

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 702 OF 2022**

IN THE MATTER OF:

DEEPAK KUMAR & ANR.

.... Applicants

Versus

STATE OF UTTARAKHAND & ORS.

.... Respondents

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Filed By:

Ashwars

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Supreme Court of India
New Delhi-110001

Place: New Delhi
Dated: 21.09.2024

**BEFORE THE NATIONAL GREEN TRIBUNAL
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**COMMON REJOINDER ON BEHALF OF THE APPLICANT TO
THE REPLY FILED BY IMPLEADED STONE CRUSHERS.**

To

HON'BLE CHAIRPERSON AND HIS LORDSHIP'S COMPANION
MEMBERS OF THE NATIONAL GREEN TRIBUNAL AT NEW DELHI

The Applicant

Most respectfully showeth:

1. That the Applicant has filed the present Original Application, inter alia, praying for quashing of permissions granted by the State of Uttarakhand to permit operation of stone crushers and screening plants within the boundaries of "Doon Valley" as originally demarcated in the MoEF Notification dt. 01.02.1989 (the "**1989 Notification**"). Despite amendments to the 1989 Notification, the boundaries of Doon Valley have remained unchanged over the years.
2. At the outset it is submitted that contents of the Rejoinder already filed by the Applicant to the Reply filed by Respondent No.s 1 & 2 be read as part and parcel of the present Rejoinder and the contents thereof are not being repeated herein for sake of brevity.

Notification dt. 06.01.2020 is manifestly arbitrary.

3. It is pertinent to mention herein that the original Doon Valley notification dt. 01.02.1989 was issued in exercise of powers conferred under Rule 5(3) of the EPA Rules, 1986, i.e. after inviting and considering objections from the public. However, the impugned amendment to the said notification dt. 06.01.2020 has been made without inviting any objections pursuant to power vested under Rule 5(4) of the EPA Rules, 1986.
4. Rule 5(4) is an exception to Rule 5(3). Thus, the norm is to invite objections from the public while the power to dispense with this requirement can be exercised as an exception and in public interest. It is settled law that exceptions are narrowly interpreted since they seek to deviate from a norm. In the present case however, the notification is absolutely silent on what the compelling public interest was to resort to exceptional powers and to amend the 1989 Notification in haste without inviting objections from public.
5. The Counter Affidavits filed by the MoEF and the State of Uttarakhand give no reason as to why the exceptional procedure under Rule 5(4) was resorted to in 2020 for amending the original 1989 notification when the original notification was itself issued after inviting objections from public.
6. It is submitted that the burden to establish public interest requirement must be evident from the 2020 Notification itself however no such public interest is evident. Neither has the same been explained in the Counter Affidavits filed before this Hon'ble Tribunal. As such, it is submitted that the 2020

Notification is liable to be quashed on this ground alone for resorting to summary procedure under Rule 5(4) without satisfying the test of 'public interest.'

7. It is further submitted that 'public interest' lies in not permitting stone crushers within the Doon Valley region particularly since (i) Doon Valley is admittedly an ecologically fragile region with several rivers, tributaries and stream entering plains/ Tarai, (ii) the Doon Valley is already heavily polluted and has no capacity to carry more pollution, (iii) stone crusher operations are anyway permissible in the rest of the state of Uttarakhand and it is therefore not sustainable to permit their operations in Doon Valley, and (iv) stone crushers were not permitted in Doon Valley until the amendment in 2020.
8. Hon'ble Supreme Court of India in Noble M. Paikada vs. Union of India [Civil Appeal No. 1628/ 2021 dt. 21.03.2024] held that the exercise of powers under Rule 5(4) must not be done in a casual manner since it impinges on the right of citizens to raise objections. The Hon'ble Court held as follows:

"22. ... Therefore, the participation of the citizens is very important, and it is taken care of by allowing them to raise objections to the proposed notification. After all, citizens are major stakeholders in environmental matters. Their participation cannot be prevented by casually exercising the power under sub-rule (4) of Rule 5.

23. ... The document recording the satisfaction of the competent authority about the existence of public interest and the nature of the public interest ought to have been produced by the Ministry. But, no such document was produced. Only one conclusion can be drawn. The drastic decision to invoke sub-rule (4) of Rule 5 was made without any application of the mind. Hence, the decision-making process has been vitiated.”

A true copy of the decision of the Hon'ble Supreme Court of India in Noble M. Paikada vs. Union of India [Civil Appeal No. 1628/ 2021 dt. 21.03.2024] is annexed herewith as **Annexure R-1**.

Ignoring the criteria specified in Rule 5(1) of the EPA Rules, 1986 itself show arbitrariness in decision making.

9. It is submitted that Rule 5(1) prescribes area specific criteria to be taken into consideration while prescribing siting norms for location of industries. In the present case, general guidelines issued by CPCB have been implemented in Doon Valley without considering the specific requirements of Rule 5(1), which acknowledge that different areas have different environmental concerns. It is submitted that the MoEF has ignored this criteria completely while amending the 1989 Notification on 06.01.2020 and as such the impugned notification is arbitrary and liable to be quashed.

Table showing non-compliance with criteria prescribed in Rule 5(1) of the EPA Rules, 1986.		
Sl. No.	Criteria prescribed in Rule 5(1).	Remarks
1.	Standards for quality of environment in its various aspects laid down for an area.	<p>Doon Valley is one of the select ecologically fragile zones recognized by MoEF pursuant to the judgment of the Hon'ble Supreme Court of India in Rural Litigation & Entitlement Kendra vs. State of UP & Ors. [AIR 1988 SC 2187].</p> <p>The special status of Doon Valley has been overlooked while implementing CPCB's general guidelines dt. 2016, which are applicable pan-India.</p> <p>Standards applicable to rest of the country cannot ipso facto be deemed appropriate for sensitive areas such as Doon Valley in the absence of any study.</p>
2.	The maximum allowable limits of concentration of various environmental pollutants (including noise) for an area.	<p>This criteria requires calculation of the carrying capacity of an area to know the carrying capacity of the environment for an area. Admittedly, no carrying capacity has been conducted for Doon Valley, which is already heavily polluted specially during winter months.</p>
3.	The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.	<p>No area specific study on this aspect has been conducted and the general CPCB guidelines have been ipso facto applied to Doon Valley without any application of mind.</p>
4.	The topographic and climatic features of an area.	<p>The uniqueness of Doon Valley lies in its unique topographic and climatic features. The valley is</p>

