Joint Committee:

- a) During inspection, it was found that no illegal mining was taking place in the nearby sand ghats. Further, there were no signs of any mining around the Koilwar bridge.
- b) The District Magistrate, Patna informed that regular raids



and checking is conducted on major routes and stern action is taken against the vehicles who plying with without challan or carrying excess quantity mentioned on challan. Legal sand ghats are also regularly checked and strict action is taken against irregularity, if found. In this regard, a total of 257 raids, 216 arresting, 70 FIR's, 434 vehicles seized and penalty amounting to Rs. 220.43 lakhs recovered during 17.04.2023 to 23.05.2023. In addition to this 7 FIR's lodged against illegal mining.

c) In the District of Bhojpur a total of 251 raids, 27 arresting, 70 FIR's and 410 vehicles seized during 18.04.2023 to 23.05.2023.

2. The Joint Committee also held a meeting with the settlees and transporters of sand on 31.05.2023 and response was sought from them regarding the stringent action being taken by the State to prevent illegal mining. The concerned individuals/settlees/transporters submitted before the Committee that the steps which are being undertaken by the State have resulted into decrease of illegal mining and a sense of fear is there amongst the sand mafias in the state. It was also requested by the said persons that such measures must remain in place permanently so that illegal sand mining is completely eradicated in the State of Bihar.

III. Recommendation Given by the Joint Committee:

The Joint Committee, in furtherance of the action taken by the District Administration for curbing illegal sand mining, gave the following directions to the concerned District Magistrate and the Superintendent of Police:

- i. Conduct regular raids nearby non-settled sand ghats and also keep vigil on settled sand ghat.
- ii. The Department of Mines and Geology will track the vehicle engaged in sand transportation by getting pre-registered and installation of GPS. Facility regarding extension of validity period will also be enabled in case of congestion in route.
- iii. The Mines and Geology Department will pre-registered the vehicles engaged in sand transportation to resolve the issue faced due to the expiry of the time period of e-challan during traffic congestion. Along with this, tracking of vehicles shall be done by installing GPS.
- iv. Establish checkposts equipped with CCTV cameras on the major routes of sand mining/transportation and get intensive checking of vehicles by officials of mining, transport and police.
- v. Additional Police post will be established in inaccessible area to



more effectively dominate these area.

A copy of the minutes of meeting of the Joint Committee held on 24.05.2023 and 31.05.2023 are enclosed herewith as Annexure A.

IV. The Measures taken by the State to deal with the problem of

Illegal mining in Bihar.

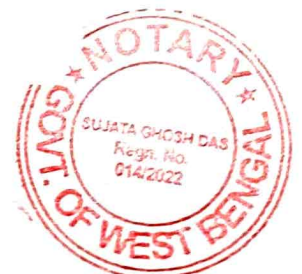
A. New Bihar Sand Mining Policy 2019

- i. The State of Bihar after due consideration of environmental concerns, sustainable sand mining guidelines and assessment of the previous sand policy, promulgated a New Sand Policy in 2019.
- ii. Earlier the whole district with all its rivers was settled with a single settlee, who then submitted a mining plan and applied for EC for various ghats. Majority of the ghats were B2 category ghats whose EC was given by DEIAA.
- iii. The settlement of one district or a few districts with one person/company led to monopolization of the sand business by a few and led to increase in criminal activities. As they were leased the whole district, the leaseholders took EC for small plots but indulged in mining in area outside these plots thereby violating environmental safeguards and negating the EC regime.
- iv. The State of Bihar rectified these issues in its new sand policy 2019 and restricted the area that could be settled with one settlee to a maximum of 200 hectares in case of major rivers.
- v. Areas of deposition of sand were identified and based on the surveyed area, major rivers like Son, Kiul, Falgu, Morhar and Chanan divided into sustainable contiguous blocks, wherever possible, keeping in mind the topography of the river to prevent illegal mining. Other rivers within a district divided as per requirement for the purpose of settlement.
- vi. The New Sand policy 2019 of Bihar was upheld by the Hon'ble NGT in OA No 62/19 and in its order dated 02.12.2019 and by the Hon'ble Supreme Court of India in Civil Appeal No.- 9467/2019 vide order dated 24.01.2020.

A copy of the Bihar Sand Mining Policy, 2019 is enclosed herewith as Annexure B.

B. Constitution of Mining Task Force at State, Division and District level

- i. The State Government has also formulated the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019. The chapter XVII of Bihar Mineral



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(Concession, Prevention of illegal Mining, Transportation & Storage) Rules, 2019 deals with mechanism for preventing illegal mining, transportation, and storage of sand. Under this chapter, **Mining Task Force has been constituted at State/Division/District level.** It is the responsibility of the District Level Task Force to ensure that all the mining activity is carried out as per the terms of the mining lease and no illegal mining, illegal transportation, over loading, hoarding and black marketing of minor mineral is carried on. The following District level officials are member of District level Mining Task Force:—

- (a) Collector— Chairman
- (b) Superintendent of Police
- (c) All Sub Divisional Officers
- (d) All Sub Divisional Police Officers
- (e) Divisional Forest Officer
- (f) Executive Engineer, RCD, BCD, PHED and Rural Works Department
- (g) District Transport Officer
- (h) District Mining Officer — Member Secretary

C. Stringent Penal Provisions made by enhancing fine to 25 times the royalty amount and compound fee based on the type of vehicle used

- i. In order to control illegal mining and transportation in the State stringent penal provisions were made enhancing the compounding fee and rate of fine for illegal mining/transportation of minerals, as per the guidelines given by the Hon'ble National Green Tribunal, Principal Bench, New Delhi v. Virender Singh vide order and judgment dated 26.02.2021 in OA No. 360 of 2015.
- ii. The State of Bihar promulgated and notified the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Amendment Rules, 2021 vide gazette notification dated 5th July 2021 for prevention of illegal mining by prescribing severe penalties considering the gravity of the offences. The amended Rule 56 (1) clearly stipulates that no person shall extract or remove or undertake any mining operation in any area without holding any mineral concession, permit or any other permission granted or permitted under these rules or shall transport or store or cause to be transported or stored any mineral without a valid challan or license. Sub Rule (2) of Rule 56 prescribes imprisonment term, which may extend to two years or a fine of five lakh rupees or both. The Mining officer may compound the offence on



payment of cost of the mineral and the compound fees detailed in the chart reproduced herein below:—

S.No.	Vehicle/Equipment	Compound Fee (in Rs.) Per Unit
1	Tractor Trolley	25000/-
2	Matador, Half Truck 407,608	50000/-
3	Full Body Truck/Dumper (Hydraulic 6-wheeler vehicle)	100000/-
4	10 or more than 10- wheeler vehicle	200000/-
5	Crane, Excavator, Loader, Power hammer, Compressor, Drilling Machine, etc	400000/-

Note:— Cost of the mineral shall be taken as twenty-five times of royalty in lieu of rent, royalty, compensation for environmental degradation and tax chargeable on the land occupied without lawful authority, etc.

Provided that the amount of compound fee in cases other than specified as above shall not be less than rupees twenty-five thousand and shall be in addition to the cost of mineral.

iii. Rule 56 (3) also contains provisions for seizure of vehicle along with the mineral by a mining officer or police officer of the district or any other officer of the district authorized by the Collector.

A copy of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Amendment Rules, 2021 is enclosed herewith as Annexure C.

D. Continuous Raids and Monitoring: -

On the directions of the District Level Task Force, district officers of mining, transport, revenue and police have been conducting periodic raids both during the day and at night. The details of action taken during last two years is provided herein below:—

Period	Raids	FIR	Arresting	Vehicles Seized	Penalty Imposed (In Iakhs)
2021-22	16,504	3175	1760	18276	16512.41
2022-23	22,962	4437	2441	20352	29900.08
2023-24	4526	821	485	4043	5362.00



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(till 31.5.2023)					
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The sand mining ghats are also being inspected by the concerned officials and in case of any irregularly, heavy penalty is being imposed upon the contractors at the sand ghats. Moreover, third party environmental audit of sand ghats has also been conducted for effective monitoring of sand mining in the respective districts of the state.

E. Exemplary Action against officers whose role was found dubious

The State of Bihar has a zero-tolerance policy towards illegal mining. It is the only state in the country to take exemplary action against government officers whose role in controlling illegal mining was found to be dubious. The Economic Offences Unit after surveillance two Indian Police Service (IPS) officers, four deputy superintendents of police (DSP) rank officers, many SHOs besides four Bihar Administrative Service officers (BAS) were among 27 officials suspended for aiding and abetting illegal sand mining mafias in four districts of the state. A motor vehicle inspector (MVI) along with five officers of mines and geology department were also suspended for aiding and abetting the illegal sand mining mafia.

F. Creation and Recruitment on 100 posts of Mining Inspectors in the State.

To ensure that regulatory mechanism works efficiently towards the prevention of illegal mining and transportation, the Department of Mines and Geology created 100 new posts of Mining Inspectors. Till date 90 Mining Inspector including 28 Women have been recruited and posted. These Mining Inspectors hail from prestigious institutions and are being regularly trained to deal with illegal sand mining.

G. Deployment of SAP and Home guards in various Districts.

190 Home guards and 137 SAPs has been deployed to deal with the menace of illegal sand mining, transportation and storage.

H. Preparation of DSR for all Districts.

In the light of order of Hon'ble Supreme Court in the matter of State of Bihar v. Pawan Kumar, Civil Appeal No. 3661-3662 of 2020, **the District Survey Report has been prepared** and the same are approved by State Level Environment Impact Assessment Authority (SEIAA), Bihar. All the sand deposit areas of the river are identified and included in the new DSRs to avoid possibilities of illegal mining. The identified sand ghats are being auctioned and the concerned LOI holders have applied for grant of EC before SEIAA which is under process. In the interregnum, the Bihar State Mining Corporation Ltd.



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(BSMCL) has been conducting sand mining in the state by appointing contractors in terms of the orders passed by the Hon'ble Supreme Court in the matter of State of Bihar v. Pawan Kumar, Civil Appeal No. 3661-3662 of 2020. The entire sand mining activity being undertaken in the State of Bihar, as on date, is being done under the supervision of the Hon'ble Supreme Court in the abovementioned pending matter.

V. Steps to further improve the mechanism:

1. The Council of Minister, State of Bihar has already granted approval for services of National Informatics Centre (NIC) in Department of Mines and Geology Department for Next Generation Mining Management Software and incorporation of latest technologies and best practices which being followed across country in mining sector for delivery of services which aims at the following:

- a) Integrated Web, Mobile technology as enabler for transparency, robustness, and Secured platforms.
- b) Dashboards for all stakeholders along with alerts will be generated for smooth operations.
- c) The software has been architecturally designed to ensure that there is no technical issue when the number of concurrent users increases.
- d) The software will be integrated with the Central mParivahan (MORTH) Portal to ensure that vehicle details are verified before issuing a challan. However, the dependency on Central server during challan issue has been eliminated.
- e) A command-and-control centre will be established to monitor the vehicle movements.
- f) A new feature has been added to the portal, allowing vehicle owners to register their vehicles and get vehicles verified with mPariwahan (MORTH) Portal before issuing a challan.
- g) Departmental officers will also be able to verify the loaded vehicle and its challan through the Mobile App. The QR Code of Challan will be securely encrypted so that only verified Mobile App users can scan and check challan/vehicle information.
- h) The software will be integrated with VLTS (Vehicle Location Tracking System), which is currently running in the transport department, to track vehicles. The route chart will also be digitized to track deviations in the route and generate alerts.
- i) Vendors for GPS devices empanelled with MORTH will be shared with vehicle owners so that they can procure and install standard devices as per MORTH guidelines.
- j) Mining plans will be digitized, and geo-fencing of the mining



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area will be done. Entire resources are being digitised bring them on GIS platform."

