

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Original Application No. 194 of 2020 (SZ)

IN THE MATTER OF:

Dr. SARVABHOUM BAGALI

.....APPLICANT

VS

STATE OF KARNATAKA &
OTHERS

.....RESPONDENTS

INDEX

Sl. No.	Particulars	Page No.
1.	Reply affidavit on behalf of Ministry(Respondent No.2)	1-7
2.	Annexure-R2/1	8-24
3.	Annexure-R2/2	25-28
4.	Annexure-R2/3	29-31

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VS

STATE OF KARNATAKA & OTHERSRESPONDENTS

**COUNTER AFFIDAVIT ON BEHALF OF THE MINISTRY OF
ENVIRONMENT, FOREST AND CLIMATE CHANGE
(RESPONDENT No. 2)**

MOST RESPECTFULLY SHOWETH:

I, Dr. S. Prabhu, currently working as Scientist "D" in the Ministry of Environment, Forest and Climate Change (MoEF&CC), Integrated Regional Office, Bangalore, do hereby solemnly affirm and state as under:-

1. That I am authorized by the Competent Authority in the Ministry of Environment, Forest and Climate Change (MoEF&CC), New Delhi to swear the affidavit on behalf of Respondent No. 2.
2. It is submitted at the very outset that the Respondent No. 2 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. 12



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 raised two substantial question 1) what is the legal status of Environment Clearances (ECs) issued mostly for a period of five years by District Level Environment impact Assessment Authorities (DEIAAs) for riverbed sand mining and mining of other minor minerals in the state of Karnataka prior to 13.09.2018? 2) should all the ECs issued by DEIAAs be reviewed by State Environment Impact Assessment Authority (SEIAA) in respect of their environmental impact and thereafter, SEIAA to decide to endorse or quash the said ECs in light of this Hon'ble Tribunals decisions? The application highlights the on-going river bed sand mining in Karnataka (especially Gadag District and Raichur District) on ECs issued by DEIAAs. It is submitted that after 13.09.2018, and more particularly after 11.12.2018, operation of DEIAAs has been stayed by this Hon'ble Tribunal (Principal Bench, New Delhi)
5. That the applicant has inter-alia prayed that the Hon'ble Tribunal please to 1) Direct the Respondent No. 1 i.e. Karnataka State Government (SEIAA) to review all the Environmental Clearances for B-2 category projects of mining of minor minerals issued by DEIAA in the entire State in respect of their environmental impact and



State in respect of their environmental impact and compliance of Sustainable Sand Mining Guidelines, 2016 and thereafter, submit a report before 22.12.2020. ii. Direct the Respondent No. 1 i.e. Karnataka State Government (SEIAA) to withdraw all proposals of B2 category projects pending before DEIAAs and transfer them to itself for grant of ECs in accordance with the EIA Notification, 2006.

6. That it is further submitted that Answering Respondent Ministry 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 requires 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

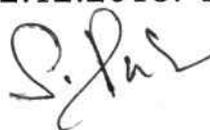


(SEIAA). In the absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be treated as a Category 'A' project.

8. That it is submitted that the answering respondent 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 hectare 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)
9. It is most respectfully submitted that the notification having S.O. 141 (E) dated 15th January, 2016 has been challenged before Hon'ble Tribunal in the matter of *Original Application No. 186 of 2016* titled as *Satendra Pandey vs Ministry of Environment, Forest and Climate Change* wherein, Hon'ble Tribunal in para no. 25 of its order dated 13.09.2018 directed that:-

The MoEF&CC shall, therefore, take appropriate steps to revise the procedure laid down in the impugned Notification dated 15th January, 2016 in terms of the above directions and observations so that it is conformity with the letter and spirit of the directions passed by the Hon'ble Supreme Court in Deepak Kumar (supra).

The copy of the order dated 13.09.2018 is annexed herein and marked as **ANNEXURE R2/1**. Further, in compliance of the Hon'ble Tribunal order Ministry issued Office Memorandum dated 12.12.2018. The copy of the OM dated



12.12.2018 is attached herein and marked as **ANNEXURE R2/2.**

10. It is submitted that the Hon'ble National Green Tribunal *vide* its order dated 11.12.2018 in Execution Application No. 55 of 2018 in Original Application No. 520 of 2016 entitled "*Vikrant Tongad Versus Union of India*" has ordered the following:

"6.The direction that 15.01.2016 should still be acted upon is clearly illegal and in violation of judgment of this Tribunal. The same will stand suspended till a fresh Notification is issued by the MoEF&CC as directed hereinabove.

7. This direction will apply to all the State Environment Impact Assessment Authorities/State Governments."

A copy of the Order dated 11.12.2018 passed by the Hon'ble National Green Tribunal is annexed herewith and marked as **ANNEXURE R2/3.**

11. That it is submitted that in pursuance of the order dated 13.09.2018 and 11.12.2018 passed by the Hon'ble Tribunal, the answering respondent has undergone to challenge the above mentioned orders by way of a Civil Appeal before Hon'ble Apex Court in the matter titled "*Union of India Vs Rajiv Suri*" having Civil Appeal No. 3799-3800 of 2019 and the case is sub-judice as of now.

