

**BEFORE THE HON'BLE GREEN TRIBUNAL
WESTERN ZONE BENCH AT PUNE
ORIGINAL APPLICATION NO. 7 OF 2023 (WZ)**

IN THE MATER OF

MR. DATTATRAY PHALKE & ANR.

...APPLICANTS

VERSUS

UNION OF INDIA THROUGH SECRETARY,

MoEFCC & ORS.

... RESPONDENTS

COMPILATION OF JUDGEMENT & ORDER

(KINDLY SEE INDEX INSIDE)

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**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

Original Application No. 28/2022 (WZ)

IN THE MATTER OF :

- 1. Mr. Dattatraya Phalke,**
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.....Applicant

Versus

- 1. The Union of India,**
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Climate Change Impact Assessment Division,
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- 2. State Level Environment Impact Assessment Authority-
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- 3. Maharashtra Pollution Control Board,**
Through Member Secretary,
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Opp. Cine Planet Cinema, Sion(E),
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- 4. The District Collector,**
As district collector and
President of Environment Committee,
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- 5. The Nandgaon Tahsildar,**
Taluk: Nandgaon, District : Nashik
E-mail: tahsilnandgaon@gamil.com
- 6. Rajendrasinh Bhamboo Infra Pvt. Ltd.**
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District Hingoli-431702

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And

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- 15. Mr. Narendra Kachardas Parakh,**
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- 17. Mr. Mahavir Parasmal Parakh**
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- 18. Mrs. Vandana Surendra Jain,**
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- 19. Mr. Shanitilal Bhikamchand jain,**
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....Respondent(s)

Counsel for Appellant(s):

Mr. Nitin Lonkar, Advocate

Counsel for Respondent(s):

Mr. Rahul Garg, Advocate for R-1

Mr. Aniruddha Kulkarni, Standing Advocate for R-2

Mr. Vilas Jadhav, Advocate for R-3

Mr. Saurabh Kulkarni, Advocate for R-6

PRESENT:

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Reserved on : 06.02.2023

Pronounced on : 22.02.2023

Judgment

1. This application has been filed under Sections 14, 15 ,18,19 and 20 of the National Green Tribunal Act, 2010.

2. The brief facts of the case are as follows:

The Respondent No.6/ Rajendrasinh Bhamboo Infra Pvt. Ltd/PP has carried out the 'illegal mining' at Gat No.81/1 and 80/2, Village- Hiswal Bk, Taluk- Nandgaon, District- Nashik. The Respondent No.4/ District Collector, Nashik had issued temporary mining permit dated 12.01.2022 to the Respondent No.6. The Respondent No.6/ Project Proponent did not deliberately obtain prior EC for the impugned project for having excavated 25,000 Brass of Stones, Murom, Sand, etc, by carrying out the illegal mining activities in the above Gat numbers. Therefore, he is liable to be levied the exemplary environmental compensation in terms of the formula derived by the Central Pollution Control Board (CPCB) in O. A. No. 593 of 2017 in the matter of ***Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors.*** An Expert Committee is also required to be appointed to calculate the environmental compensation in terms of the formula laid down by the Central Pollution Control Board (CPCB). The Project Proponent is liable to be prosecuted as per the law. The Project Proponent has not calculated the project cost on the basis of the

schedule of rates approved by the Public Works Department (PWD) of the State of Maharashtra and the cost of the land as held by the Hon'ble Supreme Court of India in the case of ***M/s Goel Ganga Developers India Vs. Union of India through the Secretary & Ors, (Civil Appeal No. 10854 of 2016) para No- 57.*** The Respondent No.6/ Project was expected to protect the existing trees and plant more trees and to obtain prior permission from Local Authority and Tree Authority before felling any standing trees under the provisions of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 and has felled several 25 years old trees for conducting illegal mining. The Respondent No.6/ Project Proponent has not complied with the provision laid down in Office Memorandum dated 01.05.2018 by not earmarking the requisite fund towards the Corporate Environment Responsibility (CER); Office Memorandum dated 04.01.2019 which provided for the Standard Environment Clearance (EC) conditions; Office Memorandum dated 07.07.2021 by seriously neglecting the Standard Operating Procedure (SOP) in respect of violation and non-compliance; Office Memorandum dated 07.09.2021 by not uploading the Environmental Clearance(EC) conditions on PARIVESH Portal. In Para 32 of the O. A. following violations have been noted which have been done on the part the Project Proponent(PP):-

- a. *PP has not got proposed mine area and 7.5 meters wide safety zone demarcated in presence of DMO before taking any effective steps on site.*
- b. *PP has not developed the green belt by planting 1000 nos. Of indigenous trees in 7.5 meters wide safety zone on the periphery of the proposed area with facility of drip irrigation and 1,000 nos. Of indigenous trees along the approach road before taking any effective steps on site.*
- c. *PP has not provided dry wall of around one meter along with barbed wire fencing to the mining lease area to ensure safety of animals and humans.*
- d. *PP not obtained all the necessary NOC's /permissions from the Competent Authority before commencing work on proposed site.*
- e. *PP has failed to ensure that no mining was done below the depth as approved in the mining plan.*

- f. PP has not ensured that, the quarrying was proposed above the level of aquifer to avoid the ground water contamination/ degradation of water quality of aquifer.*
- g. PP has not taken the adequate measures/ precautions to avoid contamination/ degradation of ground water.*
- h. PP has not adhered to the provisions stipulated in the Maharashtra Minor Mineral Excavation(Development and Regulation) Rules, 2013, guidelines issued by MoEF&CC and any other legal requirements as applicable to the proposed activity.*
- i. PP has deliberately failed to ensure strict compliance of all environmental norms, terms and conditions and the Respondent No: District has also failed to strictly monitor the compliance of the environmental norms, terms and conditions.*
- j. PP has not ensured that there was no damage to any fauna and its nesting close to the proposed excavation activities.*
- k. PP has failed to ensure that adequate measures like maintenance of roads, sprinkling of water and plantation was carried out to reduce the dust particulate matter pollution.*
- l. PP has not provided the solar energy, sanitation facility in the Z. P. School in village- Hiswal BK.*
- m. The Respondent No.4 has not ensured proper approach road to the proposed quarry area before granting final mining lease.*
- n. The Respondent No.4 has not ensured that, the proposed quarry area did not fall in the Eco Sensitive area notified by the Government before granting final mining lease.*
- o. PP has not ensured additional air quality monitoring station around the periphery of village.*
- p. Blasting, crushing and transportation of crushed material is not being carried out under covered conditions to avoid any kind of dust pollution.*
- q. PP has not employed dust suppression measures by use of water sprinklers, foggers etc.*
- r. The PP has not undertaken two rows of tree plantation along the lease boundary. Dust absorbing trees shall be planted.*
- s. PP to ensure that, as submitted in detail in SEIAA meeting, all mitigation and monitoring measures to be followed specially around the vicinity of nearest Village human settlement.*
- t. The lease holder shall undertake adequate safeguard measures during excavation of material and ensure that due to this activity, the hydro-geological regime of the surrounding area is not affected.*
- u. PP has not obtained NOC from Forestry & Wild life angle including clearance from the standing committee of National Board for Wild life.*

Hence, it is prayed that the Expert Committee be appointed to assess damage and degradation caused to the environment by the Respondent No.6/ Project Proponent and that exemplary environmental compensation cost upon them be ordered. Further, it is prayed that legal action may be taken against Respondent No.1 and 5 for gross negligence of their part.

3. This matter was first taken up on 01.04.2022 and direction was issued to send notices to the Respondents and a Joint Committee was also constituted, comprising District Collector and MPCB and the Joint Committee Report was also submitted where- in following is mentioned;

1. *“As per the Maharashtra minor mineral extraction (Development and Regulation) Rules, 2013, under the Chapter No. IV of Clause NO. 58, the committee formed under chairmanship of Hon’ble District Collector, the said Gat No. 81/1 & 80/2 is incorporated in the District Mining plan during the meeting dated 31.12.2021. Then the M/s Rajendra Singh Bamboo Infra Pvt. Ltd. site bearing Gat No. 81/1 & 80/2, A/p- Hiswal(BK), Tal- Nandgaon, Dist- Nashik was granted the mining lease from 12.01.2022 to 15.05.2022 period vide this office letter no kash 15/2GauKhaNi/Kavi 38/2022 issued on 12.01.2022 for 15,000 Brass mining of stone on temporary basis.*
2. *During visit it is observed that no mining activity is in operation & no blasting is in operation. Fencing is done at Gat No. 81/1 & 80/2, A/p- Hiswal(BK), Tal- Nandgaon, Dist- Nashik. The said site is adjacent to old Manmad- Nandgaon road. There is no residential colony in the 2 km periphery from the mining area site. The surrounding area is hilly and plain plateau. At the said site stone mining is done in the approx. 1 hectare to 1.2 hectare area.*
3. *It is observed that out of two Gat Nos, in Gat No. 81/1 approx 1 to 1.20 hectare area stone mining was carried out for Manmad- Nandgaon road construction work. It is observed that the approx. Calculated quantum of stone 80,000 Brass to 85,000 Brass stone mining is done. Out of the around 60,000 Brass excavated stone is found stored in the same premises.*
4. *It seems that Pro. M/s Rajendra Singh Bamboo Infra Pvt. Has violated the terms & conditions mentioned in the mining lease granted order dated 12.01.2022. However, to access the accurate excavation of stone mined measurement through ETS technology is important. Also, to know the actual stock of minor mineral in Gat No. 81/1 & 80/2, A/p Hiswal(BK) Tal Nandgaon, Dist _ Nashik Report shall be sought from PWD department.*

5. *The Proprietor has started mining activity of stone from 13th Jan. 2022 without Environmental Clearance, Environment department Govt. Of Maharashtra & Consent to Establish & operate for stone mining from the MPCB.*
6. *Surrounding to the said site hilly & barren land observed. Around mining site no human habitation approximately 2 km to 3 km periphery. In & around the site premises no green vegetation observed.*
7. *The Project Proponent has dug one bore well in the premises which is dry and presently the source of water is through the tanker. The mine pit area is dry & no water logging observed.*
8. *The representative informed that, the mining activity is temporary for the Construction of Road (A project by GoI), Road Construction from Manmad to nandgaon(21.375Km – NH-753 J)*
9. *Industry representative informed that no open blasting is carried out, only controlled nano technology based blasting is carried out with permission from PESO department in day time as per requirement.*
10. *Considering no compliance observed by the Joint Committee, the board has issued directions to PP dated 29.06.2022 to deposit an amount of Rs. 15,30,000/- (Rupees Fifteen Lack Thirty Thousand) towards the assessment of damage already caused to the environment and recovery of environmental compensation as per “polluter’s Pay Principles” to the Maharashtra Pollution Control Board within a period of 7 days.”*

4. The stand of **Respondent No.6/ Project Proponent** is as follows:

The Respondent No. 07 to 19/ Private Respondents are original landowners of the land and answering respondent has obtained land on lease. The Project is in respect of rehabilitation & upgradation of Jalgaon- Bhadgaon-Chalisgaon-Nandgaon-Manmad Road NH-753 J. The bid of the answering Respondent is found to be the lowest one and accordingly vide letter of Appointment dated 13.08.2021, the answering respondent was declared to be successful bidder. The answering Respondent was requested to furnish a performance security of Rs. 4.21 crores which was complied with. After following all the terms and conditions as specified in the tender document, on 13th October, 2021; the answering Respondent had made an application to the Collector, Nashik requesting for permission **to carry out mining and extraction**

work at the above Gat numbers, to which No Objection Certificates was issued to the answering Respondent for mining at the said land. On 01.11.2021, Consent to Establish under Section 25 of the Water(Prevention and Control of Pollution) Act, 1974 under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Authorization/ Renewal of Authorization under Hazardous Wastes and Other Wastes (Management and Transboundary Movement) Rules, 2016, was given by the Respondent No.4/Maharashtra Pollution Control Board (MPCB). Vide letter dated 13.12.202, addressed to District Mining Officer(DMO), Sub Regional Officer, Maharashtra Pollution Control Board(MPCB) had given consent/ NOC for carrying out temporary construction. The area involved was less than 5 Hectares and the area is outside the Western Ghats Sensitive Area, and accordingly, there is no problem in giving temporary permission to the answering Respondent. On 20th December 2021, Work Order was issued in favour of the answering Respondent and that the letter did not include any condition precedent to obtain Environment Clearance for commencing the work. Vide letter dated 01.11.2021, the Maharashtra Pollution Control Board(MPCB) granted Consent to Operate under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Authorization / Renewal of Authorization under Hazardous Wastes and Other Wastes (Management and Transboundary Movement) Rules, 2016. The Respondent No.4/Maharashtra Pollution Control Board(MPCB) did not direct the answering respondent to obtain EC for mining activity before granting consent. On 12th January, 2022, the District Mining Officer (DMO) Nashik granted permission for commencement of mining work from 12.01.2022 to 12.05.2022, subject to fulfilment of 19 conditions. The said permission also did not speak of any prior EC to be obtained, therefore, the answering Respondent commenced the mining activity for construction of road project after payment of royalty charges to the

Revenue Department. On 10.06.2022, the Respondent No.4/Maharashtra Pollution Control Board (MPCB), issued a show cause notice to the answering Respondent to show as to why action be not initiated against him under the Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981, to which detailed reply was sent on 16.06.2022. The Respondent No.4/Maharashtra Pollution Control Board (MPCB), while according Consent to Establish and Consent to Operate, did not insist for EC as the project was less than five(5) hectares of land and the EC was not prerequisite for such a small-scale activity. All the allegations made in the application are said to be false and baseless. Further, it is mentioned that Entry 1(a) and 7(f) which pertains to mining of minerals and highways under EIA Notification 2006 are as follows:

Project Activity	Category with threshold limit		Conditions if any
	A	B	
1.	Mining, extraction of natural resource and power		

1	2	Generation (for a specified production capacity)		
		3	4	5
1(a)	(i) Mining of Minerals (ii) Slurry pipelines (coal lignite and other ores) passing through national parks/ sanctuaries/ coral reefs, ecologically sensitive areas.	> 50 Ha. Of mining lease area in respect of non-coal mine lease. > 150 ha. Of mining lease area in respect of coal mine lease. > Asbestos mining irrespective of mining area All projects	< 50 ha.> 5 ha. Of mining lease area in respect of non-coal mine lease. < 150 ha. > 5 ha. Of mining lease area in respect of coal	General condition shall apply. Note: Mineral prospecting is exempted;

			mine lease.	
7(f)	Highways	<ul style="list-style-type: none"> i) New national Highways, and ii) Expansion of national Highways, greater than 30 km, involving additional right of way, greater than 20 m involving land acquisition and passing through more than one state. 	<ul style="list-style-type: none"> i) All the state Highways Project; and ii) State Highway expansion projects in hilly terrain (above 1,000 m AMSL) and or ecologically sensitive areas. 	

And thereafter it is submitted that the above provision would show that there was no requirement to obtain prior EC under EIA Notification 2006, as the area required for temporary mining is less than five(5) hectares as the construction of the road in question was for only 21.375 Kms which also did not involve additional right of way, greater than 20m, and also does not pass through more than one State. It is further mentioned that as per Page No. 154, Annexure- IV (Schedule-A) of the tender document, with respect to environment and Forest, no EC was required for the present project as project road length is less than 100 km and it is further clarified that the said document is attached as Exhibit-R. But we find that the same has not been annexed. Further, it is submitted that in the Maharashtra State Government Resolution, dated 14.06.2017 issued by the Forest and Revenue Department, it has been stated that permission for extracting minor minerals upto 25,000 Brass, would be granted by the District Collector. Rule 58 of Maharashtra Minor Mineral Extraction (Development and Regulation)

Rules, 2013, provides for a Committee in every district under the chairmanship of District Collector. Once permission has been granted by the committee, with respect to temporary permit for mining, then there would be no approval/ permission required from District Environment Impact Assessment Authority(DEIAA). On 13.10.2011, the answering Respondent had approached the District Collector, Nashik for grant of permission to carry out mining for construction of the road. On 12.01.2022, following due procedure as mandated by Government Resolution dated 14.06.2017, the District Collector, Nashik, after getting approvals from Officers of Forest Department, Mining Officer, Maharashtra Pollution Control Board, through the District Mining Officer, Nashik, Ground Water Survey and Development Agency, granted permission for commencement of mining work from 12.01.2022 to 12.05.2022 subject to fulfilment of 19 conditions which does not include any precondition to obtain prior EC. The answering respondent has carried out mining activity with utmost care for protection of the environment. It is further submitted that the answering Respondent had made an application under Right to Information Act (RTI) 2006, and obtained reply dated 21.06.2022 which indicated that Collector Nashik passed an order on an application made by one Mrs. Suvarna Dnyaneshwar Jagtap that under Clause 30 of the order it would be the responsibility of Mrs. Suvarna to obtain environmental clearance / permission from SEIAA, before commencing mining. But from the order 12.01.2022 of the District Collector, Nashik, it is evident that there was no stipulation to take prior permission (EC) from the SEIAA. Thus, with due diligence, the answering Respondent followed all the directions issued by the District Collector. Based on the above facts, it is prayed that the application be dismissed.