Salient features of the EMGSM-2020

4. We may note the salient features of the EMGSM-2020, which are supplemental to existing SSMG-2016 and seek to provide effective enforcement and monitoring from the stage of identification of source to its dispatch and end use which requires involvement of all stakeholders viz. Central Government, State Government, Leaseholders/Mine Owners, Distributors, Dealers, Transporters and Consumers (bulk & retail). EMGSM refer to the judgment of the Hon'ble Supreme Court in *Deepak Kumar v. State of Haryana*, (2012) 4 SCC 629 making EC mandatory irrespective of the area of mining lease, followed by monitoring in terms of the Environment Management Plan, using IT and IT enabled services. **Monitoring has to be with reference to quantity of mined material, transportation with a view to promote environmental protection, limit negative physiological, hydrogeological and social impacts underpinning sustainable economic growth.** Observations in the order of this Tribunal dated 04.09.2018 in O.A. 173/2018 in *Sudarsan Das v. State of West Bengal* has also been referred to as follows:

"There can be no two views that an effective institutional monitoring mechanism is required not only at the stage when Environmental Clearance is granted but also at subsequent stages".

"The guidelines focus on the preparation of District Survey Report and the Management Plan" ...

We are of the view that all the safeguards which are suggested in sustainable sand mining guidelines as well as notification dated 15.01.2016 ought to be scrupulously followed." ...

It is a known fact that in spite of the above-suggested guidelines being in existence, on the ground level, illegal mining is still going on. The existing mechanism has not been successful and effective in remedying the situation." ...

Since there is an utter failure in the current monitoring mechanism followed by the State Boards, SEIAAs and DEIAAs, it is required to be revised for effective monitoring of sand and gravel mining and a dedicated monitoring mechanism be set up."

5. Further reference has been made to the directions in the order dated 05.04.2019 requiring the 17 States, which were party before the Tribunal viz. West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh, to follow the revised Guidelines and to review their respective monitoring mechanism. It is then stated that



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with the object of regulating the mining, the sources of sand and steps required are mentioned which provide for District Survey Report (DSR), Mining Plan, replenishment study, consideration of environment impact while granting EC, laying down conditions for EC, monitoring of transportation to the end user to ensure that only legally mined material is transported. There is need to balance between deposition and extraction of sand as per replenishment study, maintaining surveillance, using Unmanned Artificial Vehicles (UAVs)/Drone for reserves estimation, quantity estimation, land use monitoring. Details about all these aspects have been mentioned in the said Guidelines. With regard to post EC monitoring, there is a provision for environment audit, monitoring of sale and purchase by developing online portal and laying down the levels of monitoring i.e. Level 1-Reach/Stockyard level monitoring, Level 2 - Transportation monitoring, Level 3 - End consumer monitoring/bulk consumer, Level 4 - Indirect monitoring. Reference has then been made to the High-Powered Committee incorporating safeguards to be adopted by the project proponents. There is also provision for assessment of compensation for the ecological damage by the State/PCB/any other Authority. Inter District and Inter State boundaries are separately dealt with. The uniform monitoring mechanism stipulates:

"9.4. Monitoring Mechanism

XXXXXX.....XXX.....

1. All precaution shall be taken to ensure that the water stream flows unhindered and process of Natural river meandering doesn't get affected due to mining activity.
2. River mining from outside shall not affect rivers, no mining shall be permitted in an area up to a width of 100 meters from the active edge of embankments or distance prescribed by the Irrigation department.
3. The mining from the area outside river bed shall be permitted subject to the condition that a safety margin of two meters (2 m) shall be maintained above the groundwater table while undertaking mining and no mining operation shall be permissible below this level unless specific permission is obtained from the Competent Authority. Further, the mining should not exceed nine-meter (9 m) at any point in time.
4. Survey shall be carried out for identifying the stretches having habitation of freshwater turtles or turtle nesting zones. Similarly, stretches shall be identified for other species of significant importance to the river ecosystem. Such stretch with adequate buffer distance shall be declared as no-mining zone and no mining shall be permitted. The regulatory authority as defined for granting Environmental Clearance,



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while considering the application of issuance of ToR and/or EC for the adjacent block (to non-mining zone) of mining shall take due precaution and impose requisite conditions to safeguard the interest of such species of importance.

5. *District administration shall provide detailed information on its website about the sand mines in its district for public information, with an objective to extend all information in public domain so that the citizens are aware of the mining activities and can also report to the district administration on any deviation observed. Appropriate feedback and its redressal mechanism shall also be made operational. The details shall include, but not limited to, lease area, geo-coordinates of lease area and mineable area, transport routes, permitted capacity, regulatory conditions for operation including mining, environmental and social commitments etc.*
6. *A website needs to be maintain to track the movement of centralised sand mining and a Centralised server system should be made to manage the data related to sand mining across India.*
7. *The mineral concession holders shall maintain electronic weighbridges at the appropriate location identified by the district mining officer, in order to ensure that all mined minerals from that particular mine are accounted for before the material is dispatched from the mine. The weighing bridge shall have the provision of CCTV camera and all dispatch from the mine shall be accounted for.*
8. *The mineral movement shall be monitored and controlled through the use of transit permit with security features like printing on IBA approved MICR papers, Unique bar/QR, fugitive ink background, invisible ink mark, void pantographs and watermarks papers or through use of RFID tagged transit permits and IT/IT-enabled services. Such monitoring system shall be created and made operationalised by State Mining department and district level mining officer shall be responsible for ensuring that all legal and operational mines are connected and providing the requisite information on the system. Regular check and associated report shall be submitted to DLTF and uploaded on the website.*
9. **State Government shall constitute a District Level Task Force (DLTF) under the Chairmanship of Deputy Commissioner/District Magistrate/Collector with Superintendents of Police and other related senior functionaries (District Forest Officer, District transport officer, Regional officer-SPCBs, Senior Officer of**



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Irrigation Department, District Mining Officer) with one/two independent member nominated by the Commissioner concerned. The independent member shall be retired government officials/teacher or ex-serviceman or ex-judiciary member.

The DLTF shall keep regular watch over the mining activities and movement of minerals in the district. The DLTF shall have its regular meeting, preferably every month to reconcile the information from the mining activity, and other observations made during the month and take appropriate corrective and remedial action, which may include a recommendation for revoking mining lease or environmental clearance. The DLTF may constitute an independent committee of the expert to assess the environmental or ecological damage caused due to illegal mining and recommend recovery of environmental compensation from the miner's concern. The recommendation may also include action under the provision of E(P) Act, 1986.

10. The area not identified for mining due to restriction or otherwise are also to be monitored on a regular basis by the DLTF. Any observations of mining activity from the restricted area shall be reported and corrective measures shall be initiated on an urgent basis by the DLTF.
11. The dispatch routes shall be defined in the Environmental Clearance and shall be avoided through densely habituated area and the increase in the number of vehicle movement on the road shall be in agreement with the IRC guidelines/carrying capacity of the road. The alternate and dedicated route shall be explored and preferred for movement of mining to avoid inconvenience to the local habitat. The mining production capacity, by volume/weight, shall be governed by total permissible dispatch calculated based on the carrying capacity of dispatch link roads and accordingly, the production should be regulated.
12. The movement of minerals shall be reconciled with the data collected from the mines and various Naka/check posts. Other measures may also include a general survey of the potential mineable area in the district which has not been leased/auctioned or permitted for mining due to regulatory or other reasons.
13. The location and number of check post requirement shall be reviewed by DLTF on a regular basis so that appropriate



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changes in location/number could be made as per the requirement. Such review shall be carried out on a regular basis for the district on inter-state boundary or district providing multiple passages between two districts of different states.

14. The district administration shall compile the information from their district of the permitted and legal mined out minerals and other details and share such information and intelligence with the officials of the adjoining district (Inter or/and Intra State) for reconciliation. The information shall include the area of operation, permissible quantity, mined out minerals (production) the permitted route etc., and other observations, especially where the mine lease boundary is congruent with the district boundary. Such coordination meeting shall be held on a quarterly basis, alternatively in two district headquarters or any other site in two districts decided mutually by the District Magistrate.

15. The mining department shall include submission of an annual environmental audit report as one of the conditions in the mining lease agreement. The annual audit for each river bed mining lease shall be carried out and the audit report shall be uploaded on the website of district administration. The audit shall be carried out by an independent team of 3 members nominated by District Collector/Magistrate/Commissioner comprising of Ex-Serviceman, Ex-Government officials of repute, Professor or Person having experience of mining/environment. The guidelines and method of the audit shall reflect adequately the monitor-able parameters and output and reflect the compliance status with respect to the conditions imposed by the regulatory authorities including conditions of Environmental clearance.

16. The in-situ and ex-situ environmental mitigative measures stipulated as EMP, CER, CSR and other environmental and safety conditions in mines including the welfare of labours shall properly reflect in the audit report.

9.5 Suggestive additional requirements are

i. The requirement at the Mine Lease Site:

- a. Small Size Plot (Up to 5 hectares) : Android Based Smart Phone.
- b. Large Size Plots (More than 5 hectares) : CCTV camera, Personal Computer (PC), Internet Connection, Power Back



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up.

- c. Access control of mine lease site.
- d. Arrangement for weight or approximation of the weight of mined out mineral on the basis of the volume of the trailer of vehicle used.

ii. Scanning of Transport Permit or Receipt and Uploading on Server:

- a. Website : Scanning of receipt on mining site can be done through barcode scanner and computer using the software;
- b. Android Application : Scanning on mining site can be done using Android Application using a smartphone. It will require internet availability on SIM card;
- c. SMS : Transport Permit or Receipt shall be uploaded on the server even by sending SMS through mobile. Once Transport Permit or Receipt get uploaded, a unique invoice code gets generated with its validity period.

iii. Proposed working of the system:

The State Mining Department should print the Transport Permit or Receipt with security features and issue them to the mining leaseholder through the District Collector. Once these Transport Permits or Receipts are issued, they would be uploaded on the server against that mine lease area. Each receipt should be preferable with pre-fixed quantity, so the total quantity gets determined for the receipts issued. When the Transport Permit or Receipt barcode gets scanned and invoice is generated, that particular barcode gets used and its validity time is recorded on the server. So all the details of transporting of mined out material can be captured on the server and the Transport Permit or Receipt cannot be reused.

iv. Checking On Route:

The staff deployed for the purpose of checking of vehicles carrying mined mineral should be in a position to check the validity of Transport Permit or Receipt by scanning them using the website, Android Application and SMS.

v. Breakdown of Vehicle:

In case the vehicle break-down, the validity of Transport Permit or Receipt shall be extended by sending SMS by the driver in specific format to report the breakdown of the vehicle. The server will register this information and register the breakdown. The State can also establish a call center, which can register breakdowns of such vehicles and extend the validity period. The subsequent restart of the vehicle also should be similarly reported to the server or call center.



vi. Tracking of Vehicles:

The route of the vehicle from source to destination can be tracked through the system using checkpoints, RFID Tags, and GPS tracking.

vii. Alerts or Report Generation and Action Review:

The system will enable the authorities to develop a periodic report on different parameters like daily lifting report, vehicle log or history, lifting against allocation, and total lifting. The system can be used to generate auto mails or SMS. This will enable the District Collector or District Magistrate to get all the relevant details and shall enable the authority to block the scanning facility of any site found to be indulged in irregularity. Whenever any authority intercepts any vehicle transporting illegal sand, it shall get registered on the server and shall be mandatory for the officer to fill in the report on action taken. Every intercepted vehicle shall be tracked.

The monitoring of mined out mineral, environmental clearance conditions and enforcement of Environment Management Plan will be ensured by the regulatory authority and the State Pollution Control Board or Committee. The monitoring arrangements envisaged above shall be put in place. The monitoring of enforcement of environmental clearance conditions shall be done by the Central Pollution Control Board, Ministry of Environment, Forest and Climate Change and the agency nominated by the Ministry for the purpose.

Some of the State has followed the SSMMG-2016 and has also improvised or customized on the provisions given therein, and are successfully in operation. Salient provision adopted at different stages of sand mining in the state of Tamil Nadu is given as **Annexure VIII**.

9.6 Actions against illegal excavation and transport

Solapur district administration in Maharashtra had adopted a multi-pronged strategy to penalize the persons involved in illegal excavation and transport which resulted in a significant increase in revenue earned by the state. Following rules and procedures as mentioned in these guidelines will add to the costs of PP. Those involved in illegal activities are not required to bear these costs and this will make their supply in the market cheaper (though illegal). This will put the players running their business by following rules and procedures laid down by the government to disadvantage as far as the selling price is considered. Therefore, it is necessary to come down heavily on those involved in illegal excavation/transport, so



that there is no incentive for players to abide by the rules.