12. It is most respectfully stated that in compliance of direction passed by Hon'ble National Green Tribunal in its order

S. J. S.

dated 04.09.2018 in O.A. 173/2018 in the matter of Sudarsan Das vs. State of West Bengal &Ors, answering respondent 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 since 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. 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.

13. That 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 and Respondent Ministry has no role to play with regard to the same. Further, 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 Department of Mines & Geology is the nodal authority in the state for dealing with the allotment of mining leases under the MMDR Act and is entrusted with the enforcement and regulation of mining operations in a state.

14. That in view of the aforementioned facts and circumstances, this Hon'ble Tribunal may kindly be pleased to pass appropriate order(s).



DEPONENT

Dr. S. Prabhu
Scientist 'D'

Ministry of Environment Forest & Climate Change
Integrated Regional Office
Kendriya Sadan, 4th Floor, Koramangala
Bangalore - 560 034

VERIFICATION

I, the above named deponent do hereby verify that the contents of the above affidavit are true and correct on the basis of official record maintained by the Respondent No. 2 in daily course of its business, no part of it is false and nothing material has been concealed there from.

Verified at Bengaluru on this the 11th day of March, 2022.



DEPONENT

Dr. S. Prabhu
Scientist 'D'

Ministry of Environment Forest & Climate Change
Integrated Regional Office
Kendriya Sadan, 4th Floor, Koramangala
Bangalore - 560 034

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 186/2016
(M.A. No. 350/2016)
And
Original Application No. 200/2016
And
Original Application No. 580/2016
(M.A. No. 1182/2016)
And
Original Application No. 102/2017
And
Original Application No. 404/2016
(M.A. No. 758/2016, M.A. No. 920/2016,
M.A. No. 1122/2016, M.A. No. 12/2017 & M.A. No. 843/2017)
And
Original Application No. 405/2016
And
Original Application No. 520 of 2016
(M.A. No. 981/2016, M.A. No. 982/2016 & M.A. No. 384/2017)

IN THE MATTERS OF:

Satendra Pandey
Vs.
Ministry of Environment, Forest & Climate Change & Anr.
And
Rajeev Suri Vs. Union of India
And
Badal Singh Vs. Union of India & Ors.
And
Nature Club of Rajasthan (NGO) Vs. Union of India & Ors.
And
Naresh Zargar Vs. Ministry of Environment & Forest and Anr.
And
Rajeev Suri Vs. Union of India & Anr.
And
Vikrant Tongad Vs. Union of India

CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

Present: Applicant:

Respondents

Mr. Rahul Choudhary and Ms. Meera Gopal,
Adv. in Original Application No. 388/2018
Mr. Divya Prakash Pande, Adv. for Ministry of
Environment, Forest and Climate Change
Dr. Abhishek Atrey, Adv. for Ministry of
Environment, Forest and Climate Change
Mr. Amit Tiwari, Adv. for State of Uttar Pradesh
Mr. Ashok Kumar Sharma and Mr. Kshitij
Mudgal, Adv.
Mr. V.K. Shukla, and Ms. Vijay Lakshmi, Adv.
for State of MP, State Environment Impact
Assessment Authority & Mining Corporation
Mr. Rahul Pratap, Adv. for Ministry of
Environment, Forest and Climate Change
Mr. Shiv Mangal Sharma, AAG with Mr. Saurabh
Rajpal and Mr. Vikramjeet Singh, Adv. for
State of Rajasthan

Date and Remarks	Orders of the Tribunal
<p data-bbox="373 248 498 304">Item Nos. 07 to 14</p> <p data-bbox="373 331 498 387">September 13, 2018</p> <p data-bbox="396 405 475 427">DV & AT</p>	<p data-bbox="529 259 1282 1093">1. By this application, the applicant has sought to assail Notifications dated 15.01.2016, 20.01.2016 and 01.07.2016 amending the EIA Notification dated 14.09.2006 on the ground that the procedure for obtaining Environmental Clearance in respect of mining of minor minerals for areas from 0 to 25 ha has been diluted by bringing it within B-2 category projects and exempting such category from Public Consultation, Environment Impact Assessment (EIA) and Environment Management Plan (EMP) which was in contravention of the judgment of the Hon'ble Supreme Court in <i>Deepak Kumar Vs. State of Haryana & Ors.: (2012) 4SCC 629</i> and also of this Tribunal in <i>Original Application No. 123 of 2014</i> dated 13.01.2015.</p> <p data-bbox="529 1149 1282 1615">2. The crux of the case of the applicant is that while in <i>Deepak Kumar</i> case (supra) it had been held that all mining leases in respect of its size would require to obtain Environmental Clearance and be subjected to strict regulatory framework as that of all major minerals, the impugned Notifications, more particularly 15.01.2016, exempts the necessity of having EIA and Public Consultation for areas upto 25 ha.</p> <p data-bbox="529 1671 1282 2011">3. According to the applicant the impugned Notification dated 15.01.2016 provided exemption of the rigors of the necessity of EIA and EMP even for areas ranging from 5 to 25 ha when in the earlier Notifications it was necessary from 5 to 50 ha. It was contended that the Hon'ble Supreme Court had expressed its concern on</p>