5. It is further submitted by the answering respondent that averment made in the Joint Committee Report is inconsistent or contrary to the present

reply. The Show Cause Notice issued by the Maharashtra Pollution Control Board (MPCB) on 30.06.2022 as well as the Joint Committee Report are quite contradictory. Para 1 and 2 of the Joint Committee Report, should be proved independently by the Committee. A communication dated 26.05.2022, was made by Tehsildar, Nashik, who had visited the project site and asked the answering Respondent to pay royalty to the tune of Rs. 4,70,81,000/- which was paid. The answering Respondent has followed all the conditions mentioned in the order granting mining lease dated 12.01.2022 and it is wrong to say on the part of the Joint Committee that answering Respondent has violated the terms and conditions mentioned in the mining lease. Consent granted by Maharashtra Pollution Control Board (MPCB) dated 13.12.2021 to the District Mining Officer (DMO) for Respondent No.6/ answering Respondent would indicate that the MPCB is bound by principle of estoppel in levying penalty and the answering Respondent was under the bona-fide impression that he was not required to obtain prior EC for setting up this establishment of mining on temporary basis. The borewell which is alleged to have been done is not operational. It is evident from the fact that no electricity connection was taken for the said borewell and that the source of water was through water tankers. The amount which has been computed by the Joint Committee as per the direction which has been issued by the Maharashtra Pollution Control Board(MPCB) to the answering Respondent vide notice dated 29.06.2022 to deposit a sum of Rs.15,30,000/-is baseless and without any merit and that the Joint Committee Report should be quashed.

6. The stand of **Respondent No.1/ MoEF&CC** is as follows:

Nothing much has been stated in this affidavit which would throw light on the present dispute except the position of law.

7. The stand of **Respondent No.3- MPCB** is as follows:

The reliance has been placed by Maharashtra Pollution Control Board (MPCB) on the Circular vide letter dated 24.03.2017 where-in for stone

quarry activity to be conducted, following decisions for grant of Consent to Establish and Consent to Operate were taken-

- I. *Stone quarry having area 5 hector and above are covered under the Consent regime.*
- II. *Stone quarry having area below 5 hector will comes under the purview of the District Collector/s in the State of Maharashtra, as per their jurisdiction and they will implement the guidelines for Environmentally Sound Operations for Stone quarries issued by the Maharashtra Pollution Control Board.*
- III. *The stone quarry activity is not allowed in the eco sensitive area declared by the Government of India/ Government of Maharashtra/ and any other Government competent authority.*

And in the end, it is submitted that in view of the Notifications issued by the MoEF&CC, orders passed by the Hon'ble Supreme Court of India & Hon'ble NGT, mandating prior EC for mining of minor minerals irrespective of size of the area of mining lease, the Hon'ble NGT may issue appropriate directions as may be deemed fit for grant of temporary mining lease permits for extraction of minor minerals.

In the reply, in the rejoinder affidavit of the applicant dated 10.09.2022 it is submitted that the Maharashtra Pollution Control Board (MPCBP) has issued a Circular dated 03.08.2020 regarding siting criteria for stone quarry in the State of Maharashtra which prohibits permission of mining of stone 1 km from the National Highway and yet in the present case the quarry permission has been granted without following the criteria prohibiting mining within 1 km from the National Highway. The amount of quantity i.e. 80,000 Brass to 85,000 Brass stone which have been extracted as per the Joint Committee Report is wrong as the Circle Field Officer has drawn Panchanama of this site on 25.05.2022 which clearly mentioned that the extracted quantity is 96,000 Brass. The Project Proponent has dug more than one bore well and draws water from this illegal bore well without any permission having been obtained by Central Ground Water Authority. The Project Proponent has started mining activity one month prior to making application to District Mining

Officer(DMO) Nashik. The mining has been done through open blasting in violations of norms without taking separate permission for blasting. The amount which has been calculated by the Joint Committee is of Rs. 15,30,000/- towards the assessment of damage caused to the environment which is negligible and shows complicity of the officers concerned with the Project Proponent who are mining mafiya. The Project Proponent had started mining activity of stone from 13th January 2022 without EC, Consent to Establish and Consent to Operate. The Project Proponent is repeatedly violating the EC norms for commercial benefits as previously also, he was punished in O. A. No. 53/2018(PB) for violating the environmental norms apart from in O. A. No. 15/2022(WZ) with RA 02/2022 and O. A. No. 54/2022(WZ). Therefore, Project Proponent's Company should be blacklisted. The Project Proponent has violated the conditions relating to depth of excavation which is provided under Maharashtra Mines Mineral Act, 2013 to be 6 meter at the most while the Project Proponent has excavated more than 6 meters at every point of quarry, using explosive for blasting devices. The statement with respect to the tree plantation around the lease boundary is false. CTE and CTO shall not be issued to any category of work where prior EC is mandatory as per the EIA Notification, 2006. This regulation has been breached in the present case by the Maharashtra Pollution Control Board authority because the Maharashtra Pollution Control Board(MPCB) ought to have directed to Project Proponent obtain prior EC before according it the said permission. The Project Proponent has also breached the terms and conditions of temporary lease on 12.01.2022, according to which lease holder was required to applicable royalty before commencement of the mining work. The prior EC was required in terms of the judgment of the Hon'ble Supreme Court in Deepak Kumar's case.

The illegally extracted mining stone is 96,0000 Brass and would stand at worth Rs. 26,88,00,000/- in terms of money and that the proposed penalty under Maharashtra Land Revenue Code 1966 was calculated as

five(5) times of the Market value of the mineral extracted which would stand at Rs.134,40,00,000/-. Further, it is submitted that the Project Proponent is indulging in mining activity without clearance from forest department as well. As regards the allegation against the applicant that he is extortionist, the allegation is stated to be false against the applicant but it is admitted by him that he is presently on bail in the case of extortion. In para 36 of the affidavit the compliances which were required to be done on the part of the Project Proponent have been indicated from (a to k). The above requirements are said to have not been fulfilled by the Project Proponent. Rest part of the affidavit contains various judgments delivered by the Hon'ble Supreme Court as well as this Tribunal and various cases under the provision of EIA Notification and provisions of PMLA Act, 2002, under which it is prayed that the Project Proponent should be proceeded against.

8. With respect to the quantum which is found to have been extracted by the Project Proponent from the area in question for which permission was granted, the Joint Committee has assessed that the Project Proponent has extracted between 80,000 to 85,000 Brass stone which is being disputed by the applicant saying that the same is 96,000 Brass but we find that there is no adequate basis provided by the applicant of having arrived at the above mentioned quantity while in the Joint Committee Report the quantity which has been said to be 85,000 Brass on higher side, is the quantity arrived at by the Joint Committee comprising members of the Maharashtra Pollution Control Board (MPCB) and District Mining Officer, therefore the said report would appear to be more authentic to us. Therefore, we go by the quantum as mentioned by the said Joint Committee, which is found to have been extracted by the Project Proponent in violation of the norms. Therefore, we would like to discard the Joint Committee Report only with respect to the mode which has been adopted by it to calculate the amount of Environmental

Compensation and would prefer to go by the mode which was adopted by the Principal Bench of this Tribunal in O. A. 360/2015.

9. On the basis of the above pleadings, the questions which need to be decided in the present case are as follows:

1. Whether The Respondent No.6/ Project Proponent was required to obtain prior EC before undertaking the mining activity in Gat numbers in question?
2. Whether the Respondent No.6/PP has committed any violation of the provisions of law related to environment ? if yes, its effect ?
3. Whether any damage to environment has happened on account of the activity of the Respondent No.6/ PP ? if yes, its effect ?

10. In order reach the conclusion on the above issues we have to take into consideration the legal position which appears to exist as on date.

11. From the side of the learned counsel for the Respondent No.6/ Project Proponent, our attention is drawn to the judgment of this Tribunal (PB) dated 17.02.2022 passed in O. A. No. 68/2020(WZ) **Shri. Rajiv Babasaheb Waman & 11 Ors. Vs. Ministry of Environment, Forest & Climate Change Union of India through Secretary & 11 Ors.** which pertains to operation of stone quarry and stone crushing activity by the Respondent No.11 & 12 in that O.A. in violation of the environmental norms. Allegation were also made in that, regarding blasting to have been conducted without safeguards.

12. The Para- 8 of the said judgment is relevant for our consideration where-in it is recorded that the legal action needs to be taken for mining without EC. EC has to be followed irrespective of the circular of State of Maharashtra dated 12.12.2013 addressed to all Divisional Commissioners and Collectors for grant of temporary permits, in view of the law laid down by the Hon'ble Supreme court in *Deepak Kumar's case (Supra)*. It is recorded in this order that the circular of the State of

Maharashtra for issuing temporary permits does not and cannot dispense with the judgment of the Hon'ble Supreme Court in *Deepak Kumar's case (Supra)*. Doing so will be contempt of order of the Hon'ble Supreme Court. It is duty of the State of Maharashtra to issue clarification in view of the fact that this circular is in defiance of judgment of the Hon'ble Supreme Court to the detriment of environment and rule of law.

13. Further, in this judgment a joint committee which was constituted, was directed to ascertain the status of compliance of stone crusher in terms of requirement of EC/ Consent as per law. Accordingly, the said application was disposed of.
14. In pursuance of this direction issued by the Principle Bench, Revenue and Forest Department State of Maharashtra issued a circular dated 24th March, 2022 which is annexed page No. 1884 of the paper book where-in it has been stipulated that as per the NGT order in O. A. No. 68/2020 dated 17.02.2022 temporary permits without EC shall not be granted.
15. Thereafter, one party by the name of Orange City Stone Crusher Owners' Association, Nagpur approached Hon'ble Bombay High Court at Nagpur Bench through filing Writ Petition No. 2153/2022 together with it other Writ Petition No. 2163/2022 and 2731/2022 were also considered, where-in prayer is made for quashing of communication dated 24th March, 2022. While considering the state prayer, the Hon'ble High Court framed following question "Whether it is permissible for the State Government to require a person interested in obtaining quarry permit under Rule 59 of the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013 (for short Rules, 2013) to submit environmental clearance as a condition precedent by issuing an executive instruction in the nature of impugned communication dated 24th March, 2022."

16. In these three(3) Writ Petitions submission was made by the petitioners that they till very recently, were being granted quarry permits for extraction and removal of minor minerals from the specified area for temporary period of time, not more than 30 days at a time, under Rule 59 of the Rules, 2013, without submitting EC, but with the issuance of communication dated 24th March, 2022 by Respondent No.4 in those writ petitions, the quarry permits were not being issued to them unless they first submitted environmental clearance certificate from the Competent Authority. The contention made before the Hon'ble High Court was that quarry permits were different from quarry leases in the sense that quarry leases were granted usually for five (5) years initially, and extendable upto twenty (20) years, making the quarry leases as long term grants, but in case of quarry permits, the permission is granted only for a period of 30 days at a time, which is limited to the areas specified. Because of this difference, there was prescription of precondition that EC certificate will have to be obtained by quarry owner for obtaining a quarry lease under the Rules of 2013, but no such requirement is there in case of a quarry permit. Further, it was submitted by the petitioners before Hon'ble High Court that Rules of 2013 have been framed following directions of Hon'ble Apex Court in the case of **Deepak Kumar and others Vs. State of Haryana reported in (2012) 4 SCC 629**, therefore, Rules of 2013 now govern the issue. It was further contended that in any case, executive instructions cannot supersede the Rules of 2013, framed under Section 15 of the Mines and Minerals Extraction (Development and Regulation) Act, 1957 (for short, "Act, 1957")
17. It was also mentioned in that judgment that the stand taken by the State Government for issuance of a quarry permit under Rule 59 of the Rules of 2013, it was not necessary to obtain prior EC, the permit being for a short term. According to the State Government, the impugned communication dated 24th March, 2022 had been issued in view of the

above directions of National Green Tribunal vide order dated 17th February, 2022 in O. A. No. 68/2020(WZ)

18. It was also contended from the side of petitioner that National Green Tribunal (NGT) has not considered the nature of the directions issued by the Hon'ble Supreme Court in the case of *Deepak Kumar (Supra)* and has held per incuriam that it was the duty of the State Government to issue a suitable clarification in view of the fact that in the Circular dated 12.12.2013 which clarified that for the grant of temporary quarry permits, there was no requirement of prior submission of EC certificate, goes against the above judgment of the Supreme Court. Further, it was contended that the judgment of the National Green Tribunal (NGT) has been stayed in relation to the appellants there-in by Hon'ble Supreme Court vide order dated 09.09.2022 passed in Civil Appeal Diary No.(S) 25543/2022. Further, it was contended that direction of the Hon'ble Supreme Court regarding submission of the prior EC from MoEF, in the case of leases of minor minerals, has been implemented by the State Government by framing Rules of 2013 as Clause (f) of Rules 11 (5) of the Rules of 2013, provides for making an application for grant of quarry lease as well as the manner in which the application should be made. It was further contended that in case of quarry permits, there was no such requirement of prior EC Certificate, as would be clear from Rule 59 of the Rules of 2013 and the Rule 59 still governs the field as it has not been struck down by any court. Further, it was contended that if an executive instruction is issued in conflict with a statutory provision or any Rule having force of law, it would be the latter which would prevail. The interim direction given by the Apex Court in the case of *Deepak Kumar's case (Supra)* was there only till the time the rules were framed under Section 15 of the Act, 1957.
19. After consideration of the matter by Hon'ble High Court, to give answer to the question framed above, it was thought proper to examine

the background of Rules of 2013 and the nature of the provisions contained therein.

20. While doing so, it has been recorded in the said judgment that in *Deepak Kumar's case (Supra)*, the validity of the auction notice dated 03.06.2011 proposing to auction the extraction of minor minerals, boulders, gravel and sand quarries of an area not exceeding 4.5 hectares in the district of Panchkula, and auction notices dated 08.08.2011 for extraction of minor minerals in the districts of Panchakula, Ambala and Yamnuna Nagar exceeding five (5) hectares was in question. One of the auction notices, which referred to mining leases of less than five(5) hectares stated that the area envisaged under mining leases being of five(5) hectares, no environmental clearance was required to be obtained as per MoEF Notification dated 14.09.2006. The Hon'ble Supreme Court while deciding question, took into consideration recommendations made by the Ministry of Environment and Forest (MoEF) which was stated in its report. The Hon'ble Supreme Court, after taking into consideration the recommendations of the MoEF observed that operation of mines of minor minerals needed to be subjected to strict regulatory measures and that it was also felt necessary to have a relook at the definition of, "minor minerals". It was also observed by the Hon'ble Apex Court, there was necessity of preparation of "comprehensive mines plan" for contiguous stretches of mineral deposits by the respective State Governments and they could also be encouraged to make inclusion of the plan by their appropriate incorporation in the Mineral Concession Rules, 1960 framed by the Ministry of Mines. With the above observations, the Hon'ble Supreme Court issued a direction to the Central Government to take steps to bring into force the Minor Minerals Conservation and Development Rules, 2010 at the earliest and further directed the State Governments and Union Territories to take immediate steps to frame necessary rules under Section 15 of the Act, 1957 taking into consideration the recommendations of MoEF given in its report of March

2010 and model guidelines framed by the Ministry of Mines. The relevant directions given by the Hon'ble Supreme Court is as follows:

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

21. The Hon'ble High Court thereafter has recorded in this judgment that the Rules of 2013 have been framed by the State of Maharashtra by issuing Notification dated 18th July, 2013 in compliance with the directions contained in Para-28 of the judgment of *Deepak Kumar's case (Supra)* in exercise of powers conferred upon the State Government under Section 15 of the Act, 1957.
22. Thereafter, the Hon'ble High Court considered the incidental question as to whether Rules of 2013 give effect to the interim direction of the Apex Court regarding granting of lease of minor minerals and renewal of such a lease for an area of less than five hectares only upon submission of environmental clearance certificate obtained from MoEF or not.
23. The answer to the said question was said to have been indicated in the provisions made in Chapter II of the Rules of 2013 which deals with the procedure for grant of 'quarry lease'. Rule 11 of the said Rules of 2013 provides for the application of 'quarry lease' which as per Clause (f) of the same provides for environmental clearance certificate.
24. The Hon'ble High Court thereafter has recorded in its judgment that it would be clear from the list of documents which were submitted with an application for grant of 'quarry lease' that it must be accompanied with EC Certificate as well, which means that no 'quarry lease' could be granted under Rule 11 (5), unless the application was accompanied with EC certificate. Accordingly, the question framed above has been answered in affirmative
25. Thereafter, the Hon'ble High Court considered the next incidental question by which regimen now the issue of exploitation and extraction of minor minerals is governed ?. Thereafter, considering the same it has

been recorded that the issue of exploitation and extraction of minor minerals would be governed by the regulatory mechanism prescribed in the Rules of 2013.

