

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 585/2023**

IN THE MATTER OF:

ARIF KIDWAI

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENT

I N D E X

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3. Proof of service

60

FILED BY

UNUC LEGAL LLP
ADVOCATE FOR THE RESPONDENT NO.5
P-97, SOUTH EXTENSION-II
NEW DELHI-110049
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PLACE: NEW DELHI

DATE: 27.01.2025

|

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

ORIGINAL APPLICATION NO. 585/2023

IN THE MATTER OF:

Arif KidwaiApplicant

Versus

Ministry of Environment, Forest and
Climate Change & Ors.Respondent(s)

**COMPLIANCE AFFIDAVIT ON BEHALF OF RESPONDENT NO.5
IN COMPLIANCE WITH THE ORDER DATED 13.01.2025**

I, Varun Sharma, aged 31 years, presently at P-97, South Extension-II, New Delhi-110049, counsel of Respondent No. 5, do hereby solemnly affirm and state as under:

1. That this Hon'ble Tribunal, vide its order dated 13.01.2025, directed the counsel for the Respondent No.5 to submit all necessary documents concerning Writ Petition (Civil) No. 534/2024, pending before the Hon'ble Supreme Court of India, to demonstrate that the same issue i.e. the is under consideration by the Hon'ble Supreme Court as pending consideration before this Hon'ble Court.

In compliance with the aforementioned order, the Respondent No. 5 respectfully furnishes the true copy of the Writ Petition served upon the Respondent No.5, herein in the Writ Petition (Civil) No.



V. Sharma

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534/2024 pending before the Hon'ble Supreme Court of India. The said Writ Petition challenges the notification/letter dated 01.05.2020 issued by the State of Uttar Pradesh on various grounds. The true copy of the Writ Petition in Writ Petition (Civil) No. 534/2024 pending before the Hon'ble Supreme Court of India is annexed herewith and marked as **ANNEXURE 1**.

3. It is pertinent to mention that the notification/letter dated 01.05.2020 is also the subject matter of challenge in the present Original Application No. 585/2023 pending before this Hon'ble Tribunal.
4. It is submitted that in Writ Petition (Civil) No. 534/2024, the Hon'ble Supreme Court, vide its order dated 02.09.2024, has been pleased to issue notice, and the matter is sub judice before the Hon'ble Supreme Court of India.
5. The identical nature of the prayer in both the pending proceedings shall stand evidenced by the following:

Prayer in OA 585 of 2023 pending before this Hon'ble Tribunal	Prayer in Writ Petition (Civil) No.534 of 2024 pending before the Hon'ble Supreme Court of India
<p>In view of the above mentioned facts and circumstances, this Hon'ble Court may graciously be please to:</p> <p>a. Quash the impugned letter dated 01/05/2020 issued by</p>	<p style="text-align: center;"><u>PRAYER</u></p> <p>It is most respectfully prayed that this Hon'ble Court may be pleased to –</p> <p>.....</p>



Handwritten signature in blue ink: V. Shrivastava

3

<p>Secretary, Government of Uttar Pradesh as the same is not only against the Order issued by Hon'ble Supreme Court of INDIA issued in I.A. No. 12-13 of 2011 in Special Leave Petition (C) No. 19628-19629 of 2009 titled as Deepak Kumar etc. Versus State of Haryana and Others etc. but is also in violation of the Notifications dated 15/01/2016 and 28/03/2020 issued by Respondent No. 01.</p>	<p>D) Issue of Writ of Certiorari or any other appropriate writ, order or direction quashing impugned letter dated 01.05.2020 issued by Respondent No.2 State of Uttar Pradesh;</p>
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6. That the present affidavit is Bonafide and has been tendered in compliance of the order dated 13.01.2025 passed by this Hon'ble Tribunal.
7. In light of the pendency of a similar issue before the Hon'ble Supreme Court and to avoid any conflicting decisions, it is respectfully prayed that this Hon'ble Tribunal may consider the implications of the pending proceedings before the Hon'ble Supreme Court while adjudicating the present matter.


DEPONENT



4

VERIFICATION

Verified at New Delhi on this 27 JAN 2025 day of January 2025, that the contents of my aforesaid affidavit are true and correct to my knowledge and belief. No part of it is false and nor anything material has been concealed therefrom.

I identify the deponent who has signed/T.I in my presence

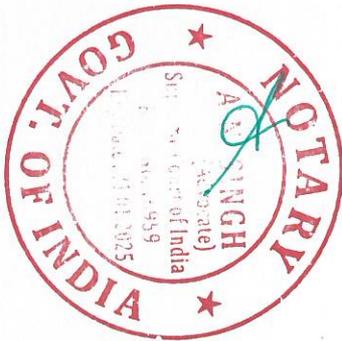
Signature
Mr./Ms Adv./Self
ID No.....

DEPONENT

Certified That The Above Named
Deponent, ID. No. Self Identified
And Verified By SH. / Smt.
Solemnly Affirmed Before Me, Reg. Sr. No.
The Content of The Affidavit Which Have Been Read
& Explained To Me Are True And Correct.

1665

Notary



ATTESTED
A.M. Singh, Adv.
Notary Public
Govt. of India, New Delhi

27 JAN 2025

**IN THE SUPREME COURT OF INDIA
CIVIL EXTRAORDINARY JURISDICTION
UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA
WRIT PETITION (CIVIL) NO. 534 OF 2024**

In the matter of –

Utkarsh Panwar

...Petitioner

Versus

Union of India & Ors.

...Respondents

With

191151

I.A. No. of 2024: Application for Stay

&

**I.A. No. ¹⁹¹¹⁵² of 2024: Application for Exemption from filing Official
Translations**

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ADVOCATE FOR THE PETITIONER: POOJA DHAR

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**N THE SUPREME COURT OF INDIA
CIVIL EXTRAORDINARY JURISDICTION
UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA
WRIT PETITION (CIVIL) NO. OF 2024**

In the matter of –

Utkarsh Panwar

...Petitioner

Versus

Union of India & Ors.

...Respondents

OFFICE REPORT ON LIMITATION

1. The above Petition is/are within time.
2. The Petition is barred by time and there is delay of days in filing the same against Order dated and Petition for Condonation of days delay has been filed.
3. There is delay of days in refilling the Petition and the Petition for Condonation of days delay in refilling has been filed.

(BRANCH OFFICER)

New Delhi

Date : 23.08.2024

A1

PROFORMA FOR FIRST LISTING

The case pertains to (Please tick/check the correct box):

	Central Act : (Title)	Constitution of India
	Section :	32 of the Constitution of India
	Central Rule: (Title)	N.A.
	Rule No. (s)	N.A.
	State Act : (Title)	N.A.
	Section:	N.A.
	State Rule : (Title)	N.A.
	Rule No(s):	N.A.
	Impugned Interim Order : (Date)	N.A.
	Impugned Final Order/Decree : (Date)	N.A.
	High Court : (Name)	N.A.
	Name of Judges :	N.A.
	Tribunal /Authority : (Name)	
1.	Nature of matter	Civil
2.	(a) Petitioner/ Appellant No. 1:	Utkarsh Panwar
	(b) e-mail ID:	N.A.
	(c) Mobile Phone Number	N.A.
3.	(a) Respondent No. 1 :	Union of India & Ors.
	(b) e-mail ID:	N.A.
	(c) Mobile Phone number:	N.A.
4.	(a) Main category classification	1800 (Ordinary Civil Matters)
	(b) Sub classification	1807 (Others)

A-2

5.	Not to be listed before :	N.A.
6.	(a) Similar/disposed off matter with citation if any and case details	1. SLP (C) No. 11272 of 2024 titled as General Secretary Bihar Bricks Manufacturing Association Vs. Union of India & Ors. & 2. SLP (C) 14272 of 2024 titled as State of Bihar & Anr. Vs. Abhay Kumar & Ors.
	(b) Similar pending matter with case details	No similar pending matters
7.	Criminal Matters :	
	(a) Whether accused / convict has surrendered :	N.A.
	(b) FIR No.	N.A.
	(c) Police Station :	N.A.
	(d) Sentence Awarded :	N.A.
	(e) Sentence Undergone:	N.A.
8.	Land Acquisition Matters :	
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	(b) Date of Section 6 Notification :	N.A.
	(c) Date of Section 17 Notification :	N.A.
9.	Tax Matters : State the tax effect :	N.A.
10.	Special Category (first petitioner/ appellant only) :	N.A.
11.	Vehicle Number (in case of Motor Accident Claim matters):	N.A.