		<p>in the tarai region of Himalayas where a large number of rivers and streams enter the plains forming a dense green environment, which is home to a large number of animals, forests and unique plants.</p> <p>Because of its low altitude, the valley contains air pollutants released specially during winter months due to low air speed and becomes heavily polluted. Stone crushers further add to the existing pollution.</p> <p>These and several other facts pertaining to Doon Valley's unique topography and climate have been ignored.</p>
5.	The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.	Admittedly, the unique biological diversity of Doon Valley ensured issuance of the 1989 notification in the first place. As such, any amendment to the 1989 notification ought to have considered the impact of such amendment on the Doon Valley biological diversity.
6.	Environmentally compatible land use.	Importantly, Clause (v) of the amended and original notification required the state to prepare a land use master plan of the entire Doon Valley area, which is to be then approved by MoEF. However, till date no such master plan duly approved by MoEF is in existence. As such, use of stone crushers is not environmentally compatible land use since no such land use has been formulated by State

		and MoEF in terms of the amended and original notification.
7.	Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.	No such study has been conducted by either the state or MoEF to study the net adverse environmental impact to be caused by permitting operation of stone crushers in Doon Valley.
8.	Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.	<p>The Doon Valley is broadly located between Yamuna River on the West and Ganga River on the East. The valley is surrounded by Forests and National Parks. Kalesar Wildlife Sanctuary is to the East while Rajaji National Park is to the South and West. To the North are protected Forests.</p> <p>Asan Wetland, a RAMSAR notified wetland, lies on the west side within the valley while Jhilmil Jheel Conservation Reserve lies to the East.</p> <p>This aspect of the matter has been completely ignored by the MoEF. A Google Map of Doon Valley is annexed herewith as <u>Annexure 2</u>.</p>
9.	Proximity to human settlements.	The city of Dehradun lies almost in the middle of the Doon Valley and the impact of crushing activities on human population in Dehradun and other towns and cities in Doon Valley has also not been studied.

10. Therefore, it is clear from above that MoEF appears to have completely ignored compliance with Rule 5(1) while issuing the impugned notification dt. 06.01.2020.

Notified Ecologically Sensitive Areas within India merit a higher degree of protection than the rest of the country.

11. The special status conferred upon Doon Valley by environmentalists and the MoEF&CC is evident from the 1989 Notification itself. Very few such ecologically sensitive areas (“**ESA’s**”) have been specially identified in India and they include the Aravallis, Mount Abu, Dhanu Taluka in Maharashtra etc. The MOEF&CC constituted the Pronab Sen Committee¹ also to identify ESA’s within India on the basis of certain determinable parameters. It is after the submission of this report in 2000 that a several ESAs have been specifically identified and notifications were issued for regulating industrial activity specifically in such ESA’s. It is therefore clear that ESAs merit a higher degree of environmental protection that applicable to the rest of the country.

Respondents do not dispute that no pollution “carrying capacity” assessment has been conducted for the Doon Valley till date. Doon

¹ Extract of the Pronab Sen Committee Report is available at <https://forest.kerala.gov.in/images/efl/ecr.pdf>. For more information on ESA’s in India, also refer to book titled “*India’s Notified Ecologically Sensitive Areas (ESAs)*” by Meenakshi Kapoor, Kanchi Kohli, and Manju Menon (Kalpavriksh, 2009) available at https://wwfin.awsassets.panda.org/downloads/indias_notified_ecologicallysensitive_areas.pdf. This book contains specific chapters on various ESA’s in India, including a chapter on the Doon Valley.

Valley is severely polluted already and carries more pollution than the capacity of its ecosystem.

12. Simply put, 'carrying capacity' is the ability of a specified local environment to carry pollutants. This study helps calculate whether local environment has the capacity to carry additional pollution likely to be generated from a proposed industry or whether the local environment is carrying pollutants to its full capacity.
13. MOEF&CC in para 11 of its Counter Affidavit states that guidelines to compute carrying capacity have already been framed. However, there is no discussion on why such carrying capacity assessment has not been undertaken for Doon Valley prior to permitting such highly polluting industry, i.e. stone crushing, mining and screening plants.
14. There is no doubt that stone crushing is a highly polluting industrial activity, which generates vast amounts of PM10 particulate matter. This not only pollutes the environment but is hazardous for health of humans and animals. A 2019 report prepared by Uttarakhand PCB itself admits that crushing and grinding activities are a major source of PM10 pollution in Dehradun.²
15. The concept of "carrying capacity" is now well entrenched in environmental jurisprudence. In M.C. Mehta vs. Union of India & [(1997) 3 SCC 715, paras 6, 8], the Hon'ble Supreme Court of India regulated constructed activity within 5 kms of the Badhkal Lake and Surajkund areas in Haryana and further read the concept of "carrying capacity" as part of precautionary

² Report annexed at page 573 @ 584 of the Original Application.

principle. Pertinently, Section 20 of the NGT Act, 2010 requires this Hon'ble Tribunal to consider the precautionary principle along with principles of sustainable development and polluter pays while passing any order.

16. In Vellore Citizens Welfare Forum vs. Union of India [(1996) 5 SCC 647], which judgment has been referred to in the above-mentioned judgment of M.C. Mehta (supra), the Hon'ble Supreme Court of India also read sustainable development to mean a "*concept to improve the quality of human life while living within the carrying capacity of supporting ecosystems.*"
17. In Utkarsh Panwar vs. CPCB & Ors. [order dt. 17.02.2021 in O.A. No. 1016/2019], this Hon'ble Tribunal prohibited operations of brick kilns within the NCR region since the pollution generated was beyond the carrying capacity.
18. The judgment in Utkarsh Panwar (supra) is pending challenge before the Hon'ble Supreme Court of India, where again the Hon'ble Supreme Court of India has directed the CPCB to report the carrying capacity of the areas in which the brick kilns are located.
19. Similarly, in a recent decision of Vinod Kumar Jangra vs. State of Haryana & Ors. [order dt. 18.01.2023 in O.A. No. 607/ 2018], this Hon'ble Tribunal prohibited functioning of stone crushers until a carrying capacity assessment of the areas is undertaken.
20. Therefore, it is most respectfully submitted that until and unless an assessment of pollution carrying capacity is undertaken for Doon Valley, no stone crushing activities should be permitted in the said region owing to the

fact that it is already severely polluted and pollution generated currently is beyond its carrying capacity.

Re-categorization of stone crushing from RED to ORANGE is arbitrary and without application of mind.

21. The 1989 Notification categorized all "*Mineral processing industries*" in the RED category, which were prohibited from operation within the Doon Valley. It is for this reason that no stone crusher units have been permitted within the Doon Valley until the change in categorization by MOEF&CC vide impugned amendment dt. 06.01.2020 to the 1989 Notification, which categorizes stone crushing as ORANGE category and thus permits the industry.
22. The Respondents have argued that simply because no new mineral compound is created during the process of stone crushing and the nature of mineral remains intact, therefore the activity of processing and crushing boulders into stones does not fall within the category of "*mineral processing*". It is submitted that there is absolutely no requirement in the 1989 Notification or the elsewhere that mineral processing must result in creation of a new compound/ material. This requirement is being inferred by the Respondent purely for the sake of convenience and without any reference to any law.
23. Pertinently, the MOEF&CC vide amendment dt. 06.01.2020 (the "**Amendment**") has simply applied the revised CPCB categorizations dt.