26. The Hon'ble High Court considered the relevant provisions of Rules of 2013 and has recorded that it finds that these rules contemplate two kinds of regulatory measures for exploitation and extraction of minor minerals. One is that of "quarry lease" and the other is of "quarry permit" which are defined under Rule 2 (r) and Rule 2 (t) respectively, as under:

"Rule 2(r) "Quarry Lease" means a lease to mine, quarry, bore, dig, search for, win, work and transport or carry away any minor mineral specified therein."

"Rule 2 (t) "Quarry permit" means a permit granted under Chapter- IV of these rules to extract and remove any minor mineral in specified quantities and specified time."

27. Thereafter, the Hon'ble High Court went on to clarify that the above definitions would indicate that apparent distinction has been made in Rules of 2013 between 'quarry lease' which is granted under Chapter II and 'quarry permit' under Chapter IV of the said Rules. A 'quarry lease' is about full exploitation of a minor mineral right from searching for it through its excavation and mining to its transportation and includes such operations, as mining, quarrying, boring, digging, searching for, and transporting; while a 'quarry permit' is about obtaining a mined minor mineral and includes only limited operations like extraction and removal of the minor mineral.

28. The Hon'ble High Court has further recorded in its judgment the permit granted for extraction and removal of minor minerals is of short term and is restricted to the specified land with ceiling put on the quantity of minerals to be extracted and removed and is also confined to specific time and volume and Rule 59 read with Rule 61 does not specify the requirement of submission of environmental clearance certificate. It is further held in the said judgment the rule making authority has made

a distinction between 'quarry lease' and 'quarry permit' to the effect that while 'quarry lease' is for a long term period of time, wider in scope of operations, the 'quarry permit' is for a very short and temporary period of time and is confined to limited operations and is intended to achieve the object of urgent and immediate need of minor minerals for various developmental works by striking a balance between the need of protection of environment and the need for undertaking developmental works which are in larger public interest. It is further recorded that for grant of 'quarry permit' under Rule 59, there is another distinguishing feature that it does not have requirement of prior submission of EC certificate. Further, it has been emphasized by the Hon'ble High Court that this distinguishing feature of 'quarry permit' in particular, has rational and proximate relation with the purpose for which 'quarry permit' is granted. The purpose of obtaining an already mined mineral serves the object of meeting an urgent and immediate need for the minor mineral for various developmental works. When an already minor mineral is to be extracted and removed from a limited area and in specific volume and specific time, the rationale behind no requirement of prior submission of environmental clearance certificate would be one of sustainable development where environment and development both go hand in hand. Thus, the question which has been framed by the Hon'ble Court reproduced by us at the beginning has been answered accordingly.

29. This judgment of Hon'ble High Court dated 14.10.2022 has been assailed before Hon'ble Supreme Court in *Go Green Foundation Vs. The State of Maharashtra & Ors.*, where-in notices have been issued but no stay has been granted.

30. Now, in view of above, we are of the opinion that the position of law which should be treated to exist as on date should be the view taken by the Hon'ble Bombay High Court in *Orange City Stone Crusher Owners Association case (Supra)*, according to which the 'quarry permit' which is

issued under rule 59 and rule 61 of the Rules of 2013 does not require prior EC, subject to condition that the distinction made by the Hon'ble High Court is very clear between the 'quarry lease' and 'quarry permit'. 'Quarry lease' has been held to be a long term grant for quarry for minimum five years extendable upto twenty (20) years which includes mining activity apart from other activity as well. But as against that, the 'quarry permit' is interpreted to mean that it would not include the mining activity rather it has been clarified that only the already mined mineral may be permitted to be extracted and transported from specific area for specific time period for the purpose of development work on urgent basis in case of 'quarry permit'. Now, in the case in hand we have to see as to whether the temporary permits which were granted to the Respondent No.6/ Project Proponent include the permission of mining as well or do they permit the Project Proponent only to extract and transport already mined mineral.

31. We find that the provision of application for 'quarry permit' provided under Rule 61 of Rules of 2013, provides that such an application shall be made in Form- P to the Competent Officer and the Form-P which is part of that rule stipulates as follows:

(1) "xxxxxxx

(2) xxxxxxx

(3) xxxxxxx

(i) xxxx

(ii) xxxx

(iii) xxxx

(iv) xxxx

(v) "Minor mineral or minerals which the applicant intends to mine:-"

(vi) Xxx

(vii) Xxx

(viii) Xxx

- (ix) Xxx
- (x) Xxx
- (xi) Xxx
- (xii) Xxx
- (xiii) Xxx
- (xiv) Xxx”

32. It appears from this rule that for purpose of issuance of the grant of short-term permit in respect of minor mineral, it is provided that the applicant needs to disclose the purpose of mining and details of the area etc. Therefore, how could it be taken that the temporary permit would not include the mining activity, rather it would include only extraction and transportation of already mined material, as has been interpreted by the Hon’ble High Court of Bombay? But we are constrained to go by the view which has been taken by the Hon’ble High Court of Bombay, though the same as of now is sub-judice before Hon’ble Supreme Court. But till the Hon’ble Supreme Court comes out with final view on this, we would have to abide by interpretation made in this regard by Hon’ble High Court of Bombay that ‘quarry permit’ is only for extraction and transportation of already mined minor mineral and includes only limited operations like extraction and removal of the already mined minor mineral.

33. From the side of the Applicant, it was vehemently argued that since the ‘quarry permit’ issued under Rule 59 read with 61 of the Rules of 2013 grants permission for exploitation, extraction and transportation, the same would also include act of mining because extraction would be possible only when the mineral has been mined. Therefore, in the case in hand Respondent No.6/ Project Proponent was required to obtain EC in view of the judgment of Hon’ble Supreme Court in the Deepak Kumar’s case.

34. Per contra, the learned counsel for the Respondent No.6/ Project Proponent as well as that of Respondent No.1- MoEF&CC, Respondent

No.2- SEIAA and Respondent No.3-MPCB have argued orally before us that the prior EC is not required in the case of 'quarry permit'. However, we find that in Joint Committee which comprised of SEIAA /MPCB /District Magistrate Hingoli, it has submitted that there is violation on the part of Respondent No.6/ Project Proponent of not obtaining prior EC before undertaking the mining activity under the grant of 'quarry permit'. Accordingly the Joint Committee has held that violation has been committed on the part of the Respondent No.6/Project Proponent.

35. First of all we would like to consider temporary permit which has already been granted in favour of the Project Proponent which has already been cited by us above at page No. 6 & 7 of this judgment. The said permit shows that 15,000 Brass stone has been permitted to be mined for the period between 12/01/2022 and 12/05/2022. This permit has been granted on temporary basis with condition No. 10 saying that permit holder will not be allowed to carry out the 'mining activity' within 50 meter from public road, public buildings, rivers, nalla, water body, railway track etc. The said conditions reflect that in fact the said permit has been given for 'mining activity' while in the subject of that it is recorded 'Temporary Permission for Extraction'. As per the interpretation made by the Hon'ble Bombay High Court Nagpur Bench in case *Orange City Stone Crusher Owners Association (supra)*, the temporary permit would not include the permission for 'mining activity' because that is permissible only under the 'quarry lease' and not under the 'quarry permit'. Pursuant to the said quarry permits, Respondent No.6/Project Proponent has carried out mining activity and has extracted minerals to the tune of 80,000 to 85,000 Brass from Gat No. 81/1 and Gat No. 80/2. It is apparent that this quantity has been extracted after mining activity having been resorted to, which was not permissible under quarry permit as per the Hon'ble High Court of Bombay. Therefore, we find that the quarry permits which have been granted in the form of 'temporary permission for extraction' are not in accordance with the 'quarry permit'

as has been interpreted by the Hon'ble High Court of Bombay and is not supposed to include mining activity, rather permission has been granted only to exploit, extract and transport already mined minor mineral. Therefore, we find these temporary permissions for extraction are not in accordance with the judgment of the Hon'ble High Court of Bombay cited above, these permits need to be quashed.

36. The Principle Bench of this Tribunal in Original Application No. 360/2015 (with Report dated 30.01.2020) vide order dated 26.02.2021 dealt with environmental compensation for illegal sand mining and observed-

“Scale of compensation for violations on polluter pays principle

10. Vide order dated 17.08.2020, the Tribunal considered the CPCB report dated 30.01.2020, in pursuance of earlier orders on scale of compensation to be recovered for violation of norms for mining on polluter pays principle and the matter was deferred for further consideration of such scale and further orders in the light of the EMGSM 2020. On the issue of scale of compensation for violations, the Tribunal held that the same has to be calculated having regard to the polluter pays principle and not mere loss of royalty. This requires taking into account value of the illegally mined material and cost of restoration of the environment. CPCB did the exercise by constituting an expert Committee. The Tribunal considered the report as follows:-

“8. The Committee considered two approaches:

(I) Approach 1: Direct Compensation based on the market value of extraction, adjusted for ecological damages.

(II) Approach 2: Computing a Simplified NPV (Net Present Value) for ecological damages.

9. In the first approach, the criteria adopted is:

- Exceedance Factor (EF).
- Risk Factor (RF).
- Deterrence Factor (DF).

10. Approach-I is demonstrated by Table 1 as follows

“Table No. 01: Approach 1

Permitted Quantity (in MT or m ³)	Total Extraction (in MT or m ³)	Excess Extraction (in MT or m ³)	Exceedance in Extraction:	Compensation Charge (in Rs.)
X	Y	Z = Y-X	Z / X	D (Market Value) * (1+RF + DF) Where D = Z x Market Value- of the material-per-MT-or-m ³ DF = 0.3 if Z/X = 0.11 to 0.40 DF = 0.6 if Z/X = 0.41 to 0.70 DF = 1 if Z/X >= 0.71 RF = 0.25, 0.50, 0.75, 1.00 as per table 2)

11. Approach-II is demonstrated by following formula:-

“Till such time as data and information for a comprehensive NPV is worked out in a site specific manner to account for all (or at least the major) ecological damages, a simplified NPV, proxied on the market value of the illegally extracted amount may be computed. In this case the NPV approach would imply that the total benefits from the activity of sand mining (as represented by the market value of the extracted amount) be deducted from the total ecological costs imposed by the activity. In the absence of data on benefits and costs separately, we recommend a modification of the formula as shown below:

*Total Benefits (B) = Market Value of illegal extraction: D
(refer Table 1)*

*Total Ecological Costs = Market Value Adjusted for risk factor:
 $D * RF$ (refer Table1).*

For present purposes, it is assumed that the Benefits would accrue only in the first year (in which the extraction of the illegally mined material takes place), while the ecological costs would continue to be felt over a period of time. NPV is to be calculated for a period of 5 years on the net value, $\Sigma (C-B)$, at a discount rate ranging from 8%- 5%, varying in inverse with the risk factor. Thus, where the highest risk factor (say 1) is applicable, the discount rate applicable would be the lowest (say 5% in this case).”

12. Final recommendation is as follows:

“Thus, it is recommended that the annual net present value (NPV) of the amount arrived at after taking the difference between the costs and the benefits through the use of the above approach, maybe calculated for a period of 5 years at a discount rate of 5% for mining which is in a severe ecological damage risk zone. The rationale for levying this NPV is based on expert opinion that reversal and/or restoration of the ecological damages is usually not possible within a short period of time and rarely is it feasible to achieve 100% restoration, even if the sand deposition in the river basin is restore through flooding in subsequent years. The negative externalities of the mining activity are therefore to be accounted for in this manner. Ideally, the worth of all such damages, including costs of those which can be restored should be charged. However, till data on site- specific assessments becomes available, this approach may be adopted in the interim. In situations where the risk categorization charged. However, till data on site-specific assessments becomes available, this approach may be adopted in the interim. In situations where the risk categorization is unavailable or pending calculation, the following Discount Rates may be considered:

<i>Severity</i>	<i>Mild</i>	<i>Moderate</i>	<i>Significant</i>	<i>Severe</i>
<i>Risk Level</i>	1	2	3	4
<i>Risk Factor</i>	0.25	0.50	0.75	1.0
<i>Discount Rate</i>	8%	7%	6%	5%

13. Annexure-A appended to the report gives the calculation as follows:

“Compensation Charge (Scenario II - explicit

accounting of NPV) Market Value of Illegally Mined

*Material (D) 5000*400 = 2000000/*

*Annual Value of Foregone Ecological Values D*RF =*

2000000/-

Present Value of Foregone Ecological Values (@ 5% discount rate and over 5 years)

$$\begin{aligned}
 PV &= \sum_{t=1}^5 \frac{(D+RT)}{(1+r)^t} \\
 &= \frac{(2000000)}{(1+0.05)^1} + \frac{(2000000)}{(1+0.05)^2} + \frac{(2000000)}{(1+0.05)^3} + \frac{(2000000)}{(1+0.05)^4} + \frac{(2000000)}{(1+0.05)^5} \\
 &= \text{Rs. } 86,58,953/-
 \end{aligned}$$

Net Present Value (after netting out market value of illegally mined material) -i.e., Total Compensation to be levied

= NPV = PV - D

= Rs. 66,58,953/-

Compensation Charge in above case:

<i>Approach 1 (no explicit accounting of NPV)</i>	<i>Approach 2 (explicit accounting of NPV)</i>
<i>D*(1+RF+DF)</i>	<i>@ 5% discount rate and over 5 years</i>
<i>Rs. 46,00,000/-</i>	<i>Rs. 66,58,953/-</i>

14. The Tribunal directed undertaking of scenario analysis, as suggested on behalf of the applicant and to furnish a further report accordingly. Further report dated 12.10.2020 has been filed by the CPCB reiterating its earlier report. We propose to approve

approach- 2 in the report. Apart from the above, a report dated 15.01.2021 has been filed by the Oversight Committee for the State of UP3 to which reference will be made later.”

37. Following the above procedure in the present case we have computed EDC as follows-

Compensation as per Approach-1

Permitted Quantity	Total Extraction	Excess Extraction	Exceedance in %	Market Rate	Market Value of illegally Mined Material	Ecological Damages ²	Total Compensation
Brass	Brass	Brass		Rs per Brass ¹			
X	Y	Z = Y-X	$E=(Z/X)*100$	M	MV=Z*M	ED=MV*DF+MV*RF	TC=D+E
0	85000	85000	Infinity	900	76500000	114750000	191250000

¹as per Joint Committee Report PB page 987 in OA 54 of 2022

²Deterrence factor =1 as exceedance is more than 100% and Risk factor =0.5 as risk is considered moderate.

Compensation as per Approach -2 -

Year	Market Value of illegally Mined Material(MV) x RF	Factor (F) in denominator	Present Value (PV)
		$F=(1+DR)^{Year}$	= Market Value / Factor
1	38250000	1.07	35747664
2	38250000	1.14	33409031
3	38250000	1.23	31223394
4	38250000	1.31	29180742
5	38250000	1.40	27271721
PV			156832552
NPV	PV-MV		80332552

* Discount rate is taken as 7% as risk is considered moderate

Compensation Charges in present case as per the two approaches are as follows:-

<i>Approach 1 (no explicit accounting of NPV)</i>	<i>Approach 2 (explicit accounting of NPV)</i>
Rs. 19,12,50,000/-	Rs 8,03,32,552/-

38. Since in the Original Application No. 360/2015, the amount of compensation charge has been calculated from Approach- I & Approach -II and the higher one was taken to be the compensation charge, which was made chargeable in the case in hand also,

following the same, we are of the view that the environmental compensation charge of the higher amount, which has been arrived at by adopting Approach-II, should be realized from the Project Proponent.

