

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**ORIGINAL APPLICATION NO. 538/ 2022**

**IN THE MATTER OF:**

Swarn Singh

...Applicant

*Versus*

State Of Uttarakhand & Ors.

...Respondents

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**N.D.O.H.: - 21.09.2023**

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**FILED BY:**

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Dated: 02.09.2023

Place: New Delhi

BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
ORIGINAL APPLICATION NO. 538 OF 2022



IN THE MATTER OF :

Swarn Singh

...Applicant

*versus*

State of Uttarakhand & Ors.

...Respondents

ADDITIONAL AFFIDAVIT  
ON BEHALF OF RESPONDENT NO.10 KRIPAL SINGH

I, Kripal Singh, son of Sh. Karta Singh, aged about 44 years, resident of village Sood Colony, tehsil Bajpur, district Udham Singh Nagar, Uttarakhand 262401, do hereby solemnly affirm and state on oath as follows:

1. I state that I am Respondent No. 10 in the present matter. The present additional affidavit is being filed to apprise this Hon'ble Tribunal of recent facts and developments during the pendency of the said proceedings. The present Additional Affidavit is being filed in continuation of the Preliminary Reply filed on behalf of Respondent No. 10 on 06.05.2023.
2. I state that as recorded in the Action Taken Report dated 17.01.2023 filed before this Hon'ble Tribunal, a notice (dated 07.01.2022) for imposing penalty of Rs. 15,44,21,400 was issued to Respondent No. 10 by the District Magistrate, Nainital. The said notice was based on the *ex-parte* inspection dated 27.12.2021,

*Swarn Singh*





- 7. Respondent No. 10 also reiterates its submission that the issues forming the subject matter of the present proceedings are regulated completely and exclusively by Rules framed by the State of Uttarakhand under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957. The subject matter of the present proceedings is not covered by any of the enactments included in Schedule 1 of the NGT Act and hence the present proceedings are respectfully not maintainable.
- 8. The present additional affidavit is being filed for the kind consideration of this Hon'ble Tribunal and in the interests of justice.

*[Handwritten Signature]*  
 DEPONENT

**VERIFICATION**

I, the deponent above named, do hereby verify and state that the contents of this affidavit are true and correct to the best of my knowledge and nothing is false and nothing material has been concealed therefrom.

Verified at \_\_\_\_\_ on \_\_\_\_\_ day of September, 2023.

*[Handwritten Signature]*  
 DEPONENT

AFFIDAVIT AGREEMENT  
 IDENTIFIED BY

*[Handwritten Signature]*

Verified & Authenticate  
 Shri... *Kripal Singh*  
 This..01 *09* of *2023*  
*[Handwritten Signature]*  
 Shivraj Singh Rana  
 Notary Public Gadarpur/Bazpur  
 (U.S.N.) Uttarakhand (India)

GOVERNMENT OF UTTARAKHAND  
INDUSTRIAL DEVELOPMENT (MINING) SECTION-1

No.706/VII-A-1/2023-10(03)/2022

Dehradun Date: 27 April 2023

**OFFICE MEMORANDUM**

On 25.11.2021 in a joint inspection of the basement permit approved in favour of Sh. Kripal Singh son of Sh. Kartar Singh resident of village Sood Colony, Tehsil Bajpur, District Nainital in village Semalchaud of tehsil Kaladungi, district Nainital in relation to the work done by the permit-holder in an area of 70 m. x45 m. x 14 m., instead of the approved depth of 12 meters, the excavation was done up to 20 m. depth, and on an average (70 m. x 45 m. x 2.0 m.) total 10,080 cubic meter excavation (taking swell factor 1.6) is found illegal in violation of Uttarakhand Minerals (Prevention of Illegal Mining, Illegal Transportation & Illegal Storage) Rules, 2021 and section 23C of Mines & Minerals (Development & Regulation) Act, 1957; hence, a notice vide letter No.60/30-GC/2021-22 was issued by the D.M. Nainital on 05.01.2022 for recovery of 5 times of the royalty @ Rs.350 per ton i.e. total Rs.31,04,640/-.