07.03.2016, which categorizes stone crushing as ORANGE. It is submitted that the CPCB Guidelines dt. 07.03.2016 ("**CPCB Guidelines**") are general guidelines applicable to the entire country however they cannot be ipso facto applied to notified Ecologically Sensitive Areas ("**ESAs**") such as the Doon Valley, which have peculiar set of regulations. Thus, a general regime cannot supersede a specific regime applicable to an area. The CPCB Guidelines therefore cannot be applied to the Doon Valley area without any application of mind.

24. That the MOEF&CC did not consider the peculiar circumstances of Doon Valley is evident from a bare perusal of the Amendment notification itself. No reasons are given for applying CPCB Guidelines to the Doon Valley area except for ensuring uniformity across the country. This, it is submitted, is clear non-application of mind and cannot be the reason for impose general CPCB Guidelines in an ESA such as the Doon Valley where stone crushing activity had been prohibited thus far.
25. It is further submitted that the CPCB Guidelines are based on a number of assumptions and are not being applied uniformly throughout the country. For instance, CSIR-NEERI, Nagpur in para 3.3 of its joint report dt. 22.11.2022, prepared w.r.t. the Taj Trapezium Zone in compliance with Supreme Court of India's order dt. 08.12.2021 passed in M.C. Mehta vs. Union of India & Ors. [WPC No. 13381/ 1984] has held as follows:

"The categorization of industries and air pollution score assigned to different industries (CPCB 2016) is based on many assumptions and

do not necessarily signify emission load of different pollutants and impact of individual industry on the surrounding environment."

As such, the applicability of the CPCB Guidelines to Doon Valley requires a reappraisal. The Amendment does not consider the effect of re-categorization of various industries on the environment of Doon Valley. Unless the experts at MOEF&CC apply their mind to the unique ecological requirements of the Doon Valley region, simply applying general CPCB Guidelines to Doon Valley would ensure further pollution of its environment. Therefore, it is prayed that the Amendment Notification dt. 06.01.2020 be quashed.

Uttarakhand Stone Crushing Policy, 2021, a general policy, cannot be applied to the Doon Valley, which is a notified ecologically sensitive area with unique environmental concerns.

26. The State of Uttarakhand on 11.11.2021 notified the Uttarakhand Stone Crusher, Screening Plant, Mobile Stone Crusher etc. policy, 2021 (the "**Stone Crusher Policy, 2021**").
27. The Counter Affidavit filed by the State of Uttarakhand, Respondent No.1, in para 9 states that the said policy has been framed under the Mines & Minerals (Development & Regulation) Act, 1957.
28. It is submitted that the said policy fails to consider the environmental impact of permitting stone crushers, screening plants etc. within the state.

29. Further, the Stone Crusher Policy, 2021 fails to provide for exclusionary zones where stone crushing etc activities would remain prohibited. Thus, the policy in one stroke has undone the prohibitions in place thus far preventing operations of stone crushers within the Doon Valley region of the state.
30. It is submitted that this general policy cannot apply uniformly to all areas of the state and the government ought to have excluded notified ecologically sensitive areas and other protected areas from its applicability.
31. It is submitted that a policy framed under the Mines & Minerals Act, 1957 cannot supersede the notifications issued under the Environment Protection Act, 1986 since the 2021 Policy fails to take specific environmental concerns of ecologically sensitive areas into account. As such, it is submitted that the 2021 Policy is arbitrary and suffers from non-application of mind and should be quashed or alternatively be read down to exclude the Doon Valley region from its operation.

Tagged matter, i.e. Appeal No. 39/ 2022, has been allowed by this Hon'ble Tribunal vide judgment dt. 30.01.2023.

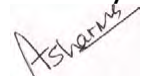
32. It is submitted by way of proper disclosure that the present O.A. No. 702/ 2022 was initially heard along with Appeal No. 39/ 2022 wherein the Applicant had challenged environmental clearance granted to one of the stone crushers within the Doon Valley. This Hon'ble Tribunal vide a detailed judgment dt. 30.01.2023 allowed the said appeal and quashed the

environmental clearance. However, this Hon'ble Tribunal specifically directed the present O.A. to be heard separately given the issues raised herein. Pertinently, the stone crusher's Civil Appeal No. 3235-3236/ 2023 against NGT's order dt. 30.01.2023 before the Hon'ble Supreme Court of India was withdrawn vide order dt. 23.04.2024. A true copy of order dt. 23.04.2024 passed by Supreme Court of India in Civil Appeal No. 3235-3236/ 2023 is annexed herewith as **Annexure 3**.

33. It is therefore submitted that adjudication of the present Original Application is imperative in the interest of justice and to protect any further harm to the environment due to the operations of these stone crushers in the Doon Valley. It is clear that operations of these crushers would significantly contribute to the air pollution within the Doon Valley and cause harm to the environment as well as the health of the residents and flora and fauna of the Doon Valley.

That therefore in view of the averments above, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to allow the prayers made in the above-mentioned Original Application.

Filed By:



AJIT SHARMA

Counsel for Applicant
320 CK Daphtary Chambers
Supreme Court of India
New Delhi-110001

Place: New Delhi
Dated: 21.09.2024



**IN THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 702 OF 2022**

IN THE MATTER OF:

DEEPAK KUMAR & ANR

..... Applicants

Versus

STATE OF UTTARAKHAND & ORS. Respondents

AFFIDAVIT

I, Deepak Kumar, S/o Pavan Kumar, R/o 70 Devlok Colony, Shimla Bypass, Dehradun, Uttarakhand do hereby solemnly affirm and state as under:-

1. That I am the Applicant in the above-mentioned Original Application and as such I am fully acquainted with the facts and circumstances of the instant case and as thus competent to swear this affidavit.
2. That I further state that the contents of the accompanying Rejoinder have been thoroughly read and understood by me and I declare that the Rejoinder has been prepared on my instructions.
3. That the contents of the accompanying Rejoinder are all true to my knowledge. The same has been read over to me and understood by me to be true.

Identified by
(Jitinder Singh)



दीपक कुमार

4. That the annexures to the accompanying Rejoinder are true copies of their respective originals.

दीपक कुमार
DEPONENT

Verification:-

I, the deponent above named, do hereby verify and state that the contents of the foregoing paragraphs of the above affidavit are true to the best of my knowledge and belief and that no part of it is false and nothing material has been concealed therefrom. Verified by me at Dehradun on this 21st day of September 2024.

दीपक कुमार
DEPONENT

दीपक कुमार
(Jatinder Singh)

This affidavit is sworn before me by
Deepak Kumar
Jatinder Singh
At Dehradun 21/9/2024 P101133cm
Advocate [Signature] 21/9/2024



MANU/SC/0238/2024

Equivalent/Neutral Citation: AIR2024SC1871, 2024(14)FLT419, 2024 INSC 241, 2024(2)KLT607, [2024]3SCR1249

IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 1628-1629 of 2021

Decided On: 21.03.2024

Noble M. Paikada **Vs.** Union of India (UOI)

Hon'ble Judges/Coram:

Abhay Shreeniwas Oka and Sanjay Karol, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Nishtha Kumar, AOR, Vanshdeep Dalmia and Shrom Sethi, Advs.