39. We have also considered EDC worked out by the Joint Committee as Rs. 15,30,000/- However we consider methodology used in Original Application No. 360/2015 (With Joint Committee report dated 30.01.2020) order dated 26.02.2021 more appropriate and hence EDC to be recovered is Rs 19,12,50,000/-

40. We conclude that-

1. In view of the above, Issue No.1 is decided in affirmative to the effect that, EC was required since the activity involved mining of the minor mineral.
2. As per issue No.2 we have to decide as to whether Respondent No.6 has committed any violations of the provision of law related to environment ? if yes, its effect. In this regard, we find that since the activity of mining has been conducted by the Respondent No.6/ Project Proponent without taking prior EC, the same is treated to be violation which impacts environment adversely. Therefore, this issue is decided accordingly. The Joint Committee report has also concluded that the prior EC was required to be obtained by the Respondent No.6/ Project Proponent before the carrying out the mining activity.
3. As per the issue No.3 we have to decide as to whether any damage to environment has been caused on account of the activity of the Respondent No.6/PP ? if yes, its effect?. In this regard, we are relying on EDC calculated by us based on the several earlier judgments passed by this Tribunal, and we decide this issue in affirmative, holding that on account of the illegal mining damage caused to the Environment is rightly

quantified at Rs. 19,12,50,000/- We decide this issue accordingly.

41. In view of the above findings, we dispose of this application with following directions:

1. The MPCB shall realize a sum of Rs. 19,12,50,000/- from the Respondent No.6/ Project Proponent who is directed to deposit the said amount with the Maharashtra Pollution Control Board(MPCB) within a period of one month from today and in the case the said amount is not deposited, the MPCB would be at liberty to take appropriate action for its realization.
2. The said amount shall be utilized by MPCB in consultation with District Collector and District Mining Officer for restoration of the environmental damage due to activities of Respondent No.6/ Project Proponent within a period of six months, after the said amount is deposited.
3. Report of remediation actions implemented along with benefits achieved shall be submitted by MPCB to the Registry of this Tribunal. This report shall also be posted on MPCB website.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

February 22, 2023.
Original Application No. 28/2022
Sachin J.

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

Original Application No. 54/2022 (WZ)

IN THE MATTER OF :

1. Mr. Dattatraya Phalke,
'MANSING RESIDENCY'
Taljai Pathar Dhankawadi,
Pune 411043
E-mail: ajitpetroleum@gmail.com

.....Applicant

Versus

- 1. The Union of India,**
Through the Secretary,
Ministry of Environment, Forest and
Climate Change Impact Assessment Division,
Government of India,
Indira Paryavaran Bhavan, Jor Bagh Road,
Aliganj, New Delhi-110003.
E-mail: mefcc@gov.in
- 2. State Level Environment Impact Assessment Authority-
Maharashtra(SEIAA)**
Through Member Secretary,
Environment Department,
Room No. 217, 2nd floor,
Mantralaya Annexe, Mumbai-400032, Maharashtra
E-mail: mahaseiaa@gmail.com
- 3. Maharashtra Pollution Control Board,**
Through Member Secretary,
Kalptaru Point, 3rd Floor, Near Sion Circle,
Opp. Cine Planet Cinema, Sion(E),
Mumbai-400022, Maharashtra
E-mail: ms@mpcb.gov.in
- 4. The District Collector,**
As district collector and
President of Environment Committee,
Hingoli-431513
E-mail: rdc.hingoli@maharashtra.gov.in
- 5. The Kalamnuri Tahsildar,**
Taluk: Kalamnuri, District : Hingoli
E-mail: tahsilkalamnuri@gmail.com
- 6. Rajendrasinh Bhamboo Infra Pvt. Ltd.**
Gat No. 41 and 42,
Devdari, Taluk: Kalamnuri,
District Hingoli-431702
Email: rsbiplwaranga@gmail.com

And

Rajendrasinh Bham boo Infra,
Pvt. Ltd. 108, First floor,
Nilkanth Building, Gandhi,
Path, Vaishalinagar,
Jaipur-302021
Email: rajendrabhambboo@yahoo.co.in

7. Mrs. Vanmala Uttamrao Shinde (Land Owner)

Near Old Bus stand,
Kalamnuri, Taluk: Kalamnuri,
District: Hingoli-431702
Email: vanmalashinde@gmail.com

8. Mr. Vaibhav Gajkumar Burse (Land Owner)

Burse Galli, At post- Kalamnuri, Tal- Kalamnuri,
Dist- Hingoli.
Email: vaibhav-burse@gmail.com

9. Mr. Nemichand Bhagirath Mal (Land Owner)

At post- Bhosi, Tal- Kalamnuri,
Dist- Hingoli
Email: Nemi2020@gmail.com

....Respondent(s)

Counsel for Appellant(s):

Mr. Nitin Lonkar, Advocate

Counsel for Respondent(s):

Mr. Rahul Garg, Advocate for R-1
Mr. Aniruddha Kulkarni, Standing Advocate for R-2
Mr. Vilas Jadhav, Advocate for R-3
Mr. Nitin Deshpande, Advocate for R- 4 and R-5
Mr. Saurabh Kulkarni, Advocate for R-6

PRESENT:

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Reserved on : 06.02.2023
Pronounced on : 22.02.2023

Judgment

1. This Application has been filed with the prayers that Project Proponent Rajendrasinh Bhamboo Infra Pvt. Ltd./ Respondent No.6 be blacklisted for having violated environmental norms for his commercial benefits repeatedly, as previously also it was punished by imposing Environmental Compensation in O. A. 53/2018 by this Tribunal (Principal Bench) and is continuing to violate the environmental norms

for which O. A. 15/2022 (WZ) and O.A. 28/2022(WZ) are pending; a Committee of the Experts be appointed to assess the irreparable damage caused to the environment and be further directed to stop illegal mining activity.

2. The brief facts of the case are as follows:

The Respondent No.6/Project Proponent has carried out the “*Illegal Mining*” at Gat No. 41 and 42, Village Devdari, Taluk: Kalamnuri, District : Hingoli and Gat No. 113, Village- Bhosi, Taluk- Kalamnuri, District- Hingoli. As per the Office Memorandum dated 01.05.2018, the Project Proponent is supposed to earmark the funds towards the Corporate Environment Responsibility(CER) activities, which is in addition to the estimated cost of Impugned Project. Vide Office Memorandum dated 04.01.2019 , the Project Proponent has to follow standard Environmental Conditions which are as follows:

- i. Statutory compliance conditions,*
- ii. Air quality monitoring and preservation conditions,*
- iii. Water quality monitoring and preservation conditions,*
- iv. Noise monitoring and preservation conditions,*
- v. Energy conservation measures conditions,*
- vi. Water management conditions,*
- vii. Green cover conditions,*
- viii. Transports conditions,*
- ix. Human health issues*
- x. Corporate Environment Responsibility.*

3. The Respondent No.4/ The District Collector Hingoli had issued temporary mining permit orders vide letters dated 08.02.2022 and 10.03.2022 to the Respondent No.6, regarding the Mining work at Gat No. 41 Village: Devdari, Taluk: Kalamnuri, Districti Hingoli and vide letter of the same date temporary permit regarding mining work at Gat No. 113, Village-Bhosi, Taluk- Kalamnuri, District- Hingoli. The Project Proponent has not deliberately obtained the prior Environmental Clearance for Impugned Project and has excavated more than 4,50,000 Brass of Stones, Murom and Sand, etc., illegally. The Project Proponent was expected to protect the existing trees and plant more trees and was

required to obtain prior permission from 'Tree Authority' for felling any trees standing on the survey numbers in question, but no such permission was obtained and has felled several trees more than twenty five (25) years old in pursuance of illegal mining activity. By not taking prior EC, Project Proponent (PP) has seriously violated Environment Impact Assessment (EIA) Notification, 2006, read with the provisions of Environment (Protection) Act, 1986 and has also violated provisions of Section 25 of the Water (Prevention & Control of Pollution) Act, 1974, Section 21 of the Air (Prevention & Control of Pollution Act, 1981 and the Hazardous and other Waste (M&TM) Rules, 2016, He has not taken consent from the State Pollution Control Board and has caused damage to the "Environment and Ecology" beyond repair. The Project Proponent is discharging hazardous pollutants in the form of waste water, solid waste, effluents, hazardous waste, and chemicals, stacks emission, fuel and energy, dust and noise.

4. Further in Para-31 of the application following violations are recorded.

- a. *PP has not got proposed mine area and 7.5 meters wide safety zone demarcated in presence of DMO before taking any effective steps on site.*
- b. *PP has not developed the green belt by planting 1,000 nos. of indigenous trees in 7.5 meters wide safety zone on the periphery of the proposed area with facility of drip irrigation and 1,000 nos. of indigenous trees along the approach road before taking any effective steps on site.*
- c. *PP has not provided dry wall of around one meter along with barbed wire fencing to the mining lease area to ensure safety of animals and humans.*
- d. *PP not obtained all the necessary NOC's /permissions from the competent Authority before commencing work on proposed site.*
- e. *PP has failed to ensure that no mining was done below the depth as approved in the mining plan.*
- f. *PP has not ensured that, the quarrying was proposed above the level of aquifer to avoid the ground water contamination/ degradation of water quality of aquifer.*
- g. *PP has not taken the adequate measures/ precautions to avoid contamination/ degradation of ground water.*
- h. *PP has not adhered to the provisions stipulated in the Maharashtra Minor Mineral Excavation(Development and Regulation) Rules, 2013, guidelines issued by the MoEF&CC and any other legal requirements as applicable to the proposed activity.*
- i. *PP has deliberately failed to ensure strict compliance of all environmental norms, terms and conditions and the Respondent No: District Collector has also failed to strictly*

- monitor the compliance of the environmental norms, terms and conditions.*
- j. PP has not ensured that there was no damage to any fauna and its nesting close to the proposed excavation activities.*
 - k. PP has failed to ensure that adequate measures like maintenance of roads, sprinkling of water and plantation was carried out to reduce the dust particulate matter pollution.*
 - l. PP has not provided the solar energy, sanitation facility in the Z. P. School in village: Devdari and Bhosi.*
 - m. The Respondent No.4 has not ensured proper approach road to the proposed quarry area before granting final mining lease.*
 - n. The Respondent No.4 has not ensured that, the proposed quarry area did not fall in the Eco Sensitive area notified by the Government before granting final mining lease.*
 - o. PP has not ensured additional air quality monitoring station around the periphery of village.*
 - p. Blasting, crushing and transportation of crushed material is not being carried out under covered conditions to avoid any kind of dust pollution.*
 - q. PP has not employed dust suppression measures by use of water sprinklers, foggers etc.*
 - r. The PP has not undertaken two rows of tree plantation along the lease boundary, Dust absorbing trees shall be planted.*
 - s. PP to ensure that, as submitted in detail in SEIAA meeting, all mitigation and monitoring measures to be followed especially around the vicinity of nearest village human settlement.*
 - t. The lease holder shall undertake adequate safeguard measures during excavation of material and ensure that due to this activity, the hydro-geological regime of the surrounding area is not affected.*
 - u. PP has not obtained NOC from Forestry & Wild life angle including clearance from the standing committee of the national Board for Wild Life.”*

In view of the above, the prayers which have been cited above have been made.

5. This application was first considered by us on 30.05.2022 and thereafter on 06.07.2022 and on that date, a Joint Committee was constituted by us which was directed to visit the site and submit a factual and action taken report on following points.

- A. “Whether leasing of private land for mining by land owners to Respondent No.6 at fixed compensation is allowed as per MMR Rules, 2017,*
- B. Whether EC for mining was obtained;*
- C. Whether CTE/CTO for mining was obtained;*
- D. How many temporary permits were granted and under which rules?;*
- E. Whether excavated material was exclusively used for road construction;*
- F. What was actual quantity of quarried material;*

G. *Work out environmental compensation amount and also prepare remediation plan, if quarrying was carried out without permissions.”*

Besides that, the Respondents were directed to be issued notices. As per the service affidavit, service on all the respondents is sufficient.

6. The Joint Committee has submitted its report in compliance with our order dated 06.07.2022, which is as follows:

*5.0 Response to issues raised by Hon’ble NGT.
Response specifically with reference to reply received from DMO Hingoli vide letter No. Ja/Kr. 2022/Gau. Kh./KaVi, dated 11/08/2022 following para wise reponse is collated*

Sr. No.	Points	Reply
A	Whether leasing of private land for mining by land owners to respondent No.6 at fixed compensation is allowed as per MMR Rules, 2017.	<p>DMO Hingoli has submitted that the Metaliferous Mines Regulation, 2017, could not be referred as it is not in existence. It should be read as MMR- 1996 and comes under Mines Act 1952. Under its purview, lease related matters do not fall under above- mentioned Act/Regulation. Mines Act as well as MMR-1961 is applicable to mines / quarries under the following conditions:</p> <ol style="list-style-type: none"> 1. If excavation exceeds 6 meters; 2. If employment exceeds 20 persons; 3. If drilling and blasting is carried out. <p>It focuses on the safety and method of working criteria in aforesaid conditions. Lease related considerations fall under the purview of MMDR Act 2015 (Amendment) (Mines and Mineral Development Regulation Act-2015). Before amendment, it was called MMDR Act- 1957. If mineral falls under Minor category, rule applicable is Minor Mineral Rule, 2013.</p>

		<p>Under the Circular for National Highway work to provide Minor Mineral from Maharashtra Government, Revenue and Forest Department, number Gokhni10/0416/pr. Kra. 302/kha, dated 14.06.2017(Under the Provision of Section 48, MLRC 1966 and Maharashtra Minor Mineral Extraction(Development and Regulation) Rules, 2013 and Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013 as per Chapter Number 4 Rule 59, there is provision to grant short term permit for minor minerals on any specified land.</p>
B	<p>Whether EC for mining was obtained.</p>	<p>No EC was obtained.</p> <p>The letter addressed by Dy. Secretary, Govt. of Maharashtra vide No. GKN-10/0812/C. No. 613/B, dated 12/12/2013, was related to no need of environmental clearance for short term permit of minor mineral as per chapter No.4 of Maharashtra Minor Mineral Extraction (Development & Regulation) Rules, 2013.</p> <p>Recently, the letter addressed by Joint, Secretary, Govt. of Maharashtra vide No. GKN-10/1221/C No. 320/ KH-2 dated, 24/03/2022. Through this letter, instructions have been given that do not issue temporary permit of minor mineral without EC. As per these instructions, the District collector Office will not allow permission for minor minerals without EC.</p>
C	<p>Whether CTE/CTO for</p>	<p>No CTE/ CTO for mining was obtained.</p> <p>As per MPCB Circular No. BA/JD(ACP)/TB-3/B-1245,</p>

	mining was obtained.	dated 24/ 03/2017, stone quarries having area 5 ha. And above are covered under Consent regime. Stone quarries having area below 5 ha will come under purview of the District Collector in the state of Maharashtra.
D	How many temporary permits were granted and under which rules?	In Mouje Devdhari Gut No.41, total 4 short term permits were granted for total quantity 70,000 Brass stone, royalty 10 % DMF on royalty amount i. e. 37 Lakh and Mouje Bhosi Gut No. 113 total 4 short permits were granted for total quantity 55,000 Brass Stone, royalty paid by National royalty amount i. e. 33 Lakh, under Circular for National Highway work to provide minor mineral from Maharashtra Government, Revenue and forest department, number Gokhni10/0416/pr.kra.302/kha, dated 14.06.2017, (under Minor Mineral Extraction (Development and Regulation) Rules, 2013 and in Maharashtra Minor Mineral Extraction(Development and Regulation) Rules, 2013 as per chapter Number-4.
E	Whether excavated material was exclusively used for road construction.	Yes, Extracted material was exclusively used for the National Highway Number 161 Pangra to Waranga Phata in Hingoli District. But, National Highway Authority of India (NHAI) is controlling Authority for National Highway construction work. For more clarity, the information will be submitted after taking report from National Highway Authority.
F	What was actual quantity of	ETS measurement was conducted on 05.08.2022 for gut No. 113 & dated 06.08.2022 for Gut No. 41, 42, the report of ETS measurement of the aforesaid Gut

	quarried material	<p>nos. received on dated 10.08.2022 from Tahasildar, kalamnuri.</p> <p>The details of ETS measurements are as follows:</p> <table border="1" data-bbox="654 416 1549 967"> <thead> <tr> <th data-bbox="654 416 824 639">Gut No./Sur. No.</th> <th data-bbox="824 416 967 639">Avg. Length (M)</th> <th data-bbox="967 416 1094 639">Avg. Width (m)</th> <th data-bbox="1094 416 1198 639">Area (ha)</th> <th data-bbox="1198 416 1344 639">Avg. Depth (M)</th> <th data-bbox="1344 416 1549 639">Quantity (Brass)</th> </tr> </thead> <tbody> <tr> <td data-bbox="654 639 824 747">113</td> <td data-bbox="824 639 967 747">664</td> <td data-bbox="967 639 1094 747">57.5</td> <td data-bbox="1094 639 1198 747">3.81</td> <td data-bbox="1198 639 1344 747">5.9701</td> <td data-bbox="1344 639 1549 747">80,382.48</td> </tr> <tr> <td data-bbox="654 747 824 862">41</td> <td data-bbox="824 747 967 862">371.5</td> <td data-bbox="967 747 1094 862">69</td> <td data-bbox="1094 747 1198 862">2.56</td> <td data-bbox="1198 747 1344 862">5.5106</td> <td data-bbox="1344 747 1549 862">49,907.8</td> </tr> <tr> <td data-bbox="654 862 824 967">42</td> <td colspan="5" data-bbox="824 862 1549 967">No mining permission granted.</td> </tr> </tbody> </table>	Gut No./Sur. No.	Avg. Length (M)	Avg. Width (m)	Area (ha)	Avg. Depth (M)	Quantity (Brass)	113	664	57.5	3.81	5.9701	80,382.48	41	371.5	69	2.56	5.5106	49,907.8	42	No mining permission granted.				
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41	371.5	69	2.56	5.5106	49,907.8																					
42	No mining permission granted.																									
G	Work out environmental compensation amount and also prepare remediation plan, if quarrying was carried out without permissions.	<p>Contractor of National Highway No. 161 Pangra to Waranga Phata, Rajendraingh Bhamboo Infra Pvt. Ltd. has taken permission as short- term permit from the Collector Office for extraction of stone for national Highway work, from Gat No. 41 village Devdari, and Gat No. 113, Village Bhosi, Taluka Kalamnuri, District Hingoli.</p>																								

6.0 Status of mining and stone crushing activities:

As per the information provided by the District Mining Officer, Office of the Collector, Hingoli, vide letter No. Ja/kr..2022/Gau.kh./kaVi. Dated 11.08.2022, short term permissions given to M/s. Rajendrasingh Bhamboo Infra Pvt. Ltd. In Mouje Devdhan Gut No. 41, total 4 short term permits were granted and Mouje Bhosi Gut No. 113 total 4 short permits were granted under Circular for National Highway work to provide minor mineral from Maharashtra Government, Revenue and Forest Department, number of Kokhni 10/0416/pr. Kra.302/kha dated 14.06.2017 (under the provision of MLRC 1986 Section 48 and Maharashtra Minor Mineral Extraction(Development and Regulation) Rules, 2013 and as per Chapter Number 4 of Maharashtra Minor Mineral Extraction(Development and Regulation) Rules, 2013.