(POOJA DHAR)
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Mobile: 9810488621

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New Delhi:

Date : 23.08.2024

B

SYNOPSIS

The present Writ Petition is filed under Article 32 of the Constitution of India seeking issue of Writ of Certiorari or any other appropriate writ, order or direction, seeking quashing of impugned Office Memorandum dated 11.02.2014 issued by Respondent No.3 State of Uttarakhand, impugned notification dated 22.10.2014 issued by Respondent No.2 State of Uttar Pradesh, impugned notification dated 19.11.2014 issued by Respondent No.3 State of Uttarakhand, impugned letter dated 01.05.2020 issued by Respondent No.2 State of Uttar Pradesh, impugned notification dated 28.10.2021 issued by Respondent No.3 State of Uttarakhand, and for issue of a writ of Mandamus or any other appropriate writ, order or direction, commanding the Respondent No.2 State of Uttar Pradesh and Respondent No.3 State of Uttarakhand not to permit the establishment or commencement of operation of any new brick kilns or continued operation of any established brick kiln without taking Environmental Clearance for excavation of brick earth in terms of EIA Notification dated 14.09.2006 as amended up to date.

The issue in the present Writ Petition involves the validity of the exemption given by the States of UP and Uttarakhand to excavation of brick earth from being treated as a mining activity.

Briefly stated, the Union Government through Ministry of Environment & Forests issued the EIA Notification dated 14.09.2006, the Schedule to which stated that mining activities over an area greater than 5 hectares would come in category B, thereby implying that such projects needed prior EC from the State Environment Impact Assessment Authority; and on the other hand, such mining activities which were below 5 ha. did not need any prior EC.

C

Subsequently, this Hon'ble Court in *Deepak Kumar vs. State of Haryana & Ors.* reported as (2012) 4 SCC 629 made it clear that mining of minor minerals, including over an area of less than five hectares, requires prior EC.

On 24.06.2013 the MOEF issued an Office Memorandum to the effect that borrowing/excavation of brick earth and extraction of ordinary earth for road manufacturing would come within B2 category henceforth and would be subject to certain screening requirements as specified therein, for the purpose of Para 7.1 of the EIA Notification dated 14.09.2016.

Following the judgment of this Hon'ble Court in *Deepak Kumar* and the MOEF OM dated 24.06.2013, it is now beyond doubt that brick earth is a minor mineral, and excavation of brick earth for the purpose of brick manufacturing comes within the scope of mining activity and prior EC is required under B2 category under the EIA Notification dated 14.09.2006.

However, on 11.02.2014 State of Uttarakhand issued the impugned Office Memorandum, amending the Uttarakhand Minor Mineral Concession Rules 2001, taking extraction of brick soil and ordinary earth out of the scope of mining activity in the State of Uttarakhand, provided the depth of the mining site was not more than 2 meters. A similar notification was issued by State of UP on 22.10.2014. Thereafter On 19.11.2014 the State of Uttarakhand issued the impugned notification formally amending the Uttarakhand Minor Mineral Concession Rules 2001, in terms of the OM dated 11.02.2014.

The impact of these amendments by both States of UP & Uttarakhand was that the judgment of this Hon'ble Court in *Deepak Kumar* immediately stood

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diluted, since as per that judgment, brick earth being a minor mineral and its extraction being a mining activity, prior EC was required, and if it was taken out of the scope of mining activity then no prior EC was needed.

Thereafter on 14.01.2015 the Hon'ble National Green Tribunal passed judgment in *Lokendra Kumar vs. State of UP & Ors.* O.A. No. 328 of 2013, in which it was held that the impugned amendment of State of UP dated 22.10.2014 (whereby extraction of brick earth subject to depth of not more than 2 meters has been taken out of the purview of mining activity) is prima facie against the judgment in *Deepak Kumar* and the same was liable to be ignored. Although appeals have been filed before this Hon'ble Court against the said order, there is no stay of the order, and the appeals are pending. As such the regime instituted by *Deepak Kumar* case read with the MOEF OM dated 24.06.2013 came back into force and it became mandatory for brick kilns to seek prior EC before commencing operations.

O.A. No. 469 of 2015 titled as *Amit Kumar vs. State of Uttarakhand & Ors.* came to be instituted before the Hon'ble NGT, in respect of the non compliance of prior EC requirement for brick kilns operating in the State of Uttarakhand. Vide an interim order dated 15.10.2015 admitting the OA, the Hon'ble Tribunal was pleased to direct that in the meantime, there shall be no excavation of brick earth for the purpose of brick kiln without obtaining EC. Hon'ble NGT then disposed off the matter on 05.05.2016 by taking note of the statement of the counsel for State of Uttarakhand that all activities of quarrying brick earth without obtaining EC in the State of Uttarakhand have been abated.

E

In view of the legal position as had developed thus far, it is apparent that requirement for prior EC for excavation of brick earth had become mandatory in the States of UP and Uttarakhand; that brick earth being a minor mineral, mining of brick earth over area of 5 hectares or less was classified as B2 category as per MOEF notification dated 24.06.2013; and that EC for the same was to be considered by the SEIAA instituted vide EIA Notification dated 14.09.2006.

However, the Petitioner is given to understand that despite the above position, consent to establish and operate brick kilns is being given in the said States of UP and Uttarakhand without the prior EC for excavation of brick earth.

Thereafter, on 28.03.2020 the MOEFCC issued a notification, to align the EIA Notification dated 14.09.2006 with amendments in the Mines & Minerals (Development and Regulation) Act, 1957. Inter alia, Appendix IX was substituted to exempt certain activities from prior EC. 13 entries were made in the substituted Appendix IX, of which item 13 read as “...*Activities declared by the State Government under legislations or rules as non-mining activity*”. It is respectfully submitted that entry 13 conferred too wide and uncanalised discretion on the State Governments to exempt any activity from the requirement of prior EC, whether or not it aligned with the other 12 entries in Appendix IX, which were aimed at protecting small scale and non polluting activities.

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Taking advantage of entry 13 as quoted above, the State of UP issued the impugned notification dated 01.05.2020, quoting the MOEFCC notification dated 28.03.2020, and revived the impugned notification dated 22.10.2014, taking excavation of brick earth out of the scope of mining activity. Similarly, State of Uttarakhand followed suit and issued the impugned notification dated 28.10.2021, amending the Minor Minerals Concession Rules and specifically provided that in view of the clause 13 of Appendix IX of MOEFCC notification dated 28.03.2020, the process of excavation of brick earth was exempted from mining operations, provided the depth was not more than 02 meters. This was done taking advantage of the fact the amendments to the respective Minor Mineral Concession Rules by the two States were never actually struck down.

On 22.02.2022 the MOEFCC issued notification amending Schedule 1 of the Environment (Protection) Rules 1986 and substituted Entry 74, and introduced several new conditions to be complied with by brick kilns all over the country. Clause 10 thereof reads that – *“10. All necessary approvals from the concerned authorities including mining department of the concerned State or Union Territory shall be obtained for extracting the soil to be used for brick making in the brick kiln.”* This notification thus also recognized the necessity for obtaining prior approval for extraction of brick earth for brick manufacturing process in brick kilns. It is pertinent to note that in Civil Appeal D. No. 18213 of 2021 (which arises out of OA No. 1016 of 2019 filed by the present Petitioner before the Hon’ble NGT) this Hon’ble Court has made compliance of the notification dated 22.02.2022 mandatory.

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Though the case pertains to Delhi NCR only, yet this Hon'ble Court has recognized that the notification must be complied with.

The State of UP issued a letter to all District Magistrates on 02.11.2022 stating that regulating fees would be collected from all brick kilns owners for the season and would be valid from 1st October to 30th September. The importance of these dates lie in the fact that from 01.10.2024 onwards, brick kilns would be required to deposit regulating fees and the same ought not to be permitted before the brick kilns obtain prior EC for excavation of brick earth as per law.

On 07.03.2024 the High Court of Judicature at Patna struck down clause 13 of Appendix IX as inserted in EIA Notification by the MOEFCC notification dated 28.03.2020. On 27.05.2024 this Hon'ble Court dismissed Special Leave Petition filed by brick kilns owners against the judgment of the Patna High Court in *Abhay Kumar*. Similarly on 22.07.2024 this Hon'ble Court dismissed Special Leave Petition filed by State of Bihar against the judgment of the Patna High Court in *Abhay Kumar*.

The impact of the judgment of the Patna High Court, and consequent dismissal of Special Leave Petitions by this Hon'ble Court, is that the offending entry 13 in Appendix IX of EIA Notification dated 14.09.2006 as inserted on 28.03.2020 no longer is good in law. Thus any action taken by any State Government relying on entry 13 is no longer valid in law. Consequently, the impugned notifications issued by the States of UP and

H

Uttarakhand, exempting excavation of brick earth from the requirement of prior EC, are unsustainable.

On 09.08.2024, the MOEFCC issued OM circulating the judgment of the Patna High Court in *Abhay Kumar* for compliance with all States/Union Territories.

