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BEFORE THE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

Original Application No. 76/2025/EZ

IN THE MATTER OF:

Rahul Kumar

...Applicant

Versus

The District Magistrate,

Banka & Ors.

...Respondents

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Rejoinder on behalf of Applicant to the Affidavit of Respondent no. 6 i.e the  
Department of Environment, Forest and Climate Change, Government of  
Bihar

I, Rahul Kumar, Son of Viswanath Das, aged about 36 years, resident son of  
Matru Yadav, residing at Village & PO - Manjira, Banka, Bihar - 813102, do  
hereby solemnly affirm and state as follows:

1. That I am the Applicant herein. I am competent to affirm the present  
affidavit.

BIHAR COURT FEE

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07 Aug 2025

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2. That the present counter affidavit is being filed in response to the affidavit submitted by Respondent No. 6, the Department of Environment, Forest and Climate Change, Government of Bihar, wherein the said Respondent has sought to justify the impugned e-tender dated 27.02.2025 and the subsequent corrigendum dated 08.04.2025 for the desilting work of Chandan Reservoir through dredging process. The Applicant most emphatically denies each and every allegation, assertion and submission made in the said affidavit, save and except those specifically admitted herein, and reiterates the submissions made in the Original Application.

3. That with respect to the averments made in the affidavit of Respondent No. 6, it is most respectfully submitted that the same is wholly misleading, devoid of merits, and fails to address the substantive environmental and legal concerns raised in the Original Application. The deponent of the said affidavit, while claiming competence to represent Respondent No. 6, has not demonstrated any personal knowledge of the facts or any independent application of mind to the grave ecological implications of the proposed dredging activity. The affidavit merely adopts the submissions of Respondent Nos. 2 and 3 in a mechanical manner, without undertaking the necessary scrutiny mandated by this Hon'ble Tribunal in its orders dated 02.05.2025 and 24.07.2025.

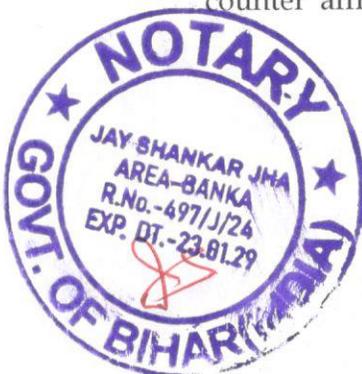


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4. That the Applicant emphatically denies the legality and propriety of the impugned e-tender and corrigendum, which have been issued in blatant violation of the Environmental Impact Assessment Notification, 2006, and the Sustainable Sand Mining Guidelines, 2016. The tender document unlawfully shifts the burden of obtaining necessary environmental clearances to the contractor, as evidenced by Clause 33 thereof, thereby violating the "polluter pays" principle as well as the settled legal position that the State cannot absolve itself of its statutory obligations under the Environment (Protection) Act, 1986.

5. That the purported reliance on the National Framework for Sediment Management, 2022, as mentioned in Clause 35 of the tender, is nothing but an afterthought, as there exists no mechanism in the tender to ensure compliance with the said Framework. The absence of any baseline data or pre-dredging environmental assessment renders the entire exercise speculative and contrary to the Precautionary Principle, which has been upheld by the Hon'ble Supreme Court in a catena of judgments, including Vellore Citizens' Welfare Forum v. Union of India (1996) 5 SCC 647.

6. That the assertion in the affidavit of Respondent No. 6 that the State's counter affidavit sufficiently addresses the concerns raised in the Original



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Application is wholly untenable. The State's affidavit conspicuously fails to rebut the Applicant's contention that the proposed dredging activity amounts to unregulated sand mining, which would cause irreversible damage to the aquatic ecosystem, deplete groundwater resources, and adversely affect the livelihoods of local communities dependent on the Chandan Reservoir. The requirement of an annual Environmental Impact Report, as stipulated in Clause 38 of the tender, is a mere eyewash, as no prior assessment has been conducted to establish a baseline against which future impacts could be measured.

7. That the Applicant reiterates that the impugned tender and corrigendum are liable to be set aside for being violative of the fundamental principles of environmental jurisprudence, including the doctrines of Sustainable Development, Public Trust, and Inter-generational Equity. The Respondent authorities have acted in a most arbitrary and high-handed manner by initiating the tender process without conducting the mandatory Environmental Impact Assessment or seeking prior environmental clearance, thereby rendering the entire exercise null and void ab initio.