For Respondents/Defendant: Gurmeet Singh Makker, AOR

JUDGMENT

Abhay Shreeniwas Oka, J.

FACTUAL ASPECTS

1. These appeals take exception to the judgment and order dated 28th October 2020 (for short, 'the impugned judgment') passed by the National Green Tribunal, Principal Bench, New Delhi (for short, 'the NGT'). There is also a challenge to the order dated 24th December 2020, by which, the NGT rejected the review petition filed by the Appellant for seeking review of the impugned judgment.

2. A notification was issued on 14th September 2006 (for short, 'the first EC notification') by the Ministry of Environment and Forests (for short, 'MoEF') in exercise of powers Under Sub-section (1) and Clause (v) of Sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (for short, 'the EP Act') read with Clause (d) of Sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 (for short, 'the EP Rules'). Clause 2 of the first EC notification is material, which reads thus:

2. Requirements of prior Environmental Clearance (EC): The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(i) All new projects or activities listed in the Schedule to this notification;

ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the

limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range.

3. The notification provided that the projects falling under categories A and B set out in the Schedule to the notification will require prior Environmental Clearance (EC) from the concerned Regulatory Authority. The Regulatory Authorities for different projects have been named in Clause (2) of the first EC notification. For the A category, the Central Government in the MoEF was named as the Regulatory Authority. For projects in the B category, the State Environment Impact Assessment Authority (for short, 'SEIAA') was named as the Regulatory Authority. Various procedural aspects regarding applying for a grant of EC, its processing, etc., have been incorporated in the first EC notification. There were subsequent modifications to the first EC notification. Another notification was issued on 15th January 2016 (for short, 'the second EC notification'), by which the first EC notification was partly modified. Clause 7B and Appendix-IX were added to the first EC notification, providing for an exemption to specific categories of projects from the requirement of obtaining EC. Item 6 in the said Appendix-IX reads thus:

Appendix-IX

Exemption of certain cases from requirement of Environmental Clearance

The following cases shall not require prior environmental clearance, namely:

.....

6. Dredging and de-silting of dams, reservoirs, weirs, barrages, river, and canals for the purpose of their maintenance, upkeep and disaster management.

.....

Though the NGT struck down a part of the second EC notification, Appendix-IX was not touched.

4. In the Original Application subject matter of these appeals, the challenge before the NGT was to the notification dated 28th March 2020 (for short, 'the impugned notification'), which modified earlier EC notifications. Appendix IX to the second EC notification provided for exempting certain cases from the requirement of obtaining EC. By the impugned notification, Appendix-IX was substituted. The substituted Appendix-IX provided that the prior EC will not be required in the thirteen cases set out therein. We are concerned with items 6 and 7 of the substituted Appendix-IX, which read thus:

Appendix-IX

Exemption of certain cases from requirement of Environmental Clearance: The following cases shall not require Prior Environmental Clearance, namely:

.....

6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc.

7. Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.

.....

Thus, item 6 in Appendix IX of the second EC notification was maintained but was renumbered as item 7. Item 6 was newly added.

5. Before we go into the challenge to the impugned notification, we must note here that items 6 and 7 were substituted by further notification dated 30th August 2023 (for short, 'amended impugned notification') issued during the pendency of these appeals. Substituted items 6 and 7 in the amended impugned notification read thus:

6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc. shall be subject to the compliance of standard operating procedures and environmental safeguards issued in this regard from time to time.

7. Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management shall be subject to the compliance of environmental safeguards issued in this regard from time to time.

6. The impugned notification was challenged on several grounds before the NGT by filing the Original Application subject matter of these appeals. Apart from other grounds, it was contended that the impugned notification violated the directions issued by this Court in the case of Deepak Kumar and Ors. v. State of Haryana and Ors. MANU/SC/0169/2012 : 2012:INSC:113 : (2012) 4 SCC 629. Even the ground that the impugned notification was arbitrary and violative of Article 14 of the Constitution of India was invoked. We must note that in the Original Application, the specific challenge was only to item 6 of the impugned notification.

7. By the impugned judgment, it was held that the exemption under item 6 should strike a balance. The finding recorded on this aspect in paragraph 8 of the impugned judgment reads thus:

8. The second issue is exemption from requirement of EC for extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc and for dredging and de- silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management. **It is possible to take a view that the EC can be exempted for these situations on account of assessment already made or for extraction of earth for linear project but such blanket exemption must be balanced by sustainable development concept. The exemption should strike balance and instead of being blanket exemption, it needs to be hedged by appropriate safeguards such as the process of excavation and quantum. Similarly, in respect of item 7, safeguards are required to be incorporated in terms of disposal of dredged material. These aspects are not shown to have been considered and the reply does not provide any explanation thereon.** Learned Counsel for the MoEFCC is also unable to provide any justification why these aspects be not addressed and incorporated in the notification for ensuring sustainable development concept which is required to be enforced by this Tribunal Under Section 20 read with Section 15 of the NGT Act, 2010.

(emphasis added)

Accordingly, the Original Application was disposed of by directing the Ministry of Environment, Forest and Climate Change (for short, 'MoEF&CC') to revisit the impugned notification within three months. An application for review was filed, which was dismissed by the second impugned order dated 24th December 2020.

8. Notice was ordered to be issued on 13th December 2021 on the appeals. On 10th August 2023, submissions were heard, and the judgment was reserved. After the judgment was reserved, the Respondent-Union of India filed an affidavit of Dr Sujit Kumar Bajpayee, Joint Secretary, MoEF&CC, dated 12th September 2023. Along with the affidavit, two documents were also filed on record. The first document was the Office Memorandum dated 21st August 2023 issued by the MoEF&CC, purportedly laying down the enforcement mechanism for items 6 and 7 in the impugned notification. The second document brought on record was the amended impugned notification. In view of the issuance of the amended impugned notification, even after the verdict was reserved, the parties were permitted to make further submissions on the legality and validity of the amended impugned notification.

SUBMISSIONS

9. The learned Senior Counsel appearing for the Appellant submitted that the object of the EP Act is to provide for the protection and improvement of the environment. She invited our attention to Section 3 of the EP Act, which confers a power on the Central Government to take such measures as it deems necessary or expedient for protecting and improving the quality of the environment and preventing and abating environmental pollution. She pointed out that the first EC notification was issued in the exercise of powers conferred Under Sub-section (1) and Clause (v) of Sub-section (2) of Section 3 of the EP Act. Clause (v) empowers the Central Government to take measures for restrictions of the areas, in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. She also invited our attention to the EP Rules and, in particular, Rule 5 thereof. It lays down that the Central Government may consider the factors set out in Sub-rule (1) while prohibiting or restricting the location of industries and carrying out operations and processes in different areas. She pointed out that before issuing the first EC notification, the process laid down in Sub-rule (3) of Rule 5 was followed.