Therefore, in the conspectus of the developments as outlined above, it is evident that the impugned notifications issued by States of UP and Uttarakhand, taking excavation of brick earth out of the scope of mining activity and thus exempting brick kilns from the requirement of taking prior EC, are bad in law and ought to be struck down by this Hon'ble Court. Consequential directions also are prayed for by the Petitioner, that no brick kiln in the States of Uttarakhand be allowed to be established, or be permitted to operate or continue to operate, without obtaining prior EC from the SEIAA for the purpose of excavation of brick earth. It is pertinent to state herein that consent to establish and operate is issued by the State Government through the respective Pollution Control Boards, under the provisions of S.25 of the Water (Prevention & Control of Pollution) Act 1974 and S. 21 of the Air (Prevention & Control of Pollution) Act 1981.

The other legal aspects raised by the Petitioner are highlighted below –

- A) It is well settled law that the right to a clean and healthy environment, including the right to breathe clean air, is part of the fundamental right to life as guaranteed under Article 21 read with Articles 47 and 51A(g)

I

of the Constitution of India, This has been so held in a large number of judgments by this Hon'ble Court, including *N.D. Jayal vs. Union of India (2004) 9 SCC 362* and *M.C. Mehta vs. Union of India (2019) 17 SCC 490*.

- B) The impugned notifications issued by the Respondent No.2 and 3 States of UP and Uttarakhand are in violation of the same as they seek to take the excavation of brick earth by brick kilns, which are a source of air pollution, out of the ambit of mining activity and hence not render them exempt from the requirement of seeking prior environmental clearance under the EIA Notification dated 14.09.2006 as amended up to date.
- C) Because the evil effects of air pollution have been recognized by this Hon'ble Court in many cases including in *Arjun Gopal vs. Union of India (2017) 1 SCC 412*.
- D) The actions of the States of UP and Uttarakhand in seeking to exempt the excavation of brick earth from the scope of mining activity and thus take them outside the ambit of the EIA Notification dated 14.09.2006, are emblematic of a failure of the institutions which are required to maintain a clean and healthy environment. The two States have clearly sacrificed the environment at the altar of commercial interest of brick manufacturers, which is not only against their constitutional obligations, but also violates the fundamental right to life of citizens under Article 21 of the Constitution of India.

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- E) Brick kilns, which are a source of air pollution, carry out activity which can only be termed as *res extra commercium* and must be subject to strict regulation under the principles of both sustainable development as well as the precautionary principle. In fact the Hon'ble NGT and this Hon'ble Court, have, at the instance of the present Petitioner, passed several directions in the cases highlighted above (OA No. 1016 of 2019 before the NGT and Civil Appeal D. No. 18213 of 2021 before this Hon'ble Court) to regulate the activities of such brick kilns.
- F) The impugned notifications and OM's issued by the States of UP and Uttarakhand are without any basis in law, not only on the grounds of protection of environment and right to life, but also on the basis of lack of legislative competence of the State Government to amend their respective Minor Mineral Concession Rules to exempt excavation of brick earth from the scope of mining activity.
- G) As per Section 4 of the MMDR Act 1957, no person may carry out any mining activity without obtaining a mining lease. Brick earth being a minor mineral, excavation of brick earth amounts to a mining activity which requires a mining lease. Although Section 15 of the MMDR Act permits State Governments to frame rules for grant of mining lease for minor minerals, Section 4 of the Act is applicable to minor minerals as well, as, pertinently, Section 14 as amended w.e.f.

k

10.02.1987 provides that only Sections 5 to 13 are made inapplicable to minor minerals.

- H) Entry 54 of List I of the 7th Schedule of the Constitution of India provides for – “*Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.*” Such a declaration as envisaged by Entry 54 List I is found in Section 2 of the MMDR Act 1957. Therefore, the field is occupied by the Parliamentary legislation to the extent of matters provided under the Act, and the requirement of obtaining mining lease for mining of minor minerals, including brick earth, is a matter which stands covered by the Central law.
- I) Entry 23 of List II provides for – “*Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.*” Thus, the legislative competence of States to deal with mines and mineral development is excluded to the extent of matters which are covered by Central legislation. This position of law is well settled and reference may be made to *Monnet Ispat & Energy Ltd. vs. Union of India (2012) 11 SCC 1*. This being the case, the States of UP and Uttarakhand have no legislative competence to make any rules or issue any notifications which dilute or are contrary to provisions under the MMDR Act. Hence, the actions of the said States in exempting excavation of brick earth, a minor mineral, from the scope of mining

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activity, are ex facie without authority of law and the impugned notifications are liable to be struck down.

- J) If that be the case, then excavation of brick earth remains a mining activity which requires prior EC under the EIA Notification dated 14.09.2006 as amended up to date, and no brick kilns in the said States can be granted consent to establish and operate without having prior EC for excavation of brick earth. So also no existing and legally established brick kilns can be allowed to continue operating unless they obtain prior EC for excavation of brick earth.
- K) Even as per MOEFCC notification dated 22.02.2022, which is mandatorily to be followed for all brick manufacturing activity across the country, requisite permission must be taken from mining department of the concerned State/Union Territory for excavation of brick earth for manufacturing bricks. This also means that without a mining lease/permit, no excavation of brick earth can take place by brick kilns, and it necessarily follows that prior EC must be taken under the EIA Notification dated 14.09.2006 as amended up to date.

Hence this Writ Petition.

LIST OF DATES

- | | |
|------------|---|
| 14.09.2006 | MOEFCC issued EIA Notification dated 14.09.2006. Schedule to the notification stated that mining activities over an area greater than 5 hectares would come in category B, thereby implying that such projects needed |
|------------|---|

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prior EC from the SEIAA; and on the other hand, such mining activities which were below 5 ha. did not need any prior EC.

- 27.02.2012 This Hon'ble Court delivered its judgment in *Deepak Kumar vs. State of Haryana & Ors. (2012) 4 SCC 629* and held that mining of minor minerals, including over an area of less than five hectares, requires prior EC.
- 24.06.2013 MOEF issued an Office Memorandum to the effect that borrowing/excavation of brick earth and extraction of ordinary earth for road manufacturing would come within B2 category henceforth and would be subject to certain screening requirements as specified therein, for the purpose of Para 7.1 of the EIA Notification.
- 11.02.2014 State of Uttarkhand issued the impugned Office Memorandum, amending the Uttarakhand Minor Mineral Concession Rules 2001, taking extraction of brick soil and ordinary earth out of the scope of mining activity in the State of Uttarakhand, provided the depth of the mining site was not more than 2 meters.
- 22.10.2014 State of UP issued the impugned notification amending the UP Minor Minerals Concession Rules 2014, and inter alia provided that extraction of brick earth would not come within the scope of mining activity, provided that

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the excavation did not exceed a depth of more than 2 meters.

- 01.11.2014 Following the judgment in *Deepak Kumar* and prior to the impugned OM dated 22.10.2014 being issued, brick kilns in the State of UP were applying for and being granted EC for extraction of brick earth, by the SEIAA.
- 19.11.2014 State of Uttarakhand issued the impugned notification formally amending the Uttarakhand Minor Mineral Concession Rules 2001, in terms of the OM dated 11.02.2014.
- 14.01.2015 Hon'ble National Green Tribunal rendered its judgment in the case of *Lokendra Kumar vs. State of UP & Ors.* O.A. No. 328 of 2013. In this order, the Hon'ble Tribunal has observed that the impugned amendment of State of UP dated 22.10.2014 (whereby extraction of brick earth subject to depth of not more than 2 meters has been taken out of the purview of mining activity) is prima facie against the judgment in *Deepak Kumar* and was liable to be ignored.
- 15.10.2015 In O.A. No. 469 of 2015 titled as *Amit Kumar vs. State of Uttarakhand & Ors.* the Hon'ble NGT, in respect of the non compliance of prior EC requirement for brick kilns operating in the State of Uttarakhand, issued an

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interim order dated 15.10.2015 directing that in the meantime, there shall be no excavation of brick earth for the purpose of brick kiln without obtaining EC.

- 05.05.2016 OA No. 469 of 2015 *Amit Kumar vs. State of Uttarakhand* was disposed off by the Hon'ble NGT by taking note of the statement of the counsel for State of Uttarakhand that all activities of quarrying brick earth without obtaining EC in the State of Uttarakhand have been abated.
- 28.03.2020 MOEFCC issued a notification, to align the EIA Notification dated 14.09.2006 with amendments in the Mines & Minerals (Development and Regulation) Act, 1957. Inter alia, Appendix IX was substituted to exempt certain activities from prior EC. 13 entries were made in the substituted Appendix IX, of which item 13 read as "*...Activities declared by the State Government under legislations or rules as non-mining activity*".
- 22.10.2014 Taking advantage of entry 13 as quoted above, the State of UP issued the impugned notification dated 01.05.2020, quoting the MOEFCC notification dated 28.03.2020, and revived the impugned notification dated 22.10.2014, taking excavation of brick earth out of the scope of mining activity.