As per the information provided by MPCB, 2 nos. of stone crushers are operating at Gut No.42 village Wai, and Gat No.57 village Dati, Taluka Kalamnuri, District Hingoli, consent to operate has been issued to stone crushers by the MPCB subject to the siting criteria;

- Minimum distance required from the Nearest National Highway-1Km.
- Minimum distance required from the nearest State Highway- 500m and or major District roads and other roads -200m
- Minimum distance required from human habitation- 500m
- Minimum distance required from sensitive areas such as Educational Institutions/ Hospitals- 500m
- Minimum distance required from place of historical monuments identified by Archaeological Survey of India- 500m
- Stone crusher should comply with other local statutory requirements which are in place, as per the law.
- Adequate pollution control system shall be provided to vibrating screen as well as water sprinkling arrangement at jaw crusher and within premises of stone crusher to be provided.

As per information provided by District Mining Officer, Hingoli, the details of stone leases given to M/s Rajendrasingh Bhamboo Infra Pvt. Ltd. in the District of Hingoli, is given below in Table-1

Table-1 Details temporary mining lease permits issued to M/s Rajendrasingh Bhamboo Infra Pvt. Ltd. in the District of Hingoli.

Sr. N.	Location of stone mine	Date of temporary permissions with validity.	Permitted quantity of stone (Brass)
1.	Gat No.41 Village Devdari, Taluka Klamnuri Disti- Hingoli.	30.06.2021, valid for 6 months.	25,000
2.	Gat No. 41 Village Devdari, Taluka Kalamnuri, Dist. Hingoli.	08.02.2022, valid for 75 days.	10,000
3.	Gat No. 41 Village Devdari, Taluka	10.03.2022, valid for 75 days.	10,000

	Kalamnuri, Disti- Hingli.		
4.	Gat No. 41 Village Devdari, Taluka Kalamnuri, Dist. Hingoli	15.03.2022, valid for 5 months	25,000
5.	Gat No. 113, Village bhosi, Taluka Kalamnuri, Dist. Hingoli.	18.10.2021, valid for 3 months	10,000
6.	Gat No. 113, Village Bhosi, Taluka Kalamnuri, Dist. Hingoli.	08.02.2022, valid for 75 days	10,000
7.	Gat No. 113, Village Bhosi, Taluka Kalamnuri, Dist. Hingoli.	07.03.2022, valid for 75 days	10,000
8.	Gat No. 113, Village Bhosi, Taluka kalamnuri, Dist- Hingoli	16.03.2022, valid for 5 months	25,000

MPCB has issued circular vide No. BO/JD(ACP)/TB-3/B-1245, dated 24/03/2017, regarding policy for grant of consent to stone quarries in the state of Maharashtra. Copy of the aforesaid circular vide dated 24/03/2017 is given at Annexure-X and the relevant paragraphs are reproduced as below:

“..... I. Stone quarry having area 5 Hector and above are covered under the Consent regime.

II. Stone quarry having area below 5 hector will comes under the purview of the District collector/s in the State of Maharashtra, as per their jurisdiction and they will implement the Guidelines for Environmentally sound operations for Stone quarries issued by the Maharashtra Pollution control Board...”

CPCB in compliance of the Hon’ble NGT order, dated 28.02.2020, in OA No. 304 of 2019, M. Haridasa & Ors. Vs. The State of Kerala, examined the matter and prepared a report on “ Distance criteria for permitting stone quarrying” and forwarded for adoption by all SPCBs/PCCs in their consent

mechanism. Based on the aforesaid guidelines, MPCB vide No. MPCB/JD(APC)/Stone Quarrying/ B-200803FTS-0006, dated 03.08.2020, issued a circular regarding "Siting criteria for stone quarries in the state of Maharashtra" for enforcement in the state of Maharashtra. Copy of the aforesaid MPCB circular vide dated 03.08.2020 is given at Annexure-XI.

7.0 Conclusions:

- i. The temporary mining lease permits for extraction of minor minerals are given on the basis of Rule 58 & 59 of the Maharashtra Minor Mineral Exploration (Development & Regulation) Rule, 2013; Govt. of Maharashtra vide letter dated 12.12.2013 and as per the Notification of the Revenue and Forest Department, dated 14.06.20174, doesn't mandate for obtaining environmental clearance from the state/ District Level Committee for such temporary mining lease permits for extraction of minor minerals. As per said rules, temporary permit proposals were included in District Mining Plan on dated 29/04/2021 (Gat No. 41, Village, Devdari) and dated 24.09.2021 (Gat No.113, Village, Bhosi) and procedure for approval of temporary permit was undertaken. In addition to the above, as per the Notification of Government of Maharashtra, Extraordinary Gazette, Part 4B No. 113, dated 18.07.2013, as Maharashtra Minor Mineral Extraction(Development & Regulation) Rules, 2013, Chapter-I (One), it is mentioned in paragraphs A to D about the minor mineral excavation transportation permit with the provision to approve the District Mining Plan for temporary permit by confirming necessity. Accordingly, temporary mining permit was issued.
- ii. In pursuance to the Order of the Hon'ble Supreme Court, dated 27.02.2012 in I. A. No. 12-13 of 2011 in Special Leave Petition(Civil) No. 19628-19629 of 2009, in the matter of Deepak Kumar etc. Vs. State of Haryana and others etc., prior environmental clearance has now become mandatory for mining of minor minerals irrespective of the area of mining lease.
- iii. Ministry of Environment, Forest and Climate Change Vide S. O., 141(E), dated 15.01.2016, issued Notification that prior environment clearance is mandatory for all minerals (major as well as minor) irrespective of size of the mine lease. Also, has delegated the authority of Environmental clearance up to five hectares of individual mining lease of minor minerals and 25 hectares in clusters to the District Environment Impact Assessment Authority(DEIAA), headed by the District Magistrate/ District Collector. Also, Ministry of Environment, Forest and Climate Change vide S. O. 1224(E), dated 28/03/2020, issued Notification regarding the list of exemption of certain cases from the requirement of environmental clearance wherein the extraction of minor minerals (Stone/ boulder/murum/soil) as considered in the District Mining Outline/Plan.
- iv. Hon'ble NGT vide order dated 27.08.2018 in Original Application No. 186/2016 (M. A. No. 350/2016(PB), New Delhi in the matter of Satendra Pande Vs. Ministry of Environment, Forest and Climate Change & Anr. Directed

the MoEF&CC to take appropriate steps to revise the procedure laid down in the impugned Notification, dated 15.01.2016, with regard to delegation of powers of the DEIAA to grant environmental clearance up to 5 ha of individual mining lease of minor minerals and 25 ha in clusters. Whereas, mandating prior environmental clearance for mining of minor minerals in compliance to the Hon'ble Supreme Court, dated 27.02.2012, in I. A. No. 12-13 of 2011 in Special Leave Petition (Civil) No. 19628-19629 of 2009, in the matter of Deepak Kumar etc. Vs. State of Haryana and others etc.

In compliance to the aforesaid Hon'ble NGT order, dated 27.08.2018, and MoEF&CC issued Office Memorandum, dated 12.12.2018 mentioned that "...Form-1 M be made more comprehensive for area of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant of EC by SEIAA instead of DEAC/DEIAA.."

- v. MPCB has issued circular vide dated 24.03.2017 regarding policy for grant of consent to stone quarries in the state of Maharashtra and the stone quarry having area below 5 ha is under purview of the District Collector/s in the State of Maharashtra, as per their jurisdiction and responsible for implementation of the Guidelines for Environmentally Sound Operations for Stone quarries issued by the Maharashtra Pollution Control Board time to time.
- vi. CPCB in compliance of the Hon'ble NGT order dated 28.02.2020 in OA No. 304 of 2019, M. Haridasan & Ors. Vs. The State of Kerala, examined the matter and prepared a report on "Distance criteria for permitting stone quarrying" and MPCB subsequently issued a circular vide dated 03.08.2020 regarding "Citing criteria for stone quarries in the state of Maharashtra" for enforcement in the state of Maharashtra.
- vii. Considering the above referred Notification issued by MoEF&CC, orders passed by the Hon'ble Supreme Court of India and Hon'ble NGT, mandating prior environmental clearance for mining of minor minerals irrespective of the area of mining lease, which are matte of records the joint committee humbly submits that Hon'ble NGT may consider issuing appropriate directions, as deemed fit, for granting temporary mining lease permits for extraction of minor minerals.
- viii. In view of the violation wrt pp undertaking mining without prior EC.
 - a. Action may be taken against the PP by MPCB under the provisions of the Section 19 of EPA 1986;
 - b. MPCB with DM, Hingoli may examine the scale of violation and communicate the same to SEIAA, Maharashtra. SEIAA Maharashtra may take necessary action while considering the grant of EC under violation TOR for the aforesaid as per SOP

for identification and handling violation cases under the EIA Notification, 2006, issued by MoEF&CC OMs dated 07.07.2021 and 28.01. 2022.

- c. DM Office shall take appropriate action for enforcing prior EC for all other stone quarrying sites, based on survey and information by respective Tahasildars/ DMO on physical inspection of sites and initiate punitive provisions, if required in line with observations and actions taken in the stone mining activity without prior EC matter carried out at Gut No. 113. Village Bhosi, Taluka Kalamnuri, Dist- Hingoli and Gut No. 41, Devadari Kalamnuri, Disting Hingoli.*
- d. Collector Office shall seize and take possession of all stone mining site without prior EC, and proceeded with necessary action under MLRC 1966.*

7. The Joint Committee report was considered by us on 05.09.2022 and found that it did not contain assessment of damage to the environment. The Joint Committee was further directed to submit additional report with regard to the calculation of loss caused to the environment.

8. Pursuant to that order, the Joint Committee has submitted its report on 22.09.2022 which is as follows:

2.0 Assessment of Damage to the Environment:

It is decided by the Committee to consider the following orders/ cases or Hon'ble NGT to ascertain the extent and assessment of damage to the environment and recover the amount from the persons who have undertaken illegal mining.

- I. Para 31 of the Hon'ble National Green Tribunal Principal Bench order dated 04.01.2019 in O. A. No. 110 (THC)/2012 titled as "Threat to life arising out of coal mining in south Garo Hills District Vs. State of Meghalaya & Ors" reads as follows:*

"Paying capacity and the amount which may act as deterrent to prevent further damage is also well recognized. Net Present Value of the ecological services foregone and cost of damage to environment and pristine ecology, the cost of illegal mined material, and the cost of mitigation and restoration are also relevant factors, The

committee may go into these aspects to determine the final figure.”

- II. *For the purpose of arriving the Net Present Value of the ecological services foregone and cost of damage to the Environment and pristine ecology and cost of mitigation and restoration, the decisions of this Hon’ble Tribunal dated 31.07.2015 in O. A. No. 110 (THC) of 2012 and O. A. No. 73 of 2014 and O. A. No. 13 of 2014 and O. A. No. 186 of 2014 in the matter of the “Threat to life arising out of coal mining in South Garo Hills District Vs. State of Meghalaya & Ors.” has been relied upon. The same is reproduced as under.*

“We further direct that all the coal miners/transporters would be liable to pay 10% environment compensation, for the coal being transported, irrespective of the fact that they had paid royalty for the same even prior the date of the order.” However, where the coal has already been transported prior to the date of the order, that is 25th March, 2015, for the present the liability to pay 10% to comply with the directions as environmental compensation would not be enforced by the State, subject to final orders.”

The Hon’ble Tribunal in its order dated 25. 03. 2015 referred above in the related Original Application Nos. 73 of 2014 and 13 of 2014 in pages 15 and 16 has ordered as follows:

“No one has even thought of restoration of the area in question to bring to some extent, if not completely, restoration of ecology and environment in question. Serious steps are required to be taken for cleaning polluted water bodies and ensure that no further pollution is caused by this activity and the activity which would be permitted to be carried on finally including transportation of coal. On the basis of ‘Polluter Pay Principle’, we direct that the State Government shall in addition to the royalty payable to it, shall also collect 10% on the market value of the coal for every consignment.

Thus, we direct that the State Government shall in addition to the royalty payable to it, also collect 10% of the said market value of the coal per metric tone from each person. The amount so collected shall be deposited in the account to be titled as ‘Meghalaya Environment Protection and Restoration Fund’ to be maintained by the State under the direct control of the Chief Secretary of the State of Meghalaya.

This amount shall only be used for restoration of Environment and for necessary remedial and preventive measures in regard to environment and matters related thereto.

We make it clear that this 10% of the additional amount shall be payable by all persons who had transported the coal in the past or would transport in future, without exception.”

This similar methodology adopted in the Joint Committee Report dated 02.01.2020 submitted to the Hon'ble NGT, South Zone Bench in the matter of OA No. 08 of 2017 (SZ) titled "Smt. S. Kannammal Vs. Govt. of India, Ministry of Environment, Forest & Climate Change, New Delhi and 6 others" which was related to illegal stone mining.

Accordingly, as per information provided by the District Mining Officer (DMO) Hingoli vide letter dated 16.09.2022 (Annexure-I) regarding mining area, schedule rates, mined quantity statement of excavation, at Gat No. 41 Devdari Tal- Kalamnuri, Dist. Hingoli and Gat No. 113 Bhosi Tal. Kalamnuri, Dist. Hingoli the committee assessed the Environmental compensation to be imposed project proponent who have undertaken illegal mining.

The compensation to be recovered from the stone mine lease holders are calculated quantified and tabulated in Annexure-II. As per calculation, Restoration & environmental Compensation cost is Rs. 288930161.44/-

Table 3 compensation amount to be realized from each stone mine lease holder.

Sr. No.	Leases Name	Mining Site	Area As per 7/12 Extract Or lease order H. R.	Total Excavated Quantity in cubic Meter	Total EC cost In Rs.
1.	M/s. Rajendrasingh Bhamboo Infra Pvt. Ltd.	Gut No. 41, Devdari, Tal Kalamnuri, Dist. Hingoli.	3.28	141239.07	110674938.39
2.		Gut No. 113, Bhosi, Tal-	4.00	227482.42	178255223.06

		Kalamnuri, Dist- Hingoli.			
	Total			368721.49	288930161.44

9. The stand of **Respondent No.6/ Project Proponent** is as follows:

The Applicant has concealed material facts. The answering respondent has obtained land on lease and license from the Landowners (Respondent No. 07 to Respondent No. 09), based on lease for three (3) years. The answering Respondent/ project Proponent has under taken 4- Laning of Pangare to WarangaPhata section from 134.500 km to 174.645 (Design Chainage) of NH-161 including bypasses at Kalamnuri and AkhadaBalapur and additional lengths of 800 m from Waranga Junction to Nanded (NH-161) (existing Chainage 253.700), which is the subject matter of the present Original Application. The Respondent No.6 is registered as Class One Contractor.