10. The learned Senior Counsel invited our attention to a decision of this Court in the case of Hanuman Laxman Aroskar v. Union of India MANU/SC/0444/2019 : 2019:INSC:434 : (2019) 15 SCC 401. She also relied upon a decision of this Court in the case of Deepak Kumar MANU/SC/0169/2012 : 2012:INSC:113 : 2012:INSC:113 (2012) 4 SCC 629. She pointed out that as a result of item 6, there will not be any Regulation of the extraction of ordinary earth for utilisation in linear projects, such as, roads, pipelines, etc. She submitted that such a blanket exemption will defeat the very object of enacting the EP Act and, in particular, Section 3 thereof. She submitted that the decision of this Court in the case of Deepak Kumar MANU/SC/0169/2012 : 2012:INSC:113 : 2012:INSC:113 : (2012) 4 SCC 629 and subsequent decisions mandated that there must be a requirement to obtain EC for the minor minerals pertaining to materials used for linear projects. The learned Senior Counsel submitted that allowing the extraction of the earth in such an indiscriminate manner is wholly arbitrary and violative of Article 14 of the Constitution of India.

11. Inviting our attention to the amended impugned notification, the learned Senior

Counsel pointed out that the substituted item 6 provides that extraction of ordinary earth for linear projects shall be subject to compliance with the Standard Operating Procedure (SOP) and safeguards issued in this regard from time to time. Thus, the exemption remains. However, an SOP will be laid down to avail the exemption. She urged that the substituted item 6 is more arbitrary.

12. The learned Senior Counsel also pointed out that the whole issue was directed to be reconsidered under the impugned judgment. But nothing has been placed on record to show that the Central Government made reconsideration in true letter and spirit.

13. The learned Senior Counsel pointed out that the decision of this Court in the case of Deepak Kumar MANU/SC/0169/2012 : 2012:INSC:113 : 2012:INSC:113 : (2012) 4 SCC 629 still holds the field, which directs that the leases of minor minerals, including their renewal for an area less than 5 hectares, shall be granted by the States/Union territories only after getting EC. She submitted that the impugned notification and the amended impugned notification, insofar as item 6 is concerned, are completely contrary to the directions issued by this Court in Deepak Kumar MANU/SC/0169/2012 : 2012:INSC:113 : 2012:INSC:113 : (2012) 4 SCC 629. She also urged that before publishing the draft of the impugned notification, objections to the draft notification were not invited. She submits that this action contravenes the provisions of Sub-rule (3) of Rule 5 of the EP Rules.

14. The learned Additional Solicitor General appearing on behalf of the Respondent - Union of India, submitted that in view of the insertion of Section 8B in the Mines and Minerals (Development and Regulation) Act, 1957 (for short, 'the MMDR Act'), the amendment to the first EC notification was required to be made. Our attention was invited to Section 8B, incorporated on 13th March 2020 and amended Section 8B, effective from 28th March 2021. She submits that the provisions of the first EC notification must conform with the amended provisions of the MMDR Act, and therefore, the amendments were necessitated. She also pointed out that in terms of the impugned order, the matter was placed before the Expert Appraisal Committee (EAC), non-coal mining and EAC, MoEF&CC and others in a meeting. Thereafter, the issue was deliberated in the meeting convened on 30th June 2022 under the chairmanship of the Joint Secretary of the concerned department. She invited our attention to the minutes of the said meeting held on 30th June 2022. She submitted that the ultimate endeavour is to uphold the principles of sustainable development. Relying upon the amended impugned notification, she submitted that now the exemption granted by items 6 and 7 cannot be said to be arbitrary, and it will be subject to compliance with the SOP issued on this behalf from time to time. Therefore, safeguards have been introduced, and the exemption is not blanket. She also pointed out that the Office Memorandum dated 21st August 2023 takes care of the safeguards. It was also submitted that the grant of exemption from the first EC notification is a matter of policy for the Central Government and no interference be called for with policy matters.

CONSIDERATION OF SUBMISSIONS

15. We have carefully considered the submissions. The EP Act was brought into force on 19th November 1986. The statement of objects and reasons of the EP Act specifically refers to the substantive decline in environmental quality due to increasing pollution, loss of vegetal cover, etc. It also notes the growing risk of environmental accidents and threats to life support systems. It refers to the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June 1972. In the said Conference, the world communities resolved to protect and enhance the environmental

quality. Clause (3) of the statement of objects and reasons reads thus:

(3) In view of what has been stated above, **there is urgent need for the enactment of a general legislation on environmental protection which inter alia, should enable co-ordination of activities of the various regulatory agencies, creation of an authority or authorities with advocate powers for environmental protection, Regulation of discharge of environmental pollutants and handling of hazardous substances,** speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment, safety and health.

(emphasis added)

Even from the preamble of the EP Act, it is apparent that the object is to provide protection to the environment and to improve the environment. Section 3 of the EP Act confers power on the Central Government to take measures to protect and improve the environment. Sub-sections (1) and (2) of Section 3 read thus:

3. Power of Central Government to take measures to protect and improve environment.-

(1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of Sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:

(i) co-ordination of actions by the State Governments, officers and other authorities--

(a) under this Act, or the Rules made thereunder, or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever: Provided that different standards for emission or discharge may be laid down under this Clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries,

operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

(emphasis added)

Section 3 of the EP Act must be read with Rule 5 of the EP Rules. Rule 5 has been enacted to give effect to Clause (v) of Sub-section (2) of Section 3 of the EP Act, which empowers the Central Government to put restrictions on the areas in which industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. Rule 5 of the EP Rules reads thus:

5. Prohibition and Restriction on the location of industries and the carrying on processes and operations in different areas.

(1) The Central government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas-

(i) Standards for quality of environment in its various aspects laid down for an area.

- (ii) The maximum allowable limits of concentration of various environmental pollutants (including noise) for an area.
- (iii) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.
- (iv) The topographic and climatic features of an area.
- (v) The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.
- (vi) Environmentally compatible land use.
- (vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.
- (viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.
- (ix) Proximity to human settlements.
- (x) Any other factor as may be considered by the Central Government to be relevant to the protection of the environment in an area.

(2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.

(3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the locations of an industry or the carrying on of processes and operations in an area, it may by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.

(b) Every notification under Clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the locations of the industries and carrying on of process or operations in that area.

(c) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under Clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.

(d) The Central Government shall within a period of one hundred and twenty days from the date of publication of the notification in the

Official Gazette consider all the objections received against such notification and may within 1 [three hundred and sixty-five days] from such day of publication] impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.

(4) Notwithstanding anything contained in Sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under Clause (a) of Sub-rule (3).