The following action may be taken to achieve this deterrence against illegal business:

1. The action should be taken under all legal options available simultaneously. Thus, after identifying the case of illegal excavation, storage and/or transport of minor minerals (including sand), fine should be levied as per the land revenue laws/code(s) of the state. In addition, FIR should be lodged in the police station under relevant sections of law including sec 379 IPC. In addition, action under the Motor Vehicle Act, 1989 and relevant rules should initiate to cancel/suspend the driving license of the driver and permit of the vehicle. Further, action should be initiated under provisions in the Income Tax Act, 1961 for unaccounted income and under the Central Goods and Services Act, 2017 for nonpayment of GST. (Earlier this was done under the state act pertaining to Value Added Tax/Sales Tax). Habitual offenders should also be taken up under local state laws for externment and/or preventive action. It is clarified that as per law, it is possible to take all actions under various laws simultaneously for one offence. What is prohibited in law is an action under the same law for the same act more than once.
2. The action should be taken against all persons responsible. Often, there is a tendency to penalize only the drivers of the vehicles. The mafia of illegal mining and transport is much bigger and drivers are only one part of the system. It is necessary to identify all those involved in the offence. It is usually not possible to reach the place of excavation without creating a motorable pathway up to the same through land which may be private land. Such role of such landowners needs to be looked into for each offence and proceeded against simultaneously. Further, the role of vehicle owners needs to be probed. Role of the person who allowed his land to be used for illegal excavation and storage should also be examined. Lastly, the person who purchases such sand should also be probed. The legal proceedings stated above needs to be initiated against all of these together. An attempt should be made to fix the financial responsibility in joint and several ways so that recovery is easier.
3. There may be discretion available in law about the extent of the penalty to be levied. If such discretion is very wide, then it is advisable that guidelines may be laid down to reduce such discretion in law for levying penalties. For example, in Maharashtra, Land Revenue Code, fine of any amount of



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penalty up to thrice the value of the sand can be levied. Solapur district administration had instructed Tahsildars and SDMs not to use discretion and levy the fine of three times the value. Availability of discretion makes junior level functionaries susceptible to pressures and it may also lead to corrupt practices.

4. *It is emphasized that actions, as stated above, are most important to ensure that the IT-based system works. If these exemplary actions are not taken against everyone, it shall create a strong disincentive to those involved in legal excavation and transportation. For IT-based (or any other) legal system to work, it is necessary to ensure that illegal system stops working altogether."*

6. Since, Chief Secretary of Bihar has taken action and proper mechanism have been suggested to control the illegal mining thus we direct the Chief Secretary to monitor the mechanism and direct the Competent Authority of District Headquarter to regularly monitor by checking of illegal mining and to comply SSMG 2016 and EMGSM, 2020.

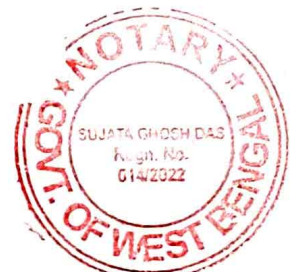
7. State PCB is directed to take necessary visit and inspect periodically and in case it is found that there is a violation of environmental rules or mining rules, penal action in addition to assessment and imposition of environmental compensation must be taken against the violators.

8. The environmental compensation so assessed shall be utilized for environmental purposes.

9. With these observations the Original Application No. 305/2023 stands disposed of.

— — —
† Principal Bench New Delhi

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Item Nos. 02 to 20

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 360/2015

(With report dated 15.01.2021)

National Green Tribunal Bar Association

Applicant

Versus

Virender Singh (State of Gujarat)

Respondent

With

Original Application No. 366/2015

National Green Tribunal Bar Association

Applicant

Versus

Dr. Sarvabhoom Bagali (State of Karnataka)

Respondent

With

Original Application No. 368/2015

National Green Tribunal Bar Association

Applicant

Versus

Dr. Sarvabhoom Bagali (State of Karnataka)

Respondent

WithOriginal Application No. 173/2018
(Earlier O.A. No. 89/2017 (EZ))

Sudarsan Das

Applicant

Versus

State of West Bengal & Ors.

Respondent(s)

With

Original Application No. 874/2018

In Re: News item published in "The Tribune " Authored by Arun Sharma
Titled "Mounds of sand on Sutlej banks, mining mafia digs in"**With**

Original Application No. 44/2016

Mushtakeem

Applicant



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Versus

MoEF & CC & Ors.

Respondent(s)

With

Original Application No. 517/2015

Sandeep Kumar

Applicant

Versus

Ministry of Environment, Forests and
Climate Change & Ors.

Respondent(s)

With

Original Application No. 550/2015

Virender Kumar

Applicant

Versus

Ministry of Environment, Forests and
Climate Change & Ors.

Respondent(s)

With

Original Application No. 530/2016

Sandeep Kumar

Applicant

Versus

Ministry of Environment, Forests and
Climate Change & Ors.

Respondent(s)

With

Original Application No. 272/2016

M/s Ganga Yamuna Mining Co.

Applicant

Versus

State of Haryana & Ors.

Respondent(s)

With

Original Application No. 481/2016

Joginder Singh

Applicant

Versus

Ministry of Environment & Forest

Respondent

With

Original Application No. 540/2015

Ved Pal Singh

Applicant



Versus
Ministry of Environment and Forests & Ors. Respondent(s)

With
Original Application No. 90/2016
Chander Mohan Uppal Applicant

Versus
State of U.P. & Ors. Respondent(s)

With
Execution Application No. 40/2017
IN
O.A. No. 517/2015
Sandeep Kumar Applicant

Versus
Ministry of Environment, Forests and
Climate Change & Ors. Respondent(s)

With
Original Application No. 671/2017
(Earlier O.A.No.123/2014)
Himmat Singh Shekhawat Applicant

Versus
State of Rajasthan & Ors. Respondent(s)

With
Original Application No. 726/2018
Rupesh Pethe Applicant

Versus
State of M.P. & Ors. Respondent(s)

With
Original Application No. 456/2018
(Earlier O.A. No. 146/2014 (CZ))
Nityanand Mishra Applicant

Versus
State of M.P. & Ors. Respondent(s)

With
Original Application No. 1086/2018
(Earlier O.A.No.140/2014)
Nanga Ram Dangi Applicant

Versus



Secretary, Department of Environment &
Forests & Ors.

Respondent(s)

With

Original Application No. 575/2019

Yaduraj Singh Jat

Applicant

Versus

State of Rajasthan

Respondent

Date of hearing: 26.02.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Ms. Katyayni, Advocate in OA 1086/2018
Amicus Curiae: Mr. Raj Panjwani, Senior Advocate with Mr. Aagney Sail, Advocate
Respondent(s): Mr. Divya Prakash Pande, Advocate. for CPCB & MoEF & CC
Mr. Raj Kumar, Advocate for CPCB in OA 726/2018
Ms. Soni Singh, Advocate for CPCB in OA 456/2018
Mr. Attin Shankar Rastogi, Mr. Balendu Shekhar & Mr. Shlok
Chandra, Advocates for MoEF & CC
Mr. Ankit Verma, Advocate for State of UP
Mr. Rahul Khurana, Advocate for State of Haryana
Mr. Darpan KM, Advocate for State of Karnataka
Ms. Madhumita Bhattacharjee, Advocate. for State of West Bengal
Mr. Vikas Mahajan, AAG for State of HP
Mr. Maulik Nanavati, Advocate for State of Gujarat
Ms. Soumya Priyadarshinee, Advocate for State of MP
Ms. Sakshi Popli, Advocate for DPCC

ORDER

1. The issue for consideration in this group of matters relates to updation of enforcement and monitoring mechanism to control and regulate illegal sand mining (including riverbed sand mining) in the light of directions in the judgments of the Hon'ble Supreme Court, including in *Deepak Kumar v. State of Haryana & Ors.*: (2012) 4 SCC 629 and *Goa Foundation v. Union of India & Ors.* (2014) 6 SCC 590 and orders of this Tribunal.



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2. Some of the matters have been pending for about seven years while others have been tagged to the pending matters later, from time to time, in view of common question. We need not refer to the individual facts and all the earlier order. It will suffice to refer to some of the significant orders passed from time to time given in a tabular form as follows:

Sl. No.	Party name	Date of orders	Particulars
1.	OA No. 173/2018 Sudarsan Das v. State of West Bengal & Ors.	04.09.2018	Inter alia directing revision of monitoring mechanism by the MoEF&CC.
2.	OA No. 44/2016 Mushtakeem v. MoEF&CC & Ors.	05.09.2018	
3.	OA No. 186 of 2016 Satendra Pandey Vs. Ministry of Environment, Forest & Climate Change & Anr	13.09.2018	Inter alia disapproving dispensing with requirement of public hearing and requiring evaluation by DEIAA.
4.	OA 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016	16.01.2019	Requiring the Chief Secretaries to monitor the subject of unregulated and unscientific sand mining
5.	O.A. No. 360/2015, National Green Tribunal Bar Association v. Virender Singh (State of Gujarat)	05.04.2019	Inter alia consideration of scale of compensation and revised monitoring mechanism
6.	OA No. 44/2016 Mushtakeem v. MoEF&CC & Ors.	19.02.2020	Inter alia modifying the mechanism for release of vehicles
7.	OA No. 360/2015 National Green Tribunal Bar Association v. Virender Singh (State of Gujarat)	17.08.2020	Inter alia considering the scale of compensation proposed by the CPCB
8.	O.A. No. 40/2020, Pawan Kumar v. State of Bihar & Ors.	14.10.2020	Inter alia engagement of experts from NABT/QCCI for preparation of DSR/ replenishment study
9.	O.A. No. 726 of 2018 Rupesh Pethe v. State of M.P. & Ors.,	04.11.2020	

3. We may now refer to the developments which have taken place during pendency of the matters and then proceed to decide the surviving issues, as further discussed in para 24:

- a. enforcement of SSMG-2016 and EMGSM-2020,
- b. compensation regime,
- c. procedure for seizure and release of vehicles,



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- d. **periodic interaction among the stakeholders as discussed in later part of the judgment,**
- e. **designing and reviewing monitoring mechanism from time to time including grievance redressal.**

‘Sustainable Sand Mining and Management Guidelines, 2016’ (SSMG-2016) and “Enforcement and Monitoring Guidelines for Sand Mining, 2020” (EMGSM-2020)

4. In the course of proceedings, the Ministry of Environment, Forest and Climate Change (MoEF&CC) issued ‘Sustainable Sand Mining and Management Guidelines, 2016’ (SSMG-2016) under the provisions of the Environment (Protection) Act, 1986 (EP Act, 1986) on 15.01.2016. Further, in the light of the September 2016 report of the High-Powered Committee (constituted by the Tribunal), headed by the Secretary, MoEF&CC and suggestions as noted in order dated 04.09.2018 in OA 173/2018, *Sudarsan Das v. State of West Bengal & Ors.*, the Tribunal directed revision of the guidelines.¹ Accordingly, the MoEF&CC has issued “Enforcement

¹ Para 25 of the said order is as follows:

“25. In view of above discussion, we are of the view that since the subject of mining is also required to be regulated for protection of environment and it is to take care of this requirement, MoEF&CC has issued directions from time to time under Section 3 and 5 of the Environment (Protection) Act, 1986. The MoEF&CC needs to revise its directions keeping in mind the following:

- i. Mining Surveillance System discussed in para 23 above be finalized in consultation with ISRO Hyderabad.
- ii. Safeguards suggested in Sustainable Sand Mining Guidelines published by the MoEF&CC in the year 2016.
- iii. Suggestions in the High Power Committee Report.
- iv. Requirement of demarcation of boundaries being published in respect of different leases in public domain.
- v. Need to issue SOP laying down mechanism to evaluate loss to the ecology and to recover the cost of restoration of such damage from the legal or illegal miners. Such evaluation must include cost of mining material as well as cost of ecological restoration and net present value of future eco system services forgone.
- vi. Need to set up a dedicated institutional mechanism for effective monitoring of sand and gravel mining which may also take care of mining done without any Environmental Clearance as well as mining done in violation of Environmental Clearance conditions.
- vii. The Mining Department may make a provision for keeping apart atleast 25% of the value of mined material for restoration of the area affected by the mining and also for compensating the inhabitants affected by the mining.
- viii. One of the conditions of every lease of mine or minerals would be that there will be independent environmental audit atleast once in a year by reputed third party entity and report of such audit be placed in public domain.
- ix. In the course of such environmental audit, a three-member committee of the local inhabitants will also be associated. Composition of three members committee may



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and Monitoring Guidelines for Sand Mining, 2020" (EMGSM 2020), uploaded on the website on 27.01.2020 and communicated to all the States. Salient features thereof will be noted later.