Similarly, in inspection done on 27.12.2021 by the joint inspection team, total 355320 cubic meter (taking swell factor 1.6) excavation is done in an area of 126 m. x 117.50 m. x 15.00 m. instead of 114.60 m. x 65.76 m. x 12 m. at the approved permit site and after reducing the illegal excavation of 10,880 cubic meter found illegal in the inspection on 25.11.2021 and the approved quantity (355320 – 144693 – 10080), it is found that total 200547 cubic meter minor mineral is illegally excavated. Thus, considering the excavation of total 200547.00 cubic meter/441204.00 ton minor minerals a violation of the provisions of Uttarakhand Minerals (Prevention of Illegal Mining, Illegal Transportation & Illegal Storage) Rules, 2021 and section 23C of Mines & Minerals (Development & Regulation) Act, 1957, a notice for recovery of 5 times i.e. Rs.15,44,21,400.00 @ 350 per ton was issued vide letter No.63/30-GC/2021-22 dated 07.01.2022 by D.M., Nainital.

2. Against the above notices issued by DM, Nainital, Sh. Kripal Singh s/o Sh. Kartar Singh r/o Village Sood Colony, Tehsil Bajpur, District Nainital

submitted a revision petition/appeal on 24.01.2023 before the government. Consequent upon filing of the application on 27.02.2023, the matter was heard on 13.04.2023. In the hearing following persons appeared:-

1. Sh. S.L. Patrick, Director, Geology and Mining Unit, Dehradun
  2. Sh. Rajpal Legha, Additional Director, Geology & Mining Unit, Dehradun
  3. Sh. Deepak Joshi, Section Officer, Industrial Development Section-1, Government of Uttarakhand
  4. Sh. Natthi Singh Batrwal, authorized representative (on the request made on 13.04.2023 by Revision-Petitioner Sh. Kripal Singh s/o Sh. Kartar Singh r/o Village Sood Colony, Tehsil Bajpur District Tehsil)
3. In the meeting it is was apprised by the department officers that DM office, Nainital vide order No.1643 dated 22.10.2021 had on the basis of swell factor of 1.6 granted 03 months time in favour of the revision-petitioner for basement excavation in an area of 11460 m. x 65.76 m. x 12 m. for basement parking of the hotel in Khasra No.231/5, 231/4/2, 231/3/1 total area 0.753 hec. in village Saimalchaud, Tehsil Kaladungi, District Nainital and for extraction of a total 1,44,693 cubic meter RBM excavated as above, for which the permit-holder had deposited a total sum of Rs.3,16,41,476/- as royalty plus other taxes. On the basis of bulk density 2.2 as determined in Uttarakhand Minor Mineral (Sand, Bajri & Boulder) Policy, 2016 and taking the swell factor of 1.6, amount of penalty is assessed for illegal excavation of minor minerals. The joint inspection team had made recommendations to the DM, Nainital for cancellation of his permit for the offence of illegal mining, in furtherance of which, DM, Nainital vide its letter No.1850/30-GC/2021-22 dated 07.01.2022 cancelled the permit of the revision-petitioner. As per the erstwhile records of e-ravanna of the permit-holder, 61425.9 minor mineral was yet to be extracted. In the above meeting it was also informed by the department officers that if the permit-holder had any issue with regard to the swell factor, he should have raised his objection at the time of issuance of the permit which was not done by him that time.