<p>Item Nos. 07 to 14</p> <p>September 13, 2018</p> <p>DV & AT</p>	<p>dispensing with the necessity of obtaining Environmental Clearance and the other requirements cognate thereto for areas less than 5 ha in the case of <i>Deepak Kumar</i> (supra).</p> <p>4. Further contention was that B-category as it stood originally, was broken to B-1 and B-2 categories by bringing areas of mining of minerals from 25 ha to 50 ha within B-1 category and 0 to 25 ha as B-2 category. For B-2 category, the authority prescribed for grant of Environmental Clearance is now the District Environment Impact Assessment Authority (DEIAA) which would base its decision on the recommendations of District Expert Appraisal Committee (DEAC).</p> <p>5. Further contentions of the applicant in assailing the Notification dated 15.01.2016 are as follows:</p> <p>a) Form-1M prescribed in the impugned Notification dated 15.01.2016, required to be submitted for mining of minor minerals upto 5 ha under Category B-2 projects provided in Appendix-VII, is generic seeking only basic details pertaining to the lease holder and the mine with perfunctory information on the environmental effect of the project which was in contrast to Form-1 which is required to be filled up for all other categories which is comprehensive seeking detailed information on environmental implications of the project.</p> <p>b) B-2 projects of 0 - 5 ha under individual and cluster category are exempted from requirements of preparing an Environment Impact Assessment</p>
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	<p>Item Nos. 07 to 14</p> <p>September 13, 2018</p> <p>DV & AT</p>	<p>Report (EIA) and Environment Management Plan (EMP) and those greater than 5 ha and less than or equal to 25 ha are exempted from preparing Environment Impact Assessment Report (EIA) both with respect to individual Mine Lease and cluster situation. No such exemption has been provided in para 7 (i) of the EIA Notification, 2006 under Stage (2) - Scoping which stipulates such requirement, but it has been done away with now at Appendix-XI of Notification dated 15.01.2016.</p> <p>c) EIA/EMP is an integral and most critical component of Environmental Clearance as it is only through the EIA that the potential impacts and risks of a project can be assessed and mitigation measures formulated and adopted in the EMP. By exempting EIA/EMP, critical environmental aspects like anticipated environmental impacts, mitigation measures and additional studies involving public consultation, risk assessment, social impact assessment and rehabilitation and resettlement action plans, stand exempted. These requirements provided under Appendix-III, defeats the very purpose of the Notification and the Environment (Protection) Act, 1986.</p> <p>d) The District Level Environment Impact Assessment Authority (DEIAA) and District Level Expert Appraisal Committee (DEAC) comprises mostly of officers/bureaucrats who have no</p>
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<p>Item Nos. 07 to 14</p> <p>September 13, 2018</p> <p>DV & AT</p>	<p>expertise and scientific knowledge to assess environmental implications, and have been conferred with excessive and uncanalized power devoid of any guidelines. Even the power to appoint the Expert Members vested upon the authorities in the DEIAA and DEAC are unguided whereas there is an extensive elaborations with regard to qualifications, skill sets and competencies for the members of SEAC and SEIAA.</p> <p>6. Based, <i>inter-alia</i>, upon the aforesaid grounds, the applicant seeks a direction for quashing the impugned Notifications.</p> <p>7. Mr. Divya Prakash Pande, Ld. Counsel for MoEF&CC in his arguments, at the outset, raised objection as to the maintainability of the application on the ground of jurisdiction of the Tribunal to grant relief for quashing the impugned notifications. It is contended that the decision of this Court in the case of <i>S.P. Muthuraman v. Union of India</i>, in O.A. No. 676 of 2017 (Earlier O.A. No. 37/2015) whereby the Tribunal has held that it had the jurisdiction to pass such orders has since been challenged before the Hon'ble Supreme Court in Civil Appeal No. 7191-7192 of 2015 and is yet to be decided and, by implication of the orders passed by the Hon'ble Supreme Court, operation of the impugned judgement stands stayed.</p> <p>8. On the merits of the application, it is submitted that Notification dated 15th January, 2016 which is sought to</p>
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	<p>Item Nos. 07 to 14</p> <p>September 13, 2018</p> <p>DV & AT</p>	<p>be assailed, had been passed by the MoEF&CC in exercise of its powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986. The notification was issued after due deliberations with various stakeholders and the State Governments over the draft notification in respect thereof issued on 22nd September, 2015 and, after a committee constituted <i>vide</i> letter dated 3rd December, 2015 to examine the comments/suggestions submitted by them, had submitted its report. The impugned Notification provides for DIEAA/DEAC in the districts which also includes appointment of Officers/bureaucrats as experts in the two bodies. The impugned Notification is further justified by the Learned Counsel contending that as the Executive Engineer, Irrigation Department has been made part of the DEAC as he deals with the rivers and canals in the district and, therefore, has the best information and knowledge about sand and gravel deposits in the districts. The Forest Department officials are also part of these committees who have the ability to do value addition in forest areas or areas adjoining the forest having deposits of minor minerals.</p> <p>9. Upon consideration of the fact and circumstances set out in the original application and upon hearing the Ld. Counsel for parties, we find that the impugned Notification dated 15th January, 2016 is not consistent with the decision of the Hon'ble Supreme Court in the case of <i>Deepak Kumar (supra)</i>. We find substance in the</p>