8. That the Hon'ble Supreme Court in 2025 SCC OnLine SC 1069 (State of Uttar Pradesh and Another Versus Gaurav Kumar and Others (Civil Appeal Nos. 14170, 14933, and 14000 of 2024), upheld the Hon'ble National Green



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Tribunal's (NGT) decision to quash an e-auction notice dated 13.02.2023 issued by the District Magistrate of Saharanpur for sand mining. The Hon'ble Court ruled that the auction was illegal as it was conducted without a valid, final, and subsisting District Survey Report (DSR), which is mandatory under the Environmental Impact Assessment (EIA) Notification, 2006, as amended in 2016 and 2018, and the Enforcement and Monitoring Guidelines for Sand Mining, 2020. The relevant extracts of the judgment are inter alia as follows:-

*"19.2. We have also noted that the NGT has been taking a consistent stand about the mandatory requirement of a DSR being a condition precedent to carry mining activity. Further, the decision of the NGT that DSR should be the basis for an application for grant of an EC and that an application without DSR is incomplete cannot be processed or proceeded further is correct in law. We may add that a 'draft DSR' is virtually a non-existing DSR for purpose of grant of environmental clearance.*

*20. Conclusion: Having considered the regulatory regime introduced from time to time, increasing the width as well as the depth of scrutiny before granting an environmental clearance for sand mining, we are of the opinion that there is a mandatory requirement of preparation of a DSR. The DSR shall form the basis for application of environmental clearance. It shall also be the basis for preparation of reports and also appraisal of the projects. Another important facet of DSR is that it*



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shall be prepared for all the districts and the draft is to be placed in the public domain. There is a requirement for keeping a copy of DSR in Collectorate. It must also be posted on the district's website for 21 days. After comments are received, they shall be considered and if found correct, they will be incorporated in the final report. The final DSR will then be finalized within 6 months by the DEIAA. The lifetime of the report is five years. After five years the existing DSR will not be tenable and a new DSR will have to be prepared and finalized. The purpose and object of prescribing a lifetime of five years for subsistence of a DSR is for the reason that the position of ecology and the environment is rapidly changing and the position that exists five years back, may not subsist for later days. It is true that it might have changed even before the expiry of five years but a reasonable estimate, to work as a benchmark is a policy consideration. May be a precautionary principle, it is not only legal and valid but is also mandatory. It must be enforced strictly and with all vigor.

21. We conclude by holding that:

- (i) . A District Survey Report is a document of seminal importance as it enables informed decision making.
- (ii). Preparation of a DSR as per the procedure prescribed for its preparation under Appendix X, read with para 7(iii)(a), is required to be followed meticulously.
- (iii) A valid and a subsisting DSR alone can be the basis for an application for grant of EC. A draft DSR is untenable for grant of an EC.
- (iv) Preparation of reports and appraisal of projects by DEIAA and DEAC shall be on the basis of a valid and a subsisting DSR.



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(v) DEIAA and DEAC are recognized as the authorities fastened with the statutory duty of preparing the DSR every five years and this duty compels them to have a comprehensive and a real time perspective of the environment position of the district including its eco-sensitivity and other fragilities."

9. That with reference to the statements made in paragraph nos. 1 to 9, I deny all allegations made therein and reiterate the statements made in the OA and herein above.

10. That in view of the foregoing, the Applicant most respectfully prays that this Hon'ble Tribunal be pleased to allow the prayers sought forth in the Original Application and declare the e-tender dated 27.02.2025 and the corrigendum dated 08.04.2025 as illegal, null, and void and direct the Respondent No. 6 to conduct a comprehensive Environmental Impact Assessment and public consultation before initiating any desilting or dredging activity in the Chandan Reservoir; and/or to pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

11. That I do hereby declare and say that the statements made in paragraphs 1 to 8 herein are true to my personal knowledge and belief and that I have not



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suppressed any material facts and those contained in paragraph no. 9 is my respectful submissions before this Hon'ble Tribunal.

✓ राहुल कुमार

Identified by me

Deponent

Susobh Kumar Mishra  
Advocate  
8.08.2025  
Eno-1954/01

Advocate



Sri/Smt. Rahul Kumar  
who is/are identified by  
Sri/Smt. Susobh Kumar Mishra  
Advocate, Banka Solemnly Affirmed  
declare before me.

Jay Shankar Jha  
08.08.25  
Jay Shankar Jha  
Notary Public  
BANKA (Bihar)  
R.No.-497/J/24

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VERIFICATION

Verified at Banka on this 8th of August 2025, that the contents of the above affidavit are true and correct to the best of my knowledge, information, and belief, and no part of it is false and nothing material has been concealed therefrom.

राहुल कुमार  
DEPONENT  
(Rahul Kumar)  
Applicant  
Identified by me

Subodh Kumar Mishra  
Advocate  
Enrolment no. 1954/01 8.08.2025



Sri/Smt. Rahul Kumar  
who is/are identified by  
Sri/Smt. Subodh Kumar Mishra  
Advocate, Banka Solemnly Affirmed  
declare before me.

Jay Shankar Jha  
Jay Shankar Jha  
Notary Public  
BANKA (Bihar)  
R.No.-497/J/24



राहुल कुमार