

**BEFORE THE NATIONAL GREEN TRIBUNAL**  
**PRINCIPAL BENCH :: NEW DELHI**  
**ORIGINAL APPLICATION No. 142 of 2022**

Jayant Kumar

..... Applicant

Vs.

Ministry of Environment,

Forest &amp; Climate Change &amp; Ors.

..... Respondents

**NDOH : 30.05.2023**

**INDEX**

<b>S. No.</b>	<b>DESCRIPTION</b>	<b>PAGES</b>
1.	ADDITIONAL AFFIDAVIT ON BEHALF OF THE APPLICANT FOR EFFECTIVE DISPOSAL OF ORIGINAL APPLICATION.	1 - 11 775 - 785

Filed By :

Place : New Delhi

Dated : 29.05.2023

  
( VIKAS K SINGH )

Advocate for the Applicant  
134, New Lawyer's Chamber,  
Supreme Court of India,  
New Delhi - 110001  
M. No. 9911111246  
Email : [vksofficesc@gmail.com](mailto:vksofficesc@gmail.com)

**BEFORE THE NATIONAL GREEN TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
ORIGINAL APPLICATION NO. 142 OF 2022**

IN THE MATTER OF

Jayant Kumar

..... Applicant

Versus

Ministry of Environment,  
Forest & Climate Change & Ors.

..... Respondents

**AN ADDITIONAL AFFIDAVIT ON BEHALF OF APPLICANT FOR  
EFFECTIVE DISPOSAL OF ORIGINAL APPLICATION.**

I, Jayant Kumar aged about 34 years Son of Ram Subhag Resident of Village & Post – Arangpani, P.S. - Myourpur, Arangpani, Dudhi, District – Sonbhadra (U.P.) 231208, Ex-Secretary – Aadarsh Sewa Samiti and at present in New Delhi do hereby solemnly affirm and state as under :-

1. That I am sole applicant in the present Original Application and I have been dealing with the subject matter of this application and therefore I am well conversant with the facts and circumstances of the present case and competent to file this affidavit.
2. That I, am a graduate, an agriculturist and social worker resides in remote area of District – Sonbhadra, where people approach with their day-to-day problems in which helps to resolve those as well as environmentalist do plantation etc. to protect the environment against pollution and illegal mining.



*(Handwritten Signature)*

3. That applicant sought following reliefs in the present O.A. i.e. *first*, Cancellation of Environmental Clearances dated 23.10.2018 granted by DEIAA; *second* Cancellation of Mining Leases dated 05.10.2020 & 06.11.2020 respectively; *third* Re-appraisal of Environmental Clearances by SEIAA; and *fourth* Recovery of Compensation, against the respondents.
4. That I have gone through the contents of report, reply affidavits filed on behalf of the Respondent No. 1 (MoEF&CC); Respondent No. 2 (SEIAA) and Respondent Nos. 5 & 6 (Project Proponents) and the orders passed by this Hon'ble Tribunal and filing this additional affidavit for effective disposal of this original application.
5. That in compliance of order dated 28.02.2022 passed by this Hon'ble Tribunal, the Joint Committee submitted its reported dated 30.06.2022, relevant part of which is stated as below :

*"Apart from those mentioned above, it has been mentioned in the revenue record that the Gatta No. 7536 has total area of 106.396 Hectare out of which 4.122 Hectare is private land, 60.1220 Hectare is Reserve Forest rest area 42.1520 Hectare marked as 7536 Ga Mi is recorded in the name of PAHAD consisting of mineable minerals like Dolo Stone Boulders.*

*Khand No. 01 (Area-4.970 Hectares), Khand No. 02 (Area-4.0 Hectares), Khand No. 03 (Area-4.0 Hectares) and Khand No. 04 (Area- 4.0 Hectares) are the parts of Gatta No. 7536 Ga Mi. (Area 42.1520 Hectare). Since this Gatta No. 7536 Ga Mi is very large in area, hence 04 blocks were carved out as Khand No. 01, 02, 03 & 04 for practical solution of e-auction leaving 100-meter area as minimum safety distance of the reserve forest on Gatta No. 7536 Gha."*



*Handwritten signature in Hindi script.*

6. That the answering respondent the Project Proponents namely **Respondent No.5-M/s. Sai Ram Enterprises & Respondent No. 6-M/s. C.S. Infra-Construction Ltd.** have filed reply to report of Joint Committee on 14.07.2022 relevant part of which is state below :

“..... 17. That however, since this Hon'ble Tribunal had erred in not appreciating the fact that some tracts of land, including the land over which mining leases had been granted in favour of the Answering Respondents, were excluded from the purview of Section 4 Notification under the settlement proceedings, concluded in terms of the judgment passed by the Hon'ble Supreme Court in Writ Petition (Crl.) No. 1061 of 1982, titled Banvasi Seva Ashram vs State of UP & Ors. reported as (1986) 4 SCC 753, on the ground that the said lands were recorded as 'pahad' (uncultivable waste land belonging to the revenue department) at the time of issuance of the Notification under Section 4 and were not forest land, the Answering Respondents, along with several other leaseholders, challenged the orders dated 13.07.2018 and 25.03.2019 passed by this Hon'ble Tribunal before the Honble Supreme Court, with the lead matter being Civil Appeal No. 12202/2018 and the Civil Appeal filed by the Answering Respondents being Civil Appeal No. 5257 / 2019.