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<p>Item Nos. 07 to 14</p> <p>September 13, 2018</p> <p>DV & AT</p>	<p>submissions of the Ld. Counsel for the applicant that while breaking category B of the mines to B-1 & B-2 may not <i>per se</i> be bad, it certainly dilutes the stringent requirement of lease areas upto 25 ha being exempted from the necessity of submitting EIA and EMP for grant of Environmental Clearance. It is undisputed that the impugned Notification is issued with the object to comply with the directions passed in the case of <i>Deepak Kumar (supra)</i>. This case had arisen as the EIA Notification dated 14th September, 2006 was being flouted by breaking homogenous areas into pieces of less than 5 ha in the States of Uttar Pradesh, Rajasthan and Haryana, as the notification then did not require Environmental Clearance for areas less than 5 ha. The Hon'ble Supreme Court after noting the serious deleterious effect of quarrying, mining and removal of sand in-stream and up-stream of rivers to the environment, in paragraphs 9 and 10 (of SCC), held as follows:</p> <p><i>"9. 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.</i></p> <p><i>10. We are expressing our deep concern since we are faced with a situation where the</i></p>
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<p>Item Nos. 07 to 14</p> <p>September 13, 2018</p> <p>DV & AT</p>	<p>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 biodiversity as well. Further it may also lead to bed degradation and sedimentation having a negative effect on the aquatic life. The 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.</p> <p>11. 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 riverbed 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 km, because their collective impact may be significant, hence the necessity of a proper environmental assessment plan.”</p> <p>10. The Hon'ble Supreme Court also took note of the fact that the MoEF&CC had constituted a Core Group under the Chairmanship of the Secretary (Environment & Forest) to look into the environment aspects associated with mining of the minor minerals <i>vide</i> order dated 24th March, 2009 with specific terms and conditions. The Core Group after consideration of various issues including cluster of mine approach for addressing and implementing EMP in case of small mines, submitted a report on 29th</p>
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<p>Item Nos. 07 to 14</p> <p>September 13, 2018</p> <p>DV & AT</p>	<p>January, 2010 with the recommendation to permit mining of minor minerals under strict regulatory regime and carried out only under an approved framework of mining plan which should provide for reclamation and rehabilitation of mine areas. For smaller mine lease areas a cluster approach was recommended. It was directed that the States should adopt the recommendations and the model guidelines framed by the Ministry of Mines, namely the Model Rules, 2010.</p> <p>11. In pursuance of the directions, the impugned Notification dated 15th January, 2016 was ultimately issued. The MoEF&CC Notification dated 14th December, 2006 as it stood earlier prescribed for two categories of projects and activities as Category A and Category B based on the spatial extent of potential impacts, potential impacts on human health and natural and man-made resources. Stage (1)-Screening that provides for Category 'B' projects or activities, entail scrutiny of an application seeking prior Environment Clearance made in Form 1 by the concerned State Level Expert Appraisal Committee (SEAC) for determining whether or not the project or activity requires further environmental studies for preparation of EIA for appraisal prior to grant of Environment Clearance depending upon the nature and location specificity of the project. It further provides that the project requiring EIA report would be termed as Category 'B-1' and remaining projects as Category 'B-2' that would not require EIA report. Discretion to make such categorization was left upon the MoEF&CC and to issue appropriate guidelines from time to time. This</p>
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<p>Item Nos. 07 to 14</p> <p>September 13, 2018</p> <p>DV & AT</p>	<p>provision was a subject matter of challenge in the case of <i>Himmat Singh Shekhawat v. State of Rajasthan</i>, 2015 ALL (I) NGT Reporter (1) DEL 44 by which it was upheld as having been issued by the Ministry as a Subordinate Legislation. However, the office memorandums dated 24th June, 2013 and 24th December, 2013 prohibiting grant of Environment Clearance to the mine areas of less than 5 ha was quashed as being in conflict with the aforesaid provision.</p> <p>12. The only contention that require for us to consider in this case is as to whether the Notification dated 15th January, 2016 would satisfy the spirit of the directions issued in the case of <i>Deepak Kumar (supra)</i>. As already noted, EIA Notification dated 14th September, 2006 under the Schedule provided thereto require all mining lease area of equal to and up to 50 ha to seek Environment Clearance requiring to submit EIA for appraisal from the SEIAA.</p> <p>13. The impugned Notification dated 15th January, 2016, however, would clearly indicate that Category B has been split into category B1 and B2 and again, category B2 has been further split into areas of 0-5 ha and 5-25 ha. While 0-5 ha has been exempted from the requirement of EIA/Public Consultation, such exemption has also been provided even for mining areas of 5 ha to 25 ha with the DEAC and the DEIAA as the prescribed authority for evaluation and grant of Environmental Clearance. Category B-1 being mining areas of 25 ha to 50 ha, the authorities prescribed are the SEAC and SEIAA. For falling in excess of 50 ha being Category-A, it is the EAC and the</p>