Issue of EC procedure being handled by SEIAA instead of DEIAA, after public hearing and other necessary steps, procedure for revision of DSR preparation and enforcement mechanism in States, including compensation regime and seizure and release of vehicles

5. Vide order dated 13.09.2018 in O.A. No. 186/2016, *Satyender Pandey Vs. MoEF*, further direction was issued against dispensing with the requirement of public hearing and evaluation by SEIAA in terms of the judgment of the Hon'ble Supreme Court in *Deepak Kumar, supra* thereby the guidelines/notification dated 15.01.2016 dispensing with such requirement was held to be hit by the judgment of the Hon'ble Supreme Court in *Deepak Kumar, supra* and thus not enforceable.

6. On 05.04.2019, the Tribunal conducted comprehensive review of the matter and noted following issues required consideration. Directions were issued with reference to the said issues:

- (a) Revision of Sustainable Sand Mining Guidelines, 2016 by the MoEF&CC in the light of directions of this Tribunal vide order dated 04.09.2018 in Sudarsan Das (supra).**
- (b) Compliance of Sustainable Sand Mining Guidelines, 2016 as may be revised by MoEF&CC as above.**
- (c) Effective monitoring mechanism for preventive and remedial measures as directed in orders of this Tribunal, including surveillance system and recovery of compensation.**
- (d) Directions in individual cases listed today.**
- (e) Scale of compensation."**

7. Considering the extent of illegality in the process, apart from directing revision of the Guidelines as above, the Tribunal directed the

preferably include ex-servicemen, former teacher and former civil servant. The Committee will be nominated by the District Magistrate."



States² to review their monitoring mechanism in the light of observations of this Tribunal in earlier orders, including orders dated 04.09.2018 in *Sudarsan Das v. State of West Bengal & Ors*, 05.09.2018 in *Mushtakeem v. MoEF&CC & Ors*. and 16.01.2019 in OA 606/2018, *Compliance of Municipal Solid Waste Management Rules, 2016*. **Though direction was issued to the States who were parties before the Tribunal, the directions are of general nature applicable to sand mining in all the State /UTs.** The Tribunal also considered compliance reports from different States after finding that the response of the State was not satisfactory.

Seizure and Release of vehicles involved in illegal mining

8. Another issue bearing on the enforcement mechanism is the action against the vehicles used in illegal sand mining. Seizure of such vehicles is required and release of seized vehicles lightly defeats the purpose of the coercive measures. Since the vehicles are in a way weapon of offence, the same cannot be dealt with in the manner disputed property is dealt with under section 451 Cr.PC. by releasing the same in favour of the ostensible owner by taking an entrustment/indemnity bond/*sapurdginama*. In *Sujit Kumar Rana*, (2004) 4 SCC 129 and order dated 26.03.2019 in Cr. A. 524/2019, *State of Madhya Pradesh v. Uday Singh*, it was held that special procedure for seizure and release of such vehicles prevails over the procedure under Section 451 Cr.P.C. This Tribunal earlier directed, in the case of illegal mining in Meghalaya that such vehicles should be released only on the payment of 50% of the showroom value. The same was affirmed by the Hon'ble Supreme Court in *2019 (8) SCC 177*. Similar order was passed by the Tribunal on 10.01.2019 in O.A. No. 670/2018, *Atul*

²The States of West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh



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Chouhan v. State of U.P., which stands affirmed by the Hon'ble Supreme Court vide order dated 07.05.2019 in C.A. No. 1590/2019. Thus, the procedure under Cr.P.C. for release of vehicles on *superdari* without stringent conditions would not apply in respect of action taken for enforcement of Sustainable Guidelines issued under the Environment (Protection) Act, 1986 (EP Act) and for enforcement of orders of this Tribunal under Section 15 of the National Green Tribunal Act, 2010 (NGT Act). However, having regard to the difficulty expressed by the State that requirement to pay 50% of the showroom value of the vehicle was resulting in vehicles not being released at all, the earlier order was modified on 19.02.2020 to the effect that following scale of amount be recovered for release of the seized vehicles:-

Sr. No.	Category of Vehicle	Penalty Amount
1	Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and less than 5 years old.	Rs. 4 lacs
2	Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and more than 5 years but less than 10 years old.	Rs. 3 lacs
3	For the remaining Vehicles older than 10 years/Equipments/ Excavators which are otherwise legally permissible to be operated and not covered by Serial No. 1 and 2.	Rs. 2 lacs
<p>Note - I: On repetition of the offence by the same vehicle/ equipment, Order dated 05.04.2019 will be applicable.</p> <p>Note - II: The option of release may be available for a period of one month from the date of seizure and thereafter, the vehicles may be confiscated and auctioned.</p>		

9. Following further directions were issued :-

"6. The State may issue an appropriate Office Order/Rule to the above effect and publish the same. Needless to say that any private contract between a financier and a debtor cannot affect the States' sovereign power to protect the environment and take incidental coercive measure for enforcement of rule of law. Lien of the State will override any private interest. The above compensation regime will be over and above any existing Rules or provisions. The amount collected may be



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remitted to the State PCBs/PCCs for being utilized for restoration of the environment.

7. The above course of action will be permissible to all the States at their option."

Scale of compensation for violations on polluter pays principle

10. Vide order dated 17.08.2020, the Tribunal considered the CPCB report dated 30.01.2020, in pursuance of earlier orders on scale of compensation to be recovered for violation of norms for mining on polluter pays principle and the matter was deferred for further consideration of such scale and further orders in the light of the EMGSM 2020. **On the issue of scale of compensation for violations, the Tribunal held that the same has to be calculated having regard to the polluter pays principle and not mere loss of royalty. This requires taking into account value of the illegally mined material and cost of restoration of the environment.** CPCB did the exercise by constituting an expert Committee. The Tribunal considered the report as follows:-

"8. The Committee considered two approaches:

- (I) **Approach 1: Direct Compensation based on the market value of extraction, adjusted for ecological damages.**
 (II) **Approach 2: Computing a Simplified NPV for ecological damages.**

9. In the first approach, the criteria adopted is:

- Exceedance Factor (EF).
- Risk Factor (RF).
- Deterrence Factor (DF).

10. Approach 1 is demonstrated by Table 1 as follows:

Permitted Quantity (in MT or m ³)	Total Extraction (in MT or m ³)	Excess Extraction (in MT or m ³)	Exceedance in Extraction:	Compensation Charge (in Rs.)
X	Y	Z = Y-X	Z/ X	D * (1+RF + DF) Where D = Z x Market Value-of-the-material-per-MT-or-m ³



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				$DF = 0.3$ if $Z/X = 0.11$ to 0.40 $DF = 0.6$ if $Z/X = 0.41$ to 0.70 $DF = 1$ if $Z/X \geq 0.71$
				$RF = 0.25, 0.50, 0.75, 1.00$ (as per table 2)

11. Approach 2 is demonstrated by following formula:

“Till such time as data and information for a comprehensive NPV is worked out in a site specific manner to account for all (or atleast the major) ecological damages, a simplified NPV, proxied on the market value of the illegally extracted amount may be computed. In this case the NPV approach would imply that **the total benefits from the activity of sand mining (as represented by the market value of the extracted amount) be deducted from the total ecological costs** imposed by the activity. In the absence of data on benefits and costs separately, we recommend a modification of the formula as shown below:

Total Benefits(B) = Market Value of illegal extraction : D
(refer Table 1)

Total Ecological Costs = Market Value Adjusted for risk factor: $D * RF$ (refer Table1).

For present purposes, it is assumed that the Benefits would accrue only in the first year (in which the extraction of the illegally mined material takes place), while the ecological costs would continue to be felt over a period of time. NPV is to be calculated for a period of 5 years on the net value, $\Sigma (C-B)$, at a discount rate ranging from 8%-5%, varying in inverse with the risk factor. Thus, where the highest risk factor (say 1) is applicable, the discount rate applicable would be the lowest (say 5% in this case).”

12. Final recommendation is as follows:

“Thus, it is recommended that the annual net present value (NPV) of the amount arrived at after taking the difference between the costs and the benefits through the use of the above approach, maybe calculated for a period of 5 years at a discount rate of 5% for mining which is in a severe ecological damage risk zone. The rationale for levying this NPV is based on expert opinion that reversal and/or restoration of the ecological damages is usually not possible within a short period of time and rarely is it feasible to achieve 100% restoration, even if the sand deposition in the river basin is restored through flooding in subsequent years. The negative externalities of the mining activity are therefore to be accounted for in this manner. Ideally, the worth of all such damages, including costs of those which can be restored should be charged. **However, till data on site-specific assessments becomes available, this approach may be**



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adopted in the interim. In situations where the risk categorization changed. However, till data on site-specific assessments becomes available, this approach may be adopted in the interim. In situations where the risk categorisation is unavailable or pending calculation, the following Discount Rates may be considered:

Severity	Mild	Moderate	Significant	Severe
Risk Level	1	2	3	4
Risk Factor	0.25	0.50	0.75	1.0
Discount	8%	7%	6%	5%

11. Annexure-A appended to the report gives the calculation as follows:

“Compensation Charge (Scenario II - explicit accounting of NPV)

Market Value of Illegally Mined Material (D) $5000 \times 400 = 2000000/-$

Annual Value of Foregone Ecological Values $D \times RF = 2000000/-$

- **Present Value of Foregone Ecological Values (@ 5% discount rate and over 5 years)**

$$PV = \sum_{t=1}^5 \frac{(D+RT)}{(1+r)^t}$$

$$= \frac{(2000000)}{(1+0.05)^1} + \frac{(2000000)}{(1+0.05)^2} + \frac{(2000000)}{(1+0.05)^3} + \frac{(2000000)}{(1+0.05)^4} + \frac{(2000000)}{(1+0.05)^5}$$

$$= \text{Rs. } 86,58,953/-$$

- **Net Present Value (after netting out market value of illegally mined material) - i.e., Total Compensation to be levied**

$$= NPV = PV - D$$

$$= \text{Rs. } 66,58,953/-$$

Compensation Charge in above case:

Approach 1 (no explicit accounting of NPV)	Approach 2 (explicit accounting of NPV)
$D \times (1 + RF + DF)$	@ 5% discount rate and over 5 years
Rs. 46,00,000/-	Rs. 66,58,953/-

12. The Tribunal directed undertaking of scenario analysis, as suggested on behalf of the applicant and to furnish a further report accordingly. Further report dated 12.10.2020 has been filed by the CPCB reiterating its earlier report. **We propose to approve approach-2 in the report.** Apart from the above, a report dated 15.01.2021 has been filed by



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the Oversight Committee for the State of UP³ to which reference will be made later.

Procedure for DSR/EC

13. Vide order dated 14.10.2020 in O.A. No. 40/2020, *Pawan Kumar v. State of Bihar & Ors.*, the issue of preparation of District Survey Report (DSR) by Experts was considered. Vide Notification dated 25.07.2018 issued by the MoEF&CC, under Section 3(2)(v) of the EP Act, 1986 amending EIA Notification dated 14.09.2006, procedure for preparation of DSR for sand mining/riverbed mining was laid down. **The DSR is crucial as it contains Environment Management plan, including the replenishment study and other safeguards and is the basis to consider the environment impact of mining based on which decision to grant the Environmental Clearance is taken.** The Tribunal held that for such crucial exercise, the **Experts should be out of those accredited by the National Accreditation Board of Education and Training/ Quality Control Council of India (NABT/QCCI) in terms of O.M. of MoEF&CC dated 16.03.2010.** Verification by the District Magistrate and evaluation by the SEAC was also necessary. Accordingly, following directions were issued in relation to a matter arising from the State of Bihar:-

“(ii) As the DEIAA is not functioning as a consequence of the decision of the Tribunal in Satendra Pandey (supra), the DSR shall be prepared through a consultant(s) accredited by the National Accreditation Board of Education and Training/ Quality Control Council of India in terms of O.M. of MoEF&CC dated 16.03.2010.