4. Authorized representative of the revision-petitioner informed in the meeting by his request letter dated 27.02.2023 that DM office, Nainital vide order No.1643 dated 22.10.2021 had granted 03 months permission on the basis of swell factor of 1.6 in favour of the revision-petitioner for basement excavation in 11460 m. x 65.76 m. x 12 m. for basement parking of hotel and for extraction of a total 1,44,693 cubic meter RBM excavated as above in Khasra No.231/5, 231/4/2, 231/3/1 total area 0.753 hec. in village Saimalchaud, Tehsil Kaladungi, District Nainital, and in connection with the penalty imposed after inspection by the joint inspection team it is brought to the cognizance that 22.00 cubic meter minor mineral is excavated from an area of 01 m. x 01 m. x 01 m. whereas in the joint inspection report/calculation of penalty amount, this figure is 35.20 against the same volume. Thus, assessment of royalty and in the penalty amount wrong calculation is done in the above permit, whereas about 8.00 lakh cubic meters is yet to be extracted as per the permit approved in favour of the revision-petitioner which is recorded in the *e-ravanna* portal even today. Representative of the revision-petitioner told that at the time of approval of permit, due to lack of proper knowledge of the swell factor 1.6 used by the joint inspection team and since it was the first experience of excavation, revision-petitioner did not have knowledge of the factual position and the rules, and therefore, the revision-petitioner could not raise objection to the determination of the swell factor. When revision-petitioner became aware of the swell factor after the fine had been imposed, objection/request letter was submitted in that regard, in furtherance of which government vide notification dated 03.01.2023 determined the swell factor with immediate effect. Prior to that, swell factor was not determined by the government in the State of Uttarakhand.
5. In the meeting, this fact clearly came to light that swell factor determination notification has come into effect from 03.01.2023, whereas prior to that swell factor 1.6 is determined in respect of the concerned permit by the DM, Nainital. According to the rules, standards of the swell factor effective in the State from the date of notification i.e. 03.01.2023 cannot be effective

from retrospective date; hence, accepting standards of swell factor 1.6 applied by DM, Nainital is not justified and rational on this ground.

After perusal/analysis of the facts produced by department officers, submission of the revision-petitioner and the relevant records, following order is passed:-

### ORDER

Hearing the revision-petition under provision of rule 16 of Uttarakhand Minerals (Prevention of Illegal Mining, Illegal Transportation & Illegal Storage) Rules, 2021, it is found in the joint inspection of basement permit approved in favour of Sh. Kripal Singh s/o Sh. Katar Singh r/o village Sood Colony, Tehsil Bajpur, District Nainital that in the excavation of 126 m. x 117.5 m. x 15 m. instead of the approved area of 114.60 m. x 65.76 m. x 12 m. for basement excavation at the site in question by permit holder, total 2,22,075 cubic meter minor mineral is excavated, whereas permit holder has already deposited total sum of Rs.3,16,41,476/- towards royalty of 1,44,693 cubic meter minor mineral and other taxes. Keeping in view the status of the swell factor of 1.6 effective from 03.01.2023 by government notification, swell factor 1.6 determined on the illegal excavation by the DM, Nainital has no effect.

Thus, permit holder has done illegal excavation of 77,382 cubic meter (2,22,075-1,44,693) i.e. 139287.6 ton minor minerals, which is violation of section 23C of Mines & Minerals (Development & Regulation) Act, 1957; hence, a penalty of 5 times of the royalty i.e. total Rs.4,87,50,660/- @ Rs.350 per ton is imposed on the permit holder. Therefore, revision-petition/appeal is disposed of with modification/amendment of above notices issued by DM, Nainital accordingly with a direction to recover the penalty, imposed as above, from the permit holder within maximum 06 months and deposit the same in the state treasury.

Sd/- (Lakshman Singh)  
Additional Secretary

No.706/VII-A-1/2023-10(03)/2023, date as above –

Copy to the following for information and necessary action:-

1. DM, Nainital
2. Director, Geology & Mining Unit, Uttarakhand, Dehradun
3. Sh. Kripal Singh s/o Sh. Kartar Singh r/o Village Sood Colony, Tehsil Bajpur, District Nainital.
4. Guard file.

Sd/- (Lakshman Singh)  
Additional Secretary



//True translated copy//