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- 28.10.2021 State of Uttarakhand followed suit and issued the impugned notification dated 28.10.2021, amending the Minor Minerals Concession Rules and specifically provided that in view of the clause 13 of Appending IX of MOEFCC notification dated 28.03.2020, the process of excavation of brick earth was exempted from mining operations, provided the depth was not more than 02 meters.
- 22.02.2022 MOEFCC issued notification amending Schedule 1 of the Environment (Protection) Rules 1986 and substituted Entry 74, and introduced several new conditions to be complied with by brick kilns all over the country. Clause 10 thereof reads that – “10. *All necessary approvals from the concerned authorities including mining department of the concerned State or Union Territory shall be obtained for extracting the soil to be used for brick making in the brick kiln.*” This notification thus also recognized the necessity for obtaining prior approval for extraction of brick earth for brick manufacturing process in brick kilns.
- 08.04.2022 In Civil Appeal D. No. 18213 of 2021 (which arises out of OA No. 1016 of 2019 filed by the present Petitioner before the Hon’ble NGT) this Hon’ble Court has made

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compliance of the notification dated 22.02.2022 mandatory. Though the case pertains to Delhi NCR only, yet this Hon'ble Court has recognized that the notification must be complied with.

- 02.11.2022 The State of UP issued a letter to all District Magistrates on 02.11.2022 stating that regulating fees would be collected from all brick kilns owners for the season and would be valid from 1st October to 30th September. The importance of these dates lie in the fact that from 01.10.2024 onwards, brick kilns would be required to deposit regulating fees and the same ought not to be permitted before the brick kilns obtain prior EC for excavation of brick earth as per law.
- 07.03.2024 The Hon'ble High Court of Judicature at Patna struck down clause 13 of Appendix IX as inserted in EIA Notification by the MOEFCC notification dated 28.03.2020.
- 21.03.2024 This Hon'ble Court passed a judgment striking down Item 6 of the newly inserted Appendix IX to EIA Notification dated 14.09.2006 vide MOEFCC Notification dated 28.03.2020.

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- 27.05.2024 This Hon'ble Court dismissed Special Leave Petition filed by brick kilns owners against the judgment of the Patna High Court in *Abhay Kumar*.
- 22.07.2024 This Hon'ble Court dismissed Special Leave Petition filed by State of Bihar against the judgment of the Patna High Court in *Abhay Kumar*.
- 09.08.2024 MOEFCC issued OM circulating the judgment of the Patna High Court in *Abhay Kumar* for compliance with all States/Union Territories.

Hence this Writ Petition.

IN THE SUPREME COURT OF INDIA
CIVIL EXTRAORDINARY JURISDICTION
UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA
WRIT PETITION (CIVIL) NO. OF 2024

In the matter of –

Utkarsh Panwar

s/o Shri Ashwani Kumar

r/o Village Sakuti

District Meerut, U.P.

...Petitioner

Versus

1. Union of India

Through the Secretary

Ministry of Environment, Forest & Climate Change

Government of India

Indira Paryavarah Bhawan

Jorbagh Road, New Delhi 110003

...Respondent No.1

2. State of Uttar Pradesh

Through the Secretary

Environment, Forest & Climate Change Department

17, Rana Pratap Marg

Lucknow 226001; U.P.

...Respondent No.2

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3. State of Uttarakhand

Through the Secretary

Ministry of Forest & Environment

85, Rajpur Road, Hathibarpala

Salwala, Dehradun

Uttarakhand 248001

...Respondent No.3

4. Uttar Pradesh Eint Nirmata Samiti

Through its President

87/15/1 Risaldar Park

Lucknow 226018, U.P.

...Respondent No.4

5. Eint Nirmata Kalyana Samiti

Haridwar Uttarakhand

Through its President

Village Dhadra, Tehsil Roorkee

District Haridwar, Uttarakhand

...Respondent No.5

6. Dev Bhoomi Eint Bhatta Welfare Society

Uttarakhand

Through its President

Ramnagar, Post Kelakhera

District Udham Singh Nagar

Uttarakhand

... Respondent No.6

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA SEEKING ISSUE OF WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION, FOR QUASHING OF IMPUGNED OFFICE MEMORANDUM DATED 11.02.2014 ISSUED BY RESPONDENT NO.3 STATE OF UTTARAKHAND, IMPUGNED NOTIFICATION DATED 22.10.2014 ISSUED BY RESPONDENT NO.2 STATE OF UTTAR PRADESH, IMPUGNED NOTIFICATION DATED 19.11.2014 ISSUED BY RESPONDENT NO.3 STATE OF UTTARAKHAND, IMPUGNED LETTER DATED 01.05.2020 ISSUED BY RESPONDENT NO.2 STATE OF UTTAR PRADESH, IMPUGNED NOTIFICATION DATED 28.10.2021 ISSUED BY RESPONDENT NO.3 STATE OF UTTARAKHAND, AND FOR ISSUE OF A WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION, COMMANDING THE RESPONDENT NO.2 STATE OF UTTAR PRADESH AND RESPONDENT NO.3 STATE OF UTTARAKHAND NOT TO PERMIT THE ESTABLISHMENT OR COMMENCEMENT OF OPERATION OF ANY NEW BRICK KILNS OR CONTINUED OPERATION OF ANY ESTABLISHED BRICK KILN WITHOUT TAKING ENVIRONMENTAL CLEARANCE FOR EXCAVATION OF BRICK EARTH IN TERMS OF EIA NOTIFICATION DATED 14.09.2006 AS AMENDED UP TO DATE

To

The Hon'ble Chief Justice of India and his Companion Justices of the Hon'ble Supreme Court of India

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The humble petition of the Petitioner above named
Most respectfully showeth –

1. The present Writ Petition is filed under Article 32 of the Constitution of India seeking issue of Writ of Certiorari or any other appropriate writ, order or direction, seeking quashing of impugned Office Memorandum dated 11.02.2014 issued by Respondent No.3 State of Uttarakhand, impugned notification dated 22.10.2014 issued by Respondent No.2 State of Uttar Pradesh, impugned notification dated 19.11.2014 issued by Respondent No.3 State of Uttarakhand, impugned letter dated 01.05.2020 issued by Respondent No.2 State of Uttar Pradesh, impugned notification dated 28.10.2021 issued by Respondent No.3 State of Uttarakhand, and for issue of a writ of Mandamus or any other appropriate writ, order or direction, commanding the Respondent No.2 State of Uttar Pradesh and Respondent No.3 State of Uttarakhand not to permit the establishment or commencement of operation of any new brick kilns or continued operation of any established brick kiln without taking Environmental Clearance for excavation of brick earth in terms of EIA Notification dated 14.09.2006 as amended up to date. True translated copy of impugned Office Memorandum dated 11.02.2014 issued by Respondent No.3 State of Uttarakhand is annexed as **Annexure P-1** (from pages 32-35). True translated copy of impugned notification dated 22.10.2014 issued by Respondent No.2 State of Uttar Pradesh is annexed as **Annexure P-2** (from pages 36-77). True translated copy of impugned notification dated

19.11.2014 issued by Respondent No.3 State of Uttarakhand is annexed as **Annexure P-3** (from pages 78-84). True translated copy of impugned letter dated 01.05.2020 issued by Respondent No.2 State of Uttar Pradesh is annexed as **Annexure P-4** (from pages 85-89). True translated copy of impugned notification dated 28.10.2021 issued by Respondent No.3 State of Uttarakhand is annexed as **Annexure P-5** (from pages 90-99).

2. The Petitioner is a citizen of India and is a resident of the address above mentioned. The Petitioner is a public spirited citizen who has previously filed O.A. No. 1016 of 2019 before the Hon'ble National Green Tribunal, which resulted in judgment dated 17.02.2021 wherein the Hon'ble Tribunal issued directions for regulating the operation of brick kilns in the Delhi NCR area in view of air pollution being caused. The said judgment was carried in appeal before this Hon'ble Court in Civil Appeal D. No. 18213 of 2021, wherein this Hon'ble Court has again issued directions to regulate the operation of brick kilns in Delhi NCR area. It is in the course of the said proceedings that the Petitioner became aware of the issues highlighted in this Writ Petition, and has approached this Hon'ble Court seeking relief as prayed for herein.
3. The Respondent No.1 is the Ministry of Environment, Forest & Climate Change, Government of India. Respondent No.2 is the State of U.P., represented through the Environment, Forest & Climate Change Department. Respondent No.3 is the State of Uttarakhand,

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represented through the Ministry of Environment & Forest. All the Respondents are State within the meaning of Article 12 of the Constitution of India and are amenable to the writ jurisdiction of this Hon'ble Court. Respondents 4 and 5 are associations of brick kilns operating in States of Uttar Pradesh and Uttarakhand respectively, and represent brick kilns operators whose interests are likely to be affected by the outcome of this Writ Petition.

