

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 61 OF 2022**

IN THE MATTER OF:

ALL INDIA KAIMUR PEOPLE'S FRONT.APPLICANT
VERSUS
STATE OF UTTAR PRADESH & ORS.RESPONDENTS

INDEX

S.No.	Particulars	Pg No.
1.	Additional Reply on behalf of M/s BCS Enterprises (Respondent No. 8), in response to Objections filed by Applicant to the Joint Committee Report, with Affidavit	1-17

FILED BY:


Scanned with CamScanner



[UTKARSH SHARMA] [SHARAD CHAUHAN]
Counsels for M/s BCS Enterprises
139, Setalvad Block,
Supreme Court, New Delhi-110001
Mob:+91-9312061203

Dated: 13.08.2022

E-mail: sharadadvocate22@gmail.com

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 61 OF 2022**

IN THE MATTER OF:

ALL INDIA KAIMUR PEOPLE'S FRONT APPLICANT

VERSUS

STATE OF UTTAR PRADESH & ORS. ...RESPONDENTS

**ADDITIONAL REPLY ON BEHALF OF M/s BCS
ENTERPRISES/RESPONDENT NO. 8 WITH AFFIDAVIT**

MOST RESPECTFULLY SHOWETH:

1. That the present Additional Reply is being filed on behalf of M/s BCS Enterprises, through its Partner Mr. Chandra Bhushan Gupta, in response to the Objections filed by the Applicant to the Joint Committee Report dated 21.05.2022. At the outset, it is stated that the Objections to the Report filed by the Applicant, qua Respondent No. 8 [As stated in its Reply dated 11.07.2022, M/s BCS Enterprises does not have a copy of the Original Application and has learnt that it has been arrayed as Respondent No. 8 in the Original

Application only from the contents of the Objections to the Joint Committee Report filed by the Applicant], are completely erroneous, malicious and not borne out either from the record or from the situation on the ground. The Objections raised by the Applicant, qua Respondent No. 8, are based on a fallacious and selective reading of the facts and law and have no rational basis whatsoever. The contents of the Objections filed by the Applicant, not specifically admitted hereunder, are denied by Respondent No. 8.

2. That it has been contended by the Applicant in its Objections that large-scale illegal excavation and illegal mining is being carried out by Respondent no. 8 over its lease area and around 300-400 tons material is being supplied through illegal transport permit (MM-11) issued by the mining department. The said contention has been advanced by the Applicant without placing on record any supporting material/documentation and is nothing but an extremely vexatious and malicious

attempt to mislead and prejudice this Hon'ble Tribunal. The Applicant, through its submission, has irresponsibly alleged that the mining department is issuing illegal transport permits [MM-11 Forms] to Respondent No. 8, which only depicts the utter lack of knowledge on the part of the Applicant in respect of the methodology and manner of issuance of MM-11 Forms. The Applicant should be put to strict proof of the allegations levelled by it and in case the Applicant is unable to substantiate its submissions, then the strictest possible action should be initiated against the Applicant by this Hon'ble Tribunal. It is made clear that no illegal or excess mining whatsoever is being done by Respondent No. 8.

3. That as stated in its Reply dated 11.07.2022, it is reiterated that the mining being done by the Respondent No. 8 is well within the limits specified in its Environmental Clearance dated 26.05.2017 [Annexure R-2 of Reply dated 11.07.2022] and no

mining at all is being done by Respondent No. 8 outside its lease area.

4. That the Applicant has also alleged that Respondent No. 8 had been carrying out illegal mining near the railway line till a few months back. The said submission of the Applicant is without any basis whatsoever and has been made without placing any documentation on record to support the said averment, which is again indicative of the malicious attempt of the Applicant to somehow prejudice the mind of this Hon'ble Tribunal, by concealing and suppressing actual facts and putting forth wrong and misleading facts. The Joint Committee Report clearly states that no mining outside its area has been done by Respondent No. 8. The Joint Committee Report also makes a mention of an earlier mining lease, granted to one Mr. Satyajit Kumar, during the period from 30.10.2001 to 29.10.2011, over Khasra Nos. 7566 and 7577, which was located close to the railway line in question.

5. That apart from this, several other mining leases have also been granted earlier in respect of the areas surrounding the mining lease area of Respondent No. 8, including a mining lease granted to one Dara Sewa Samiti and another granted to one Mr. Prem Narain Chaubey. It is reiterated that the small pits, located close to the railway line and the areas surrounding the lease area of Respondent No. 8, are a result of the mining done during the earlier mining leases, which have not been filled thereafter, and no fresh mining has been done anywhere close to the railway line since the earlier leases in the area came to an end. The pits depicted in the Google Map photos, marked as Annexures R-3 and R-5 in the Objections filed by the Applicant, were also made during the subsistence of the lease of Mr. Satyajit Kumar and other mining leases which have been granted from time to time in the area.
6. That the contention of the Applicant that the mining lease area of Respondent No. 8 is less than 50 meters

from the railway line, is completely misconceived and baseless. It is submitted that the mining lease area of Respondent No. 8 is around 90-100 meters from the railway line and around 54 meters from the railway boundary, as shall be evident from the map annexed along with the Joint Committee Report dated 21.05.2022, in which the yellow portion earmarks the mining lease area of Respondent No. 8.