“(iii) The DSR so prepared shall be submitted to the District Magistrate who shall verify the DSR only in respect of the relevant facts pertaining to the physical and geographical features of the district which shall be distinct from the scientific findings based on the parameters prescribed in the SSMMG-2016. After such verification, the District Magistrate shall forward the DSR for examination and evaluation by the State Expert Appraisal Committee (SEAC) having regard to the fact

³ constituted by this Tribunal to oversee compliance of environmental issues, on suggestions of the State Government.



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that the SEIAA comprises of technical/scientific experts. The SEAC after appraisal of the report shall forward it to the SEIAA for consideration and approval if it meets all scientific/technical requirements.

(iv) While preparing the DSR, the MoEF&CC Accredited Agency/Consultant shall scrupulously follow the procedure and the parameters laid down under the SSMMG-2016 and EMGSM-2020 read in sync with each other."

14. Considering the above, vide order dated 04.11.2020 in O.A. No. 726 of 2018, *Rupesh Pethe v. State of M.P. & Ors.*, the Tribunal directed that the above direction ought to be followed pan India, as follows:-

"5. The above direction may be followed by the State of MP also for the sake of uniformity. Further information required to be furnished is about the extent of illegal mining, extent of action taken, including the compensation recovered, vehicles seized and other coercive measures and impact of such action. The State of M.P. may compile relevant directions on the subject including the binding order of any Courts or Tribunal. This exercise may be undertaken jointly by the Secretary Geology and Mining, Member Secretary State PCB and Member Secretary SEIAA. In light of above, the State may further revise its policy and exercise. Let further compliance status be furnished before the next date by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

6. We are of the view that the above directions need to be followed by all other States where the issue of mining is relevant.

7. A copy of this order be forwarded to the Chief Secretaries of all the States and UTs by e-mail for compliance."

Adverse impact of unscientific/unregulated Sand Mining

15. It is undisputed that there is huge degradation of environment on account of unregulated sand mining remains which is otherwise lucrative activity. It poses threat to bio-diversity, could destroy riverine vegetation, cause erosion, pollute water sources, badly affecting riparian ecology, damaging ecosystem of rivers, safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spell disaster for the conservation bird



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species, increase saline water in the rivers. It has direct impact on the physical habitat characteristics of the rivers such as bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Increase in demand of sand has placed immense pressure in the supply of sand resource and mining activities were going on illegally as well as legally without requisite restrictions. Lack of proper planning and sand management disturbs marine ecosystem and upset the ability of natural marine processes to replenish the sand. The Hon'ble Supreme Court (in Deepak Kumar, supra) noted that core group was constituted by the MoEF&CC to examine the impact of minor minerals on riverbeds and ground waters. A draft report was prepared recommending mandatory preparation of mining plan on the pattern of mining plans for major minerals. Further recommendations are reclamation and rehabilitation of abandoned mines, proportion of hydro geo-logical balance for minerals below ground water table limiting depth of mining to 3 meter and identification on locations where mining should be permitted was required. There is need for identifying safety zones in the proximity of intendments. Thus, strict regulatory parameters were required for regulating mining of minor minerals. It was noted that in-stream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the stream bed causes deepening of rivers which may result in destruction of aquatic and riparian habitats. It has impact on stream's physical habitat characteristics.

16. *In State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772, at page 790, it was observed :*

"32. *The policy and object of the Mines and Minerals Act and Rules have a long history and are the result of an increasing awareness of*



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the compelling need to restore the serious ecological imbalance and to stop the damages being caused to the nature. The Court cannot lose sight of the fact that **adverse and destructive environmental impact of sand mining has been discussed in the UNEP Global Environmental Alert Service Report. As per the contents of the Report, lack of proper scientific methodology for river sand mining has led to indiscriminate sand mining, while weak governance and corruption have led to widespread illegal mining. While referring to the proposition in India, it was stated that sand trading is a lucrative business, and there is evidence of illegal trading such as the case of the influential mafias in our country.**

33. The mining of aggregates in rivers has led to severe damage to rivers, including pollution and changes in levels of pH. Removing sediment from rivers causes the river to cut its channel through the bed of the valley floor, or channel incision, both upstream and downstream of the extraction site. This leads to coarsening of bed material and lateral channel instability. It can change the riverbed itself. The removal of more than 12 million tonnes of sand a year from Vembanad Lake catchment in India has led to the lowering of the riverbed by 7 to 15 cm a year. Incision can also cause the alluvial aquifer to drain to a lower level, resulting in a loss of aquifer storage. It can also increase flood frequency and intensity by reducing flood regulation capacity. However, lowering the water table is most threatening to water supply exacerbating drought occurrence and severity as tributaries of major rivers dry up when sand mining reaches certain thresholds. Illegal sand mining also causes erosion. Damming and mining have reduced sediment delivery from rivers to many coastal areas, leading to accelerated beach erosion.

34. The Report also dealt with the astonishing impact of sand mining on the economy. It states that tourism may be affected through beach erosion. Fishing, both traditional and commercial, can be affected through destruction of benthic fauna. Agriculture could be affected through loss of agricultural land from river erosion and the lowering of the water table. The insurance sector is affected through exacerbation of the impact of extreme events such as floods, droughts and storm surges through decreased protection of beach fronts. The erosion of coastal areas and beaches affects houses and infrastructure. A decrease in bed load or channel shortening can cause downstream erosion including bank erosion and the undercutting or undermining of engineering structures such as bridges, side protection walls and structures for water supply.

35. Sand is often removed from beaches to build hotels, roads and other tourism-related infrastructure. In some locations, continued construction is likely to lead to an unsustainable situation and destruction of the main natural attraction for visitors—beaches themselves. Mining from, within or near a riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, instream roughness of the bed, flow velocity, discharge capacity, sediment transportation capacity, turbidity, temperature, etc. Alteration or



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modification of the above attributes may cause hazardous impact on ecological equilibrium of riverine regime. This may also cause adverse impact on instream biota and riparian habitats. This disturbance may also cause changes in channel configuration and flow paths

.....Today, demand for sand and gravel continues to increase. Mining operators, instead of working in conjunction with cognizant resource agencies to ensure that sand mining is conducted in a responsible manner, are engaged in full-time profiteering. Excessive in-stream sand and gravel mining from riverbeds and like resources causes the degradation of rivers. In-stream mining lowers the stream bottom, which leads to bank erosion. Depletion of sand in the stream-bed and along coastal areas causes the deepening of rivers and estuaries and enlargement of river mouths and coastal inlets. It also leads to saline water intrusion from the nearby sea. The effect of mining is compounded by the effect of sea level rise. Any volume of sand exported from stream-beds and coastal areas is a loss to the system. Excessive in-stream sand mining is a threat to bridges, river banks and nearby structures. Sand mining also affects the adjoining groundwater system and the uses that local people make of the river. Further, according to researches, in-stream sand mining results in the destruction of aquatic and riparian habitat through wholesale changes in the channel morphology. The ill effects include bed degradation, bed coarsening, lowered water tables near the stream-bed and channel instability. These physical impacts cause degradation of riparian and aquatic biota and may lead to the undermining of bridges and other structures. Continued extraction of sand from riverbeds may also cause the entire stream-bed to degrade to the depth of excavation."

Need for regulation under the Water, Air and EP Acts by PCBs, apart from the Mining authorities under the Mining law

17. Again, in Goa Foundation, supra (prs 74-76) it was observed that **mining was required to be regulated not only by the Mining department but also by the PCBs under the Water and Air Act and by the MoEF under the EP Act. It is made clear that the environment laws override other laws and any provision to the contrary in the Mines Act will not stay in the way of enforcing the environment norms. In this regard reference may also be made to report of the Ministry of Mines entitled "Sand Mining Framework" which will not stand in the way of modified mechanism in accordance with this order.**



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Salient features of the EMGSM-2020

18. We may note the salient features of the EMGSM-2020, which are supplemental to existing SSMG-2016 and seek to provide effective enforcement and monitoring from the stage of identification of source to its dispatch and end use which requires involvement of all stakeholders viz. Central Government, State Government, Leaseholders/Mine Owners, Distributors, Dealers, Transporters and Consumers (bulk & retail). EMGSM refer to the judgment of the Hon'ble Supreme Court in *Deepak Kumar Vs. State of Haryana & Ors. (2012) 4 SCC 629* making EC mandatory irrespective of the area of mining lease, followed by monitoring in terms of the Environment Management Plan, using IT and IT enabled services. **Monitoring has to be with reference to quantity of mined material, transportation with a view to promote environmental protection, limit negative physiological, hydrogeological and social impacts underpinning sustainable economic growth.** Observations in the order of this Tribunal dated 04.09.2018 in O.A. 173/2018 in Sudarsan Das vs. State of West Bengal & Ors. has also been referred to as follows:

"There can be no two views that an effective institutional monitoring mechanism is required not only at the stage when Environmental Clearance is granted but also at subsequent stages".

"The guidelines focus on the preparation of District Survey Report and the Management Plan" ...

We are of the view that all the safeguards which are suggested in sustainable sand mining guidelines as well as notification dated 15.01.2016 ought to be scrupulously followed." ...

It is a known fact that in spite of the above-suggested guidelines being in existence, on the ground level, illegal mining is still going on. The existing mechanism has not been successful and effective in remedying the situation." ...

Since there is an utter failure in the current monitoring mechanism followed by the State Boards, SEIAAs and DEIAAs, it is required to be revised for effective monitoring of sand and gravel mining and a dedicated monitoring mechanism be set up."

Further reference has been made to the directions in the order dated 05.04.2019 requiring the 17 States, which were party before the Tribunal



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viz. West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh, to follow the revised Guidelines and to review their respective monitoring mechanism. It is then stated that with the object of regulating the mining, the sources of sand and steps required are mentioned which provide for District Survey Report (DSR), Mining Plan, replenishment study, consideration of environment impact while granting EC, laying down conditions for EC, monitoring of transportation to the end user to ensure that only legally mined material is transported. There is need to balance between deposition and extraction of sand as per replenishment study, maintaining surveillance, using Unmanned Artificial Vehicles (UAVs)/Drone for reserves estimation, quantity estimation, land use monitoring. Details about all these aspects have been mentioned in the said Guidelines. With regard to post EC monitoring, there is a provision for environment audit, monitoring of sale and purchase by developing online portal and laying down the levels of monitoring i.e. Level 1- Reach/ Stockyard level monitoring, Level 2 - Transportation monitoring, Level 3 - End consumer monitoring/ bulk consumer, Level 4 - Indirect monitoring. Reference has then been made to the High-Powered Committee incorporating safeguards to be adopted by the project proponents. There is also provision for assessment of compensation for the ecological damage by the State/ PCB/ any other Authority. Inter District and Inter State boundaries are separately dealt with. The uniform monitoring mechanism stipulates:

“ 9.4. Monitoring Mechanism

xxxxxx.....xxx.....



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1. All precaution shall be taken to ensure that the water stream flows unhindered and process of Natural river meandering doesn't get affected due to mining activity.
2. River mining from outside shall not affect rivers, no mining shall be permitted in an area up to a width of 100 meters from the active edge of embankments or distance prescribed by the Irrigation department.
3. The mining from the area outside river bed shall be permitted subject to the condition that a safety margin of two meters (2 m) shall be maintained above the groundwater table while undertaking mining and no mining operation shall be permissible below this level unless specific permission is obtained from the Competent Authority. Further, the mining should not exceed nine-meter (9 m) at any point in time.
4. Survey shall be carried out for identifying the stretches having habitation of freshwater turtles or turtle nesting zones. Similarly, stretches shall be identified for other species of significant importance to the river ecosystem. Such stretch with adequate buffer distance shall be declared as no-mining zone and no mining shall be permitted. The regulatory authority as defined for granting Environmental Clearance, while considering the application of issuance of ToR and/or EC for the adjacent block (to non-mining zone) of mining shall take due precaution and impose requisite conditions to safeguard the interest of such species of importance.
5. District administration shall provide detailed information on its website about the sand mines in its district for public information, with an objective to extend all information in public domain so that the citizens are aware of the mining activities and can also report to the district administration on any deviation observed. Appropriate feedback and its redressal mechanism shall also be made operational. The details shall include, but not limited to, lease area, geo-coordinates of lease area and mineable area, transport routes, permitted capacity, regulatory conditions for operation including mining, environmental and social commitments etc.
6. A website needs to be maintain to track the movement of centralised sand mining and a Centralised server system should be made to manage the data related to sand mining across India.
7. The mineral concession holders shall maintain electronic weighbridges at the appropriate location identified by the district mining officer, in order to ensure that all mined minerals from that particular mine are accounted for before the material is dispatched from the mine. The weighing bridge shall have the provision of CCTV camera and all dispatch from the mine shall be accounted for.