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<p>Item Nos. 07 to 14</p> <p>September 13, 2018</p> <p>DV & AT</p>	<p>MoEF&CC.</p> <p>14. The procedure for grant of the Environment Clearance by the DEIAA for areas between 0 to 5 ha falling under Category 'B-2' is found prescribed in paragraphs 6, 7(iii) (a) and 7(iii) (b) of the impugned Notification read with appendices VIII, X and XI. The Schematic Presentation of Requirement of Environment Clearance of Minor Minerals including cluster situation provided in a table to Appendix XI would substantiate indubitably that even for areas between 5 to 25 ha, no EIA and Public Hearing is required and in cluster situation also, the requirement of EIA and Public Hearing have been exempted.</p> <p>15. Introduction of such procedure, in our view, is clearly not consistent with the directions contained in the case of <i>Deepak Kumar (supra)</i> and the spirit behind such direction. By the provision, mining area upto from 5 ha to 25 ha has been completely exempted from the EIA and Public Consultation. For areas of 5 ha and below, apart from the exemption, it has been made only subject to a separate procedure of preparing a District Survey Report (DSR). These provisions quite apparently are more mine-centric rather than striving a balance between mining and environment especially with regard to Form-1M which needs to be made more elaborate incorporating environment related aspects.</p> <p>16. The Sustainable Sand Mining Management Guidelines, 2016 prepared by the MoEF&CC has also deprecated the procedure as will appear from below which</p>
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<p>Item Nos. 07 to 14</p> <p>September 13, 2018</p> <p>DV & AT</p>	<p>is contained in the chapter on "The Issues and Management of Mining in Cluster":-</p> <p>"It is seen that the categorization of mines into 'B1' and 'B2' category in which Category 'B2' leases are being exempted from the requirement of Environment Impact Assessment, Environment Management Plan, and Public Consultation for grant of EC, in many cases now the mining leases are being given for 25 hectares or less. This defeats the purpose and intent of Hon'ble Supreme Court Judgment which orders environment clearance for all mining leases irrespective of size. The environment clearance without Environment Impact Assessment, Environment Management Plan, and Public Consultation does not serve the purpose of environment clearance which is to ensure environmentally sustainable and socially responsible mining. So if a cluster or individual lease size exceeds 5 hectare, the EIA/ EMP should be completed in the process of grant of prior environment clearance."</p> <p>17. Thus, even according to the Sustainable Sand Mining Management Policy issued by the MoEF&CC by dispensing with Public Hearing, the judgment of the Hon'ble Supreme Court in the case of <i>Deepak Kumar (supra)</i> will stand defeated.</p> <p>18. We also find that parameters for consideration while preparing District Mining Plan (DMP) and District Survey Report (DSR) are only for the purpose of ascertaining whether an area is fit for mining which are quite different from the parameters laid down for EIA. The consideration of the view point of the public by keeping DSR in public domain is not a substitute of Public Hearing for consideration of the view point of the public for EIA.</p> <p>19. With specific reference to mining in cluster, the Report of the Committee of Secretaries, Ministry of Environment, Forest and Climate Change, 2010 recommended as follows:</p>
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<p>Item Nos. 07 to 14</p> <p>September 13, 2018</p> <p>DV & AT</p>	<p><i>“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.”</i></p>
	<p>20. This report which is a part of the Sustainable Sand Mining Management Guidelines, 2016 finds reinforcement in the Chapter “The Issues and Management of Mining in Cluster” referred to earlier where it has inter-alia been recommended as under:</p>
	<p><i>“The Hon’ble Supreme Court, NGT, SEAC/EAC and the Project Proponents have raised issue of cluster in mine lease allotment and environment clearance for the same, so following conditions need to be ensured for cluster of mines:</i></p>
	<ol style="list-style-type: none"> 1. <i>To address the concern of adverse impact of minor mineral mining on environment it is proposed that all mining activity including river sand mining (above 5 hectare individual or cluster) will need to prepare Environment Impact Assessment Report and Environment Management Plan before grant of environment clearance. These reports (EIA /EMP) can be prepared by the State or State nominated Agency / the Project Proponent (s).</i> 2. <i>As can be seen from the data provided by the States most of the mining leases for minor minerals are of lease area less than 5 hectare. It is also reported that in hill states getting a stretch in river with area more than 5 hectare is very uncommon. So the size of lease for minor minerals including river sand mining will be determined by the States as per their circumstances.</i> 3. <i>The EIA Notification, 2006 does not provide for cluster EC, it provides for issuance of EC to individual project proponents and the same has also been upheld in the judgment of Hon’ble Supreme Court in Vijay Bansal vs. State of Haryana case. So EC will have to be applied for and issued to the individual project proponent.</i> 4. <i>A cluster shall be formed when the distance between the peripheries of one lease is less than 500 meters from the periphery of other lease in a homogeneous mineral area.</i> 5. <i>The mining of minor minerals is mostly in clusters. The Environment Impact Assessment or Environment Management</i>