4. The facts leading to the filing of this Writ Petition are set out below -
 - A) On 14.09.2006 the Ministry of Environment and Forests, Government of India, issued a notification under Rule 3(5) of the Environment Protection Rules, 1986, which is commonly known as the Environmental Impact Assessment (EIA) Notification. This provided for mandatory prior environmental clearance (EC) to be taken before commencement of activities specified therein. It was inter alia specified that activities falling under Category A of the Schedule to the notification would require prior EC from the Central Government, and those activities falling under Schedule B would require clearance from State Level Environmental Impact Assessment Committee (SEIAA) which was constituted under the notification. For the purposes of this Writ Petition, it is sufficient to note that the Schedule to the notification stated that mining activities over an area greater than 5 hectares would come in category B, thereby implying that such projects needed prior EC from the SEIAA; and on the other hand, such mining activities which were below 5 ha. did not need any prior EC.

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True copy of EIA Notification dated 14.09.2006 as amended up to date is annexed as **Annexure P-6** (from pages 100-144).

- B) On 27.02.2012 this Hon'ble Court delivered its judgment in *Deepak Kumar vs. State of Haryana & Ors.* For the purposes of this Writ Petition, the concluding direction in this order is of importance, which is extracted herein below –

“19. We, in the meanwhile, order that leases of minor minerals including their renewal for an area of less than five hectares be granted by States/Union Territories only after getting environmental clearance from the MOEF. Ordered accordingly.”

Thus this Hon'ble Court made it clear that mining of minor minerals, including over an area of less than five hectares, requires prior EC. True copy of judgment of this Hon'ble Court dated 27.02.2012 in *Deepak Kumar vs. State of Haryana & Ors.* reported as (2012) 4 SCC 629 is annexed as **Annexure P-7** (from pages 145-157).

- C) On 24.06.2013 the MOEF issued an Office Memorandum to the effect that borrowing/excavation of brick earth and extraction of ordinary earth for road manufacturing would come within B2 category henceforth and would be subject to certain screening requirements as specified therein, for the purpose of Para 7.1 of the EIA Notification dated 14.09.2016. True copy of MOEF OM dated 24.06.2013 is annexed as **Annexure P-8** (from pages 158-160).

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- D) Following the judgment of this Hon'ble Court in *Deepak Kumar* and the MOEF OM dated 24.06.2013, it is now beyond doubt that brick earth is a minor mineral, and excavation of brick earth for the purpose of brick manufacturing comes within the scope of mining activity and prior EC is required under B2 category under the EIA Notification dated 14.09.2006.
- E) On 11.02.2014 State of Uttarakhand issued the impugned Office Memorandum, amending the Uttarakhand Minor Mineral Concession Rules 2001, taking extraction of brick soil and ordinary earth out of the scope of mining activity in the State of Uttarakhand, provided the depth of the mining site was not more than 2 meters. This OM is totally without jurisdiction as the State lacks the legislative competence much less executive competence, to declare which activity is mining activity or not, as the field is occupied by Parliament through the Mines and Minerals (Development & Regulation) Act 1957.
- F) On 22.10.2014 the State of UP issued the impugned notification amending the UP Minor Minerals Concession Rules 2014, and inter alia provided that extraction of brick earth would not come within the scope of mining activity, provided that the excavation did not exceed a depth of more than 2 meters. This Notification is totally without jurisdiction as the State lacks the legislative competence much less executive competence, to declare which activity is mining activity or not, as the field is occupied by Parliament through the Mines and Minerals (Development & Regulation) Act 1957.

- G) The impact of these amendments by both States of UP & Uttarakhand was that the judgment of this Hon'ble Court in *Deepak Kumar* immediately stood diluted, since as per that judgment, brick earth being a minor mineral and its extraction being a mining activity, prior EC was required, and if it was taken out of the scope of mining activity then clearly no prior EC was needed. This is also against the interests of the environment and contrary to Articles 21 and 51A(g) of the Constitution of India.
- H) It is stated that following the judgment in *Deepak Kumar* and prior to the impugned OM dated 22.10.2014 being issued, brick kilns in the State of UP were applying for and being granted EC for extraction of brick earth, by the SEIAA. The EC was being granted subject to stringent conditions. True copy of one such EC dated 01.11.2014 issued by SEIAA UP is annexed as **Annexure P-9** (from pages 161-164).
- I) On 19.11.2014 the State of Uttarakhand issued the impugned notification formally amending the Uttarakhand Minor Mineral Concession Rules 2001, in terms of the OM dated 11.02.2014.
- J) Thereafter on 14.01.2015 the Hon'ble National Green Tribunal rendered its judgment in the case of *Lokendra Kumar vs. State of UP & Ors.* O.A. No. 328 of 2013. In para 38 of this order, the Hon'ble Tribunal has observed that the impugned amendment of State of UP dated 22.10.2014 (whereby extraction of brick earth subject to depth

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of not more than 2 meters has been taken out of the purview of mining activity) is prima facie against the judgment in *Deepak Kumar*. In para 40 it was held that

40. Accordingly, we hold that the amendments brought in by the State Government of Haryana and UP are to be ignored and in spite of the same, until and unless the State of UP and Haryana pass appropriate amendments to their respective mining rules in accordance with the directions issued by the Hon'ble Supreme Court in the Deepak Kumar case, the last portion of the judgment of the Hon'ble Supreme Court shall continue to be in operation. Accordingly we allow all the applications. However we make it clear that until and unless the State of UP and Haryana frame the MMDR Rules strictly in accordance with the directions of the Hon'ble Supreme Court in Deepak Kumar case, by considering the MoEF recommendation as well as Core group 2010 of Department of Mines, the judgment of the Hon'ble Supreme Court shall continue to be applied for minor minerals including the brick earth whatever may be the extent and no lease shall be permitted by the States or the Union Territories before obtaining EC."

True copy of judgment dated 14.01.2015 passed by the Hon'ble National Green Tribunal, Principal Bench at New Delhi, in *Lokendra Kumar vs. State of UP & Ors.* O.A. No. 328 of 2013 is annexed as **Annexure P-10** (from pages 165-204).

- K) It may be noted that the Hon'ble Tribunal did not actually strike down the impugned OM dated 22.10.2014, but declared it should be ignored. As such the regime instituted by *Deepak Kumar* case read with the

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MOEF OM dated 24.06.2013 came back into force and it became mandatory for brick kilns to seek prior EC before commencing operations.

- L) The judgment of the Hon'ble NGT in *Lokendra Kumar* has been assailed before this Hon'ble Court in Civil Appeal D. No. 6373 of 2015 titled as *Haryana Pradesh Brick Kilns Owners Association (Regd). vs. Union of India & Ors.* The said matter is still pending before this Hon'ble Court and there is no stay of the NGT judgment.
- M) O.A. No. 469 of 2015 titled as *Amit Kumar vs. State of Uttarakhand & Ors.* came to be instituted before the Hon'ble NGT, in respect of the non compliance of prior EC requirement for brick kilns operating in the State of Uttarakhand. Vide an interim order dated 15.10.2015 admitting the OA, the Hon'ble Tribunal was pleased to direct that in the meantime, there shall be no excavation of brick earth for the purpose of brick kiln without obtaining EC. True copy of order dated 15.10.2015 passed by the National Green Tribunal, Principal Bench, New Delhi in OA No. 469 of 2015 is annexed as **Annexure P-11** (from pages 205-).
- N) In OA No. 469 of 2015 *Amit Kumar vs. State of Uttarakhand*, the Hon'ble NGT disposed off the matter by taking note of the statement of the counsel for State of Uttarakhand that all activities of quarrying brick earth without obtaining EC in the State of Uttarakhand have been abated. True copy of order dated 05.05.2016 passed by the

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National Green Tribunal, Principal Bench, New Delhi in OA No. 469 of 2015 is annexed as **Annexure P-12** (from pages 206-207).

- O) In view of the legal position as had developed thus far, it is apparent that requirement for prior EC for excavation of brick earth had become mandatory in the States of UP and Uttarakhand; that brick earth being a minor mineral, mining of brick earth over area of 5 hectares or less was classified as B2 category as per MOEF notification dated 24.06.2013; and that EC for the same was to be considered by the SEIAA instituted vide EIA Notification dated 14.09.2006.
- P) However, the Petitioner is given to understand that despite the above position, consent to establish and operate brick kilns is being given in the said States of UP and Uttarakhand without the prior EC for excavation of brick earth.
- Q) Thereafter, on 28.03.2020 the MOEFCC issued a notification, to align the EIA Notification dated 14.09.2006 with amendments in the Mines & Minerals (Development and Regulation) Act, 1957. Inter alia, Appendix IX was substituted to exempt certain activities from prior EC. 13 entries were made in the substituted Appendix IX, of which item 13 read as “...Activities declared by the State Government under legislations or rules as non-mining activity”. True copy of MOEFCC notification dated 28.03.2020 is annexed as **Annexure P-13** (from pages 208-209).