(emphasis added)

SCOPE OF ADJUDICATION

16. As far as the scope of adjudication in these appeals is concerned, it is necessary to refer to the Original Application No. 190 of 2020 filed by the Appellant. There were three prayers made in the said Original Application, which read thus:

- (a) Pass an Order quashing newly inserted Clause 6 of the Impugned Notification dated 28.03.2020 as being violative of Article 14 and 21 of the Constitution of India, ultra vires the provisions of the EPA Act, 1986, the EIA Notification dated 14.09.2006, and in further violation of the judgment passed by the Hon'ble Supreme Court in the Deepak Kumar case (supra);
- (b) Pass an appropriate Order quashing the Impugned Notification dated 28.03.2020 as being violative of the principles of Polluter Pay, Non-regression, sustainable development and Precautionary Principle;
- (c) Pass an appropriate Order directing the Respondent not to allow any mining of ordinary earth without a prior environmental clearance.

From the prayers mentioned above in Clauses (a) to (c), it is apparent that the specific challenge was to item 6. Regarding Clause (b), perhaps the only ground of challenge taken in the application was that no public interest was involved in exercising the power Under Sub-rule (4) of Rule 5 of the EP Rules for dispensing with public notice.

17. After perusal of the impugned judgment, we find that the submissions made by the learned Counsel appearing for the Appellant before the NGT were not recorded therein. The order dated 29th June 2021 passed by this Court in the present appeals is relevant, which reads thus:

X(name masked), learned Senior Counsel appearing for the Appellant, submits that the learned Counsel appearing for the Appellant before the National Green Tribunal argued that exemption could not have been granted by the Notification of the Ministry of Environment, Forest and Climate Change which has not been considered by the Tribunal. Y(name masked), learned Counsel who appeared before the Tribunal, is directed to file an affidavit that he, in fact, raised this point before the Tribunal during the course of hearing.

List the matter after two weeks.

The advocate filed an affidavit dated 11th December 2021. In paragraph 5(a) of the affidavit, he stated thus:

5.....

(a) That the OA No. 190/2020 was listed for hearing before the Hon'ble Tribunal by way of video conferencing on 28.10.2020. On that day the Deponent appeared before the Hon'ble Tribunal and was granted a hearing. **During the course of the hearing the Deponent raised his submissions inter-alia including the fact that the Ministry of Environment and Forests did not have the power to exempt the removal of ordinary earth from the purview of the EIA Notification and that the exemption as granted for the removal of ordinary earth was illegal and ultra vires the Environment Protection Act as well as the judgment of this Hon'ble Court in Deepak Kumar's Judgment** It is submitted that the aforesaid point was raised, however the Hon'ble Tribunal did not find merit in the said submission as is evident from the judgment dated 28.10.2020.

(emphasis added)

Thus, the Advocate-on-Record stated in the affidavit that what was argued before the NGT was the challenge to the exemption granted for the removal of ordinary earth for linear projects. We may note here that item 7 in the substituted Appendix-IX brought on record by the impugned notification was already there as item 6 in Appendix-IX to the second EC notification dated 15th January 2016. The Appellant did not challenge the notification dated 15th January 2016. Even if we set aside or strike down item 7 regarding dredging/desilting in the impugned notification, it will continue to exist as item 6 in the second EC notification. The second EC notification is not under challenge. Therefore, we restrict the challenge to item 6 in the substituted Appendix-IX to the impugned notification.

CHALLENGE TO ITEM 6 IN THE IMPUGNED NOTIFICATION

Failure to follow the procedure prescribed by Sub-rule (3) of Rule 5

18. We have already quoted Rule 5 of the EP Rules. There is no dispute that the first EC notification, the second EC notification and the impugned notification were issued in the exercise of powers Under Sub-rule (1) of Rule 5 of the EP Rules. Sub-rule (2) of Rule 5 provides that while passing an order prohibiting or restricting the location of industries and carrying on processes and operations, the Central Government shall follow the procedure laid down in Rule 5. Sub-rule (3) of Rule 5 requires the Central Government to publish a notice of its intention to do so in the official Gazette and in such other manner as the Central Government deems fit. Any person interested is entitled to file objections against the proposed prohibition or restriction. The Central Government is required to consider the objections before issuing the final notification. The said procedure was followed before publishing the first EC notification.

19. Sub-rule (4) of Rule 5 empowers the Central Government to dispense with the requirement of publication of notice Under Sub-rule (3) of Rule 5 when it appears to the Central Government that it is in the public interest to do so. Thus, Sub-rule (4) of Rule 5 is an exception to Sub-rule (3). The exception can be invoked only on the grounds of public interest.

20. Now, we turn to the impugned notification dated 28th March 2020. The recitals of the said notification are important, which read thus:

S.O. 1224(E).-WHEREAS, vide the Mineral Laws (Amendment) Act, 2020 (2 of

2020), the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) (hereinafter referred to as MMDR Act) has been amended with effect from the 10th day of January, 2020 and, inter alia, new Section 8B relating to the provisions for transfer of statutory clearances has been inserted;

AND WHEREAS, Sub-section (2) of Section 8B of the MMDR Act provides that notwithstanding anything contained in this Act or any other law for the time being in force, the successful bidder of mining leases expiring under the provisions of Sub-sections (5) and (6) of Section 8A and selected through auction as per the procedure provided under this Act and the Rules made thereunder, shall be deemed to have acquired all valid rights, approvals, clearances, licences and the like vested with the previous lessee for a period of two years;

AND WHEREAS, Sub-section (3) of Section 8B of the MMDR Act provides that notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the new lessee to continue mining operations on the land, in which mining operations were being carried out by the previous lessee, for a period of two years from the date of commencement of the new lease;

AND WHEREAS, in pursuance of the aforesaid amendment to the MMDR Act, the Central Government deems it necessary to align the relevant provisions of the notification of the Government of India in the erstwhile Ministry of Environment and Forests number S.O. 1533 (E), dated the 14th September, 2006 (hereinafter referred to as the EIA Notification, 2006);

AND WHEREAS, the Ministry of Environment, Forest and Climate Change is in the receipt of representations for waiver of requirement of prior environmental clearance for borrowing of ordinary earth for roads; and manual extraction of lime shells (dead shell), shrines, etc., within inter tidal zone by the traditional community;

Now, therefore, in exercise of the powers conferred by Sub-section (1) and Clause (v) of Sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with Sub-rule (4) of Rule 5 of the Environment (Protection) Rules, 1986, the Central Government, after having dispensed with the requirement of notice under Clause (a) of Sub-rule (3) of the Rule 5 of the said rules, in public interest, and in supersession of the notification number S.O. 4307(E), dated the 29th November, 2019, hereby makes the following further amendments in the EIA Notification, 2006, namely:

.....

(emphasis added)

By the impugned notification, after sub-paragraph (2) of paragraph 11 of the first EC notification, sub-paragraph (3) was inserted to give effect to Sections 8A and 8B of the MMDR Act. An entry has been made in the Schedule against Item 1(a) in column (5) for inserting a Clause dealing with the evacuation or removal and transportation of already mined out material. Appendix IX, which contains the list of projects exempted from obtaining EC, was substituted by the impugned notification.