7. That it is pertinent to mention that only a small portion contained in Khasra No. 4422 Ka Mi, which is highlighted in yellow in the map, is a part of the mining lease area of Respondent No. 8 and the contention of the Applicant that Khasra No. 4422 Ka Mi is within 50 meters of the railway line has no relevance at all as the distance to be measured is the distance between the mining lease area and the railway line and not the distance between the boundary of Khasra No. 4422 Kha Mi and the railway line, as the size of the Khasra is naturally going to be extremely large. Hence, there is no

question of any violation of Rule 42 (e) of the Uttar Pradesh Minerals (Concession) Rules, 2021, which inter-alia mandates that no mining operation shall be carried on at or to any point within a distance 50 metres from any railway line, except with the previous written permission of the Railway Administration concerned, taking place in respect of the mining lease of Respondent No. 8.

8. That in so far as the allegation of the Applicant, to the effect that the lease area of Respondent No. 8 is a short distance away from inhabitation, is concerned, the said allegation is also erroneous and has been deliberately raised by the Applicant to create confusion and prejudice the mind of this Hon'ble Tribunal. It is submitted that the structures depicted in the Google Map photo, marked as Annexure R-4 in the Objections filed by the Applicant, are the sheds/rooms housing the workers, employees and the partners of M/s BCS Enterprises, which have been built for efficient and

effective conduct and supervision of the mining operations. It is relevant to mention that the said sheds/rooms have been built over land, which is owned by the partners of M/s BCS Enterprises.

9. That it is respectfully submitted that the Applicant has deliberately mislead this Hon'ble Tribunal by creating a confusion in respect of the words 'bandh' and 'dam' and misrepresenting that the word 'bandh' represents the Obra Dam and that the lease of the Respondent No. 8 is located within 50 meters of the Obra Dam. It is clarified that a perusal of the Joint Inspection Report, prepared after a detailed spot inspection, makes it clear that no dam is situated anywhere near the lease area of Respondent No. 8. The fact of the matter is that the word 'bandh' indicates the medha/excess land and falls under Category 6(4) whereas dam falls under the category 6(2). It is made clear that in so far as the lease area of Respondent No. 8 is concerned, it is situated more than 5 kilometers from the Obra Dam.

10. That hence , it is abundantly clear from the above submissions that the mining lease area of Respondent No. 8 is neither in close proximity to the railway line or to inhabited area or to any dam, and hence, there is no question of the barring provisions of Rules 41 and 42 of Uttar Pradesh Minerals (Concession) Rules, 2021 being attracted.

11. That as has been stated in the Reply dated 11.07.2022 filed on behalf of Respondent No. 8, the mining of Respondent No. 8 is currently suspended as improvements are being carried out at the mining site, in terms of the provisions of the Uttar Pradesh Minerals (Concession) Rules, 2021 and the mining will only resume after obtaining permission from the mining department and the district administration. Hence, no mining operations, leave alone illegal mining and transportation, is taking place at the lease area of Respondent No. 8 and submissions in that regard by the Applicant, without any supporting material/

documentation, are absolutely baseless and misconceived. The Applicant should be put to strict proof to substantiate the said submissions and should be meted out serious consequences in case of failure to do so.

12. That as has stated in in the Reply dated 11.07.2022 filed on behalf of Respondent No. 8, at any given point of time, if analyzed on a real time basis, there is always a slight discrepancy between the figures of actual mined materials and figures available in the statutory MM-11 Forms because of the time lag between actual mining and generation of MM-11 Forms, which are generated only after the mined material is sent to the crushing units and converted into gittis, which are then sold in the market. The small differences, found in the reports dated 21.11.2019 and 04.02.2022, are because of the fact that MM-11 Forms for the said material were yet to be generated, but the same would have been generated in due course.

13. That it is submitted that because of the time lag between mining and generation of MM-11 Forms, although there is a possibility of minor differential occurring in the quantum of actual mined material and the figures reflected in the MM-11 Forms, such discrepancy is only a short term occurrence and in the long run, towards the end of the mining year, the quantum of actual mining completely reconciles with the figures reflected in the MM-11 Forms, which can be proved from the records available with the mining department. Further, it is respectfully submitted that the differential in the quantum of actual mining and figures reflected in MM-11 Forms, on a short term basis, cannot be termed as illegal mining by any stretch of imagination since the figures of actual mining and those reflected in the MM-11 Forms, in the case of the Respondent No. 8, have always reconciled at the end of the year and no mining, in excess of the permitted amount indicated in the Environmental Clearance, has

ever been done by Respondent No. 8. Further, both the royalty and the penalty for the differential figures has already been paid by Respondent No. 8 to the authorities.