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- R) It is respectfully submitted that entry 13 conferred too wide and uncanalised discretion on the State Governments to exempt any activity from the requirement of prior EC, whether or not it aligned with the other 12 entries in Appendix IX, which were aimed at protecting small scale and non polluting activities.
- S) Sure enough, taking advantage of entry 13 as quoted above, the State of UP issued the impugned notification dated 01.05.2020, quoting the MOEFCC notification dated 28.03.2020, and revived the impugned notification dated 22.10.2014, taking excavation of brick earth out of the scope of mining activity.
- T) Similarly, State of Uttarakhand followed suit and issued the impugned notification dated 28.10.2021, amending the Minor Minerals Concession Rules and specifically provided that in view of the clause 13 of Appending IX of MOEFCC notification dated 28.03.2020, the process of excavation of brick earth was exempted from mining operations, provided the depth was not more than 02 meters.
- U) It is worthwhile to reiterate herein that the impugned notification dated 22.10.2014 was never struck down by the Hon'ble NGT in its judgment in *Lokendra Kumar*, but was declared as liable to be ignored. The State of UP clearly took advantage of this fact to revive the notification on the basis of the MOEFCC notification dated 28.03.2020. Similarly, the impugned notification dated 11.02.2014 and 19.11.2014 issued by State of Uttarakhand were also never struck

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down. The State of Uttarakhand also took advantage of clause 13 of Appending IX of MOEFF Notification dated 28.03.2020 to exempt excavation of brick earth from mining activity. It is a matter of fact that a large number of brick kilns have been given consent to establish and operate without taking the prior EC for excavation of brick earth.

- V) On 22.02.2022 the MOEFCC issued notification amending Schedule 1 of the Environment (Protection) Rules 1986 and substituted Entry 74, and introduced several new conditions to be complied with by brick kilns all over the country. Clause 10 thereof reads that – “10. *All necessary approvals from the concerned authorities including mining department of the concerned State or Union Territory shall be obtained for extracting the soil to be used for brick making in the brick kiln.*” This notification thus also recognized the necessity for obtaining prior approval for extraction of brick earth for brick manufacturing process in brick kilns. True copy of MOEFCC Notification dated 22.02.2022 is annexed as **Annexure P-14** (from pages 210-211).
- W) It is pertinent to note that in Civil Appeal D. No. 18213 of 2021 (which arises out of OA No. 1016 of 2019 filed by the present Petitioner before the Hon’ble NGT) this Hon’ble Court has made compliance of the notification dated 22.02.2022 mandatory. Though the case pertains to Delhi NCR only, yet this Hon’ble Court has recognized that the notification must be complied with. True copy of order dated 08.04.2022 passed by this Hon’ble Court in Civil Appeal D. No.

18213 of 2021 is annexed as **Annexure P-15** (from pages 212-219),

- X) The State of UP issued a letter to all District Magistrates on 02.11.2022 stating that regulating fees would be collected from all brick kilns owners for the season and would be valid from 1st October to 30th September. The importance of these dates lie in the fact that from 01.10.2024 onwards, brick kilns would be required to deposit regulating fees and the same ought not to be permitted before the brick kilns obtain prior EC for excavation of brick earth as per law. True translated copy of letter dated 02.11.2022 is annexed as **Annexure P-16** (from pages 220-227).
- Y) On 07.03.2024 the High Court of Judicature at Patna struck down clause 13 of Appendix IX as inserted in EIA Notification by the MOEFCC notification dated 28.03.2020. True copy of judgment of High Court of Judicature at Patna in the case of *Abhay Kumar vs. Union of India & Ors.* Civil Writ Jurisdiction Case No. 11181 of 2021 dated 07.03.2024 is annexed as **Annexure P-17** (from pages 228-242).
- Z) On 21.03.2024 this Hon'ble Court passed a judgment striking down Item 6 of the newly inserted Appendix IX to EIA Notification dated 14.09.2006 vide MOEFCC Notification dated 28.03.2020. True copy of Judgment of this Hon'ble Court in Civil Appeal Nos. 1628-1629 of

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2021 dated 21.03.2024 is annexed as **Annexure P-18** (from pages 243-274).

- AA) On 27.05.2024 this Hon'ble Court dismissed Special Leave Petition filed by brick kilns owners against the judgment of the Patna High Court in *Abhay Kumar*. True copy of order dated 27.05.2024 passed by this Hon'ble Court in Special Leave Petition (Civil) No. 11272 of 2024 is annexed as **Annexure P-19** (from pages 275-).
- BB) On 22.07.2024 this Hon'ble Court dismissed Special Leave Petition filed by State of Bihar against the judgment of the Patna High Court in *Abhay Kumar*. True copy of order dated 22.07.2024 passed by this Hon'ble Court in Special Leave Petition (Civil) No. 14272 of 2024 is annexed as **Annexure P-20** (from pages 276-).
- CC) The impact of the judgment of the Patna High Court, and consequent dismissal of Special Leave Petitions by this Hon'ble Court, is that the offending entry 13 in Appendix IX of EIA Notification dated 14.09.2006 as inserted on 28.03.2020 no longer is good in law. Thus any action taken by any State Government relying on entry 13 is no longer valid in law. Consequently, the impugned notifications issued by the States of UP and Uttarakhand, exempting excavation of brick earth from the requirement of prior EC, are unsustainable.
- DD) On 09.08.2024, the MOEFCC issued OM circulating the judgment of the Patna High Court in *Abhay Kumar* for compliance with all

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States/Union Territories. True copy of MOEFC OM dated 09.08.2024 is annexed as **Annexure P-21** (from pages 277 -).

EE) Therefore, in the conspectus of the developments as outlined above, it is evident that the impugned notifications issued by States of UP and Uttarakhand, taking excavation of brick earth out of the scope of mining activity and thus exempting brick kilns from the requirement of taking prior EC, are bad in law and ought to be struck down by this Hon'ble Court. Consequential directions also are prayed for by the Petitioner, that no brick kiln in the States of Uttarakhand be allowed to be established, or be permitted to operate or continue to operate, without obtaining prior EC from the SEIAA for the purpose of excavation of brick earth. It is pertinent to state herein that consent to establish and operate is issued by the State Government through the respective Pollution Control Boards, under the provisions of S.25 of the Water (Prevention & Control of Pollution) Act 1974 and S. 21 of the Air (Prevention & Control of Pollution) Act 1981.

FF) Hence this Writ Petition.

5. This Writ Petition is filed on the following, amongst other, grounds, which are taken without prejudice to each other –

GROUND

5.1 Because it is well settled law that the right to a clean and healthy environment, including the right to breathe clean air, is part of the

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fundamental right to life as guaranteed under Article 21 read with Articles 47 and 51A(g) of the Constitution of India, This has been so held in a large number of judgments by this Hon'ble Court, including *N.D. Jayal vs. Union of India (2004) 9 SCC 362* and *M.C. Mehta vs. Union of India (2019) 17 SCC 490*.

- 5.2 Because the impugned notifications issued by the Respondent No.2 and 3 States of UP and Uttarakhand are in violation of the same as they seek to take the excavation of brick earth by brick kilns, which are a source of air pollution, out of the ambit of mining activity and hence not render them exempt from the requirement of seeking prior environmental clearance under the EIA Notification dated 14.09.2006 as amended up to date.
- 5.3 Because the evil effects of air pollution have been recognized by this Hon'ble Court in many cases. In *Arjun Gopal vs. Union of India (2017) 1 SCC 412* while considering the evil effects of air pollution during winters in Delhi NCR area, this Hon'ble Court observed –

8. The adverse effects of these extreme levels of air pollution spare no one — the young, the old, the infirm and even the future generations. A study of the data of the Global Health Depository of the World Health Organisation reveals that India has the world's highest death rate from chronic respiratory diseases and that about 1.5 million people in India die annually due to indoor and outdoor pollution (see Delhi Wakes up to an Air Pollution Problem it cannot Ignore, 15-2-2015, The

New York Times). The Kolkata-based Chittaranjan National Cancer Institute (CNCI), in a study commissioned and handed over to the Central Pollution Control Board, found that key indicators of respiratory health, lung function to palpitation, vision to blood pressure, of children in Delhi, between four and 17 years of age, were worse off than their counterparts elsewhere. It also found that more than 40% of the school children suffer from lung damage (see *Landmark Study Lies Buried*, 2-4-2015, *The Indian Express*). We note with apprehension that there are nascent studies that suggest that pollution can lower children's IQ, hurt their test scores and increase the risks of autism, epilepsy, diabetes and even adult-onset diseases like multiple sclerosis (see *Holding Your Breath in India*, 29-5-2015, *The New York Times*).