<p>Item Nos. 07 to 14</p> <p>September 13, 2018</p> <p>DV & AT</p>	<p><i>Plan are required to be prepared for the entire cluster in order to capture all the possible externalities. These reports shall capture carrying capacity of the cluster, transportation and related issues, replenishment and recharge issues, geo-hydrological study of the cluster area. The Environment Impact Assessment or Environment Management Plan shall be prepared by the State or State nominated Agency or group of project proponents in the Cluster or the project proponent in the cluster.</i></p> <p>6. <i>The individual lease holders in cluster can use the same Environment Impact Assessment or Environment Management Plan for application for environmental clearance. The cluster Environment Impact Assessment or Environment Management Plan shall be updated as per need keeping in view any significant change.</i></p> <p>7. <i>There shall be one public consultation for entire cluster after which the final Environment Impact Assessment or Environment Management Plan report for the cluster shall be prepared.</i></p> <p>8. <i>The details of cluster Environment Impact Assessment or Environment Management Plan shall be reflected in each environmental clearance in that cluster and District Expert Appraisal Committee (DEAC), SEAC, and EAC shall ensure that the mitigative measures emanating from the Environment Impact Assessment or Environment Management Plan study are fully reflected as environmental clearance conditions in the environmental clearance's of individual project proponents in that cluster.</i></p> <p>9.</p> <p>10.</p> <p>11.”</p> <p>21. Dispensing with the requirement of Public Hearing which forms a part of the Public Consultation under Stage-III of the Environmental Clearance process under EIA Notification, 2006 for areas measuring 0 to 25 ha for individual mine areas and in cluster situation where public hearing has been provided, has resulted in gross dilution of EIA Notification dated 14th September, 2006. Such dilution would, in our view, result in its misuse by unscrupulous elements and the situation would revert</p>
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<p>Item Nos. 07 to 14</p> <p>September 13, 2018</p> <p>DV & AT</p>	<p>back to the lawless state prevailing prior to the decision in the case of <i>Deepak Kumar (supra)</i>. Stringent measures are, therefore, necessary if the rampant exploitation of the minor minerals is to be curbed. This apparently was also the view of the Hon'ble Supreme Court in the case of <i>Deepak Kumar (supra)</i>.</p> <p>22. For all these reasons, we direct that the procedure laid down in the impugned Notification be brought in consonance and in accord with the directions passed in the case of <i>Deepak Kumar (supra)</i> by (i) providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling under Category B-2 at par with Category B-1 by SEAC/ SIEAA as well as for cluster situation wherever it is not provided; (ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA; (iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance; (iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (<i>supra</i>) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof; (v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area; (vi) the MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining.</p>
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<p>Item Nos. 07 to 14</p> <p>September 13, 2018</p> <p>DV & AT</p>	<p>23. We have permitted retention of 0-5 ha as a category keeping in view that some States grant isolated single lease of 5 ha and less not falling in cluster situation for which stringent requirements in Form-1M will serve the purpose of providing safeguards for protection of the environment and sustainable mining of minor minerals. This is particularly true in smaller and mountainous States as will also appear from condition no. 2 under "The Issues and Management of Mining in Cluster" referred to earlier in para 20 of this order.</p> <p>24. It is reiterated that any attempt to split the lease area for the purpose of avoiding the applicable regulatory regime shall be viewed seriously. This in our view will be in the interest of the environment as deliberated in detail in the case of <i>Deepak Kumar (supra)</i> and would also satisfy the Precautionary Principle and the Principle of Sustainable Development contemplated under Section 20 of the National Green Tribunal Act, 2010.</p> <p>25. The MoEF&CC shall, therefore, take appropriate steps to revise the procedure laid down in the impugned Notification dated 15th January, 2016 in terms of the above directions and observations so that it is conformity with the letter and spirit of the directions passed by the Hon'ble Supreme Court in <i>Deepak Kumar (supra)</i>.</p> <p>The applications stand disposed of.</p> <p>....., CP (Adarsh Kumar Goel)</p> <p>....., JM (Dr. Jawad Rahim)</p>
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<p>Item Nos. 07 to 14</p> <p>September 13, 2018</p> <p>DV & AT</p>	<p>.....,JM (S.P. Wangdi)</p> <p>.....,EM (Dr. Nagin Nanda)</p> <p>13.09.2018</p>
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F. No. L-11011/125/2018-IA-II (M)
Government of India
Ministry of Environment, Forest & Climate Change
Impact Assessment Division