21. We have quoted above the recitals of the impugned notification. The first three

recitals refer to the necessity of giving effect to Sections 8A and 8B of the MMDR Act. Thereafter, the last recital refers to the Ministry receiving representations for waiver of the requirement of prior EC for borrowing of ordinary earth for roads. After that, without giving any details, it is mentioned that in the public interest, the requirement of publication of notice Under Sub-rule (3) of Rule 5 was dispensed with. At this stage, we may refer to the relevant ground specifically taken in the Original Application filed by the Appellant before the NGT. Ground J was specifically taken on this aspect, which reads thus:

J. Because the Respondent has deliberately and ostensibly circumvented the requisite procedures before issuing the Impugned Notification, including evading previous publication, inviting public objections Under Rule 5(3) of the EP Rules, 1986, and by wrongly exercising its powers Under Rule 5(4) of the EP Rules under the garb of "public interest" during the Covid-19 national lockdown without offering even a shred of reasoning for its actions. It is most respectfully submitted that the amendments brought forth by the Impugned Notification serve and further the interest of private miners and contractors, and the actions of ratifying such illegal and mala fide acts of disregard and disobedience to environmental norms is in fact against public interest at large.

22. We have carefully perused the counter affidavit filed by the MoEF&CC before the NGT. The said affidavit does not deal with Ground J at all. It does not specify or set out reasons for concluding that in the public interest, the requirement of publication of prior notice was needed to be dispensed with. It is pertinent to note that before the issue of the second EC notification by which Appendix-IX was incorporated, the procedure of inviting objections to the draft notification was followed, and the objections were considered. There is no reason to dispense with this important requirement before publishing the impugned notification. Article 21 guarantees a right to live in a pollution-free environment. The citizens have a fundamental duty to protect and improve the environment. Therefore, the participation of the citizens is very important, and it is taken care of by allowing them to raise objections to the proposed notification. After all, citizens are major stakeholders in environmental matters. Their participation cannot be prevented by casually exercising the power Under Sub-rule (4) of Rule 5.

23. In the present appeals, the questions of law (e) and (f) have been incorporated regarding the illegal invocation of the power Under Sub-rule (4) of Rule 5 of the EP Rules. In the grounds of the challenge, ground EE has been taken explicitly on this aspect. We have perused the counter affidavit filed by the MoEF&CC in these appeals. We find from the counter affidavit that the contention raised regarding the illegal invocation of power Under Sub-rule (4) of Rule 5 has not been dealt with. We are not going into the question of whether it was necessary for the Central Government to specify reasons in the impugned notification itself why it came to the conclusion that in the public interest, the requirement of public notice should be dispensed with. However, the reasons for the said conclusion ought to have been set out in the counter affidavit filed before the NGT or, at least, in the counter affidavit filed before this Court. The document recording the satisfaction of the competent authority about the existence of public interest and the nature of the public interest ought to have been produced by the Ministry. But, no such document was produced. Only one conclusion can be drawn. The drastic decision to invoke Sub-rule (4) of Rule 5 was made without any application of the mind. Hence, the decision-making process has been vitiated.

24. The impugned notification was issued two days after the nationwide lockdown was imposed due to the COVID-19 pandemic. At that time, the work of linear projects, such

as roads, pipelines, etc., had come to a grinding halt. So, there was no tearing hurry to modify the EC notifications. Apart from the fact that no reasons have been assigned in the counter affidavit filed by the Central Government for coming to the conclusion that in the public interest, the requirement of prior publication of notice was required to be dispensed with, we fail to understand the undue haste shown by the Central Government in issuing the impugned notification during the nationwide lockdown. Therefore, the inclusion of item 6 of the substituted Appendix-IX will have to be held illegal. We have already given reasons for not dealing with the challenge to item 7 of the impugned notification.

ARBITRARINESS

25. There is one more important ground for striking down item 6. But for item 6 in Appendix-IX to the impugned notification, for extraction, sourcing, or borrowing of ordinary earth for linear projects, prior EC would have been required in terms of the first EC notification. The very object of issuing the first EC notification incorporating the mandatory requirement of obtaining EC for projects was that the damage to the environment must be minimised while implementing projects. When an exception is sought to be carved out by incorporating Appendix-IX to the requirement of obtaining EC in the first EC notification, the exception must be specific. Item 6 grants exemption for "extraction or sourcing or borrowing of ordinary earth for linear projects, such as roads, pipelines, etc." There is no specification about the quantum of ordinary earth, which can be extracted on the basis of the exemption. There is no specification of the area which can be used to extract ordinary earth. It is also not provided that only that quantity of ordinary earth, which is required to implement the linear projects, is exempted. Importantly, "linear projects" have not been defined. Without the definition, it is difficult to imagine which projects will be termed linear projects. The term "linear projects" is very vague. The process to be adopted for excavation has not been set out. Thus, item 6 is a case of completely unguided and blanket exemption, which is, per se, arbitrary and violative of Article 14 of the Constitution of India. There is no provision for setting up an authority which will decide whether a particular linear project is covered by item 6.

26. As stated earlier, during the pendency of the appeals, an amendment was made to item 6 by the notification dated 30th August 2023. Even the amended impugned notification does not elaborate on the concept of linear projects. The only addition to item 6 is that the extraction, sourcing or borrowing shall be subject to compliance with SOP and environmental safeguards issued in this regard from time to time. The authority to issue the SOP and environmental safeguards has not been specified. No provision has been made to enforce the SOP and environmental safeguards. No restriction is imposed on the quantum of ordinary earth, which can be extracted for linear projects. Therefore, even the amended item 6 continues to suffer from the same vice of arbitrariness, which Article 14 of the Constitution of India prohibits.

27. The learned Additional Solicitor General placed reliance on the Office Memorandum dated 21st August 2023. It provides that before carrying on activities mentioned in entry 6, the project proponents must notify the State Pollution Control Board/Pollution Control Committees. The State Pollution Control Boards are required to monitor the compliance status of the SOP/environmental safeguards. As entry 6 is arbitrary, the Office Memorandum is of no consequence. Hence, on account of the violation of Article 14, item 6 in the impugned notification, as well as the amended impugned notification, will have to be struck down. As noted earlier, the object of the EP Act is to protect and improve the environment. Apart from the illegality committed by non-compliance with

Sub-rule (3) of Rule 5 of the EP Rules, the exemption granted without incorporating any safeguards is completely unguided and arbitrary. Grant of such blanket exemption completely defeats the very object of the EP Act.

NON-COMPLIANCE WITH THE DIRECTIONS OF THE NGT

28. In paragraph 8 of the impugned order, which we have quoted earlier, the NGT observed that the blanket exemption needs to be hedged by appropriate safeguards, such as, the process of excavation and quantum. Therefore, in paragraph 9, a direction was issued to MoEF&CC to revisit the impugned notification in the light of the observations made in paragraph 8. Within the three months provided by the NGT to do so, no steps had been taken to revisit item 6 of the impugned notification.