.....

20. That the above submissions make it evident that no fault could be attributed to the Answering Respondents for the delay which occurred in registration of their mining leases and the same occurred only due to the pendency of the judicial proceedings before the Hon'ble Supreme Court, in which it has been specifically noted that the lease holders were not at fault. Further, as already stated above, the relevant date of consideration for the purpose of determining as to whether the legal regime in grant of EC has been followed or not, since that is the scope of application of the Deepak Kumar judgment, the order dated 13.09.2018 passed by this Hon'ble Tribunal, the O.M. dated 12.12.2018 issued by MoEF&CC and the decision dated 05.02.2019 taken by UP-SEIAA and UP-SEAC, is 23.10.2018, the date of grant of EC's in favor of the answering Respondents. The date of registration of the mining lease [05.10.2020 and 06.11.2020] is not



गणेश कुमार

*relevant at all for the purpose of determining the validity of the EC. .... ”*

7. That on 31.08.2022 SEIAA-respondent no. 2 has filed its response and relevant para is stated as below :

*“..... 14. That as per the report of the committee constituted by this Hon'ble Tribunal and the statutory provisions like Rule 10 of UP Minor Minerals (concession) Rules, 2021 inter alia, it is pertinent to bring to the notice of this Hon'ble Tribunal that on 23.10.2018 the District Level Environmental Assessment Authority, Sonbhadra was legally working and the EC issued to respondent no. 5 and 6 is valid as well as in accordance with law.”*

8. That on 31.01.2023 MoEF&CC-respondent no. 1 filed a counter affidavit when this Hon'ble Tribunal sought action taken report by MoEF&CC vide order dated 07.12.2022 the relevant part is stated as below :

*“..... 8. It is most humbly submitted that this Ministry in compliance to the order dated 13.09.2018 passed by Hon'ble National Green Tribunal in the matter of Satendra Pandey vs. MoEF&CC & Anr. issued an OM No.L-11011/175/2018 IA-II(M) vide dated 12.12.2018 addressed to the Chief Secretaries of all the States/UTs.*

*....*

*9. It is submitted that in pursuance to the above-mentioned order of the Hon'ble National Green Tribunal dated 13.09.2018 and 11.12.2018, the Ministry has approached the Hon'ble Supreme Court against the above mentioned order by way of a Civil Appeal in the matter titled C.A. No. 3799-3800 "Union of India Vs Rajiv Suri". It is further submitted that the said matter is pending before the Hon'ble Supreme Court. ....”*

9. That an additional affidavit was filed on behalf of MoEF&CC – respondent no. 1 in compliance to the directions issued by this Hon'ble Tribunal vide order dated 07.12.2022 & 09.02.2023, relevant part of the affidavit as stated under :



*5/4-1 सुनिर*

*“..... 7. That it is stated that in pursuance to the Hon’ble NGT order and OM dated 12.12.2018, DEIAA is not functional and does not exist as on date. DEIAA’s work is now looked after by SEIAA w.e.f. from 13.09.2018.”*

10. That the captioned matter was listed for directions / hearing before this Hon’ble Tribunal on 22.05.2023, when the Hon’ble Tribunal was pleased to pass the following order :-

*“..... 4. On 15.05.2023 learned counsel for MoEF&CC sought time for obtaining instructions and filing of additional affidavit as to whether during the period the mining leases are to be reappraised through SEAC/SEIAA the mining will remain suspended or will continue.*

5. *Learned Counsel for respondent no. 1-MoEF & CC has stated on instructions that during the period the mining leases are to be reappraised through SEAC/SEIAA the mining will continue. Affidavit in this regard be filed by respondent no. 1-MoEF & CC on or before 30.05.2023 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. *Learned Counsel for the parties seek adjournment for arguments on the original application.*
7. *The case is adjourned to 30.05.2023 for further consideration/arguments.”*

11. That in compliance of order dated 15.05.2023 MoEF&CC – respondent no. 1 filed an additional affidavit dated 25.05.2023 relevant part of which is stated as below :