3rd Floor, Vayu Wing,
Indira Paryavaran Bhawan,
Jorbagh Road, Aliganj,
New Delhi-110 003
Email: rb.lal@nic.in
Phone/Fax: 011-24695362

Dated: 12th December 2018

Office Memorandum

Sub: Order dated 04th September, 2018 & 13th September, 2018 passed by the Hon'ble National Green Tribunal, New Delhi in O.A. No. 173 of 2018 & O.A. No. 186 of 2016 in the matters titled "Sudarsan Das Vs State of West Bengal & Ors" & "Satendra Pandey Vs Ministry of Environment Forest & Climate Change & Anr." respectively- regarding.

This is with reference to the recent orders of the Hon'ble NGT dated 04th September, 2018 in the matter titled *Sudarsan Das Vs State of West Bengal & Ors* & and order dated 13th September, 2018 in the matter *Satendra Pandey Vs Ministry of Environment Forest & Climate Change & Anr.* Copies of the orders are enclosed herewith for ready reference.

2. The Hon'ble NGT vide order dated 13th September, 2018 in O.A. No. 186 of 2016 (*Satendra Pandey Vs Ministry of Environment Forest & Climate Change & Anr*) has inter-alia directed as follows:-

"(i) Providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling member Category B-2 at par with Category B-1 by SEAC/ SIEAA as well as for cluster situation wherever it is not provided;

(ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA;

(iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance;

(iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof;

(v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area;

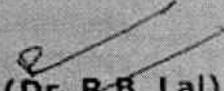
(vi) the MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining."

3. In view of the above, the undersigned is directed to forward the copy of the aforementioned order for necessary compliance and inform the Ministry about the action taken.

4. This issues with the approval of the Competent Authority.

Yours faithfully,

Encl: As above


(Dr. R.B. Lal)
Scientist 'E'

To,

1. The Chief Secretary, 1st Block, 1st Floor A.P Secretariat Office, Andhra Pradesh, Velagapudi - 522503
2. The Chief Secretary, Government of Arunachal Pradesh, Civil Secretariat, Itanagar - 791111
3. The Chief Secretary, Government of Assam, Block-C, 3rd Floor, Assam Sachivalaya, Guwahati-781006
4. The Chief Secretary, Government of Bihar, Main Secretariat Building, Patna-800015
5. The Chief Secretary, Government of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Naya Raipur-492002
6. The Chief Secretary, Government of Gujarat, Block No.1, 5th Floor, Sardar Bhawan, Sachivalaya, Gandhinagar-382010
7. The Chief Secretary, Government of Goa, Secretariat, Porvrom, Bardez, Goa - 403521
8. The Chief Secretary, 4th Floor, Haryana Civil Secretariat Sector-I, Chandigarh - 160019
9. The Chief Secretary, Government of Himachal Pradesh Secretariat, Shimla - 171002
10. The Chief Secretary, R. No. 2/7, 2nd, Floor Main Building Civil Secretariat, Jammu - 180001 R. No. 307, 3rd Floor Civil Secretariat, Srinagar - 190001
11. The Chief Secretary, Government of Jharkhand 1st Floor, Project Building, Dhurwa, Ranchi-834004
12. The Chief Secretary, Govt of Karnataka, Room No.321, Vidhana Soudha, Bengaluru- 560 001
13. The Chief Secretary, Government of Kerala Secretariat, Thiruvananthapuram - 695001
14. The Chief Secretary, Government of Madhya Pradesh MP Mantralaya, Vallabh Bhavan Bhopal - 462004

15. The Chief Secretary, Government of Maharashtra CS Office Main Building, Mantralaya 6th Floor, Madame Cama Road, Mumbai - 400032
16. The Chief Secretary, Government of Manipur South Block, Old Secretariat Imphal-795001
17. The Chief Secretary, Government of Meghalaya Main Secretariat Building Rilang Building, Room No. 321 Meghalaya Secretariat, Shillong - 793001
18. The Chief Secretary, Government of Mizoram New Secretariat Complex, Aizwal - 796001
19. The Chief Secretary, Government of Nagaland Civil Secretariat, Kohima-797004
20. The Chief Secretary, Government of Odisha General Administration Department, Odisha Secretariat, Bhubaneswar - 751001
21. The Chief Secretary, Government of Punjab, Chandigarh - 160001
22. The Chief Secretary, Government of Rajasthan Secretariat, Jaipur - 302005
23. The Chief Secretary, Government of Sikkim New Secretariat, Gangtok - 737101
24. The Chief Secretary, Government of Tamil Nadu Secretariat, Chennai - 600009
25. The Chief Secretary, Government of Telangana Block C, 3rd Floor, Telangana Secretariat Khairatabad, Hyderabad, Telangana
26. The Chief Secretary, Government of Uttar Pradesh 1st Floor, Room No. 110 LalbahadurSastri Bhawan Uttar Pradesh Secretariat, Lucknow - 226 001
27. The Chief Secretary, Government of Tripura New Secretariat Complex, Secretariat-799010, Agartala West Tripura
28. The Chief Secretary, Government of Uttarakhand 4 Subhash Road, Uttarakhand Secretariat, Dehradun - 248001
29. The Chief Secretary, Government of West Bengal Nabanna, 13th Floor, 325, Sarat Chatterjee Road, MandirtalaShibpur, Howrah - 711102
30. The Chief Secretary, Andaman and Nicobar Administration Secretariat, Port Blair - 744101
31. The Chief Secretary, Secretariat, Moti, Silvassa, Daman - 396220
32. The Chief Secretary, Secretariat, Moti, Daman - 396 220
33. The Chief Secretary, Raj Bhawan, Chandigarh-160019
34. The Chief Secretary, Lakshadweep, Kavaratti - 682555
35. The Chief Secretary, Chief Secretariat, Goubert Avenue, Puducherry - 605001
36. The Chief Secretary, Delhi Secretariat, Ip Estate, Delhi - 110002, Near Indra Gandhi Indoor Stadium