9. It has been brought to our notice that the severe air pollution in the NCR is leading to multiple diseases and other health related issues amongst the people. It is said that the increase in respiratory diseases like asthma, lung cancer, bronchitis, etc. is primarily attributable to the worsening air quality in the NCR. The damage being caused to people's lungs is said to be irreversible. Other health related issues like allergies, temporary deafness are also on the rise. Various experts have pointed towards multiple adverse effects of air pollution on human health like premature deaths, rise in mortality rates, palpitation, loss of vision, arthritis, heart ailments, cancer, etc.

10. When we refer to these extreme effects, we are not merely referring to the inconvenience caused to people, but to abject deprivation of a range of constitutionally

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embedded rights that the residents of NCR ought to have enjoyed. Needless to state, the grim situation of air quality adversely affected the right to education, work, health and ultimately, the right to life of the citizens, and this Court is constitutionally bound to address their grave concerns. May we remind ourselves, that this is not the first time that this Court was impelled into ensuring clean air for the citizens of the capital region (see M.C. Mehta v. Union of India [M.C. Mehta v. Union of India, (1998) 6 SCC 60] · [M.C. Mehta v. Union of India, (1998) 9 SCC 589] , M.C. Mehta v. Union of India [M.C. Mehta v. Union of India, (1998) 8 SCC 648] and M.C. Mehta v. Union of India [M.C. Mehta v. Union of India, (1998) 8 SCC 206]).

- 5.4 Because the EIA notification dated 14.09.2006 which has been issued by the Government of India under the powers conferred by the Environment (Protection) Act 1986, seeks to ensure the economic activity and development is carried out in conformity with the requirement of maintaining a clean environment, based on the principle of sustainable development. It is essential to have a robust institutional framework as established by the EIA Notification dated 14.09.2006 to ensure that sustainable development takes place. In *BDA vs. Sudhakar Hegde* (2020) 15 SCC 63 this Hon'ble Court observed that –

95. The protection of the environment is premised not only on the active role of courts, but also on robust institutional frameworks within which every stakeholder complies with its duty to ensure sustainable development. A framework of environmental governance committed to the rule of law

requires a regime which has effective, accountable and transparent institutions. Equally important is responsive, inclusive, participatory and representative decision-making. Environmental governance is founded on the rule of law and emerges from the values of our Constitution. Where the health of the environment is key to preserving the right to life as a constitutionally recognised value under Article 21 of the Constitution, proper structures for environmental decision-making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, but ensuring that such failures do not take place.

- 5.5 Because the actions of the States of UP and Uttarakhand in seeking to exempt the excavation of brick earth from the scope of mining activity and thus take them outside the ambit of the EIA Notification dated 14.09.2006, are emblematic of a failure of the institutions which are required to maintain a clean and healthy environment as observed by this Hon'ble Court. The two States have clearly sacrificed the environment at the altar of commercial interest of brick manufacturers, which is not only against their constitutional obligations, but also violates the fundamental right to life of citizens under Article 21 of the Constitution of India.
- 5.6 Because brick kilns, which are a source of air pollution, carry out activity which can only be termed as *res extra commercium* and must be subject to strict regulation under the principles of both sustainable

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development as well as the precautionary principle. In fact the Hon'ble NGT and this Hon'ble Court, have, at the instance of the present Petitioner, passed several directions in the cases highlighted above (OA No. 1016 of 2019 before the NGT and Civil Appeal D. No. 18213 of 2021 before this Hon'ble Court) to regulate the activities of such brick kilns.

- 5.7 Because the impugned notifications and OM's issued by the States of UP and Uttarakhand are without any basis in law, not only on the grounds of protection of environment and right to life, but also on the basis of lack of legislative competence of the State Government to amend their respective Minor Mineral Concession Rules to exempt excavation of brick earth from the scope of mining activity.
- 5.8 Because after the judgment of this Hon'ble Court in *Deepak Kumar vs. State of Haryana & Ors.* reported as (2012) 4 SCC 629, read with MOEFCC notification dated 24.06.2013, it is beyond doubt that brick earth is a minor mineral, and excavation of brick earth is a mining activity which requires prior EC under EIA Notification dated 14.09.2006, even if it is over an area less than 5 hectares. Further, the activity of excavation of brick earth falls under B2 category as per EIA Notification and EC requirement is to be assessed by the SEIAA.
- 5.9 Because as per Section 4 of the MMDR Act 1957, no person may carry out any mining activity without obtaining a mining lease. Brick earth being a minor mineral, excavation of brick earth amounts to a

mining activity which requires a mining lease. Although Section 15 of the MMDR Act permits State Governments to frame rules for grant of mining lease for minor minerals, Section 4 of the Act is applicable to minor minerals as well, as, pertinently, Section 14 as amended w.e.f. 10.02.1987 provides that only Sections 5 to 13 are made inapplicable to minor minerals.

- 5.10 Because Entry 54 of List I of the 7th Schedule of the Constitution of India provides for – “*Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.*” Such a declaration as envisaged by Entry 54 List I is found in Section 2 of the MMDR Act 1957. Therefore, the field is occupied by the Parliamentary legislation to the extent of matters provided under the Act, and the requirement of obtaining mining lease for mining of minor minerals, including brick earth, is a matter which stands covered by the Central law.
- 5.11 Because Entry 23 of List II provides for – “*Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.*” Thus, the legislative competence of States to deal with mines and mineral development is excluded to the extent of matters which are covered by Central legislation. This position of law is well settled and reference may be made to *Monnet Ispat & Energy Ltd. vs. Union of India (2012) 11 SCC 1*. This being the case, the States of UP and

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Uttarakhand have no legislative competence to make any rules or issue any notifications which dilute or are contrary to provisions under the MMDR Act. Hence, the actions of the said States in exempting excavation of brick earth, a minor mineral, from the scope of mining activity, are ex facie without authority of law and the impugned notifications are liable to be struck down.

- 5.12 Because if that be the case, then excavation of brick earth remains a mining activity which requires prior EC under the EIA Notification dated 14.09.2006 as amended up to date, and no brick kilns in the said States can be granted consent to establish and operate without having prior EC for excavation of brick earth. So also no existing and legally established brick kilns can be allowed to continue operating unless they obtain prior EC for excavation of brick earth.
- 5.13 Because specifically in the case of State of UP, the impugned notification dated 22.10.2014 has already been adjudged to be unlawful by the Hon'ble NGT in *Lokendra Kumar vs. State of UP & Ors.* O.A. No. 328 of 2013. In para 38 of this order, the Hon'ble Tribunal has observed that the impugned amendment of State of UP dated 22.10.2014 (whereby extraction of brick earth subject to depth of not more than 2 meters has been taken out of the purview of mining activity) is prima facie against the judgment in *Deepak Kumar*. In para 40 it was held that

40. Accordingly, we hold that the amendments brought in by the State Government of Haryana and UP are to be ignored and in

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spite of the same, until and unless the State of UP and Haryana pass appropriate amendments to their respective mining rules in accordance with the directions issued by the Hon'ble Supreme Court in the Deepak Kumar case, the last portion of the judgment of the Hon'ble Supreme Court shall continue to be in operation. Accordingly we allow all the applications. However we make it clear that until and unless the State of UP and Haryana frame the MMDR Rules strictly in accordance with the directions of the Hon'ble Supreme Court in Deepak Kumar case, by considering the MoEF recommendation as well as Core group 2010 of Department of Mines, the judgment of the Hon'ble Supreme Court shall continue to be applied for minor minerals including the brick earth whatever may be the extent and no lease shall be permitted by the States or the Union Territories before obtaining EC."

- 5.14 It may be noted that the Hon'ble Tribunal did not actually strike down the impugned OM dated 22.10.2014, but declared it should be ignored. As such the regime instituted by *Deepak Kumar* case read with the MOEF OM dated 24.06.2013 came back into force and it became mandatory for brick kilns to seek prior EC before commencing operations. The judgment of the Hon'ble NGT in *Lokendra Kumar* has been assailed before this Hon'ble Court in Civil Appeal D. No. 6373 of 2015 titled as *Haryana Pradesh Brick Kilns Owners Association (Regd). vs. Union of India & Ors.* The said matter is still pending before this Hon'ble Court and there is no stay of the NGT judgment.
- 5.15 Because on 28.03.2020 the MOEFCC issued a notification, to align the EIA Notification dated 14.09.2006 with amendments in the Mines

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& Minerals (Development and Regulation) Act, 1957. Inter alia, Appendix IX was substituted to exempt certain activities from prior EC. 13 entries were made in the substituted Appendix IX, of which item 13 read as “...Activities declared by the State Government under legislations or rules as non-mining activity”. It is respectfully submitted that entry 13 conferred too wide and uncanalised discretion on the State Governments to exempt any activity from the requirement of prior EC, whether or not it aligned with the other 12 entries in Appendix IX, which were aimed at protecting small scale and non polluting activities.