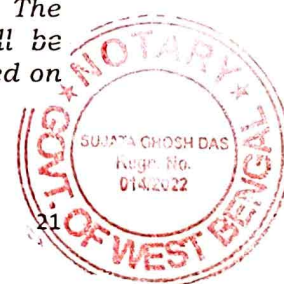


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8. *The mineral movement shall be monitored and controlled through the use of transit permit with security features like printing on IBA approved MICR papers, Unique bar/QR, fugitive ink background, invisible ink mark, void pantographs and watermarks papers or through use of RFID tagged transit permits and IT /IT-enabled services. Such monitoring system shall be created and made operationalised by State Mining department and district level mining officer shall be responsible for ensuring that all legal and operational mines are connected and providing the requisite information on the system. Regular check and associated report shall be submitted to DLTF and uploaded on the website.*
9. **State Government shall constitute a District Level Task Force (DLTF) under the Chairmanship of Deputy Commissioner/District Magistrate/Collector with Superintendents of Police and other related senior functionaries (District Forest Officer, District transport officer, Regional officer- SPCBs, Senior Officer of Irrigation Department, District Mining Officer) with one/two independent member nominated by the Commissioner concerned. The independent member shall be retired government officials/teacher or ex-serviceman or ex-judiciary member.**

The DLTF shall keep regular watch over the mining activities and movement of minerals in the district. The DLTF shall have its regular meeting, preferably every month to reconcile the information from the mining activity, and other observations made during the month and take appropriate corrective and remedial action, which may include a recommendation for revoking mining lease or environmental clearance. The DLTF may constitute an independent committee of the expert to assess the environmental or ecological damage caused due to illegal mining and recommend recovery of environmental compensation from the miner's concern. The recommendation may also include action under the provision of E(P) Act, 1986.

10. *The area not identified for mining due to restriction or otherwise are also to be monitored on a regular basis by the DLTF. Any observations of mining activity from the restricted area shall be reported and corrective measures shall be initiated on an urgent basis by the DLTF.*
11. *The dispatch routes shall be defined in the Environmental Clearance and shall be avoided through densely habituated area and the increase in the number of vehicle movement on the road shall be in agreement with the IRC guidelines / carrying capacity of the road. The alternate and dedicated route shall be explored and preferred for movement of mining to avoid inconvenience to the local habitat. The mining production capacity, by volume/weight, shall be governed by total permissible dispatch calculated based on*



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the carrying capacity of dispatch link roads and accordingly, the production should be regulated.

12. The movement of minerals shall be reconciled with the data collected from the mines and various Naka/check posts. Other measures may also include a general survey of the potential mineable area in the district which has not been leased/auctioned or permitted for mining due to regulatory or other reasons.
13. The location and number of check post requirement shall be reviewed by DLTF on a regular basis so that appropriate changes in location/number could be made as per the requirement. Such review shall be carried out on a regular basis for the district on inter-state boundary or district providing multiple passages between two districts of different states.
14. **The district administration shall compile the information from their district of the permitted and legal mined out minerals and other details and share such information and intelligence with the officials of the adjoining district (Inter or/and Intra State) for reconciliation. The information shall include the area of operation, permissible quantity, mined out minerals (production) the permitted route etc., and other observations, especially where the mine lease boundary is congruent with the district boundary. Such coordination meeting shall be held on a quarterly basis, alternatively in two district headquarters or any other site in two districts decided mutually by the District Magistrate.**
15. **The mining department shall include submission of an annual environmental audit report as one of the conditions in the mining lease agreement. The annual audit for each river bed mining lease shall be carried out and the audit report shall be uploaded on the website of district administration. The audit shall be carried out by an independent team of 3 members nominated by District Collector/Magistrate/Commissioner comprising of Ex-Serviceman, Ex-Government officials of repute, Professor or Person having experience of mining/environment. The guidelines and method of the audit shall reflect adequately the monitor-able parameters and output and reflect the compliance status with respect to the conditions imposed by the regulatory authorities including conditions of Environmental clearance.**
16. The in-situ and ex-situ environmental mitigative measures stipulated as EMP, CER, CSR and other environmental and safety conditions in mines including the welfare of labours shall properly reflect in the audit report.

9.5 Suggestive additional requirements are



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i. The requirement at the Mine Lease Site:

- a. *Small Size Plot (Up to 5 hectares): Android Based Smart Phone.*
- b. *Large Size Plots (More than 5 hectares): CCTV camera, Personal Computer (PC), Internet Connection, Power Backup.*
- c. *Access control of mine lease site.*
- d. *Arrangement for weight or approximation of the weight of mined out mineral on the basis of the volume of the trailer of vehicle used.*

ii. Scanning of Transport Permit or Receipt and Uploading on Server:

- a. *Website: Scanning of receipt on mining site can be done through barcode scanner and computer using the software;*
- b. *Android Application: Scanning on mining site can be done using Android Application using a smartphone. It will require internet availability on SIM card;*
- c. *SMS: Transport Permit or Receipt shall be uploaded on the server even by sending SMS through mobile. Once Transport Permit or Receipt get uploaded, a unique invoice code gets generated with its validity period.*

iii. Proposed working of the system:

The State Mining Department should print the Transport Permit or Receipt with security features and issue them to the mining leaseholder through the District Collector. Once these Transport Permits or Receipts are issued, they would be uploaded on the server against that mine lease area. Each receipt should be preferable with pre-fixed quantity, so the total quantity gets determined for the receipts issued. When the Transport Permit or Receipt barcode gets scanned and invoice is generated, that particular barcode gets used and its validity time is recorded on the server. So all the details of transporting of mined out material can be captured on the server and the Transport Permit or Receipt cannot be reused.

iv. Checking On Route:

The staff deployed for the purpose of checking of vehicles carrying mined mineral should be in a position to check the validity of Transport Permit or Receipt by scanning them using the website, Android Application and SMS.

v. Breakdown of Vehicle:

In case the vehicle break-down, the validity of Transport Permit or Receipt shall be extended by sending SMS by the driver in specific format to report the breakdown of the vehicle. The server will register this information and register the breakdown. The State can also establish a call center, which can register breakdowns of such vehicles and extend



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the validity period. The subsequent restart of the vehicle also should be similarly reported to the server or call center.

vi. Tracking of Vehicles:

The route of the vehicle from source to destination can be tracked through the system using checkpoints, RFID Tags, and GPS tracking.

vii. Alerts or Report Generation and Action Review:

The system will enable the authorities to develop a periodic report on different parameters like daily lifting report, vehicle log or history, lifting against allocation, and total lifting. The system can be used to generate auto mails or SMS. This will enable the District Collector or District Magistrate to get all the relevant details and shall enable the authority to block the scanning facility of any site found to be indulged in irregularity. Whenever any authority intercepts any vehicle transporting illegal sand, it shall get registered on the server and shall be mandatory for the officer to fill in the report on action taken. Every intercepted vehicle shall be tracked.

The monitoring of mined out mineral, environmental clearance conditions and enforcement of Environment Management Plan will be ensured by the regulatory authority and the State Pollution Control Board or Committee. The monitoring arrangements envisaged above shall be put in place. The monitoring of enforcement of environmental clearance conditions shall be done by the Central Pollution Control Board, Ministry of Environment, Forest and Climate Change and the agency nominated by the Ministry for the purpose.

Some of the State has followed the SSMMG-2016 and has also improvised or customized on the provisions given therein, and are successfully in operation. Salient provision adopted at different stages of sand mining in the state of Tamil Nadu is given as **Annexure VIII**.

9.6 Actions against illegal excavation and transport

Solapur district administration in Maharashtra had adopted a multi-pronged strategy to penalize the persons involved in illegal excavation and transport which resulted in a significant increase in revenue earned by the state. Following rules and procedures as mentioned in these guidelines will add to the costs of PP. Those involved in illegal activities are not required to bear these costs and this will make their supply in the market cheaper (though illegal). This will put the players running their business by following rules and procedures laid down by the government to disadvantage as far as the selling price is considered. Therefore, it is necessary to come down heavily on those involved in illegal excavation/transport, so that there is no incentive for players to abide by the rules.



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The following action may be taken to achieve this deterrence against illegal business:

1. The action should be taken under all legal options available simultaneously. Thus, after identifying the case of illegal excavation, storage and/or transport of minor minerals (including sand), fine should be levied as per the land revenue laws/code(s) of the state. In addition, FIR should be lodged in the police station under relevant sections of law including sec 379 IPC. In addition, action under the Motor Vehicle Act, 1989 and relevant rules should initiate to cancel/suspend the driving license of the driver and permit of the vehicle. Further, action should be initiated under provisions in the Income Tax Act, 1961 for unaccounted income and under the Central Goods and Services Act, 2017 for nonpayment of GST. (Earlier this was done under the state act pertaining to Value Added Tax/Sales Tax). Habitual offenders should also be taken up under local state laws for externment and/or preventive action. It is clarified that as per law, it is possible to take all actions under various laws simultaneously for one offence. What is prohibited in law is an action under the same law for the same act more than once.
2. The action should be taken against all persons responsible. Often, there is a tendency to penalize only the drivers of the vehicles. The mafia of illegal mining and transport is much bigger and drivers are only one part of the system. It is necessary to identify all those involved in the offence. It is usually not possible to reach the place of excavation without creating a motorable pathway up to the same through land which may be private land. Such role of such landowners needs to be looked into for each offence and proceeded against simultaneously. Further, the role of vehicle owners needs to be probed. Role of the person who allowed his land to be used for illegal excavation and storage should also be examined. Lastly, the person who purchases such sand should also be probed. The legal proceedings stated above needs to be initiated against all of these together. An attempt should be made to fix the financial responsibility in joint and several ways so that recovery is easier.
3. There may be discretion available in law about the extent of the penalty to be levied. If such discretion is very wide, then it is advisable that guidelines may be laid down to reduce such discretion in law for levying penalties. For example, in Maharashtra, Land Revenue Code, fine of any amount of penalty up to thrice the value of the sand can be levied. Solapur district administration had instructed Tahsildars and SDMs not to use discretion and levy the fine of three times the value. Availability of discretion makes junior level functionaries susceptible to pressures and it may also lead to corrupt practices.



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4. It is emphasized that actions, as stated above, are most important to ensure that the IT-based system works. If these exemplary actions are not taken against everyone, it shall create a strong disincentive to those involved in legal excavation and transportation. For IT-based (or any other) legal system to work, it is necessary to ensure that illegal system stops working altogether.”

19. Several formats have been suggested in the Annexures, apart from salient provisions in the State of Tamil Nadu before execution of the mining lease and after execution of such lease including **judicious mined closure plan, reclamation, removal of sheds and maintaining of record for future reference.**

Compliance Status in States – Context of UP

20. We now refer to the Oversight Committee report dated 15.01.2021 for the State of UP with regard to status of compliance of Sustainable Guidelines as follows:-

S. No.	Directions by Hon'ble NGT	Compliance Status (Yes/No)	Compliance Status
1.	Status of the progress in ensuring issues related to illegal sand mining in the State of Uttar Pradesh	Partially Complied	For effective control of illegal mining and transportation of minerals, a seven-member District level Task Force has been constituted under the chairmanship of District Magistrate vide Govt. Order no. 616/86-2018-371/2005 dated 20.03.2018. Under the Integrated Mines Surveillance System (IMSS), all the mine areas have been geo fenced. PTZ cameras at the mines have been installed. Weigh Bridges fitted with cameras have been installed at all mines and have been integrated with the Control Centre at Head Quarters. At present, there are 36000 registered vehicles and 310 Weigh Bridges have been established.
2.	Demarcation of boundaries for regulating grant of sand mining lease	Partially Complied	Rule-23 of the Uttar Pradesh Sub-Divisional (Avoidance) Rules, 1963 as amended, provides for the advertisement of an area with Geo-coordinates and Rule-17 mentions the Geo-coordinates of all boundaries of the area sanctioned. These are being followed by all the District Magistrates.