14. That the conclusion drawn by the Applicant that the amount of 2,34,805 cubic meters mentioned in report dated 04.02.2022 denotes the mining done by Respondent No. 8 in one year, leading to the conclusion that a huge amount of illegal mining has been done by Respondent No. 8 in excess of the amount permitted under the Environmental Clearance, is a blatant attempt at misleading and prejudicing this Hon'ble Tribunal. The report dated 04.02.2022 clearly indicates that the total amount of mining done in the lease area of Respondent No. 8, **till 04.02.2022**, is 2,34,805 cubic meters, which unequivocally depicts the total mining done in the area since the commencement of the mining lease of Respondent No. 8 [26.05.2016] and by no stretch of imagination can be understood to connote the

mining done in one year. It is again reiterated that no mining, in excess of the amount permitted under the Environmental Clearance granted to Respondent No. 8, has ever been done by Respondent No. 8.

15. That in light of the above submissions, it is humbly submitted that the Objections filed by the Applicant to the Joint Committee Report are misconceived, untenable and devoid of any merit. There are certain infirmities in the Joint Committee Report, which have been highlighted in the Reply dated 11.07.2022 filed on behalf of Respondent No. 8 but the Objections raised by the Applicant to the Report are based on surmises and conjectures and have no factual or legal foundation.

16. That it is categorically stated that contrary to the assertion made by the Applicant in its Objections, no mining has ever been done in the private land owned by the partner of M/s BCS Enterprises in Khasra 7577 Ka/2 and mining has been confined only to the area in

respect of which lease has been granted to Respondent No. 8, contained in Khasra No. 7577 Kha.

17. That thus, it is clear from the submissions contained in the present Additional Reply and the Reply dated 11.07.2022 filed by Respondent No. 8 earlier, that Respondent No. 8 has neither indulged in any mining outside the area of its mining lease nor has it done any mining beyond the limit specified in its Environmental Clearance. Hence, there is no question of any environmental damage, due to any illegal mining, being caused by Respondent No. 8, which is operating in consonance with the terms and conditions of its Environmental Clearance.

18. That in such circumstances, it is respectfully prayed that there is no cause or reason for imposition of any action being taken or any environmental compensation being imposed on Respondent No. 8 and the Original

Application, qua Respondent No. 8, may kindly be dismissed.

M/s BCS ENTERPRISES

THROUGH


Scanned with CamScanner



[UTKARSH SHARMA] [SHARAD CHAUHAN]

ADVOCATES

**139, SETALVAD BLOCK, LAWYERS' CHAMBERS,
SUPREME COURT, NEW DELHI-110001.**

PLACE: NEW DELHI

DATE: 13.08.2022



उत्तर प्रदेश UTTAR PRADESH

GA 080163

2 Ticket Rs 10-00
Ramashankar Yadav
Notary Sonbhadra
13/07/22

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 61 OF 2022

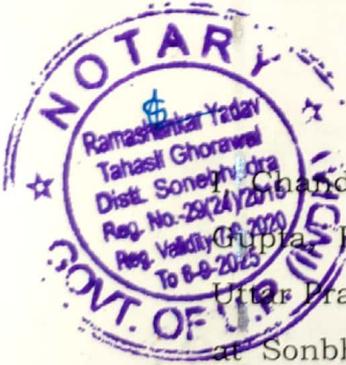
IN THE MATTER OF:

ALL INDIA KAIMUR PEOPLE'S FRONTAPPLICANT

VERSUS

STATE OF UTTAR PRADESH & ORS.RESPONDENTS

AFFIDAVIT



Chandra Bhushan Gupta, aged about 64 years, S/o Ram Lakhan
Gupta, R/o 20/91, near Ayappa Mandir, Sector-8, Obra, Sonbhadra,
Uttar Pradesh-231219, presently partner M/s B.C.S Enterprises, presently
at Sonbhadra, Uttar Pradesh do hereby solemnly affirm and state as
under:

1. That I am authorized to represent M/s B.C.S Enterprises in the
abovementioned Original Application and I am fully conversant with

the facts and circumstances of the case to the best of my knowledge and belief and as such competent to swear this affidavit in my official capacity.

- 2. That I have read and understood the contents of the accompanying reply and the same has read over to me and explained to me by my counsel in my vernacular and hence swearing the present affidavit.
- 3. I state that the contents of the above reply which has been drafted under my instructions and the contents are true and correct to the best of my knowledge and belief.

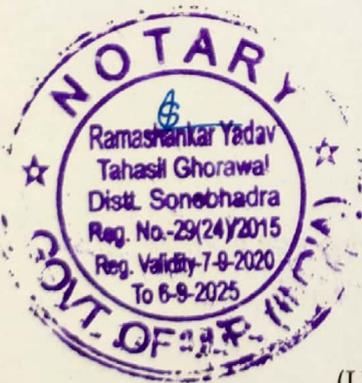
DEPONENT

Utkarsh Sharma

VERIFICATION

I the above named deponent, do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed therefrom.

Verified at New Delhion the 13th day of August, 2022.



THROUGH,

(UTKARSH SHARMA, SHARAD CHAUHAN)

DEPONENT

Utkarsh Sharma

ADVOCATE

Utkarsh Sharma