29. The Ministry has filed an additional affidavit dated 18th July 2023, and reliance has been placed on the guidelines for sand mining. As far as item 6 is concerned, in the counter affidavit, reliance was placed on the Office Memorandum dated 8th August 2022, purportedly issued in terms of the directions issued in paragraph 9 of the impugned judgment. It records that item 6 shall be subject to the SOP attached to the said Office Memorandum. We have perused the said SOP. We find that the SOP creates no regulatory machinery to ensure the implementation of the terms of the SOP. The SOP does not refer to item 6 at all; it merely refers to the activities relating to the identification to borrow areas to obtain earth or soil materials. It does not refer to extracting ordinary earth for linear projects, such as roads, pipelines, etc. Therefore, the said SOP can hardly be said to be in terms of what the NGT ordered the Central Government to do in terms of paragraphs 8 and 9.

30. We are not entertaining a challenge to item 7 of the impugned notification. As none of the Respondents have challenged the impugned notification, they will have to implement the directions issued in terms of paragraph 9 of the impugned judgment regarding item 7.

31. Thus, notwithstanding the specific directions issued in paragraph 8 read with paragraph 9 of the impugned judgment, no safeguards have been provided, such as laying down processes, the mode and the manner of excavation and quantum.

32. Therefore, we have no hesitation in striking down item 6 of the substituted Appendix-IX forming part of the impugned notification dated 28th March 2020 and item 6 of the amended impugned notification dated 30th August 2023. Accordingly, we quash item 6 in the two notifications above.

33. The appeals are, accordingly, partly allowed on above terms. There will be no order as to costs.

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Imagery ©2024 Landsat / Copernicus, Imagery ©2024 TerraMetrics, Map data ©2024 10 km

Measure distance
Total distance: 68.96 km (42.85 mi)





Google

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3235-3236 OF 2023

M/S BALAJI STONE CRUSHER APPELLANT(S)

VERSUS

DEEPAK KUMAR & ORS. RESPONDENTS

O R D E R

Learned counsel for the appellant - M/s. Balaji Stone Crusher seeks permission to withdraw the present appeals. She also states that the appellant - M/s. Balaji Stone Crusher may be permitted to remove their equipment/machinery.

Learned counsel for respondent nos. 1 and 2, namely, Deepak Kumar and Junaid Ayubi (the original applicants) and respondent nos. 3, 6, 9 and 11 have no objection to the withdrawal of the present appeals and removal of the equipment/machinery.

In view of the aforesaid, the present appeals are dismissed as withdrawn. The appellant - M/s. Balaji Stone Crusher will remove its equipment/machinery within a period of four weeks from today.

.....J.
(SANJIV KHANNA)

.....J.
(BELA M. TRIVEDI)

NEW DELHI;
APRIL 23, 2024.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCIVIL APPEAL NOS. 3235-3236 OF 2023

M/S BALAJI STONE CRUSHER APPELLANT(S)

VERSUS

DEEPAK KUMAR & ORS. RESPONDENTS

(IA No. 193719/2023 - EARLY HEARING APPLICATION, IA No. 90647/2023 - EX-PARTE STAY, IA No. 90650/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 90648/2023 - EXEMPTION FROM FILING O.T., IA No. 30039/2024 - EXEMPTION FROM FILING O.T., IA No. 189740/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No. 30038/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

C.A. No. 5386-5387/2023 (XVII)

(IA No. 138792/2023 - EX-PARTE STAY, IA No. 138794/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 158908/2023 - EXEMPTION FROM FILING O.T. and IA No. 158907/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 23-04-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Appellant(s)

Ms. Bani Dikshit, Adv.
Ms. Noor Rampal, AORMr. Jatinder Kumar Sethi, D.A.G.
Mr. Ankit Shah, Adv.
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Mr. Ajit Sharma, AOR
Mr. Kanchan Kumar, Adv.
Mr. A. Renganath, Adv.Mr. Mukesh Verma, Adv.
Mr. Pankaj Kumar Singh, Adv.
Mr. Kamal Kumar Pandey, Adv.
Mr. Pawan Kumar Shukla, Adv.
Mr. Krishna Prakash Dubey, Adv.
Mr. G.P. Mahto, Adv.
Mr. Shashank Singh, AOR

Mr. Jatinder Kumar Sethi, D.A.G.
Mr. Ankit Shah, Adv.
Mr. Manan Verma, AOR

UPON hearing the counsel, the Court made the following
O R D E R

Civil Appeal Nos. 3235-3236/2023

The present appeals are dismissed as withdrawn, in terms of the signed order.

Civil Appeal Nos. 5386-5387/2023

The appeals will remain on Board.

We clarify that pendency of the present appeals will not be a ground for the parties to seek adjournment in the matter(s) pending before the National Green Tribunal.

(Deepak Guglani)

AR-cum-PS

(signed order in CA Nos. 3235-3236/2023 is placed on the file)

(R.S. NARAYANAN)

ASSISTANT REGISTRAR

3045



Kanchan Singh <kanchanchuhan87@gmail.com>

**PFA Reply on behalf of Original Applicant to I.A. No. 304/2024 along with Affidavit.
OA. No. 702/2022**

2 messages

Kanchan Singh <kanchanchuhan87@gmail.com>

Mon, Sep 23, 2024 at 12:42 PM

To: Anjali Rajput <advanjali.rajput@gmail.com>, banidikshit.advocate@gmail.com, uddhavkhanna.advocate@gmail.com, Mukesh Verma <mvermadv@gmail.com>, rkhanalegal@gmail.com, secy-moef@nic.in, msukpcb@yahoo.co.in, Ajit Sharma <sharma.ajit@gmail.com>

Dear Sir/ Ma'am,

I am sharing the enclosed file Reply on behalf of the Original Applicant to I.A. No. 304/2024 along with Affidavit And Rejoinder to Stone Crushers. That is for kind information and necessary action.

Best & Regards

Kanchan Kumar Singh Adv.**For Ajit Sharma, Adv.****Counsel for the Applicants**

**Chamber No. 320,
C.K. Daphtary Block,
Supreme Court of India,
New Delhi - 110 001**

Contact No. : 9873720007**Mr. Mukesh Verma: Email Id:-** mvermadv@gmail.com (for UKPCB)msukpcb@yahoo.co.in**Ms. Anjali Rajput Email Id:** advanjali.rajput@gmail.com (For State of UK)**Ms.Bani Dikshit Email Id:** banidikshit.advocate@gmail.com (Project Proponents)**Mr.Uddhav Khanna Email id:** uddhavkhanna.advocate@gmail.com (Project Proponents)**Mr. Rahul Khurana Email Id:** rkhanalegal@gmail.comEmail Id : secy-moef@nic.in**2 attachments****Reply to IA filing version.pdf**

6856K

**Rejoinder to Stone Crushers.pdf**

1705K

Mail Delivery Subsystem <mailer-daemon@googlemail.com>

Mon, Sep 23, 2024 at 12:42 PM

To: kanchanchuhan87@gmail.com