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3.	Environmental Compensation imposed on leasing of minor minerals in any area to cover the restoration cost of environment and to compensate the victims	Partially Complied	There is provision for execution of mining lease deed only after demarcation under rule-17 of the Mining lease Approval Rules, 1963.
4.	Status of the constitution of a team to carry out demarcation by the Chief Secretary	Partially Complied	Under Rule-17 of the Uttar Pradesh Sub-Divisional (Avoidance) Rules, 1963, there is a provision for survey/demarcation of the area by an authorized officer/employee of the Directorate of Geology and Mining. A separate team is not justified at the level of Chief Secretary
5.	Mining in all blocks is undertaken as per provisions of EIA Notification, 2006; MOEF Notification dated 15.1.2016 and the Sustainable Sand Mining Management Guidelines, 2016	Partially Complied	i. Rule 34(4) of Rules-1963 contains the provision for obtaining Environmental Clearance before commencement of mining in the sequence of notification dated 14.09.2006 and the notification as amended from time to time. ii. According to the Sustainable Sand Mining Management Guidelines, 2016 issued by MOEF&CC, mining work is restricted from the riverbed during the monsoon season. Thus, mining work is restricted in the month of July, August and September in the State.
6.	No sand mining is permitted without due compliance of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 as well as regulations governing clearances by the Central Ground Water Authority	Partially Complied	Rule- 41(J)(1) of the 1963 Rules envisages that no mining operations in the leveled river bed shall be carried out beyond the depth of 3 meters or water level whichever is less/lower. The conditions mentioned in the Environmental Cleanliness Certificate issued by the State Level Environmental Impact Authority (SEIAA), are being followed.
7.	District authorities shall seize all sump pumps, other machinery, tools, vehicles, etc. used for carrying out illegal sand mining.	Partially Complied	Report awaited
8.	Any penalty imposed or not by concerned Department to cover the restoration cost of environment and to compensate the victims.	Partially Complied	The orders of Hon'ble NGT dated 18.02.2016 in OA No. 184/2013 Gurpreet Singh Baggha vs. MOEF, regarding recovery of penalty/ environmental damage from the concerned lease holders are being complied at district level.
9.	Status of a detailed restoration plan for the concerned river and its river beds	Partially Complied	Mining work is being done on the basis of approved mining scheme by including the restoration plan in the mining plan.



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10	Status of the assessment done through Indian Council of Forestry Research and Education, Dehradun of the ecological damage on account of illegal mining by incorporating the given components: a) Cost of river bed material b) Cost of ecological restoration c) Net present value of the future ecosystem services.	Partially Complied	In OA No. 184/2013 Gurpreet Singh Bagga vs. MOEF, the action is being taken by conducting assessment of environmental damage in compliance with Indian Council of Forestry Research and Education, Dehradun.
11	Action against the polluters and the erring officers	Not Complied	Report awaited
12	Status of CCTV Cameras installation at mining points to verify the amount of sand extracted	Partially Complied	Rule-35(2) of Uttar Pradesh Minor Mineral Regulations, 1963 provides that the mining lease holder whose mining lease area is more than 5 hectares, shall constructs checkpost/gate and install 4 CCTV cameras capable of recording at 360° visibility at his own expense for monitoring. Under the supervision of the DMs.
13	Status of regular patrolling by the police to inspect the mining operations	Partially Complied	For effective control over illegal mining and transportation of minerals, a seven-member district level task force has been set up under the chairmanship of DM vide order no. 616/86-2018-371/2005 dated 20.03.2018. Deputy Superintendent of Police level officers of Police department are members of this task force. The mining areas are constantly monitored by this task force.
14	Status of daily reports regarding mining to be filed by SHO/ Mining officer to be sent to District Magistrate.	Partially Complied	According to the information received from the DM, Prayagraj in compliance of the order of Hon'ble NGT passed in OA No. 670/2018 in re: Atul Singh Chauhan vs. MOEF&CC and Ors., regular checking of illegal mining transportation is being done by the Task force constituted at the district level. The District Collector/ Senior Superintendent of Police, Prayagraj are regularly informed.
15	Status of vehicles confiscation	Partially Complied	In compliance of orders of Hon'ble NGT in OA No. 670/2018 in re: Atul Singh Chauhan vs. MOEF&CC and Ors., in district Prayagraj 06 chargesheets were filed in the financial year 2018- 19; 80 chargesheets filed in 2019-20 and in the year 2020-21 till the month of November, 2020, 150 FIRs and 214 cases have been filed in the competent Courts, including the order passed by Hon'ble NGT. Similar instructions have also been issued to the other districts regarding the above.



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16	Status of EC imposed and realized by the CPCB till date in this regard	Partially Complied	<p>In compliance of Order dated 05.04.2019 of Hon'ble NGT, Principal Bench in O.A. 360 of 2015 (13 clubbed cases), CPCB in NGT on 06.01.2020 the "Recommendations on Scale of Compensation to deal with the cases of illegal sand mining" were made by the Committee of Experts constituted by Hon'ble NGT. The Committee of Expert recommended two approaches regarding the scale of compensation to deal with the cases of illegal sand mining:</p> <ol style="list-style-type: none"> 1. Direct Compensation based on the market value of extraction, adjusted for ecological damages 2. Computing a Simplified NPV for ecological damages. <p>The above referred recommendations were initially taken up by Hon'ble NGT during the hearing on 08.01.2020 wherein Hon'ble NGT expressed prima facie deficiencies in the recommendations and directed for rectification of the deficiencies before the next date. Accordingly, the Committee of Experts reviewed and revised its recommendations, and CPCB filed in NGT on 30.01.2020 the revised "Recommendations on Scale of Compensation to deal with the cases of illegal sand mining" of the Committee of Experts constituted by Hon'ble NGT. The scale of compensation was calculated by adopting two approaches. For details of approach, I & II refer Appendix- VI. It was also suggested by the Hon'ble NGT vide its order dated 17/08/2020 to consider the suggestions of Shri Panjwani which were noted at point no 13 needs to be looked into by the same Committee and thereafter the Scale of Compensation finalized (Refer Appendix- VII).</p> <p>In compliance of the Hon'ble NGT direction, the matter was examined by the same expert Committee at CPCB, Delhi & found that more or less the formula suggested by committee and the methodology suggested by Shri Panjwani is similar except some of the factors. The details of same are noted at point no. 3 of the affidavits is submitted before the Hon'ble NGT by CPCB on 12.10.2020. Copy of same is enclosed as Appendix-VIII.</p>
17	Status of EC imposed and realized by the UPPCB till date in this regard	Partially Complied	<p>In compliance of Order dated 08.01.2020 of Hon'ble NGT in O.A. 360 of 2015 are given at Appendix -IX of the report</p>



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18	Status of setting up of dedicated institutional mechanism for monitoring of conditions of Environmental Clearance as granted under EIA Notification, 2006 in respect of sand and gravel mining.	Partially Complied	Under the supervision of the DMs in the districts, the conditions of the Environmental Clearance Certificate are complied with by the PCBs/ Departmental officers. A separate institutional mechanism has been established for the same.
19	Safeguards based on High Powered Committee report and observations into the Sustainable Sand Mining and Management Guidelines, 2016.	Partially Complied	MOEF& CC is following the Sustainable Sand Mining Management Guidelines, 2016. (Refer Appendix- X)
20	Necessary steps have been taken by District Administration for the effective monitoring mechanisms for preventive and remedial measures including surveillance system for recovery of compensation.	Not Complied	Action will be taken after necessary amendments in environmental regulations. As per information given by the Mr. A.K. Tiwari, UPPCB on 07.01.2021 that: Comments: In compliance of Hon'ble NGT order dated 17.08.2020 in OA No. 360/2015 and as per provision of 'Enforcement & Monitoring Guidelines for Sand Mining' Jan., 2020 issued by MOEF&CC, Govt. of India, action is to be taken by concerned District Administration. (Refer Appendix- XI)
21	Necessary steps have been taken by MOEF & CC to restore effective impact assessment and safeguards; any action taken against the erring officers	Not Complied	Report awaited
22	Status of Chief Secretary filed the report regarding recovery of compensation (i.e. damage to environment)	Not Complied	Report awaited



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23	Whether there is any progress towards amendments of the Act/Rules so that the Courts can order for the fine as ordered by Hon'ble NGT.	Not Complied	<p>As per information given by the Mr. A.K. Tiwari, UPPCB on 07.01.2021 that: Comments: In compliance of Hon'ble Supreme Court Judgement dated the 27.02.2012 in I.A. No. 12-13 in Special Leave Petition (C) No. 19628-19629 of 2009, in the matter of Deepak Kumar etc. Vs. State of Haryana and Others and in compliance of Hon'ble NGT directions dated 04.09.2018 in O.A. No. 173/2018 in the matter of Sudarsan Das Vs. State of West Bengal, MOEF&CC, Govt. of India has issued 'Enforcement & Monitoring Guidelines for Sand Mining' Jan., 2020 which has the following provisions regarding illegal mining:</p> <p>"As per the provision of 23 (C) of MMDR Act, the State Government is empowered to make rules for preventing illegal mining, and transportation & storage of illegal minerals. All such mining which qualifies under illegal shall be dealt with in the provision of MMDR Act the concern authorities".</p> <p>In the above circumstance the necessary amendments in Mining Regulation/ The Uttar Pradesh SubDivisional (Avoidance) Rules, 1963 is to be initiated by the Mines & Geology Department, Govt. of U.P. (Refer Appendix- XI).</p>
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Additional Information provided by Mines Department

1. **The Mines Department has established a Command Centre at the Directorate of Geology and Mines at Lucknow from where they operate the Integrated Mines Surveillance System for the entire State. They are using Artificial Intelligence based Software and taking the help of Drones and Cloud Services for monitoring mining activity in the State. Drone Videography has been done in sensitive districts- Fatehpur, Banda, Prayagraj and Saharanpur. Besides the CCTV Cameras, they are using RFID tags to monitor the movement of vehicles.**
2. *They have made a provision in the Rules to blacklist a person for upto 2 years if found guilty of illegal mining/illegal transportation. So far 125 persons/firms have been blacklisted.*
3. *They have amended the Rules to allow storage of minerals beyond 5Km radius from the riverbed. This has been done to prevent illegal mining from river bed under the alibi of storage.*
4. **They have established a Vehicle Tracking System to check the misuse of Transport Pass and Overloading. To begin with, this system has been introduced in the most sensitive districts of Hamirpur, Banda, Fatehpur, Jalaun and Jhansi.**



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5. *New areas have been identified based on survey conducted according to Sustainable Mining Guidelines and they are being included in the DSR.*
6. *Instead of the printed MM-11, online royalty payment has been introduced through E- MM- 11.*
7. *Security features have been introduced in E-MM 11 to check its misuse.*
8. *Transport of minerals even from stores is being regulated through electronic E- forms.*

Observation of the Oversight Committee: *The Committee felt that the compliance of the Mining Department needs to be verified by independent sources. CPCB and UPPCB are being directed by the Committee to jointly verify the compliance. The report would be submitted in three months time.*

VI. RECOMMENDATIONS

1. *There have been a number of complaints regarding illegal mining specially in Districts of Hamirpur, Banda, Fatehpur, Jalaun, Prayagraj, Saharanpur and Jhansi. The Oversight Committee, while enclosing the newspaper cuttings has asked for a status report from the Directorate of Mining, which so far has not been received. **Illegal Mining is mining done without a Mining Plan in utter violation of environmental norms and is a grave threat to ecology and environment.** The State Government should have a zero tolerance on illegal mining and the Directorate of Mining and District Administration should immediately enquire into all such cases and if found correct take stringent legal action against the guilty.*
2. *Environmental Clearance takes into account all the environmental concerns. Mining plan is the instrument through which it is enforced. However, for mining activity going on illegally, there is neither any EC nor any mining plan. Illegal mining invariably leads to reckless damage to environment. Hence, utmost efforts are required in surveillance, patrolling and enforcement. **Electronic surveillance through UAVs/Remote Sensing is a good surveillance option especially in areas where sand mafias are active. Night vision drones could be used for checking mining activity at night. Sensitive spots need to be identified and police presence- both static presence and dynamic patrolling needs to be beefed up there. DMs / SSPs be made directly responsible for checking illegal mining.***
3. *DSRs need to be prepared very carefully. They should be based on Physical surveys and replenishment studies. **Since sand deposition is a dynamic issue, they need to be regularly updated. While awarding lease deeds, important environmental parameters like deposition and replenishment of sand, areas of erosion, distance from infrastructural structures need be considered.***