10. The applicant has on-going dispute with the answering respondent with respect to sale of land admeasuring 2 Hectares 60 Ares, situated at Gat No. 34/1 and 34/2, situated at Village- Pimpalsuti, Taluka- Shirur, District- Pune. Both the parties had entered into lease Agreement/ Sale Agreement on 25th September, 2019 with respect to the said land. On the basis of the said agreement the Applicant was supposed to transfer his rights, title and interest in the said land and on the assurances of the Applicant, and his brothers of payment of an amount of Rs. 1,09,90,000/- with respect to the said land. However, some dispute arose between the answering respondent and the applicant pursuant to which the answering Respondent lodged a complaint on 14.02.2022 against the Applicant. The Applicant has also been arraigned as an accused for the

offence punishable under Sections 386 and 387 of Indian Penal Code. The conduct of applicant is shady as he was also accused of extorting an amount of Rs. 2,00,00,000/- from M/s Nikhil Constructions, therefore, the applicant is a habitual offender. The present application has been filed in order to pressurize the answering Respondent.

11. The answering Respondent has complied with all the environmental norms and conditions as prescribed by the Respondent No.4/ The District Collector Hingoli. The Project Proponent has demarcated the safety zone in presence of DMO before taking any effective steps on site. The Project Proponent has developed the green belt by planting over 1200 trees in 7.5 meter safety zone with facility of drip irrigation and as per the directions given by the DMO, there was no direction to plant 1000 indigenous trees along the approach road. It has provided the wall around one meter along with barbed wire fencing to the mining leased area to ensure the safety to animals and humans. It has obtained all the necessary NOCs, permissions from the competent authorities before commencing work on proposed site. No mining was done below depth as approved in the mining plan. The quarrying is done above the level of aquifer to avoid the ground water contamination. The area around the proposed site is fairly dry area, there being no ground water source near it and adequate precaution has been taken to avoid contamination of ground water. The answering Respondent adhered to the provisions of Maharashtra Minor Mineral Excavation (Development and Regulation Rules 2013 (to be referred in short in Rules of 2013), and guidelines issued by the MoEF&CC. The answering Respondent has ensured that there is maintenance road, sprinkling of water on regular basis and plantation is carried out to reduce the dust particulate matter pollution.

12. There is no direction from DMO to provide the solar energy, sanitation facility in Z. P. School in villages Devdai and Bhosi. However, it has helped the people of said villages for carrying out various

construction works for the betterment of village on regular basis. The answering Respondent has ensured proper approach road to the proposed quarry area before granting of final lease. DMO has given NOC after the report is submitted by the Government forest officer that the site area does not fall under the Eco-sensitive area. Air quality monitoring is for the industrial area and not for the mining. There is no human habitation within the periphery of 1KM from mining site and blasting and crushing. Transportation is carried out under covered condition. The answering Respondent has ensured dust suppression by using of sprinkler which is connected to the tune of 20,000 ltr.of water tank and over 1200 trees have been planted along the leased boundary. All the mitigation and monitoring measures have been followed, detailed in SEIAA meeting. There is no hydro-geological regime of the surrounding area because of the area being dry. This Tribunal does not have jurisdiction to hear this matter.

13. Further, it is submitted that the National Highways Authority of India (NHAI), under the umbrella of Government of India, for the purpose of 4-Laning of Pangare to WarangaPhata section, including bypasses, mentioned above, has undertaken this work. The answering Respondent had made a bid which was found to be lowest and vide letter of appointment (LOA) dated 02.03.2021 treated the Respondent No.6 to be successful bidder of this project and had Respondent No.6 furnished performance security. Thereafter, the answering respondent had applied to the Respondent No.4-District Collector seeking permission to carry out mining and extraction work at the above site. On 17.05.2021, District Mining Office (DMO), Hingoli had issued letter to Deputy Forest Conservation Officer, Deputy Regional Officer, Maharashtra Pollution Control Board Hingoli, Senior Geologist, Land Water Survey and Tahsildar regarding granting of Temporary permission for mineral mining to be granted to the answering Respondent. Accordingly, No Objection Certificate (NOC) has been issued by all the concerned authorities. On

24.09.2021, a joint meeting was conducted at the Office of Collector, Hingoli of the above officers and Committee was constituted to approve the District Mining Plan and accordingly permissions were given to the answering Respondent/ Project Proponent. The District Mining Officer (DMO), Hingoli, granted temporary permission for commencement of mining work from 12.05.2022 subject to fulfillment of 19 conditions. None of these conditions provides for any precondition to obtain prior EC. Therefore, answering Respondent has carried out the mining required for construction of road for the said project. On 21.01.2021, Consent to Establish under Section 25 of the Water (Prevention and Control of Control of Pollution) Act, 1974 under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Authorization/ Renewal of Authorization under Hazardous Wastes and Other Wastes (Management and Transboundary Movement) Rules, 2016, was given by the Maharashtra Pollution Control Board- Respondent No.4, with respect to Gat No. 57. Consent to Operate with respect Gat No. 42, was also given 30.08.2021. On 03.09.2021, Maharashtra Pollution Control Board (MPCB) granted Consent to Operate under Section 26 of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Authorization/ Renewal of Authorication under Hazardous Wastes and Other Wastes (Management and Transoboundary Movement) Rules, 2016. On 01.07.2021, Work Order which was issued to the answering Respondent, did not include any precondition to obtain EC. The answering Respondent commenced the work after paying royalty charges. On 03.08.2022, a joint visit was made by officers of MPCB, SEIAA, District Mining Officer, Hingoli and Circle Officer, Kalamnuri and Respondent No.4/MPCB and issued a notice to the answering Respondent instructing them to stop extraction of crushed stone and metal and all other activities which was based on stone metal excavated from mines at above-mentioned sites. Thereafter, on 04.08.2022, a notice was issued by

DMO (District Mining Officer) Hingoli, asking answering Respondent to stop transportation of crushed stone, from the stone crushers to the site. Similar notice was also issued by Respondent No.5/The Kalamnuri Tahsildar to the answering Respondent asking it to the stop work. A detailed reply was sent by the answering Respondent to the above notice on 21.08.2022 which was issued in pursuance of the complaint made by the Applicant. It is further submitted that under EIA Notification 2006, an Environmental Clearance is required to be obtained for State Highway expansion projects in hilly terrain (above 1,000m AMSL), and / or ecological sensitive areas. It is further submitted that admittedly, the area required temporary mining for the project in question is less than five hector of land. The construction of 4- Laining of Pangare to WarangaPhata, is exempted from Environmental Clearance. The EIA Notification dated 14th February 2006 makes it clear that EC is required from State Environment Impact Assessment Authority(SEIAA), for area required for temporary mining, if the area would have been greater than five hector and less than 50 hector of land, EC is required from the Ministry of Environment and Forests for carrying out expansion of National Highways greater than 30 KM, involving additional right of way, greater than 20m involving land acquisition and passing through more than one state. It is submitted that answering Respondent does not fall under any of the categories as mentioned in the schedule attached, to the EIA Notification 2006, as the project road's length is less than 100 Kms. Further, it is submitted that the Maharashtra State Government Resolution, dated 14.06.2017, issued by the Forest and Revenue Department says that for permission for extracting minor minerals upto 25,000 Brass is to be granted by the District Collector. Under rule 58 of Maharashtra Minor Mineral Extraction (Development and Regulation) Rules 2013, a Committee in every district has been constituted under the chairmanship of the District Collector. Once permission has been granted by the committee, with respect to temporary permit for mining,

then no approvals/ permissions would be required from District Environment Impact Assessment Authority (DEIAA).

14. Further, It is submitted following the procedure as per the Government Resolution dated 14.06.2017, the District Collector, Hingoli, after getting approvals from Officers of Forest Department, Mining Officer, Maharashtra Pollution Control Board, District Mining Officer, Hingoli, Ground Water Survey and Development Agency, granted temporary permission for commencement of mining work subject to fulfillment of 34 conditions which does not contain prior EC.

15. Further, it is submitted that as per the MoEF&CC Notification dated 28.03.2020, it has been categorically mentioned that there are few cases for which requirement of environmental clearance is exempted which contains "6. Extraction or sourcing or borrowing of ordinary earth for linear projects such as roads, pipelines, etc."

16. The case of the answering Respondent falls under this specific category of exemption stated above.

17. Further, it is submitted that Hon'ble Bombay High Court, Nagpur Bench, in Writ Petition No. 2748 of 2022 {**M/s. Eagle Infra India Ltd. V/s The Union of India and others**} has held as under:

"In view of aforesaid, since the Central Government has now clarified the applicability of the Environmental Impact Assessment Notification 2006, by issuing Standard Operating Procedure for the purpose of extraction or sourcing or borrowing of ordinary earth for linear projects to be subject to Standard Operating Procedure, the petitioner would be required to follow the said Standard Operating Procedure while extracting or sourcing or borrowing of ordinary earth for linear projects. It is also the stand of the Revenue Forests Department that it would be cumbersome and difficult to obtain environment Clearance for every excavation quantity and hence exemption for obtaining environmental clearance for temporary permit was allowed as per the communication dated 12/12/2013. The Respondents in the aforesaid facts are thus duty bound to ensure that the aforesaid Office Memorandum dated 08.08.2022 along with its Standard Operating Procedure is followed when a temporary permit is granted as per communication dated 12/12/2013 while extracting and borrowing of ordinary earth for linear projects such as roads, pipelines etc."

18. Therefore, denying all the allegations against the answering Respondent it is submitted that the Application deserves to be dismissed.

19. The Respondent No.6/PP has also filed objection against the Joint Committee Report where-in it is submitted by him that the Hon'ble Supreme Court expressed that without conducting study of Environmental Impact on the river beds and elsewhere the extraction of sand/ minerals from river beds have an impact on the river's physical habitant characteristics. The concern was also shown that though such Environment Clearance may not be required for mining in land less than five(5) hector but, if such activity is done within the radius of 1km it may have collective impact, hence, the necessity of proper environmental assessment plan was felt. Considering the above aspects, Respondent No.1/MoEF&CC, constituted a core group under the chairmanship of the Secretary (Environment and Forest) to look into environmental aspects associated with mining of minor minerals. The said Committee submitted its report and suggested several recommendations, concluding that mining of minor minerals should be subjected to simple but strict regulatory regime and carried out only under an approved frame work of mining plan, which should provide for reclamation and rehabilitation of the mined out areas. It was also expressed by committee that while granting mining leases by the respective State Governments, location of any eco-fragile zones within the impact zone of the proposed mining area, the linked rules/ notifications governing such zones and the judicial pronouncements, if any need to be considered. In view of the above recommendations, Respondent No.1/MoEF&CC on 01.06.2021 wrote a D. O. letter to the Chief Ministers of States to incorporate recommendations of the committee in mining of minor minerals framed under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957. In the year 2010, the Ministry of Mines also published Model Rules which are

vital from the environmental, ecological and biodiversity point of view. The Hon'ble Supreme Court finally decided that the Central Government shall take steps to bring into force the Minor Minerals Conservation and Development Rules 2010 at the earliest and the State Government and Union Territories should also take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1927. Till such action is taken by the respective parties, it was directed that leases of minor minerals including their renewals for an area of less than five hectares be granted by the State/ Union Territories only after getting Environmental Clearance from MoEF. It is thus very clear that the final direction issued by the Hon'ble Supreme Court, was operating till the State Government/ Union Territories amended the Minor Conservation and Development Rules resorting to provisions of Section 15 of the Act. Once such steps are taken, the above direction of non-issuance of lease or renewal of lease of minor mineral shall not be applicable.

20. Further, it is submitted after the directives were issued in the matter of Deepak Kumar's case, the Union of India and State Governments took several steps for providing modalities for the lease of minor minerals as directed by the Hon'ble Supreme Court.

21. Further, it is submitted that the government Notification dated 29/11/2019 has provided for lease of minor minerals. However, several representations were received by the Respondent No.1/MoEF&CC for waiver of requirement of prior environment clearance for borrowing of ordinary earth for roads etc. and considering the those representations the Respondent No.1 on 28.03.2019, issued another notification in supersession of notification dated 29.11.2019 and extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines etc. has been exempted from getting prior environmental clearance. In view of the above notification and temporary permission

issued by the Respondent No.4, the answering Respondent was carrying out construction activity of road.

22. Therefore, it is submitted that the Joint Committee has failed to establish that the answering Respondent was at fault and that damage has been caused to the environment particularly in view of the fact that the answering respondent has taken all possible due care.

23. The stand of **Respondent No.3/MPCB** is as follows:

The National Highways Authority of India has awarded contract to Respondent No.6/PP for construction and development of Highway No. NH-161, for which Respondent No.6/PP obtained short-term mining permissions for land Gat No. 41, Village Devdari, Tal- Kalamnuri, District Hingoli admeasuring 3 H 28 R & land Gat No. 113 Village Bhosi, Tal- Kalamnuri, Dist. Hingoli admeasuring 4 H 00 R, both of District Hingoli. The Project Proponent had applied for Consent to Establish and Consent to Operate for Stone crusher unit located at Gat No. 42, Wai, Taluka- Kalamuni, Dist-Hingoli which were granted on 03.09.2021. The Project Proponent had applied for Consent to Establish and Consent to Operate for stone crusher unit located at Gat No. 57, Datti, Taluka Kalamnuri, Dist. Hingoli which was also issued on 03.09.2021. These are granted after verification of siting criteria and other compliances . As per the MPCB circular dated 24.03.2017, stone quarries having area 5 ha and above are covered under consent regime. Stone quarries having area below 5 hectores will come under purview of the District Collector. As per the said circular, the District Collector will implement the guidelines for environmentally sound operations for stone quarries issued by the Maharashtra Pollution Control Board (MPCB). No consent was issued by answering Respondent for mining activity as mining lease area is less than 5 hectores at both stone mining sites. Visit was conducted on 14.07.2022 by Board officials of the mining sites and they observed that Project Proponent had not obtained EC for stone mines located at above sites, though at the time of their

visit the mining activity was not found in operation, however, extraction of crushed stone and metal was found going on. Therefore, Project Proponent was instructed to stop extraction of crushed stone and metal and all other activities which were based on stone metal, excavated from mines. They were also instructed not to take any effective step without obtaining EC for the mines located at Gat No. 41 and 113. Further, it is submitted that temporary short- term permissions for land Gat No.41 and 113 was granted by Respondent No.4/ District Collector and District Mining Officer Hingoli. Further, it is submitted that in view of the judgment of the Hon'ble Supreme Court in Special Leave Petition (SLP) No. 19628-19629 of 2009 in the matter of **Deepak Kumar Vs. State of Haryana & Ors**, prior EC has become mandatory for mining of minor minerals irrespective of the area of mining, therefore the answering Respondent has rightly issued notice to the Respondent No.6 on 03.08.2022. Further, It is submitted that the Maharashtra Pollution Control Board(MPCB) issued circular dated 03.08.2020 for siting criteria for stone quarry and the answering respondent was granted Consent to Operate for Stone crusher unit of Respondent No.6 located at Gat No. 42, Village Wai, Tal. Kalamnuri, Dist- Hingoli which is valid upto 31.08.2023. As per the G. R. dated 14.06.2017 of Government of Maharashtra published under Rule 2013, power of granting quarry permits regarding minor mineral Extraction upto 25000 Brass has been delegated to District Collector and has been exempted from approval from District Environment Impact Assessment Authority. Further, it is submitted that the pursuant to the judgment of the Hon'ble Supreme Court in *Deepak Kumar case* (Supra) that no mining activities could be permitted without prior EC, the MoEF&CC issued a Notification dated 28.03.2020 and has proposed Amendments in the earlier Notification dated 14.09.2006 providing for exemption from EC for "extraction or sourcing or borrowing ordinary earth for linear projects such as roads, Pipelines". The Respondent No.6 has not obtained EC for mining

activity and that as per the recommendations of Joint Committee the answering Respondent shall file the prosecution against the Project Proponent following due process of law.

24. The stand of **Respondent No.2/SEIAA** is as follows:

The construction in the present case pertains to National Highway undertaken by the National Highway Authority of India, which has appointed Respondent No.6 as the contracting agency to carry out the said project. In the present case no application for EC was received by the Answering Respondent nor an EC has been granted.