*“..... 4. It is humbly submitted that Environmental Clearances (EC) granted by District Level Environment Impact Assessment Authority (DEIAA) from 15.01.2016 to 13.09.2018 will continue to be valid for one year as per*



*जयन्त कुमार*

*the Ministry's OM dated 28.04.2023, subject to the compliance of the conditions prescribed therein. ....”*

12. That present original application is still pending for final consideration and as prayed for arguments on Original Application this Hon'ble Tribunal kind enough to grant, therefore, after exchange of pleadings relevant issues are evolved, hence, matter be considered on following **ADDITIONAL GROUNDS** at the time of hearing:

- A. Because the lease land involved in present matter and in the matter of Amit Pandey vs. State of U.P. & Ors. (O.A. No. 781 of 2018) are common, where issue was illegal mining on forest land notified under section 4 of the Indian Forest Act, 1927 granted to project proponents and this Hon'ble Tribunal vide order dated 25.03.2019 prohibited mining on the said land implementing order dated 13.07.2018 passed by this Hon'ble Tribunal in O.A. No. 429 of 2016 (All India Kaimur People's Front vs. State of Uttar Pradesh & Ors.).
- B. Because order dated 25.03.2019 of this Hon'ble Tribunal was a formal implementing order of 13.07.2018 passed in O.A. No. 429 of 2016 (All India Kaimur People's Front vs. State of Uttar Pradesh & Ors.) whereby this Hon'ble Tribunal forthwith prohibited all mining process on land covered by the notification under section 4 of the Indian Forest Act, 1927 for which notification under section 20 of the Indian Forest Act, 1927 has not yet been issued in entire District - Sonbhadra including Village - Billi Markundi.



Handwritten signature/initials.

- C. Because the lease land on which the present mining lease was granted situated in Village – Billi Markundi of District – Sonbhadra and *Letter of Intent* issued on 20.08.2018 to the Project Proponents much later after order dated 13.07.2018 by which grant of mining process has already been prohibited on the said section 4 notified forest land.
- D. Because when by virtue of order dated 13.07.2018 *NOC & Letter of Intent dt. 20.08.2018* became ineffective, then how the Mining Plan and Environmental Clearances could have been prepared and granted for mining on a prohibited section 4 notified forest land, therefore, ECs dated 23.10.2018 granted by DEIAA deems to be invalid and are not liable for re-appraisal by SEIAA.
- E. Because work of DEIAA taken over by SEIAA w.e.f. 13.09.2018 and ECs granted by DEIAA from 15.01.2016 to 13.09.2018 will continue to be valid for one year as per the Ministry's OM dated 28.04.2023, therefore, in such a situation, in the present matter ECs were granted on 23.10.2018 by DEIAA after 13.09.2018 on the basis ineffective *LOI & Mining Plan*, hence ECs are deemed to be invalid and are not liable for re-appraisal by SEIAA.
- F. Because in the present matter mining lease deeds were registered on 05.10.2020 and 06.11.2020 after Gazette Notification dated 15.06.2020 published / issued under Section 20 of the Forest Act, 1926 by the permission of Hon'ble Supreme Court of India in the proceedings where final orders dated 13.07.2018 & 25.03.2019



उत्तरांचल सरकार

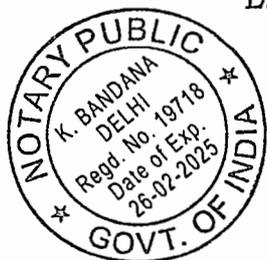
passed in O.A. No. 429 of 2016 (All India Kaimur People's Front vs. State of Uttar Pradesh & Ors.) & O.A. No. 781/2018 (Amit Pandey vs. State of U.P. & Ors.) were challenged before the Hon'ble Supreme Court of India in C.A. No. 12202/2018 (Dharmendra Kumar Singh vs. State of U.P. & Ors.) and C.A. No. 5093/2019 (Sai Ram Enterprises & Ors. vs. Amit Pandey & Ors.) respectively, latter by Project Proponents herein.

- G. Because waiting for gazette notification of Section 20 by the project proponents itself make crystal clear that there was an embargo under order dated 13.07.2018 passed by this Hon'ble Tribunal due to which mining leases were not registered as per Rule 29 of the U.P. Minor Minerals (Concession) Rules, 1963/2021, where project proponent has to get the lease deed registered within a period of three-months from the date of issuance of Environmental Clearance.
- H. Because the mining proponents cannot be at luxury of getting the mining lease deeds executed at any time of their choice, as there are rules which are required to be followed for completion of lease granting process and in the present case there is sheer violation of Rules as Rule 59 of the U.P. Minor Minerals (Concession) Rules, 1963/2021 says if lease deed not executed within time LOI shall be cancelled and consequently entire lease granting process stands cancelled, therefore in such circumstances mining lease deeds dated 05.10.2020 and 06.11.2020 are liable to be cancelled.