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4. *In the absence of replenishment studies and physical inspection before award, many times sites are awarded where there is no sand. The lease holder per force indulges in mining adjoining areas, some of which may be environmentally not very suitable. Before award of LOI, physical inspection should be mandatory.*
5. *Areas where only few leases are operative and the rest are not settled/surrendered need to be carefully analyzed. There could be a chance of cartel formation and mining of sand illegally from other vacant mining plots under the garb of the operative lease. (In district Prayagraj, there is only one operative lease out of 51 leases).*
6. *Storage Godowns should be at least 5 kms away from the river bank. Otherwise, illegal mining can be carried on under the garb of storage by the leaseholder himself.*
7. *Geo-fencing of sites, their physical demarcation, allotment of geo-coordinates to all the pillars and their constant physical inspection and electronic surveillance is a must to ensure that the mining activity is as per the approved mining plan and no illegal mining, detrimental to environment, is going on.*
8. *There has to be a mechanism to ensure that the actual mining activity conforms to the approved Mining Plan and the approved Environment Management Plan (EMP). Besides the statutory system of Departmental inspections, there has to be a system of annual mandatory Environmental Audit by experts. Environment Department can empanel some experts/expert institutions with standard TORs and Remuneration terms which could be utilized by the Mines Department on a regular basis. This way the District Administrations can access good technical experts with standard conditions in a transparent way without bothering about tedious time-consuming tender formalities.*
9. *There has to be an effective mechanism for restoration of environment in case of its degradation due to mining. A portion of the royalty could be reserved for it as Environment Restoration Fund. The Environment Department can empanel some reputed institutions with standard terms for preparing environmental restoration plans which could be used directly by the Mining Department without the arduous formalities. These plans could be funded by the Environment Fund as mentioned above. Already a number of mineral rich districts like Sonbhadra have a sizeable District Mineral Fund at the disposal of the District Collector. However, since there is no mechanism available at the level of District Collector for preparation of Environment Restoration Plans, this fund is normally used for works other than environmental restoration.*



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10. *All the mining activity should strictly comply with Provisions of EIA Notification 2006, Sustainable Sand Mining Guidelines, 2016; The Environmental Protection Act, 1986; The Water (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981 and Regulations of Central Ground Water Authority.*
11. ***Direction may be issued to the Principal Secretary, Mining to take immediate steps for amendment of rules so that the Courts may order the fine as ordered by the Hon'ble NGT."***

Stand of State of MP

21. The State of MP has filed an affidavit on 13.01.2021 that necessary changes have been made in accordance with the directions of this Tribunal dated for procedure for granting EC in accordance with the directions of this Tribunal in the order dated 13.9.2018 in Satendra Pande, by constituting a Committee. Order dated 12.10.2020 was issued by the State of Madhya Pradesh on the subject. There is a proposal to amend the Minor Minerals Rules and also to introduce technology to prevent illegal mining using QR Code for transit passes, pool SMS facility to ascertain validity of electronic passes, google distance matrix to avoid multiple usage of single transit pass, web portal and mobile App to verify validity of electronic transit pass. It is not necessary to refer to the affidavits of other individual States in view of the fact that final and updated directions are now being issued in the light of which all the States/UTs are expected to take further steps in the matter.

Stand of State of Rajasthan

22. In the status report, filed by the State of Rajasthan on 16.10.2020, it is stated that the Chief Secretary Environment Cell has been established. It holds regular meetings with the District Magistrates. Meeting was also held with the Director General of Police (law and order), Secretary Home, Director Mines, all District Collectors, Dy. Conservators of Forest and other concerned officers. Directions have been issued for formation of SITs,



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monitoring cases of illegal mining, setting up of special check posts on the routes used for illegal mining, ensuring CCTV surveillance, strict recovery of environmental compensation fee, etc. Directions have issued to District Magistrates to create awareness at Panchayat level. The Chief Secretary proposes proposed to issue comprehensive guidelines. Mining Department has also taken up a project for creating redressal portal and mobile app for reporting illegal mining.

Today's Consideration

23. The extent of challenge posed by illegal sand mining was noted by the Tribunal in the order dated 05.04.2019 in OA 360/2015 as follows:-

"8. Despite this, the menace of illegal sand mining in India continues unabated. As per reports, the sand business in India employs over 35 million people and is valued at well over \$126 billion per annum. In the year 2015-2016, there were over 19,000 cases of illegal minor minerals including sand in the country.⁴ In Uttarakhand, a 115 years old bridge collapsed due to overloaded sand trucks. In Maharashtra, 26,628 cases of illegal sand mining were recorded in the year 2017. The State of Maharashtra has the highest number of cases of non-compliance of Sustainable Sand Mining Management Guidelines, 2016. The State of Kerala suffered hugely in 2004 Tsunami and 2018 floods which several report explain were aggravated by illegal sand extraction.⁵ The issue of illegal sand mining is also rampant in the states of Goa⁶, Bihar⁷, Tamil Nadu⁸, Uttarakhand⁹, Telangana¹⁰, Jammu and Kashmir¹¹ amidst others."

24. In view of resume of above orders and responses, the issue which survives for consideration is enforcement of the 2016 and 2020 guidelines, read with orders dated 19.2.2020, 14.10.2020, 4.11.2020 and observations herein, by evolving appropriate comprehensive monitoring

⁴<http://www.legalserviceindia.com/legal/article-73-why-is-illegal-sand-mining-harmful-.html>

⁵<https://sandrp.in/2019/03/01/sand-mining-2018-is-it-a-national-menace/>

⁶<https://timesofindia.indiatimes.com/city/goa/govt-is-ignoring-illegal-sand-mining/articleshow/67908428.cms>

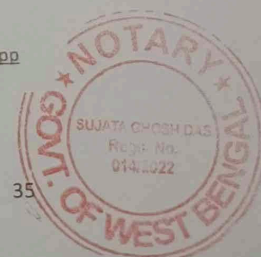
⁷<https://www.firstpost.com/india/illegal-sand-mining-part-3-bihar-govts-attempted-crackdown-has-sent-prices-soaring-officials-face-axe-as-rivers-in-ruin-6008351.html>

⁸https://en.wikipedia.org/wiki/Sand_mining_in_Tamil_Nadu

⁹<https://sandrp.in/tag/uttarakhand-sand-mining/>

¹⁰<https://sandrp.in/2019/02/26/sand-mining-2018-telangana-and-andhra-pradesh/>

¹¹https://greaterkashmir.com/article/news.aspx?story_id=309365&catid=2&mid=53&AspxAutoDetectCookieSupport=1



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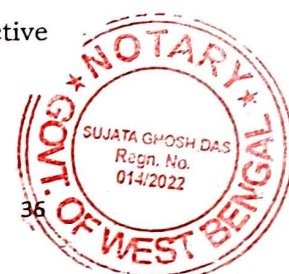
mechanism, with designated accountable officers, grievance redressal mechanism, envisaging strict action against violators, including assessment and recovery of compensation for the violations, seizure of vehicles and review at higher levels in the State.

Compensation

25. In the light of discussion in para 12 above, having regard to the totality of the situation, **we accept the report of the CPCB and direct that the scale of compensation calculated with reference to approach II be adopted by all the States/UTs.** Though compensation assessment for damage to the environment is a dynamic concept, depending on variables, floor level formula can be worked out to avoid arbitrariness inherent in unguided discretion. **The CPCB may issue an appropriate statutory direction for the facility of monitoring and compliance to the Environment Secretaries of all the States/UTs who may forthwith evolve an appropriate mechanism for assessment and recovery of compensation in all Districts of the State. The recovered compensation may be kept in a separate account and utilized for restoration of environment by preparing an appropriate action plan under the directions of the Environment Secretary with the assistance of such individual/ institutions as may be considered necessary.**

Interaction for Effective enforcement

26. The above discussion shows that the problem has defied solution and unless tackled seriously, damage to the environment will continue. Clear road map is thus required with effective monitoring mechanism. Report of the Oversight Committee for UP and affidavit of the State of MP, the report from Rajasthan and some other States also show that effective



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mechanism is lacking. For clarity on all issues, periodic interaction of stake holders, particularly the enforcement authorities is required. This will also facilitate engagement of accredited agencies/experts for preparing DSRs/replenishment studies. In the Central Government, the concerned authorities include Mining Ministry, Environment Ministry, Jalshakti Ministry and CPCB. In States, Departments of Mining, Environment, SEIAA, PCB and District Magistrates.

Enforcement of Monitoring Mechanism and review by the Chief Secretary at State level and Secretary MoEF&CC at National level

27. We direct all the States/UTs to strictly follow the SSMG-2016 read with EMGSM-2020 reinforced by mechanism for preparation of DSRs (in terms of directions of this Tribunal dated 14.10.2020 in Pawan Kumar, supra and 04.11.2020 in Rupesh Pethe, supra), Environment Management Plans, replenishment studies, mine closure plans, grant of EC (in terms of direction dated 13.09.2018 in Satendra Pandey, supra), assessment and recovery of compensation (as per discussion in Para 25), seizure and release of vehicles involved in illegal mining (in terms of order dated 19.02.2020 in Mushtakeem, supra), other safeguards against violations, grievance redressal, accountability of the designated officers and periodical review at higher levels. As already noted, EMGSM-2020 contemplates extensive use of digital technology, including remote sensing.

28. We further direct that periodic inspection be conducted by a five-members Committee, headed and coordinated by the SEIAA and comprising CPCB (wherever it has regional office), State PCB and two expert members of SEAC dealing with the subject. Where CPCB regional office is not available, if MoEF&CC regional office is available, its Regional Officer will be included in the Committee.



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Where neither CPCB nor MoEF&CC regional office exists, Chairman, SEIAA will tie up with the nearest institution of repute such as IIT to nominate an expert for being included in the Committee. Such inspection must be conducted at least thrice for each lease i.e. after expiry of 25% the lease period, then after 50% of the period and finally six months before expiry of the lease period for midway correction and assessment of damage, if any. The reports of such inspections be acted upon and placed on website of the SEIAA. Every lessee, undertaking mining, must have an environment professional to facilitate sustainable mining in terms of the mining plan and environmental norms. This be overseen by the SEIAA. Environment Departments may also develop an appropriate mobile App for receiving and redressing the grievances against the sand mining, including connivance of the authorities and also a mechanism to fix accountability of the concerned officers. Recommendations of the Oversight Committee for the State of UP quoted earlier may be duly taken into account.

The mechanism must provide for review at the level of the Chief Secretary at least once in every quarter, in a meeting with all concerned Departments in the State. The Chief Secretary UP may ensure further action in the light of the report of the Oversight Committee.

Similarly, at National level, such review needs to be conducted atleast once in a year by the Secretary, Environment in coordination with the Secretaries Mining and Jalshakti Ministries the CPCB.

Publication of Annual Reports

29. We further direct all the States/UTs to publish their annual reports on the subject and such annual reports may be furnished to



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MoEF&CC by 30th April every year giving status till 31st March. First such report as on 31.03.2022 may be filed with the MoEF&CC by all the States/UTs on or before 30.04.2022. The report may also be simultaneously posted on the website of the Environment Department of the States/UTs. Based on such reports, MoEF&CC may consider supplementing its Guidelines from time to time. The MoEF&CC may prepare a consolidated report considering the reports from the States/UTs and publish its own report on the subject, preferably by 31st May every year.

Interaction at National Level

30. We direct the Secretary MoEF to convene a meeting in coordination with the CPCB and Mining and Jalshakti Ministries of Central Government and such other experts/individuals at National level and representatives of States within three months for interaction on the subject which may be followed by such meetings being convened by the Chief Secretaries in all States in next three months. Holding of such meetings will provide clarity on enforcement strategies and help protection of environment.

All the applications are disposed of. Individual issues may be gone into in accordance with the mechanism to be involved as above.

A copy of this order be forwarded to the MoEF&CC, CPCB, Secretaries, Ministries of Jalshakti and Mining, GoI, Chief Secretaries, Environment Secretaries, SEIAA and State PCBs/PCCs and District Magistrates of all the States/UTs by e-mail for compliance.

Adarsh Kumar Goel, CP



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S.K. Singh, JM

Dr. Nagin Nanda, EM

February 26, 2021
Original Application No. 360/2015
and other connected matters
DV & A