25. The stand of **Respondent No.11/DMO** is as follows:

The provisions of the Maharashtra Minor Mineral Extraction (Development & Regulation) Rules, 2013 are relevant, Rule 2 (h) of which defines the Competent Authority. For the purpose of the quarries situated on the lands owned by PWD and Water Resources Department, Executive Engineer of the concerned Division is a competent authority for granting permit upto a maximum of 25,000 Brass for the purpose of Departmental Works only. In the case where quantity does not exceed 500 brass, the Competent Authority is Tahsildar. In case of quantity does not exceeding 2000 Brass Competent Authority in sub Divisional Officer and in case quantity does not exceed 25000 brass, the Competent Authority is Collector or Additional Collector. As per the Government Circular dated 13.10.2022, the Authority for notifying public project is collector if the quantity is One (1) lakh Brass.

26. The stand of **Respondent No.4- District Collector and Respondent No. 5- The Kalamnuri Tahsildar** is as follows:

On 14.09.2006, the Central Government issued a Notification making it obligatory to obtain EC with regard to the projects and activities' mentioned in Para-2 and the Schedule Appended to the said Notification, as per which no EC was required if mining was undertaken in an area less than 5 hectares. It was brought to the notice of the Hon'ble Supreme Court that the Department of Mines and

Geology, Govt. of Haryana issued an Auction Notice dated 03.06.2011 proposing to auction the Excavation of Minor Minerals, Boulders Gravels, and Sand quarries of an area not exceeding 4.5 hectares, the Hon'ble Supreme Court took the view that the EC was necessary even if mining is undertaken in an area less than 5 hectares. In '*Deepak Kumar's case* (Supra) the Hon'ble Supreme Court directed all the States, Union Territories, MoEF&CC and the Ministry of Mines to give effect to the recommendations made by MoEF&CC in its Report of March, 2010 and the Model Guidelines framed by the Ministry of Mines. Thereafter, the State Government took into consideration the law on the point laid down in '*Deepak Kumar's case* and issued notification Maharashtra Minor Mineral Extraction (Development & Regulation) Rules, 2013. These Rules envisaged granting quarry leases and quarry permits. The Rule 11 insisted for EC Certificate to be accompanied by Application of Quarry Lease. Chapter IV deals with the grant of 'quarry permits'. Rule 59 empowers the Competent Officers to grant short- term permits for Minor Minerals. Rule 61 deals with the application for quarry permits. In none of the provisions is it contained that prior EC would be required in case of grant of temporary permit. The State Government issued a Clarification dated 12.12.2013 to the effect that no requirement would be their of EC in respect of temporary permit being granted under Chapter IV of the Maharashtra Minor Mineral Rules, 2013.

Further, it is submitted that in exercise of the powers under Chapter IV, the Respondent No.4 granted a temporary permit to the Respondent No.6 for stone quarry for construction of road, National Highway No. 161, without there being any necessity of prior EC in view of the above provision Rule 58 and 59 under Chapter IV of the of the Rules of 2013.

Further, it is submitted that the MoEF&CC issued a notification dated 28.03.2020, stipulating that the no EC is required in case of linear projects. Pursuant to this Notification, Office Memorandum

dated 08.08.2022 was issued by MoEF&CC laying down SoP for carrying out excavation of ordinary Earth in linear projects.

Vide letter dated 24.03.2022, the State Government has directed all the Divisional Commissioners and all the District Collectors that no temporary permits would be given in view of the pendency of the issue before NGT, which was challenged by the Orange City Stone Crusher Owners' Association, Nagpur by filing Writ Petition No. 2153 of 2022 where-in judgment is pronounced on 14.10.2022 by Hon'ble High Court Bombay, which set aside the communication dated 24.03.2022. Resultantly, the State Government is required to go by the Rules of 2013.

Further, It is submitted that in view of the judgment of the Hon'ble High Court of Bombay, the State Government issued circular dated 13.10.2022 clarifying that no Environmental Clearance is necessary for linear projects for Earth / Soil material permissions. The Rules of 2013 have neither been stayed nor have been set aside by any Competent Authority. By letter dated 20.10.2022, all the Divisional Commissioners & Collectors have been directed to grant temporary permits. Therefore, answering respondent and collector acted upon the said directions of the State Government.

27. On the basis of the above pleadings, the questions which need to be decided in the present case are as follows:

1. Whether The Respondent No.6/ Project Proponent was required to obtain prior EC before undertaking the mining activity in Gat numbers in question?
2. Whether the Respondent No.6/PP has committed any violation of the provisions of law related to environment ?
if yes, its effect ?

3. Whether any damage to environment has happened on account of the activity of the Respondent No.6/ PP ? if yes, its effect ?
28. In order reach the conclusion on the above issues we have to take into consideration the legal position which appears to exist as on date.
29. From the side of the learned counsel for the Respondent No.6/ Project Proponent, our attention is drawn to the judgment of this Tribunal (PB) dated 17.02.2022 passed in O. A. No. 68/2020(WZ) **Shri. Rajiv Babasaheb Waman & 11 Ors. Vs. Ministry of Environment, Forest & Climate Change Union of India through Secretary & 11 Ors.** which pertains to operation of stone quarry and stone crushing activity by the Respondent No.11 & 12 in that O.A. in violation of the environmental norms. Allegation were also made in that, regarding blasting to have been conducted without safeguards.
30. The Para- 8 of the said judgment is relevant for our consideration where-in it is recorded that the legal action needs to be taken for mining without EC. EC has to be followed irrespective of the circular of State of Maharashtra dated 12.12.2013 addressed to all Divisional Commissioners and Collectors for grant of temporary permits, in view of the law laid down by the Hon'ble Supreme court in *Deepak Kumar's case (Supra)*. It is recorded in this order that the circular of the State of Maharashtra for issuing temporary permits does not and cannot dispense with the judgment of the Hon'ble Supreme Court in *Deepak Kumar's case (Supra)*. Doing so will be contempt of order of the Hon'ble Supreme Court. It is duty of the State of Maharashtra to issue clarification in view of the fact that this circular is in defiance of judgment of the Hon'ble Supreme Court to the detriment of environment and rule of law.
31. Further, in this judgment a joint committee which was constituted, was directed to ascertain the status of compliance of stone crusher in

- terms of requirement of EC/ Consent as per law. Accordingly, the said application was disposed of.
32. In pursuance of this direction issued by the Principle Bench, Revenue and Forest Department State of Maharashtra issued a circular dated 24th March, 2022 which is annexed page No. 1884 of the paper book where-in it has been stipulated that as per the NGT order in O. A. No. 68/2020 dated 17.02.2022 temporary permits without EC shall not be granted.
33. Thereafter, one party by the name of Orange City Stone Crusher Owners' Association, Nagpur approached Hon'ble Bombay High Court at Nagpur Bench through filing Writ Petition No. 2153/2022 together with it other Writ Petition No. 2163/2022 and 2731/2022 were also considered, where-in prayer is made for quashing of communication dated 24th March, 2022. While considering the state prayer, the Hon'ble High Court framed following question "Whether it is permissible for the State Government to require a person interested in obtaining quarry permit under Rule 59 of the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013 (for short Rules, 2013) to submit environmental clearance as a condition precedent by issuing an executive instruction in the nature of impugned communication dated 24th March, 2022."
34. In these three(3) Writ Petitions submission was made by the petitioners that they till very recently, were being granted quarry permits for extraction and removal of minor minerals from the specified area for temporary period of time, not more than 30 days at a time, under Rule 59 of the Rules, 2013, without submitting EC, but with the issuance of communication dated 24th March, 2022 by Respondent No.4 in those writ petitions, the quarry permits were not being issued to them unless they first submitted environmental clearance certificate from the Competent Authority. The contention made before the Hon'ble High Court was that quarry permits were

different from quarry leases in the sense that quarry leases were granted usually for five (5) years initially, and extendable upto twenty (20) years, making the quarry leases as long term grants, but in case of quarry permits, the permission is granted only for a period of 30 days at a time, which is limited to the areas specified. Because of this difference, there was prescription of precondition that EC certificate will have to be obtained by quarry owner for obtaining a quarry lease under the Rules of 2013, but no such requirement is there in case of a quarry permit. Further, it was submitted by the petitioners before Hon'ble High Court that Rules of 2013 have been framed following directions of Hon'ble Apex Court in the case of **Deepak Kumar and others Vs. State of Haryana reported in (2012) 4 SCC 629**, therefore, Rules of 2013 now govern the issue. It was further contended that in any case, executive instructions cannot supersede the Rules of 2013, framed under Section 15 of the Mines and Minerals Extraction (Development and Regulation) Act, 1957 (for short, "Act, 1957")

35. It was also mentioned in that judgment that the stand taken by the State Government for issuance of a quarry permit under Rule 59 of the Rules of 2013, it was not necessary to obtain prior EC, the permit being for a short term. According to the State Government, the impugned communication dated 24th March, 2022 had been issued in view of the above directions of National Green Tribunal vide order dated 17th February, 2022 in O. A. No. 68/2020(WZ)
36. It was also contended from the side of petitioner that National Green Tribunal (NGT) has not considered the nature of the directions issued by the Hon'ble Supreme Court in the case of *Deepak Kumar (Supra)* and has held per incuriam that it was the duty of the State Government to issue a suitable clarification in view of the fact that in the Circular dated 12.12.2013 which clarified that for the grant of temporary quarry permits, there was no requirement of prior

submission of EC certificate, goes against the above judgment of the Supreme Court. Further, it was contended that the judgment of the National Green Tribunal (NGT) has been stayed in relation to the appellants there-in by Hon'ble Supreme Court vide order dated 09.09.2022 passed in Civil Appeal Diary No.(S) 25543/2022. Further, it was contended that direction of the Hon'ble Supreme Court regarding submission of the prior EC from MoEF, in the case of leases of minor minerals, has been implemented by the State Government by framing Rules of 2013 as Clause (f) of Rules 11 (5) of the Rules of 2013, provides for making an application for grant of quarry lease as well as the manner in which the application should be made. It was further contended that in case of quarry permits, there was no such requirement of prior EC Certificate, as would be clear from Rule 59 of the Rules of 2013 and the Rule 59 still governs the field as it has not been struck down by any court. Further, it was contended that if an executive instruction is issued in conflict with a statutory provision or any Rule having force of law, it would be the latter which would prevail. The interim direction given by the Apex Court in the case of *Deepak Kumar's case (Supra)* was there only till the time the rules were framed under Section 15 of the Act, 1957.

37. After consideration of the matter by Hon'ble High Court, to give answer to the question framed above, it was thought proper to examine the background of Rules of 2013 and the nature of the provisions contained therein.

38. While doing so, it has been recorded in the said judgment that in *Deepak Kumar's case (Supra)*, the validity of the auction notice dated 03.06.2011 proposing to auction the extraction of minor minerals, boulders, gravel and sand quarries of an area not exceeding 4.5 hectares in the district of Panchkula, and auction notices dated 08.08.2011 for extraction of minor minerals in the districts of Panchakula, Ambala and Yamnuna Nagar exceeding five (5) hectares

was in question. One of the auction notices, which referred to mining leases of less than five(5) hectares stated that the area envisaged under mining leases being of five(5) hectares, no environmental clearance was required to be obtained as per MoEF Notification dated 14.09.2006. The Hon'ble Supreme Court while deciding question, took into consideration recommendations made by the Ministry of Environment and Forest (MoEF) which was stated in its report. The Hon'ble Supreme Court, after taking into consideration the recommendations of the MoEF observed that operation of mines of minor minerals needed to be subjected to strict regulatory measures and that it was also felt necessary to have a relook at the definition of, "minor minerals". It was also observed by the Hon'ble Apex Court, there was necessity of preparation of "comprehensive mines plan" for contiguous stretches of mineral deposits by the respective State Governments and they could also be encouraged to make inclusion of the plan by their appropriate incorporation in the Mineral Concession Rules, 1960 framed by the Ministry of Mines. With the above observations, the Hon'ble Supreme Court issued a direction to the Central Government to take steps to bring into force the Minor Minerals Conservation and Development Rules, 2010 at the earliest and further directed the State Governments and Union Territories to take immediate steps to frame necessary rules under Section 15 of the Act, 1957 taking into consideration the recommendations of MoEF given in its report of March 2010 and model guidelines framed by the Ministry of Mines. The relevant directions given by the Hon'ble Supreme Court is as follows:

"29. We, in the meanwhile, order that leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from MoEF."

39. The Hon'ble High Court thereafter has recorded in this judgment that the Rules of 2013 have been framed by the State of Maharashtra

- by issuing Notification dated 18th July, 2013 in compliance with the directions contained in Para-28 of the judgment of *Deepak Kumar's case (Supra)* in exercise of powers conferred upon the State Government under Section 15 of the Act, 1957.
40. Thereafter, the Hon'ble High Court considered the incidental question as to whether Rules of 2013 give effect to the interim direction of the Apex Court regarding granting of lease of minor minerals and renewal of such a lease for an area of less than five hectares only upon submission of environmental clearance certificate obtained from MoEF or not.
41. The answer to the said question was said to have been indicated in the provisions made in Chapter II of the Rules of 2013 which deals with the procedure for grant of 'quarry lease'. Rule 11 of the said Rules of 2013 provides for the application of 'quarry lease' which as per Clause (f) of the same provides for environmental clearance certificate.
42. The Hon'ble High Court thereafter has recorded in its judgment that it would be clear from the list of documents which were submitted with an application for grant of 'quarry lease' that it must be accompanied with EC Certificate as well, which means that no 'quarry lease' could be granted under Rule 11 (5), unless the application was accompanied with EC certificate. Accordingly, the question framed above has been answered in affirmative
43. Thereafter, the Hon'ble High Court considered the next incidental question by which regimen now the issue of exploitation and extraction of minor minerals is governed ?. Thereafter, considering the same it has been recorded that the issue of exploitation and extraction of minor minerals would be governed by the regulatory mechanism prescribed in the Rules of 2013.
44. The Hon'ble High Court considered the relevant provisions of Rules of 2013 and has recorded that it finds that these rules contemplate

two kinds of regulatory measures for exploitation and extraction of minor minerals. One is that of “quarry lease” and the other is of “quarry permit” which are defined under Rule 2 (r) and Rule 2 (t) respectively, as under:

“Rule 2(r) “Quarry Lease” means a lease to mine, quarry, bore, dig, search for, win, work and transport or carry away any minor mineral specified therein.”

“Rule 2 (t) “Quarry permit” means a permit granted under Chapter- IV of these rules to extract and remove any minor mineral in specified quantities and specified time.”

45. Thereafter, the Hon’ble High Court went on to clarify that the above definitions would indicate that apparent distinction has been made in Rules of 2013 between ‘quarry lease’ which is granted under Chapter II and ‘quarry permit’ under Chapter IV of the said Rules. A ‘quarry lease’ is about full exploitation of a minor mineral right from searching for it through its excavation and mining to its transportation and includes such operations, as mining, quarrying, boring, digging, searching for, and transporting; while a ‘quarry permit’ is about obtaining a mined minor mineral and includes only limited operations like extraction and removal of the minor mineral.
46. The Hon’ble High Court has further recorded in its judgment the permit granted for extraction and removal of minor minerals is of short term and is restricted to the specified land with ceiling put on the quantity of minerals to be extracted and removed and is also confined to specific time and volume and Rule 59 read with Rule 61 does not specify the requirement of submission of environmental clearance certificate. It is further held in the said judgment the rule making authority has made a distinction between ‘quarry lease’ and ‘quarry permit’ to the effect that while ‘quarry lease’ is for a long term period of time, wider in scope of operations, the ‘quarry permit’ is for a very short and temporary period of time and is confined to limited

operations and is intended to achieve the object of urgent and immediate need of minor minerals for various developmental works by striking a balance between the need of protection of environment and the need for undertaking developmental works which are in larger public interest. It is further recorded that for grant of 'quarry permit' under Rule 59, there is another distinguishing feature that it does not have requirement of prior submission of EC certificate. Further, it has been emphasized by the Hon'ble High Court that this distinguishing feature of 'quarry permit' in particular, has rational and proximate relation with the purpose for which 'quarry permit' is granted. The purpose of obtaining an already mined mineral serves the object of meeting an urgent and immediate need for the minor mineral for various developmental works. When an already minor mineral is to be extracted and removed from a limited area and in specific volume and specific time, the rationale behind no requirement of prior submission of environmental clearance certificate would be one of sustainable development where environment and development both go hand in hand. Thus, the question which has been framed by the Hon'ble Court reproduced by us at the beginning has been answered accordingly.