6/14/2021 3/27/21

- I. Because in the present case prescribed rules of the U.P. Minor Minerals (Concession) Rules, 1963/2021 have not been followed and mining lease deeds dated 05.10.2020 and 06.11.2020 were registered after about 2 years on the basis of ineffective/invalid *LOI, Mining Plan & ECs*, therefore, liable to be cancelled.
- J. Because before this Hon'ble Tribunal O.A. No. 474/2019 (Surendra Singh v. MoEF&CC & Ors.) and O.A. No. 992/2019 (Surendra Singh v. MoEF&CC & Ors.) have been filed seeking the same reliefs as sought here, which this Hon'ble Tribunal pleased to grant vide orders dated 24.05.2019 and 14.08.2019 passed in O.A. No. 474/2019 (Surendra Singh v. MoEF&CC & Ors.) by Hon'ble four & three Judges Bench respectively and order dated 18.03.2020 and 23.12.2020 passed in O.A. No. 992/2019 (Surendra Singh v. MoEF&CC & Ors.) by Hon'ble three & four Judges Bench respectively of this Hon'ble Tribunal, following *Deepak Kumar* and *Satendra Pandey*.
- K. Because final orders dated 14.08.2019 passed in O.A. No. 474/2019 (Surendra Singh v. MoEF&CC & Ors.) and final order dated 23.12.2020 passed in O.A. No. 992/2019 (Surendra Singh v. MoEF&CC & Ors.) following *Deepak Kumar* (supra) and *Satendra Pandey* (supra) have not been challenged before the Hon'ble Supreme Court of India, therefore, final and binding.
- L. Because final order dated 13.09.2018 passed in O.A. No. 186/2016 (Satendra Pandey vs. MoEF&CC Anr. etc.



Satendra Kumar

etc.) and 11.12.2018 passed in review petition by this Hon'ble Tribunal have been challenged before the Hon'ble Supreme Court of India in Civil Appeal No. 3799-3800/2019 (Union of India vs. Rajiv Suri) were not stayed by the Hon'ble Supreme Court, therefore, order dated 13.09.2018 is still in force.

- M. Because in cases of Surendra Singh (supra) this Hon'ble Tribunal directed reappraisal of ECs by SEIAA granted by DEIAA after cut-off date 13.09.2018 as the Mining Lease Deeds were registered within three months of grant of ECs and mining were not under any embargo but here in the present case mining lease deeds were registered after about 2 years in violation of rules and there was an embargo on lease granting process, therefore ECs are not liable for reappraisal by SEIAA.
- N. Because project proponents are liable for recovery of compensation for illegal mining as despite orders dated 13.07.2018 and 13.09.2018 which puts embargo on lease granting process, *LOI, Mining Plan & ECs* were issued processed and granted and lease deeds were executed on the basis of ineffective *LOI, Mining Plan & Environmental Clearances*.
- O. Because despite order dated 25.03.2019 in *Amit Pandey's case (supra)* and SEAC meeting dated 05.02.2019 held for issuance of EC by SEIAA for area 0-5 hectare following order dated 13.09.2018 and OM dt. 12.12.2018, afresh process for granting lease has not



जय श्री गणेशाय नमः

been initiated, therefore, liable for recovery of compensation.

P. Because in the cases of *Surendra Singh (Supra)* Hon'ble bench of three/four judges of this Hon'ble Tribunal directed recovery of compensation as only ECs were found to be issued invalidly in violation of order dt. 13.09.2018 and O.M. dated 12.12.2018 but rest of the process were in accordance of Rules and Laws but in the present case entire lease granting process is invalid, therefore project proponents are liable for recovery of compensation as above orders are final and binding.

13. That in view of the submissions made above the Original Application is liable to be allowed and mining to be closed.

*VKS Singh*  
DEPONENT

VERIFICATION :-

I, above-named, deponent do hereby verify that the contents of paras 1 to 13 of this my additional-affidavit are true and correct to my personal knowledge and belief being based on record as well as on legal advice which I verily believe to be true and no part of this my affidavit is false and nothing material has been concealed or withheld there from.

Verified at New Delhi this the 29<sup>th</sup> day of May, 2023.

*VKS Singh*  
DEPONENT

Place : New Delhi  
Dated : 29.05.2023

29 MAY 2023

Filed By  
*VKS Singh*  
( VIKAS K SINGH )  
Advocate for the Applicant  
134, New Lawyer's Chamber  
Supreme Court of India,  
New Delhi - 110001  
M. No. 9911111246  
Email : [vksofficesc@gmail.com](mailto:vksofficesc@gmail.com)



ATTESTED  
NOTARY PUBLIC DELHI  
GOVT. OF INDIA  
Mob.: 9654768498