- 5.16 Because taking advantage of entry 13 as quoted above, the State of UP issued the impugned notification dated 01.05.2020, quoting the MOEFCC notification dated 28.03.2020, and revived the impugned notification dated 22.10.2014, taking excavation of brick earth out of the scope of mining activity. This clearly shows the intent of the State of UP to place the commercial interest of brick kilns owners above the interests of the environment. Similarly the State of Uttarakhand issued the impugned notification dated 28.10.2021.
- 5.17 Because the fig leaf cover of Entry 13 to Appendix IX as per MOEFCC notification dated 28.03.2020 is no longer available to justify the anyway unlawful notification dated 22.10.2014, since, on 07.03.2024, the High Court of Judicature at Patna struck down clause 13 of Appendix IX in the case of *Abhay Kumar vs. Union of India & Ors.* Special Leave Petitions filed by State of Bihar as also by brick

kilns owners came to be dismissed by this Hon'ble Court, and thereafter on 09.08.2024 the MOEFCC has circulated the judgment of the Patna High Court to all States and UT's for their information and compliance.

- 5.18 Because therefore, the impugned letter dated 01.05.2020, issued only on the strength of entry 13 of Appendix IX vide notification dated 28.03.2020, has no legs to stand on and consequently it, along with impugned notification dated 22.10.2014, must be struck down.
- 5.19 Because so also in the case of State of Uttarakhand, O.A. No. 469 of 2015 titled as *Amit Kumar vs. State of Uttarakhand & Ors.* came to be instituted before the Hon'ble NGT, in respect of the non compliance of prior EC requirement for brick kilns operating in the State of Uttarakhand. Vide an interim order dated 15.10.2015 admitting the OA, the Hon'ble Tribunal was pleased to direct that in the meantime, there shall be no excavation of brick earth for the purpose of brick kiln without obtaining EC. Thereafter on 05.05.2016 Hon'ble NGT disposed off the matter by taking note of the statement of the counsel for State of Uttarakhand that all activities of quarrying brick earth without obtaining EC in the State of Uttarakhand have been abated.
- 5.20 Because therefore, even for the State of Uttarakhand, there is an order of the NGT mandating prior EC for excavation of brick earth, yet the State of Uttarakhand has granted large number of consents to

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establish and operate without ensuring prior EC by brick kilns, including by taking advantage of MOEFCC Notification dated 28.03.2020 and issued the impugned notification dated 28.10.2021.

- 5.21 Because both States of UP and Uttarakhand have taken advantage of the fact that the impugned notifications and letters/OM's issued by them have never been struck down. Till such time as they stand, there is always scope for the said States to continue to attempt to exempt brick kilns from mining activity and EC requirement, and thus it is in the interests of environment as well as right to life of citizens that they be struck down by this Hon'ble Court.
- 5.22 Because even as per MOEFCC notification dated 22.02.2022, which is mandatorily to be followed for all brick manufacturing activity across the country, requisite permission must be taken from mining department of the concerned State/Union Territory for excavation of brick earth for manufacturing bricks. This also means that without a mining lease/permit, no excavation of brick earth can take place by brick kilns, and it necessarily follows that prior EC must be taken under the EIA Notification dated 14.09.2006 as amended up to date.
6. The Petitioner states that he has not filed any other Writ Petition or other petition before this Hon'ble Court or any other Hon'ble Court seeking similar relief.
7. That since the matter involves notifications issued by two different States, raising a common legal issue, the Petitioner has no other

alternative and efficacious remedy than to approach this Hon'ble Court with the present petition under Article 32 of the Constitution of India. It may also be noted that this Hon'ble Court has already dealt with similar matters as noted above.

PRAYER

It is most respectfully prayed that this Hon'ble Court may be pleased to –

- A) Issue of Writ of Certiorari or any other appropriate writ, order or direction, quashing impugned Office Memorandum dated 11.02.2014 issued by Respondent No.3 State of Uttarakhand;
- B) Issue of Writ of Certiorari or any other appropriate writ, order or direction, quashing impugned notification dated 22.10.2014 issued by Respondent No.2 State of Uttar Pradesh;
- C) Issue of Writ of Certiorari or any other appropriate writ, order or direction quashing impugned notification dated 19.11.2014 issued by Respondent No.3 State of uk;
- D) Issue of Writ of Certiorari or any other appropriate writ, order or direction quashing impugned letter dated 01.05.2020 issued by Respondent No.2 State of Uttar Pradesh;
- E) Issue of Writ of Certiorari or any other appropriate writ, order or direction quashing impugned letter dated 28.10.2021 issued by Respondent No.3 State of Uttarakhand;

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- F) Issue a writ of Mandamus or any other appropriate writ, order or direction, commanding the Respondent No.2 State of Uttar Pradesh and Respondent No.3 State of Uttarakhand not to permit the establishment or commencement of operation of any new brick kilns or continued operation of any existing established brick kiln without taking Environmental Clearance for excavation of brick earth in terms of EIA Notification dated 14.09.2006 as amended up to date;
- G) Pass any other or further order as this Hon'ble Court may deem fit in the facts of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY

New Delhi

Date: 23.08.2024

FILED BY



(POOJA DHAR)

ADVOCATE FOR THE PETITIONER

**IN THE SUPREME COURT OF INDIA
ORIGINAL WRIT JURISDICTION
(ORDER XXXVIII, S.C.R. 2013)
UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA
WRIT PETITION (CIVIL) No. OF 2024**

IN THE MATTER OF:

Utkarsh Panwar

...Petitioner

Versus

Union of India & Ors.

...Respondents

AFFIDAVIT

I, Utkarsh Panwar, aged about 30 yrs /o Shri Ashwini Kumar, R/o Village Sakuti District Meerut, U.P., and Presently at New Delhi, do hereby affirm and state on oath as under —

1. I say that I am the Petitioner in the above captioned Writ Petition, I am aware of the facts of the case and am competent to swear this affidavit.
2. I have read and understood the contents of paras. 1-7at Pages 1-30of the Writ Petition, along with List of Dates at Pages B-Pand the I.A's and I say that the contents thereof are true and correct to the best of my knowledge.
3. I say that the annexures filed with the Writ Petition are true copies of their respective originals.
4. I say that I have not filed any other similar Writ Petition before this Hon'ble Court or any Hon'ble High Court praying for the same relief.

I say that the averments of facts stated herein above are true to my knowledge no part of it is false and nothing material has been concealed therefrom

Utkarsh
DEPONENT

VERIFICATION

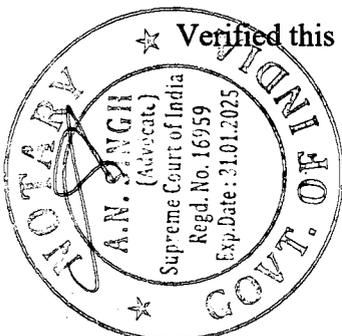
I, the deponent above named do hereby verify and state that the contents of the above affidavit are true and correct to the best of my knowledge and belief and that nothing material has been concealed herefrom.

Verified this at on this 23 AUG 2024 day of August, 2024.

Utkarsh
DEPONENT

ATTESTED
A.N. Singh, Adv.
Notary Public
Govt. of India, New Delhi

23 AUG 2024



I Identify the deponent who has Signed/Put T.I. in my presence

*Identified
Rohan Thakur who has Signed/Put T.I. in my presence*

In re: Reply-Arif Kidwai Vs. Union of India & Ors. in O.A. No.585 of 2023

2 messages

UNUC Legal LLP <unuconsultants@gmail.com>

4 November 2024 at 17:42

To: Gaurav Bansal <advocategauravkumarbansal@gmail.com>, ronz.chd-mef@nic.in, mscb.cpcb@nic.in, cs-up@nic.in, doeuplko@yahoo.com

Dear Sir,

Please find attached the advance copy of reply along with annexures in the above stated matter on behalf of Respondent No.5

With Regards,

**UNUC LEGAL LLP**
Advocates & Solicitors

P-97, South Extension - II,
New Delhi - 110049.
Tel: 011-41057587

**Lex Falcon Global Awardee, 2023 for Inspiring Indian Law Firm of the Year
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 **Reply.pdf**
14098K

UNUC Legal LLP <unuconsultants@gmail.com>

5 November 2024 at 12:47

To: Aditi Anup <aditianup14@gmail.com>

[Quoted text hidden]

 **Reply.pdf**
14098K