47. This judgment of Hon'ble High Court dated 14.10.2022 has been assailed before Hon'ble Supreme Court in *Go Green Foundation Vs. The State of Maharashtra & Ors.*, where-in notices have been issued but no stay has been granted.
48. Now, in view of above, we are of the opinion that the position of law which should be treated to exist as on date should be the view taken by the Hon'ble Bombay High Court in *Orange City Stone Crusher Owners Association case (Supra)*, according to which the 'quarry permit' which is issued under rule 59 and rule 61 of the Rules of 2013 does not require prior EC, subject to condition that the distinction made by the Hon'ble High Court is very clear between the

'quarry lease' and 'quarry permit'. 'Quarry lease' has been held to be a long term grant for quarry for minimum five years extendable upto twenty (20) years which includes mining activity apart from other activity as well. But as against that, the 'quarry permit' is interpreted to mean that it would not include the mining activity rather it has been clarified that only the already mined mineral may be permitted to be extracted and transported from specific area for specific time period for the purpose of development work on urgent basis in case of 'quarry permit'. Now, in the case in hand we have to see as to whether the temporary permits which were granted to the Respondent No.6/ Project Proponent include the permission of mining as well or do they permit the Project Proponent only to extract and transport already mined mineral.

49. We find that the provision of application for 'quarry permit' provided under Rule 61 of Rules of 2013, provides that such an application shall be made in Form- P to the Competent Officer and the Form-P which is part of that rule stipulates as follows:

(1) "xxxxxxx

(2) xxxxxxx

(3) xxxxxxx

(i) xxxxx

(ii) xxxxx

(iii) xxxxx

(iv) xxxxx

(v) "Minor mineral or minerals which the applicant intends to mine:-"

(vi) Xxx

(vii) Xxx

(viii) Xxx

(ix) Xxx

(x) Xxx

- (xi) Xxx
- (xii) Xxx
- (xiii) Xxx
- (xiv) Xxx”

50. It appears from this rule that for purpose of issuance of the grant of short-term permit in respect of minor mineral, it is provided that the applicant needs to disclose the purpose of mining and details of the area etc. Therefore, how could it be taken that the temporary permit would not include the mining activity, rather it would include only extraction and transportation of already mined material, as has been interpreted by the Hon'ble High Court of Bombay? But we are constrained to go by the view which has been taken by the Hon'ble High Court of Bombay, though the same as of now is sub-judice before Hon'ble Supreme Court. But till the Hon'ble Supreme Court comes out with final view on this, we would have to abide by interpretation made in this regard by Hon'ble High Court of Bombay that 'quarry permit' is only for extraction and transportation of already mined minor mineral and includes only limited operations like extraction and removal of the already mined minor mineral.

51. From the side of the Applicant, it was vehemently argued that since the 'quarry permit' issued under Rule 59 read with 61 of the Rules of 2013 grants permission for exploitation, extraction and transportation, the same would also include act of mining because extraction would be possible only when the mineral has been mined. Therefore, in the case in hand Respondent No.6/ Project Proponent was required to obtain EC in view of the judgment of Hon'ble Supreme Court in the Deepak Kumar's case.

52. Per contra, the learned counsel for the Respondent No.6/ Project Proponent as well as that of Respondent No.1- MoEF&CC, Respondent No.2- SEIAA and Respondent No.3-MPCB have argued orally before us that the prior EC is not required in the case of 'quarry permit'.

However, we find that in Joint Committee which comprised of SEIAA /MPCB /District Magistrate Hingoli, it has submitted that there is violation on the part of Respondent No.6/ Project Proponent of not obtaining prior EC before undertaking the mining activity under the grant of 'quarry permit'. Accordingly the Joint Committee has held that violation has been committed on the part of the Respondent No.6/Project Proponent.

53. First of all we would like to consider temporary permits which have already been granted in favour of the Project Proponent which has already been cited by us above at page No. 8 and 9. They show that in-all eight(8) temporary permits have been granted in favour of Respondent No.6/Project Proponent for different time periods(which in many cases are for more than 30 days period) and to extract different quantities of stones. These permits have been granted on temporary basis for the work of National Highway -161. At condition No.14 of said permit it is mentioned that the permit holder will not be allowed to carry out the 'mining activity' within 50 meter from public road, public buildings, rivers, nalla, water body, railway track etc. The said conditions reflect that in fact the said permit has been given for 'mining activity' while in the subject of that it is recorded 'Temporary Permission for Extraction'. As per the interpretation made by the Hon'ble Bombay High Court Nagpur Bench in case *Orange City Stone Crusher Owners Association (supra)*, the temporary permit would not include the permission for 'mining activity' because that is permissible only under the 'quarry lease' and not under the 'quarry permit'. Pursuant to the said quarry permits, Respondent No.6/Project Proponent has carried out mining activity and has extracted minerals to the tune of 80,382.48 Brass from Gat No. 113 and 49,907.8 Brass from Gat No. 41. It is apparent that this quantity has been extracted after mining activity having been resorted to, which was not permissible under quarry permit as per the Hon'ble High Court of

Bombay. Therefore, we find that the quarry permits which have been granted in the form of 'temporary permission for extraction' are not in accordance with the 'quarry permit' as has been interpreted by the Hon'ble High Court of Bombay and is not supposed to include mining activity, rather permission has been granted only to exploit, extract and transport already mined minor mineral. Therefore, we find these temporary permissions for extraction are not in accordance with the judgment of the Hon'ble High Court of Bombay cited above, these permits need to be quashed.

54. The Principle Bench of this Tribunal in Original Application No. 360/2015 (with Report dated 30.01.2020) vide order dated 26.02.2021 dealt with environmental compensation for illegal sand mining and observed-

“Scale of compensation for violations on polluter pays principle

10. Vide order dated 17.08.2020, the Tribunal considered the CPCB report dated 30.01.2020, in pursuance of earlier orders on scale of compensation to be recovered for violation of norms for mining on polluter pays principle and the matter was deferred for further consideration of such scale and further orders in the light of the EMGSM 2020. On the issue of scale of compensation for violations, the Tribunal held that the same has to be calculated having regard to the polluter pays principle and not mere loss of royalty. This requires taking into account value of the illegally mined material and cost of restoration of the environment. CPCB did the exercise by constituting an expert Committee. The Tribunal considered the report as follows:-

“8. The Committee considered two approaches:

(I) Approach 1: Direct Compensation based on the market value of extraction, adjusted for ecological damages.

(II) Approach 2: Computing a Simplified NPV (Net Present Value) for ecological damages.

9. In the first approach, the criteria adopted is:

- Exceedance Factor (EF).
- Risk Factor (RF).
- Deterrence Factor (DF).

10. Approach-I is demonstrated by Table 1 as follows

“Table No. 01: Approach 1

Permitted Quantity (in MT or m3)	Total Extraction (in MT or m3)	Excess Extraction (in MT or m3)	Exceedance in Extraction:	Compensation Charge (in Rs.)
X	Y	Z = Y-X	Z / X	D (Market Value) * (1+RF + DF) Where D = Z x Market Value- of the material-per-MT-or-m3 DF = 0.3 if Z/X = 0.11 to 0.40 DF = 0.6 if Z/X = 0.41 to 0.70 DF = 1 if Z/X >= 0.71 RF = 0.25, 0.50, 0.75, 1.00 as per table 2)

11. Approach-II is demonstrated by following formula:-

“Till such time as data and information for a comprehensive NPV is worked out in a site specific manner to account for all (or at least the major) ecological damages, a simplified NPV, proxied on the market value of the illegally extracted amount may be computed. In this case the NPV approach would imply that the total benefits from the activity of sand mining (as represented by the market value of the extracted amount) be deducted from the total ecological costs imposed by the

activity. In the absence of data on benefits and costs separately, we recommend a modification of the formula as shown below:

Total Benefits (B) = Market Value of illegal extraction: D
(refer Table 1)

Total Ecological Costs = Market Value Adjusted for risk factor:
 $D * RF$ (refer Table 1).

For present purposes, it is assumed that the Benefits would accrue only in the first year (in which the extraction of the illegally mined material takes place), while the ecological costs would continue to be felt over a period of time. NPV is to be calculated for a period of 5 years on the net value, $\Sigma (C-B)$, at a discount rate ranging from 8%- 5%, varying in inverse with the risk factor. Thus, where the highest risk factor (say 1) is applicable, the discount rate applicable would be the lowest (say 5% in this case).”

12. Final recommendation is as follows:

“Thus, it is recommended that the annual net present value (NPV) of the amount arrived at after taking the difference between the costs and the benefits through the use of the above approach, maybe calculated for a period of 5 years at a discount rate of 5% for mining which is in a severe ecological damage risk zone. The rationale for levying this NPV is based on expert opinion that reversal and/or restoration of the ecological damages is usually not possible within a short period of time and rarely is it feasible to achieve 100% restoration, even if the sand deposition in the river basin is restored through flooding in subsequent years. The negative externalities of the mining activity are therefore to be accounted for in this manner. Ideally, the worth of all such damages, including costs of those which can be restored should be charged. However, till data on site-specific assessments becomes available, this approach may be adopted in the interim. In situations where the risk categorization is charged. However, till data on site-specific assessments becomes available, this approach may be adopted in the interim. In situations where the risk categorization is

unavailable or pending calculation, the following Discount Rates may be considered:

Severity	Mild	Moderate	Significant	Severe
Risk Level	1	2	3	4
Risk Factor	0.25	0.50	0.75	1.0
Discount Rate	8%	7%	6%	5%

13. Annexure-A appended to the report gives the calculation as follows:

“Compensation Charge (Scenario II - explicit accounting of NPV) Market Value of Illegally Mined Material (D) $5000 \times 400 = 2000000$ /

Annual Value of Foregone Ecological Values $D \times RF = 2000000$ /-

Present Value of Foregone Ecological Values (@ 5% discount rate and over 5 years)

$$\begin{aligned}
 PV &= \sum_{t=1}^5 \frac{(D+RF)}{(1+r)^t} \\
 &= \frac{(2000000)}{(1+0.05)^1} + \frac{(2000000)}{(1+0.05)^2} + \frac{(2000000)}{(1+0.05)^3} + \frac{(2000000)}{(1+0.05)^4} + \frac{(2000000)}{(1+0.05)^5} \\
 &= \text{Rs. } 86,58,953/-
 \end{aligned}$$

Net Present Value (after netting out market value of illegally mined material) -i.e., Total Compensation to be levied

$$= NPV = PV - D$$

$$= \text{Rs. } 66,58,953/-$$

Compensation Charge in above case:

Approach 1 (no explicit accounting of NPV)	Approach 2 (explicit accounting of NPV)
$D \times (1 + RF + DF)$	@ 5% discount rate and over 5 years
Rs. 46,00,000/-	Rs. 66,58,953/-

14. The Tribunal directed undertaking of scenario analysis, as suggested on behalf of the applicant and to furnish a further report accordingly. Further report

dated 12.10.2020 has been filed by the CPCB reiterating its earlier report. We propose to approve approach-2 in the report. Apart from the above, a report dated 15.01.2021 has been filed by the Oversight Committee for the State of UP3 to which reference will be made later.”

55. Following the above procedure in the present case we have computed EDC as follows –

Compensation as per Approach-1

Permitted Quantity	Total Extraction	Excess Extraction	Exceedance in %	Market Rate	Market Value of illegally Mined Material	Ecological Damages ²	Total Compensation
Brass	Brass	Brass		Rs per Brass ¹			
X	Y	Z = Y-X	$E=(Z/X)*100$	M	MV=Z*M	ED=MV*DF+MV*RF	TC=D+E
0	130290.28	130290.28	Infinity	900	117261252	17,58,91,878	29,31,53,130

¹as per Joint Committee Report PB page 987

²Deterrence factor =1 as exceedance is more than 100% and Risk factor =0.5 as risk is considered moderate.

Compensation as per Approach -2 -

Year	Market Value of illegally Mined Material(MV)	Factor (F) in denominator	Present Value (PV)
		$F=(1+DR)^{Year}$	= Market Value / Factor
1	117261252	1.07	109589955
2	117261252	1.14	102420519
3	117261252	1.22	95720111
4	117261252	1.31	89458048
5	117261252	1.40	83605652
PV			480794285
NPV	PV-MV		36,35,33,033

* Discount rate is taken as 7% as risk is considered moderate

Compensation Charges in present case as per the two approaches are as follows:-

<i>Approach 1 (no explicit accounting of NPV)</i>	<i>Approach 2 (explicit accounting of NPV)</i>
29,31,53,130/-	Rs 36,35,33,033/-

56. Since in the Original Application No. 360/2015, the amount of compensation charge has been calculated from Approach-I & Approach -II and the higher one was taken to be the compensation charge, which was made chargeable in the case in hand also, following the same, we are of the view that the environmental compensation charge of the higher amount, which has been arrived at by adopting Approach-II, should be realized from the Project Proponent.

57. We have also considered EDC worked out by the Joint Committee as summarized which was following methodology adopted in Original Application No. 08 of 2017 (SZ) wherein EDC has been worked out as Rs. 28,89,30,161/- . However we consider methodology used in Original Application No. 360/2015 (With Joint Committee report dated 30.01.2020) order dated 26.02.2021 more appropriate and hence EDC to be recovered as Rs 36,35,33,033/-

58. We conclude that-

1. In view of the above, Issue No.1 is decided in affirmative to the effect that, EC was required since the activity involved mining of the minor mineral.
2. As per issue No.2 we have to decide as to whether Respondent No.6 has committed any violations of the provision of law related to environment ? if yes, its effect. In this regard, we find that since the activity of mining has been conducted by the

Respondent No.6/ Project Proponent without taking prior EC, the same is treated to be violation which impacts environment adversely. Therefore, this issue is decided accordingly. The Joint Committee report has also concluded that the prior EC was required to be obtained by the Respondent No.6/ Project Proponent before the carrying out the mining activity.

3. As per the issue No.3 we have to decide as to whether any damage to environment has been caused on account of the activity of the Respondent No.6/PP ? if yes, its effect?. In this regard, we are relying on EDC calculated by us based on the several earlier judgments passed by this Tribunal, and we decide this issue in affirmative, holding that on account of the illegal mining damage caused to the Environment is rightly quantified at Rs. 36,35,33,033/- We decide this issue accordingly.

59. In view of the above findings, we dispose of this application with following directions:

1. The MPCB shall realize a sum of Rs. 36,35,33,033/- from the Respondent No.6/ Project Proponent who is directed to deposit the said amount with the Maharashtra Pollution Control Board(MPCB) within a period of one month from today and in the case the said amount is not deposited, the MPCB would be at liberty to take appropriate action for its realization.
2. The said amount shall be utilized by MPCB in consultation with District Collector and District Mining Officer for restoration of the environmental damage due to activities of Respondent No.6/ Project Proponent within a period of six months, after the said amount is deposited.
3. Report of remediation actions implemented along with benefits achieved shall be submitted by MPCB to the Registry of this Tribunal. This report shall also be posted on MPCB website.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

February 22, 2023.
Original Application No. 54/2022
Sachin J.

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 S

Civil Appeal No. 1707/2023

RAJENDRASINH BHAMBOO INFRA PVT. LTD.

Appellant(s)

VERSUS

DATTATRAYA PHALKE & ORS.

Respondent(s)

(IA No.52327/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT and IA No.52326/2023-STAY APPLICATION)

WITH

C.A. No. 1718/2023 (XVII)

(IA No.53156/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT and IA No.53153/2023-STAY APPLICATION)

Date : 27-03-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MS. JUSTICE HIMA KOHLIFor Appellant(s) Mr. Shyam Divan, Sr. Adv.
Mr. V Giri, Sr. Adv.
Mr. Dhaval Mehrotra, Adv.
Mr. Aman Varma, Adv.
Mr. Pourush Ranka, Adv.
Mr. Saurabh Kulkarni, Adv.
M/S Ads Legal, AORFor Respondent(s) Mr. Nitin Lonkar, Adv.
Mr. Himanshu Chaubey, AOR
Ms. Sonali Suryawanshi, Adv.
Ms. Pradnya Bheke, Adv.UPON hearing the counsel the Court made the following
O R D E RHeard learned senior counsel for the appellant as also
learned counsel for the respondent No.1 who has entered caveat.Issue notice to respondent Nos. 2 to 6. Notice to
proforma respondents is dispensed.

In the meantime, having taken note of the contentions put forth by learned counsel for the appellant, for the present we deem it appropriate to grant stay of the impugned order subject to the appellant depositing 15% of the amount quantified in the impugned order, before this Court within four weeks from today. The said amount be kept in fixed deposit until further orders.

Objection statement, if any, be filed in the meantime.

(RAJNI MUKHI)
COURT MASTER (SH)

(DIPTI KHURANA)
ASSISTANT REGISTRAR