Copy to:

1. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (SZ), Kendriya Sadan, 4th Floor, E&F Wings, 17th Main Road, Koramangala II Block, Bangalore-560034
2. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (WZ), E-5, Kendriya Paryavaran Bhawan, E-5 Area Colony, Link Road-3, Ravishankar Nagar, Bhopal-462016
3. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (EZ), A/3, Chandersekharpur, Bhubaneswar-751023

4. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (SEZ), 1st and 2nd Floor, Handloom Export Promotion Council, 34, Cathedral Garden Road, Nungambakkam, Chennai-34
5. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (NZ), Bays No. 24-25, Sector 31 A, Dakshin Marg, Chandigarh-160030
6. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (NCZ), Pearson Road, P.P. New Forest, Forest Research Institute (FRI) Campus Dehradun-248006
7. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (CZ), Kendriya Bhawan, 5th Floor Sector "H", Aliganj, Lucknow-226020
8. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (WCZ), Ground Floor, East Wing, New Secretariat Building, Civil Lines, Nagpur-440001
9. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (ECZ), Bungalow No. A-2, Shyamali Colony Ranchi-834002
10. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (NEZ) Law-U-Sib, Lumbatngen, Near MTC Workshop, Shillong, Meghalaya-793021


(Dr. R.B. Lal)
Scientist 'E'

0/00

Item No. 04

Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Executive Application No. 55/2018
IN
Original Application No. 520/2016

Vikrant Tongad

Applicant(s)

Versus

Union of India

Respondent(s)

Date of hearing: 11.12.2018

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s): Mr. Rahul Choudhary, Advocate and Mr. Sany Antony,
Advocate

ORDER

1. Grievance in this application is that there is non-compliance of the judgment of this Tribunal dated 13.09.2018 in *Original Application No. 186/2016, Satendra Pandey Vs. Ministry of Environment, Forest & Climate Change & Anr.* The Hon'ble Supreme Court, vide judgment in *Deepak Kumar Vs. State of Haryana & Ors.: (2012) 4 SCC 629*, required proper Environmental Clearance before grant of lease of minor minerals, including sand mining. Vide Notification dated 15.01.2016 issued by MoEF&CC, environmental clearance was to be given by the District Environment Impact Assessment Authority (DEIAA) which defeat the direction of the Hon'ble Supreme Court.
2. This Tribunal noted that the Notification dated 15.01.2016 issued by the Ministry of Environment, Forest and Climate Change (MoEF&CC) was not consistent with the mandate in *Deepak Kumar (supra)*.
3. The District Expert Appraisal Committee (DEAC) comprised officers having no expertise or scientific knowledge to assess environment implications. Permitting DEAC to make assessment

was also not consistent with the Sustainable Sand Mining Management Guidelines, 2016. Accordingly, MoEF&CC was directed to take steps to revise the procedure laid down in the Notification dated 15.01.2016.

4. According to the applicant, the MoEF&CC failed to issue appropriate Notification. Moreover, the State of Uttar Pradesh vide the letter dated 25.10.2018 and State of Kerala vide the letter dated 29.10.2018 directed Environmental Clearance to be given in accordance with the Notification dated 15.01.2016 in violation of the judgment of this tribunal dated 13.09.2018 which in turn is to implement the direction of the Hon'ble Supreme Court in Deepak Kumar (*supra*).
5. Accordingly, we direct the MoEF&CC to comply with the order dated 13.09.2018 forthwith and furnish a report of compliance on or before 31.12.2018 failing which coercive measures may have to be taken. We also make it clear that till a fresh Notification is issued by the MoEF&CC, Notification dated 15.01.2016 will not be acted upon.
6. Since our attention has been drawn to letter dated 29.10.2018 issued by the State Environment Impact Assessment Authority, Kerala addressed to the District Environment Impact Assessment Authorities of various districts in Kerala that Notification dated 15.01.2016 having not being stayed, the same be followed. This interpretation is clearly contrary to the order of this Tribunal disapproving the Notification dated 15.01.2016 and requiring the same to be revised. The direction that 15.01.2016 should still be acted upon is clearly illegal and in violation of judgment of this Tribunal. The same will stand suspended till a fresh Notification is issued by the MoEF&CC as directed hereinabove.
7. This direction will apply to all the State Environment Impact Assessment Authorities/State Governments.

8. List for further consideration along with the report of the MoEF&CC on 14.01.2019.
9. Copy of this order be sent to the MoEF&CC by e-mail.
10. The report may also be furnished to this Tribunal by e-mail at ngt.filing@gmail.com.

Adarsh Kumar Goel, CP

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

December 11, 2018
Executive Application No. 55/2018
in Original Application No. 520/2016
R

